

REICE
Revista Electrónica de Investigación en Ciencias Económicas
Abriendo Camino al Conocimiento
Facultad de Ciencias Económicas, UNAN-Managua

Vol. 10, No. 20, julio - diciembre 2022 REICE ISSN: 2308-782X
<http://revistacienciaseconomicas.unan.edu.ni/index.php/REICE>
revistacienciaseconomicas@gmail.com

Compensation For Damage Caused by Corruption Crimes Committed in The Allocation
and Spending of Budgetary Funds

Indemnización por Daño Causado por Delitos de Corrupción Cometidos en la
Asignación y Gasto de Fondos Presupuestarios

Fecha recepción: noviembre 02 del 2022
Fecha aceptación: noviembre 17 del 2022
DOI: 10.5377/reice.v10i20.16028

Dmitriy Ivanov

Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation (MGIMO-University), Russia.

Email: dmitriy.a.ivanov@bk.ru

ORCID: <https://orcid.org/0000-0002-2023-3771>

Vitaly Vasyukov

Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation (MGIMO-University), Russia.

Email: v.f.vasyukov@mail.ru

ORCID: <https://orcid.org/0000-0003-0743-5616>

Stanislav Selivanov

Ministry of Internal Affairs of Russian Federation, Russia.

Email: s.v.selivanov@bk.ru

ORCID: <https://orcid.org/0000-0003-2203-6963>

Olesya Ivanova

Moscow University of the Ministry of Internal Affairs of Russia named after V. Ya. Kikotya, Russia.

Email: olesya.m.ivanova@mail.ru

ORCID: <https://orcid.org/0000-0003-0554-718X>

Sergey Nuikin

Moscow University of the Ministry of Internal Affairs of Russia named after V. Ya. Kikotya, Russia.

Email: sergey.y.nuikin@mail.ru

ORCID: <https://orcid.org/0000-0001-6831-3298>



Derechos de autor 2021 REICE: Revista Electrónica de Investigación en Ciencias Económicas. Esta obra está bajo licencia internacional [Creative Commons Reconocimiento-NoComercial-CompartirIgual 4.0](https://creativecommons.org/licenses/by-nc-sa/4.0/). Copyright (c) Revista Electrónica de Investigación en Ciencias Económicas de la Unan- Managua

Resumen

La corrupción como fenómeno social es multifacética. Los delitos de corrupción incluyen actos ilícitos que reúnan todas las características siguientes: la presencia de sujetos propios de un delito penal, que incluyen a los funcionarios especificados en las notas al artículo 285 del Código Penal, la relación del hecho con el cargo oficial de el sujeto, desviación de sus derechos y deberes directos; presencia obligatoria del sujeto por motivo egoísta (el acto está asociado a la recepción de derechos de propiedad y beneficios para sí o para terceros); cometer el delito sólo con la intención directa. A pesar de los logros teóricos y legislativos existentes en el campo de la regulación jurídica de la investigación de los delitos de corrupción cometidos en el ámbito de la distribución y gasto de los fondos presupuestarios, en las condiciones modernas existen dificultades en su calificación, el orden de iniciación de las causas penales, como así como la reparación del daño causado. En este estudio, teniendo en cuenta la cuantía de los daños materiales ocasionados por los delitos de corrupción cometidos en la asignación y gasto de los fondos presupuestarios, parece razonable y adecuado considerar las características procesales para asegurar su indemnización.

Palabras clave: Delitos de Corrupción; Investigador; Distribución y Gasto de Fondos Presupuestarios; Embargo de Bienes; Medidas de Desacreditación Procesal Penal.

Abstract

Corruption as a social phenomenon is multifaceted. Crimes of corruption include unlawful acts that have all of the following features: the presence of proper subjects of a criminal offense, which include the officials specified in the notes to Article 285 of the Criminal Code, the relationship of the act to the official position of the subject, deviation from his direct rights and duties; mandatory presence of the subject of selfish motive (the act is associated with the receipt of property rights and benefits for themselves or for third parties); committing the crime only with the direct intent. Despite the existing theoretical and legislative achievements in the field of legal regulation of the investigation of corruption crimes committed in the area of distribution and spending of budgetary funds, in modern conditions there are difficulties in their qualification, the order of initiation of criminal cases, as well as compensation for the harm caused. In this study, taking into account the size of property damage caused by corruption crimes committed in the allocation and spending of budgetary funds, it seems reasonable and appropriate to consider the procedural features of ensuring its compensation.

Keywords: Corruption Crimes; Investigator; Distribution and Spending of Budgetary Funds; Seizure of Property; Measures of Criminal Procedure Disparagement.

Introduction

Among the criminal procedural means of combating corrupt practices in this area, an effective tool is the application of procedural coercive measures, which consists in the arrest of property (Article 115 of the Criminal Procedure Code). In particular, to ensure the enforcement of a sentence in respect of a civil claim, other property claims or the possible confiscation of property referred to in Article 1041, Part 1, of the Criminal Code, the investigator with the consent of the head of the investigative body and the person conducting the initial inquiry with the consent of the procurator must apply to the court for the seizure of the property of the suspect, accused or persons who are financially liable under the law for their actions.

Materials and Methods

The general scientific system method was used as the main method, through which the features of compensation for damage caused by corruption crimes committed in the allocation and spending of budgetary funds were formulated.

The systemic approach has allowed us to look at the procedural order of compensation for damage caused by corruption crimes committed in the allocation and spending of budgetary funds, as a broad, multidimensional, holistic set of interrelated elements.

Comparative legal method allowed to investigate the current legislation and normative legal acts in the field of distribution and expenditure of budgetary funds. This method allowed to identify problems in the designated area, as well as to form the author's position and make proposals for their resolution, including the improvement of the current criminal procedural legislation.

Through the use of methods of analysis and synthesis we obtained real information about the effectiveness of law enforcement agencies to compensate for the damage caused by corruption crimes committed in the allocation and spending of budgetary funds.

Specific sociological method was used to obtain the results of empirical research, including questionnaire survey of investigators, as well as to analyze the results, systematize and generalize them.

As a result of the application of this methodology, ways of further improvement were developed in terms of increasing the effectiveness of procedural activities of law

enforcement agencies to compensate for the damage caused by corruption crimes committed in the allocation and spending of budgetary funds.

Results and Discussion

According to the Judicial Department under the Supreme Court of the Russian Federation, in 2019 the courts of the Russian Federation considered more than 40.8 thousand applications of the bodies conducting the preliminary investigation for seizure of property, including money of individuals and legal entities in accounts and deposits or in custody in banks and other credit organizations, of which about 87% were satisfied by the court.

A generalization of court practice showed that a significant portion of these petitions are considered in criminal cases of corruption offenses (74.6% of the total number of petitions). In cases where a petition for seizure of property is filed in a criminal case of bribery, the seizure is imposed in order to secure a sentence in terms of fines, possible confiscation of property or other property penalties. When investigating crimes of corruption, the investigator should pay particular attention to increasing the effectiveness of measures aimed at compensation for the damage caused by the crime, the establishment of property to be seized in order to ensure the execution of a sentence in terms of civil action, the collection of a fine or possible confiscation of property (Sokolova, 2017b, p. 177).

In particular, when investigating criminal cases on crimes of this category it is advisable to request information from the units of Rosfinmonitoring about the availability of accounts, movement of assets, property and other valuables of suspects (accused) and their close relatives in order to seize the property and ensure compensation for the damage caused (Ivanov, 2019, p. 234; Tien et al., 2021, p. 211-220).

To find the stolen funds from the current accounts of individuals and legal entities, budget funds allocated for the purchase of goods, works and services for state needs, in all cases the search for stolen funds was carried out by requesting bank statements, tracking “chains” for the movement of budget funds through the current accounts (Pushkarev et al., 2021, p. 395-396). Thus, a positive result was obtained in criminal case No. 52988, investigated in the Department of Internal Affairs in Central Administrative

District of the Main Department of Internal Affairs of Russia for Moscow, where arrest was imposed on 350 million rubles on the correspondent account of CB Intercommerce. For this purpose, requests are also sent to Rosreestr, GIBDD, tax authorities, interaction with the Federal Service for Financial Monitoring, NCB Interpol of the Ministry of Internal Affairs of Russia (Lapina, Lapin, 2015, p. 82-86).

In order to identify the property of suspects or defendants to be seized, investigative measures are carried out aimed at obtaining information about the property of persons involved in the commission of crimes. Investigators also conduct searches of homes and (or) workplaces in order to find items of crime and stolen property.

Regular requests are sent to the bodies of the State Traffic Police, the Office of the Federal Service for State Registration, Cadastre and Cartography, the Office of the Federal Tax Service, the Office of the Federal Service for Financial Monitoring to identify the property owned by individuals.

Thus, during the investigation of criminal case No. 285567 investigated by the Investigation Department for the Northwestern Administrative District of the Main Directorate of the Ministry of Internal Affairs in Moscow it was established that an unidentified person had submitted to MIFNS No. 46 in Moscow false founding documents of Carroll LLC on the basis of which the Unified State Register of Legal Entities had been amended and the founder of Carroll LLC was deprived of her 100% share in the authorized capital of the company. In order to exclude further criminal encroachments by unidentified persons, the court seized 100% of the shares of Carroll LLC.

In order to establish closer cooperation between the law enforcement agencies of the Russian Federation and the competent authorities of foreign states within the framework of international cooperation, at a meeting of the Presidium of the Presidential Council for Countering Corruption it was proposed to consider issues concerning the list of states (state entities) with which agreements containing provisions on asset recovery, including those on search, seizure, seizure and confiscation should be concluded as a matter of priority

In accordance with the decisions of meetings of the Interdepartmental Working Group on Combating Illegal Financial Transactions and operational meetings in the Ministry of

Indemnización por Daño Causado por Delitos de Corrupción Cometidos en la Asignación y Gasto de Fondos Presupuestarios

Internal Affairs and the Federal Customs Service of Russia related to improving the effectiveness of cooperation in this area:

- registers of reports and criminal cases are maintained to monitor the results of their review and investigation;

- training seminars-meetings were held with the heads of investigative and operational departments of internal affairs bodies of all constituent entities of the Russian Federation (with the participation of representatives of the Federal Customs Service of Russia, Federal Tax Service of Russia, Federal Security Service of Russia, Bank of Russia, Rosfinmonitoring, State Company "ASV", territorial prosecutors and courts);

- together with the Federal Customs Service of Russia, the Federal Tax Service of Russia, the Bank of Russia and Rosfinmonitoring are working on the formation of a database of unscrupulous participants of foreign economic activity, carrying out dubious financial transactions.

As for the seizure of property, it should be noted that this measure is used most often for such crimes as: abuse of power (Part 2 of Art. 285 of the Criminal Code) - 31.6%; misuse of budget funds (Art. 2851 of the Criminal Code) - 21.4%; abuse of power (Part 2 of Art. 286 of the Criminal Code) - 17.8%; bribery by a public official (Part 3 of Art. 286 of the Criminal Code) - 17.8%. 2851 of the Criminal Code) 21.4%; exceeding of authority (Part 2, Article 286 of the Criminal Code) 17.8%; bribe taking by a public official (Part 3, Article 290) 11.2%; bribe giving (Article 291) 9.7%; forgery in office (Article 292) 8.3%.

To ensure a positive result in the compensation of damage caused by corruption crimes can provide appropriate amendments to the Criminal Procedure Code of the Russian Federation, providing for the possibility of seizure of property of suspected persons at the stage of preliminary investigation of a crime report, which will prevent the actions of figures to conceal the stolen property or property, which under a court sentence may be foreclosed (Sokolova, 2017a, p. 19).

A positive example of organization of work in this area of activity is criminal case No. 78351, investigated by the Main Investigation Department of the Ministry of Internal Affairs of Russia for St. Petersburg and the Leningrad region against the Director General of FSUE "Russian Scientific Center "Applied Chemistry" Sh. for embezzlement of 10 million rubles, allocated from the federal budget to purchase engineering equipment, the court

on the motion of the investigator seized the property – hotel Belletalish House located in the UK and owned by the spouse of the accused – Sh.

It should be noted another similar fact, where the officers of the Main Directorate for Combating Organized Crime of the Ministry of Internal Affairs of Russia documented facts of embezzlement by the owner of LLC “Diatom Plant” of the federal budget of the Ministry of Education and Science of the Russian Federation, allocated to the specified commercial organization for the execution of a state contract. On the 10th of March, 2017, the Investigation Department of the Ministry of Internal Affairs of Russia in the Ulyanovsk region initiated a criminal case under Part 4 of Article 159 of the Criminal Code of the Russian Federation. In the course of operational and investigative measures and investigative actions established assets (movable and immovable property), acquired by the accused as a result of the crime.

In order to ensure compensation for damage caused to the state on the basis of court orders, the property of the accused was seized for a total amount of 48.5 million rubles.

On the contrary, in criminal case No. 2-1202079, investigated by the Department of the Interior Ministry of Russia in the Tyumen region for the theft of money allocated for the major overhaul of 17 apartment buildings, the Ishim District Court denied the request to seize the property because at the time of the request to the court it was the property of K., who was in a de facto marital relationship with him.

Thus, it should be concluded that the court both grants and denies the motions of the investigators to seize the property on the facts of committing corrupt crimes in the expenditure of budgetary funds.

The reasons for the courts' refusal to satisfy the petitions are disproportionality of the value of the property to be seized to the amount of damage caused, absence of the declared civil claim, attribution of property to household items, failure to provide the court with sufficient evidence that the accused committed deliberate actions to alienate the property in favor of other persons in order to conceal it. The problem here is, in our opinion, that investigators often do not provide the full amount of comprehensive information to justify the necessity of seizure of property as the only and correct solution to ensure compensation for damage caused by corruption offenses in the budgetary sphere.

In addition, in order to optimize the work on the establishment and seizure of property obtained by criminal means, taking interim measures by investigative units, it is proposed in cooperation with the concerned agencies and Rosreestr to work out the issue of granting the right to investigators and employees of UBEPiPK to access the information databases of Rosreestr departments in all subjects of the Russian Federation online (Lapin, 2016, p. 41-45).

It should be emphasized that during the investigation of criminal cases investigators must necessarily explain to the accused (suspect) the criminal law privileges of voluntary compensation for the harm caused in accordance with Article 61 of the CPC of the Russian Federation. Such measures often lead to positive results.

For example, in Grozny Department of the Ministry of Internal Affairs of Russia on transport, the investigators achieved 100% compensation for the damage caused in criminal cases, four of them for crimes of corruption in the spending of budgetary funds. Within the framework of the investigation of the criminal case in the Main Investigation Department of the Ministry of Internal Affairs of Russia in the Kemerovo region, the accused B., who is the director of LLC “Managing Company Housing and Utilities-Kaltan”, who abused his authority, did not transfer to the resource provider LLC “Heat Network Company of Southern Kuzbass” the money received from the population as payment for heat energy, almost completely (more than 20 million rubles) voluntarily compensated.

It should also be specified that in cases where the investigator during the investigation of this category of crimes property may be seized in cases of urgency in accordance with the procedure provided for in Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation. 5 Art. 165 of the Criminal Procedure Code of the Russian Federation (except for non-cash funds, securities and precious metals on accounts or deposits in banks and other credit organizations, which can be seized only by a court decision, according to the Federal Law No. 395-I “On Banks and Banking Activities” from 02.12.1990).

With regard to the topic of the present study the authors are scientifically and practically interested in the provisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 15.11.2016 No. 48 “On the practice of application by the courts of the legislation governing the features of criminal responsibility for crimes in the sphere of

business and other economic activity”, regulating the voluntary order of compensation for damage and subsequent exemption from criminal responsibility. Thus, paragraph 14 states that for exemption from criminal liability for the crimes specified in Part 2 of Article 76.1 of the Criminal Code, compensation for the damage caused as a result of the crime to a citizen, organization or the State, as well as the transfer to the federal budget of income and monetary compensation must be made in full.

Taking into account the fact that Part 3 of Article 28.1 of the Criminal Procedural Code of the Russian Federation does not contain a requirement to compensate damage before the court hearing, criminal prosecution in cases stipulated by Part 2 of Article 76.1 of the Criminal Code of the Russian Federation, shall be terminated by the court if all conditions stipulated by this norm (damage compensation and monetary transfers to the federal budget) are fully met before the court is removed to the deliberation room (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 48, 2016).

The essence of this aspect of the procedural activity of an investigator investigating this category of crimes is reduced to the ability and ability to form a person brought to criminal responsibility, the desire to voluntarily compensate the harm caused.

The peculiarity of this category of crimes is the fact that the amount of property damage to be compensated is often determined on the basis of civil law contracts, primary accounting documents, statements (references) on settlement accounts, information on transactions with the use of electronic means of payment, etc. If necessary, to determine the amount of damage to be compensated, a forensic examination may be appointed.

According to a number of authors (Neryakhin et al., 2021) the main argument and decisive factor in this case for the accused is criminal-legal value of voluntary compensation of harm, which is a circumstance mitigating punishment (Paragraph “k”, Part 1 of Article 61 of the CC of the Russian Federation).

Given the above, the dissertant considers it appropriate to expand the boundaries of possible use of the facts of voluntary compensation for the harm caused by a crime in terms of application of provisions of criminal law mitigating punishment. Foreign experience also shows that the initiative of a person guilty of committing a criminally punishable act to voluntary compensation should be perceived and implemented by an investigator at any stage of criminal proceedings, up to the removal of the court to the

deliberation room for sentencing. Thus, Article 22 of the Criminal Code of Spain enshrines the provision that the mitigating circumstances are the actions of the perpetrator aimed to compensate the damage caused to the victim, or elimination of its consequences at any stage of the proceedings before sentencing (Kuznetsova, Reshetnikov, 1998, p. 32).

It should be said that in Russian criminal proceedings this procedure is clearly regulated, and if the suspect (accused) voluntarily compensated the harm caused, his actions will be evaluated within the current legal framework, when the fact of compensation of harm creates grounds for exemption from criminal responsibility and termination of the criminal case (criminal prosecution) in accordance with Articles 75, 76, 76¹, 76² of the Criminal Code, Articles 25, 25¹, 28, 28¹ of the CPC of the Russian Federation.

Conclusion

In conclusion of the study of procedural peculiarities of providing compensation for damage caused by corruption crimes committed in the allocation and spending of budgetary funds, the author justified the following conclusions and proposals.

It is proved that the seizure of property as a measure of procedural coercion in the investigation of corruption crimes committed in the allocation and expenditure of budgetary funds is essential preventive and at the same time security nature, consisting in preventing the suspect (accused) to hide or make other legal alienation of property, money, securities and other valuables in order to prevent seizure of these objects to ensure compensation for the property damage caused by the crime

The conclusion is grounded that in the Russian criminal legal proceedings the order of voluntary compensation for the damage caused by crime is regulated and if the suspect (accused) voluntarily compensates the caused harm, his actions will be evaluated within the current legal framework, when the fact of compensation of harm creates the grounds for exemption from criminal responsibility and termination of the criminal case (criminal prosecution) in accordance with articles 75, 76, 76¹, 76² of the Criminal Procedural Code and Articles 25, 25¹, 28, 28¹ of the Criminal Procedure Code of the Russian Federation.

Referencias

1. Ivanov, D.A. (2019). Theoretical and legal foundations of the pre-trial procedure for compensation for damage caused by a crime: monograph. Moscow: Yurlitinform.
2. Kuznetsova, N.F., Reshetnikov, F.M. (eds.). (1998). The Criminal Code of Spain of November 23, 1995. Moscow: Zertsalo. REICE | 98
3. Lapin, V.O. (2016). Ensuring compensation for damages in criminal cases on crimes related to the development of budgetary funds. Proceedings of the Academy of Management of the Ministry of Internal Affairs of Russia, 4(40), 41-45.
4. Lapina, S.B., Lapin, V.O. (2015). Interaction of regulatory and law enforcement agencies as a factor of ensuring economic security when exporting capital from Russia. Bulletin of the Academy of Economic Security of the Ministry of Internal Affairs of Russia, 5, 82-86.
5. Neryakhin, A. I., Ivanov, D. A., Potapov, V. D., Stacyuk, D. N., & Bondar, T. I. (2021). Termination of a criminal case (criminal prosecution) as a result of voluntary compensation for damage caused by a crime in the russian criminal court legal proceedings. Laplage Em Revista, 7(3B), 645–651. <https://doi.org/10.24115/s2446-6220202173b1608p.645-651>
6. Pushkarev, V. V., Poselskaya, L. N., Skachko, A. V., Tarasov, A. V., & Mutaliev, L. S. (2021). Criminal Prosecution of Persons Who Have Committed Crimes in The Banking Sector. Cuestiones Políticas, 39(69), 395–406. <https://doi.org/10.46398/cuestpol.3969.25>
7. Resolution of the Plenum of the Supreme Court of the Russian Federation No. 48. (November 15, 2016). On the practice of application by courts of legislation regulating the specifics of criminal liability for crimes in the sphere of entrepreneurial and other economic activities.
8. Sokolova, M.V. (2017a). Voluntary compensation for damage as a basis for the cancellation of the seizure of property. A Russian investigator, 11, 19-24.
9. Sokolova, M.V. (2017b). On the issue of determining the property subject to arrest. Proceedings of the Academy of Management of the Ministry of Internal Affairs of Russia, 3(43), 177-182.
10. Tien, N. V., Pushkarev, V. V., Tokareva, E. V., Makeev, A. V., & Shepeleva, O. R. (2021). Compensation for Damage Caused by a Crime in the Socialist Republic of Vietnam and the Russian Federation. Jurnal Cita Hukum, 9(2), 211–220. <https://doi.org/10.15408/jch.v9i2.21738>.