

ABSTRACT

The article provides a thorough analysis of the types of criminal offenses committed by convicts in places of detention of the State Criminal Enforcement Service of Ukraine (SCSU). It has been proven that the commission of a criminal offense of free will by convicts in places of deprivation of liberty is not only a dangerous encroachment on the goal and task of justice and the normal operation of the penal institutions of the State Security Service of Ukraine, but also prevents the achievement of the goal of punishment and, above all, its counteraction and prevention.

Among the most important theoretical and practical issues that have influenced judicial and executive practice and that currently require elaboration and research, the author includes such high-profile criminal offenses as: malicious disobedience to the requirements of the administration of the penal institution; actions that disorganize the work of penal institutions; escape from the place of deprivation of liberty or from custody. The greatest danger in the correctional colonies of Ukraine is criminal offenses combined with an attack by convicts on the guards in order to remove obstacles to the implementation of the plan and to take possession of weapons, which they use for armed resistance during their subsequent detention, as well as to commit new crimes.

The author's definition of a criminal offense in places of deprivation of liberty of the State Security Service of Ukraine is formulated. This is a socially dangerous act (action or inaction), committed by a special subject, in places of deprivation of liberty of the State Security Service of Ukraine and which encroaches on the goal and task of justice and the normal operation of institutions for the execution of punishments, as well as prevents the achievement of the goal of punishment, correction and resocialization of convicts.

Keywords: *criminal offense, convict, staff, places of imprisonment, prevention, correctional colony.*

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LEGAL REGULATION AND MECHANISMS FOR COMPENSATION FOR DAMAGE CAUSED BY A CRIME UNDER LEGISLATION OF THE REPUBLIC OF MOLDOVA

Наталія Паустовська, Дмитро Попушної. ПРАВОВЕ РЕГУЛЮВАННЯ ТА МЕХАНІЗМИ ВІДШКОДУВАННЯ ЗАПОДІЯНОЇ ЗЛОЧИНОМ ШКОДИ ЗА ЗАКОНОДАВСТВОМ РЕСПУБЛІКИ МОЛДОВА. У статті йдеться про сучасні особливості правового регулювання та механізми відшкодування заподіяної злочинною шкоди за молдовським законодавством. Відновлення порушених злочинною шкодою прав і законних інтересів, зокрема шляхом відшкодування заподіяної злочинною шкодою, – одне із найважливіших завдань кримінального судочинства. Однак, суть проблеми полягає навіть не так у тому, що права цієї категорії не передбачені в чинному законодавстві, а в тому, що реалізація цих прав насправді часто пов'язана із безліччю труднощів. 29 липня 2016 р. в Республіці Молдова було прийнято Закон про реабілітацію жертв злочинів. Положення цього закону націлені на створення законодавчої бази для забезпечення мінімальних умов реабілітації потерпілих від злочинів осіб, захисту та забезпечення дотримання їхніх прав та законних інтересів, а також регулює категорії потерпілих від злочинів осіб, на які поширюються його положення, механізми захисту та реабілітації жертв злочинів, порядок та умови надання державою фінансової компенсації завданої злочинною шкодою.

Потерпілі від торгівлі людьми та від насильства в сім'ї користуються допомогою на умовах

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Закону про запобігання та припинення торгівлі людьми від 20 жовтня 2005 р. або, залежно від обставин, Закону про запобігання та припинення насильства в сім'ї від 1 березня 2007 р. На фінансову компенсацію мають право потерпілі від злочинів, передбачених деякими статтями Кримінального кодексу (злочини проти життя та здоров'я особи).

Незважаючи на те, що в Республіці Молдова вживаються деякі заходи щодо створення законодавчої бази для забезпечення умов реабілітації та механізмів для відшкодування шкоди жертвам злочинів, автори вважають, що ці заходи мало ефективні на тлі зростання злочинності. На їхню думку, молдовське законодавство має розвиватися шляхом удосконалення заходів та способів захисту прав потерпілих шляхом створення державних компенсаційних фондів з виплат потерпілим, у тому числі з подальшим стягненням у порядку регресу виплачених сум з боржників-засуджених.

Ключові слова: *потерпілий, злочин, відшкодування шкоди, механізм, кримінальне судочинство.*

Relevance of the study. In current realities, when the influence of negative social factors on the area of public relations has become more pronounced systemic, the number of criminal encroachments on human life and health, unfortunately, is increasing – the problem of compensation for harm caused by a crime is acute for today's society. Poverty, unemployment, social insecurity and a difficult geopolitical situation are factors that give rise to crime. In this regard, we should expect an increase in such types of crimes as robberies, thefts, looting. The level of detection of violent and mercenary-violent crimes does not exceed 50 percent, and more than a third of the victims are deprived of the opportunity to compensate for the damage caused to them, since the persons responsible for their commitment have not been identified.

Accordingly, with the development of crime, the harm that it causes increases. Restoration of the rights and legitimate interests violated by the crime, including by means of compensation for the harm caused by the crime, is one of the most important tasks of criminal proceedings. However, the essence of the problem lays not so much in the fact that the rights of this category are not provided for in the current legislation, but in the fact that the implementation of these rights in reality is often associated with many difficulties. Compensation for harm to the victim, a rarity for the criminal proceedings of the Republic of Moldova.

Recent publications review. The problems of compensation for harm caused by a crime have been dealt with by many scientists at different times. In particular, in the pre-revolutionary period, these issues were studied by: M. Dukhovskoy, V. Sluchevsky, I. Foinitsky. In the soviet period by: B. Bezlepkin, V. Bozhev, A. Gulyaev, V. Daev, V. Dubrivny, S. Efimichev, P. Marfitsin, I. Petrukhin, I. Poteruzha, V. Savitsky, M. Strogovich, M. Cheltsov, L. Kokorev, V. Shadrin, S. Shcherba, N. Yakubovich, P. Yani. Currently, the works of S. Aleksandrov, F. Bagautdinov, V. Bykov, T. Galimov, A. Grinenko, V. Grigoriev, V. Dubrovin, A. Dyk, Yu. Zvereva, Z. Zinatullina, D. Ivanov, V. Ionova, E. Kleshchina, S. Koldina, D. Mantsurova, L. Maslennikova, O. Michurina, N. Muratova, E. Nagieva, E. Nikolaev, M. Samitova, E. Smirnova, O. Selednikova, N. Senina, S. Sinenko, S. Turov, V. Khatuaeva, O. Khimicheva, R. Khasanshina, D. Chekulaev, D. Sharov, A. Erdelevsky and others are devoted to this problem.

The process of formation of the criminal procedural legislation of the Republic of Moldova on the issues of compensation for harm to the victim has common features with the formation of the legislative base of the Republic, however, there are some peculiarities. This calls for a detailed comparative legal study in order to develop new legal means, modern methods and criminal procedural measures that contribute to the effective provision of compensation for harm caused by a crime.

The article's objective is to consider current features of legal regulation and mechanisms of compensation for damage caused by crime under Moldovan law.

Discussion. Practice has shown that in criminal proceedings the victim has two goals: firstly, he/she wants to receive compensation for the harm caused by the committed crime; secondly, to punish the guilty person. The desire of the criminal process to restore social justice corresponds to the unity of these desires. Thus, Article 23 of the Code of Criminal Procedure of the Republic of Moldova guarantees the right of victims of crimes to compensation for the moral, physical and material damage caused to them, but in practice this right is not always realized. Firstly, compensation for harm is not an unconditional obligation of the perpetrator and is made only by a court verdict. Secondly, the victim cannot count on compensation if the guilty person does not want to compensate for the harm or does not have the necessary funds, and also if the guilty person is simply not identified or is hiding from the investigation and, accordingly, there is no one to recover the amount of damage caused.

In addition, the terms of investigation and consideration of criminal cases in courts are sometimes not respected, although some types of crimes do not tolerate delay, and as a result, the statute of limitations for criminal liability expires. For these reasons, again, the victims' rights to restoration of social justice are violated. These situations predetermine the formulation of the question of the need for other legal mechanisms for compensation for harm from crimes, except for those for the functioning of which a guilty person is required, who undertakes to compensate for the harm caused to him/her. We should note that in the Criminal Code of the Republic of Moldova, the prevention by the perpetrator of the harmful consequences of the crime committed, the voluntary compensation for the damage caused or the elimination of the harm caused is considered as a circumstance mitigating criminal punishment, and as an integral part of the condition for exemption from criminal liability [2].

At the same time, according to the principle of the presumption of innocence, no one is obliged to prove his innocence [3]. The burden of proving the prosecution and refuting the arguments put forward in defense of the suspect or the accused lies with the prosecution. In accordance with these provisions, the burden of proving the guilt of the accused in both considered cases should be assigned to the victim as well. It should be noted that the victim, being unable to collect the evidence base he needs, is forced to resort to the help of the preliminary investigation bodies and the court. It seems that this assistance should consist, for example, in resolving the petitions of the victim to obtain additional evidence through investigative and other procedural actions.

One of the mechanisms that significantly simplifies the procedure for considering criminal cases in courts is provided by Article 3641 of the Code of Criminal Procedure of the Republic of Moldova, according to which the trial can be conducted on the basis of evidence collected at the stage of criminal prosecution only if the defendant confesses to committing all the acts indicated in the indictment, and does not require the presentation of new evidence [3].

The defendant who confessed to the acts specified in the indictment and demanded a trial on the basis of evidence collected at the stage of criminal prosecution shall be reduced by a third the limits of the statutory punishment in the event of a sentence to imprisonment or unpaid labor in favor of society and by a quarter the limits of punishment prescribed by law are reduced in the event of a fine being imposed. If the petition is satisfied, the presiding judge explains to the victim the right to file a civil claim and addresses the civil plaintiff, civil defendant with a question whether they offer to present evidence. After that, the court proceeds to the judicial debate, consisting of the speeches of the prosecutor, defense counsel and the defendant, who can once again take the floor for a cue. If the victim, the civil plaintiff and the civil defendant participate in the meeting, they are also given the floor in the debate. However, this procedural norm still does not guarantee real compensation for the damage caused.

Another mechanism that speeds up the investigation and trial process is plea bargaining. A plea guilt is an agreement between the prosecutor and the accused or, as the case may be, the defendant, who has agreed to plead guilty in exchange for a reduced sentence, which must be drawn up in writing with the mandatory participation of the defense counsel, the accused or the defendant in the case of all crimes under the Special part of the Criminal Code, except for the crimes provided for in Articles 135 and 1351 of the Criminal Code of the Republic of Moldova, i.e. genocide and crimes against humanity. A plea guilt can be entered into at any time after the indictment is filed before the start of the judicial investigation [3]. This institution leads to a significant reduction in the expenditure of funds from the state budget, spent from the moment a person is informed of suspicion of a crime and until the court announces the verdict. Also, the cooperation of the suspect or the accused with justice helps to effectively solve crimes and provides significant assistance to law enforcement agencies in the fight against organized crime. However, this proceeding does not oblige the accused and the defendant to compensate for the damage caused by the committed crime.

It should be clarified that in the Republic of Moldova, when concluding plea bargains, the interests of the victim are not taken into account, his consent is not a condition for concluding a deal between the parties. It should also be noted that at present, the Ministry of Justice of the Republic of Moldova is considering a draft amendment to the criminal procedure legislation, namely, it may introduce the possibility of concluding a judicial agreement on the admission of guilt between the prosecutor and the accused legal entity. A mechanism that exists in most EU member states and the US. Such a measure may lead to faster redress for the damage caused to the State. If approved by parliament, such a measure would provide an opportunity to redress the damage caused to the state by the accused person, who would also have to pay a large fine.

Nevertheless, we note that recently the state has paid quite a lot of attention to the observance of the rights of the accused and defendants. The conditions of detention of arrested persons and those sentenced to deprivation of liberty have been improved, compensation is being awarded for violation of conditions of detention in correctional institutions. Thus, according to part (5) of Article 385 of the Code of Criminal Procedure of the Republic of Moldova, if serious violations of the rights of the defendant arising from the procedural status of the defendant are established during the criminal prosecution or trial, the court considers the possibility of reducing the punishment as compensation for the violations committed [3]. And in the event of a violation of the rights in relation to the conditions of detention guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in the light of the jurisprudence of the European Court of Human Rights, the reduction in punishment is calculated as follows: two days of imprisonment for one day of preliminary arrest.

The rules adopted in 2019 also provide for monetary compensation for the conditions of detention, the equivalent of five euros per day, i.e. a little over a hundred lei. Thus, in almost three years, more than 600 prisoners have obtained through the courts a reduction in their terms of detention due to degrading conditions in prisons. As for financial compensation: they amounted to more than 5 million lei. Perhaps this is correct, and humane treatment of those who have broken the law is necessary, however, we believe that the condition for the application of these procedural mechanisms should be, first of all, the satisfaction of a civil lawsuit. Often, when considering a criminal case and deciding a judicial act, civil claims are left without consideration and the victims are invited to file a claim in civil proceedings.

That is, a person who has suffered harm from a crime has an alternative choice: the law has given him the right to file a civil claim in the process of considering a criminal case and the right to present a claim for compensation for harm in civil proceedings. However, in civil proceedings, the victim himself, and not the prosecutor, who should act on the side of protecting the rights of the victim, proves the amount of damage, the causal relationship, independently prepares and files a claim, and acts in civil proceedings.

The victim, who has experienced physical, moral suffering, suffered material damage, is forced to seek protection of his rights himself, while receiving additional inconvenience and suffering, there are no material resources to pay for a lawyer, it is impossible to figure it out on his own. The result is a sad statistic, an extremely low percentage of claims for compensation for harm to victims of crime. As an example, the United States has developed a mechanism that allows the victim of a crime to receive compensation, regardless of any causes and conditions related to the accused. We are talking about compensation for harm caused by a crime to the victim by the state. On July 29, 2016, the law on the rehabilitation of crime victims was adopted in the Republic of Moldova. The provisions of this law are aimed at creating a legislative framework to ensure minimum conditions for the rehabilitation of crime victims, to protect and ensure their rights and legitimate interests, and also regulates the categories of crime victims that are subject to its provisions, mechanisms for the protection and rehabilitation of crime victims, the procedure and conditions provision by the state of financial compensation for the damage caused by the crime.

Psychological and legal consultation at the expense of the state, as well as financial compensation is provided to victims of crimes if the crime is committed on the territory of the Republic of Moldova, or if it is committed outside the Republic of Moldova and the victim is a citizen of the Republic of Moldova, a citizen of a foreign state or a stateless person legally residing in territory of the Republic of Moldova.

Thus, the following support services are provided to victims of crime:

- a) informing victims of crime about the rights and services that can be provided to them;
- b) psychological counseling;
- c) legal assistance guaranteed by the state;
- d) financial compensation by the government for the damage caused by the crime.

It should also be noted that victims of human trafficking and victims of domestic violence receive assistance under the terms of the law on the prevention and suppression of trafficking in persons no. 241-XVI of October 20, 2005 or, depending on the circumstances, the law on the prevention and suppression of domestic violence no. 45-XVI dated March 1, 2007.

In addition, victims of torture, inhuman or degrading treatment are provided with legal assistance, guaranteed by the state, on a mandatory basis. Victims of crimes under the following articles of the Criminal Code are entitled to financial compensation: article 145 (premeditated murder), article 146 (murder committed in a state of passion), article 149 (deprivation of life by

negligence), part (4) of article 151 (deliberate infliction of grievous bodily injury or other grievous bodily harm resulting in the death of the victim), article 158 (trafficking in human organs, tissues and cells), clause b) of part (3) of article 164 (kidnapping of a person, negligently causing grievous bodily injury or other grievous harm health or death of the victim), article 165 (trafficking in human beings), paragraph (3) of article 166 (illegal deprivation of liberty), article 1661 (torture, inhuman or degrading treatment), article 167 (slavery and conditions similar to slavery), article 168 (forced labor if the crime is committed against a minor), articles 171-175 (crimes related to the sexual sphere), art. Article 2011 (domestic violence), Article 206 (trafficking in children), Article 2081 (child pornography), Article 2082 (obtaining child prostitution services) [5].

When determining the amount of financial compensation provided by the state for damage caused by violent acts that accompanied the crime, the following are taken into account:

- a) hospitalization, treatment or other treatment-related costs incurred by the victim of the crime;
- b) damage to prostheses and other items that replenish the functionality of individual parts of the human body;
- c) damage caused by the destruction, damage or seizure of the property of the victim by committing a crime under paragraph 2 of Article 12;
- d) damage caused by loss of ability to work, if caused by criminal acts;
- e) in the event of the death of the victim of the crime, the costs of his/her burial.

The Interdepartmental Commission for State Financial Compensation for the Damage Caused by the Crime consists of a representative of the Ministry of Justice, a representative of the Ministry of Health, Labor and Social Protection and a representative of the Ministry of Finance, and considers an application for financial compensation along with the attached documents within 30 days from the date of submission.

Financial compensation is paid from the state budget and amounts to 70 % of the amount of damage calculated in accordance with Article 15, but not more than 10 average monthly wages in the economy according to the forecast for the year in which the victim submitted the application for financial compensation. And the transfer of financial compensation to victims of crime is carried out by the Ministry of Justice within 30 days after the acquisition of a final character by the order of the Minister of Justice on state financial compensation for the damage caused by the crime [5].

Nevertheless, we would like to emphasize that the possibilities of state compensatory assistance to crime victims, even in developed countries, are very limited. Therefore, in most countries, including the Republic of Moldova, compensation provisions cover the limited types of crime presented above. In September 2022, the Ministry of Justice of the Republic of Moldova took the initiative to change and improve the regulatory framework and the law on the rehabilitation of crime victims. In this regard, this item was included in the Strategy for Ensuring the Independence and Integrity of the Justice Sector for 2022-2025 and in the Action Plan for its implementation.

Conclusions. It should be noted that despite the fact that in the Republic of Moldova some measures are being taken to create a legislative framework to ensure the conditions for rehabilitation and mechanisms for compensating victims of crime, we believe that these measures are not very effective against the backdrop of an increase in crime. It seems to us that domestic legislation should develop along the path of improving measures and methods for protecting the rights of victims by creating state compensation funds for payments to crime victims, including with the subsequent recovery of the amounts paid from convict debtors in the order of recourse (for example, budget revenues in connection with the confiscation of valuables and property of the perpetrators or the extended confiscation of the convicted person, fees for legal costs, fines, etc.). Any obstruction of the execution of a sentence in terms of a civil claim should entail negative consequences for the convicted person, in the form of a refusal to apply parole from punishment or other mechanisms that reduce the limits of punishment provided for by law. It is also necessary to further improve the legal mechanisms for compensation for harm from crimes, except for those that require a guilty person to function.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article deals with modern features of legal regulation and mechanisms of compensation for damage caused by crime under Moldovan law. Restoring the rights and legitimate interests violated by the crime, in particular by compensating the damage caused by the crime, is one of the most important tasks of the criminal justice system. However, the essence of the problem lies not so much in the fact that the rights of this category are not provided for in the current legislation, but in the fact that the realization of these rights is often associated with many difficulties.

Despite the fact that some measures are being taken in the Republic of Moldova to create a legislative framework to ensure conditions for rehabilitation and mechanisms to compensate victims of crimes, the authors believe that these measures are not very effective against the background of the increase in crime. In their opinion, Moldovan legislation should be developed by improving the measures and ways of protecting the rights of victims by creating state compensation funds for payments to victims, including the subsequent recovery of the sums paid from convicted debtors.

Keywords: *victim, crime, compensation, mechanism, criminal proceeding.*