

THE THEORY OF COMPENSATORY PUNISHMENT

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Abstract: The issue of punishment is one of the most pressing issues of our time and serves as an important criterion for the democratic development of the state. In recent years, the problem of crime is of particular importance for the society of Uzbekistan, which requires the state to revise the laws aimed at creating humane principles, ensuring and protecting the freedom, honor and dignity of the individual. By the Resolution of the President of the Republic of Uzbekistan No.PP-3723 dated May 14, 2018, the “Concept for Improving the Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan” was adopted. According to this concept, the main task is to revise the system of penalties and mechanisms for their appointment, to eliminate outdated forms and types of punishments that do not meet modern requirements. The study of the most humane aspects of punishment theories, the development of proposals, as well as the improvement of criminal legislation on reforming the problem of disclosing punishment to the general public with the consent of the person who committed a crime, as a function of direct punishment (prevention theory) is important in today's conditions.

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Unlike civil proceedings, compensation **for damage** in criminal cases is realized through the punishment of the offender. If we examine the historical development of this theory of punishment, the recovery of damage was initially referred to as **compensation (reparation)**.

In criminal legislation, primary attention is directed either toward punishing the offender or toward rectifying the consequences of the unlawful act and restoring violated rights by utilizing all available resources and mechanisms of courts as well as other state and non-state institutions.

Compensation to victims of crime may generally be provided on two principal grounds, namely:

1. the offender who has caused harm to an individual (or a group of individuals) or to property compensates the victim for the damage inflicted;
2. The state, which has failed to ensure the safety of its citizens, is obliged to provide compensation for the harm caused.

In criminal law, the **theory of compensatory punishment** is more closely aligned with the fundamental principles of the theories of prevention, correction, and retribution.

In our country, “civil claims in the criminal process are considered for compensation of property damage caused directly by a crime or by the socially dangerous acts of a mentally incapacitated person to citizens and legal entities, as well as for covering the costs of the victim’s burial or inpatient treatment, and for sums paid to them in the form of insurance, allowances, or pensions. Harm caused to a citizen’s life and health, as well as moral (non-pecuniary) damage, possesses distinctive characteristics” [Criminal Procedure Code of the Republic of Uzbekistan, National Database of Legal Acts, 18.02.2021, No. 03/21/675/0126].

Moreover, the issue of compensating moral harm has long been a focal point for theorists and practitioners in the field of law, and it remains a subject of ongoing scholarly research. In recent years, serious theoretical and practical studies, as well as publications, have emerged addressing specific aspects of moral damage compensation.

In this chapter, we examine and analyze scholars' perspectives and international experiences concerning the theories of compensatory punishment in criminal law, and consider proposals for incorporating their positive aspects into the practice of Uzbekistan.

According to the distinguished legal scholar L.V. Golovko, a criminal victim has a need to restore their property and personal non-property rights. In this context, the state must generally pay significant attention to safeguarding the victim's rights when establishing criminal procedural norms. In particular, competent state authorities should approach each case individually while conducting criminal proceedings. [Golovko, L.V. *Alternatives to Criminal Prosecution as a Form of Procedural Differentiation: Contemporary Trends in Development*, Doctoral Dissertation in Law, Moscow, 2004, p. 44.]

According to E. Eshwotom, the essence of the "restorative paradigm" should be understood as follows: the purpose of criminal justice is not limited solely to punishment, but must also focus on restoring the rights of crime victims and injured parties. In this process, the rights of the state—whose interests are subject to nearly all criminal procedural mechanisms—should be implemented as a form of restoration. [Golovko, L.V. *Alternatives to Criminal Prosecution as a Form of Procedural Differentiation: Contemporary Trends in Development*, Doctoral Dissertation in Law, Moscow, 2004, pp. 48–49.]

On January 14, 2019, the Republic of Uzbekistan adopted Law No. 515 "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings." The primary objectives of this law are to establish a system of measures aimed at preventing crimes or assisting in their detection when there is a threat to the life, health, or property of victims, witnesses, and other participants in criminal proceedings (hereinafter referred to as protected persons). These measures encompass security and social protection mechanisms, as well as the grounds and procedures for their implementation. However, it is evident that the law addresses victims' and witnesses' needs **only from the perspective of safety during the criminal process**, without extending to broader restorative or compensatory considerations.

Indeed, according to Article 19 of this law, "The authority responsible for adopting a decision to ensure protection must, within three days of receiving an application (or report) regarding the death of a protected person and confirming that the death occurred in connection with their participation in the criminal process, issue a decision either to apply or to deny social protection measures for the deceased person's family members and dependents."

Furthermore, the law stipulates that "the authority responsible for adopting a decision to ensure protection must, within three days of receiving an application (or report) regarding bodily injury, harm to health, or property damage suffered by a protected person in connection with their participation in the criminal process, review the application (or report) and issue a decision either to apply or to deny social protection measures."

It is also specified that the funds for implementing these safety measures—namely, "the financing and material-technical support of protective measures for protected persons shall be provided from the budget and other sources not prohibited by law allocated to the state bodies responsible for ensuring protection; the costs associated with ensuring the protection of protected persons may not be charged to the protected persons themselves" [Law of the Republic of Uzbekistan No. 515 of January 14, 2019, Article 26].

However, during the consideration of a criminal case, the right to a fair trial does not commence from the moment formal charges are brought, but rather from the time when the state

seriously restricts a person's freedom of movement or applies other measures that deprive the individual of the ability to exercise any rights, while the possibility of future criminal prosecution remains. [European Court of Human Rights: Decision of 24 November 1993, para. 36; John Murray v. United Kingdom, No. 18731/91, decision of 8 February 1996, para. 62; Decision of 20 January 2002, para. 75.]

Article 55 of the Criminal Procedure Code of the Republic of Uzbekistan sets out the rights and obligations of the victim; however, this provision does not expressly recognize the victim's **right to redress the harm suffered**.

The protection of the rights of crime victims occupies a distinct place within the philosophy of justice. Yet, if the rights and legitimate interests of a criminal victim are not guaranteed during the implementation of criminal law, it cannot be considered that justice has been duly served.

According to the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On Judicial Practice in Applying Legislation on Compensation for Property Damage Resulting from a Crime" [Resolution No. 26 of 27 December 2016], compensation for property damage caused by a crime plays a crucial role in protecting the interests of citizens, enterprises, institutions, organizations, business entities, as well as the property rights and interests of the state.

The individual has the right to seek compensation for the damage suffered (i.e., property loss), and the general principles of material liability for such damage are established in the Civil Code (Article 14, Chapter 57). The state's duty consists of preventing and suppressing offenses that may cause harm or moral suffering to a person in accordance with the procedures established by law. Furthermore, the state must ensure that the crime victim has the opportunity to protect their rights and legitimate interests by any means not prohibited by law.

Thus, all of the above indicates the necessity for a **fundamental shift in legislative practice**, emphasizing the need to promptly restore the status of the victim in criminal proceedings, as well as their rights and legitimate interests harmed by the crime.

The **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (adopted by the UN General Assembly on 29 November 1985, Resolution 40/34) establishes that individuals who suffer harm as a result of criminal acts—including bodily injury, moral damage, mental suffering, material loss, or serious violations of their fundamental rights—are entitled to **access judicial mechanisms** and to receive **prompt and effective compensation**.

The harm suffered by crime victims, whether individually or collectively, encompasses physical or mental health damage—such as psychological distress—and economic losses.

According to the practice of member states of the United Nations, a significant violation of fundamental rights may result from acts or omissions that contravene national criminal laws (para. 1), and the concept of "victim" also includes the immediate family members or dependents of the directly affected person (para. 2).

Courts hearing criminal cases must have the authority to order the offender to pay compensation to the victim. To enable this, existing legal or technical obstacles should be removed, as such barriers often preclude the practical application of this remedy. [Recommendation No. R (85) 11 of the Committee of Ministers of the Council of Europe, *On the Position of the Victim in the Framework of Criminal Law and Procedure*, in: Collection of Council of Europe Documents on Human Rights Protection and Crime Prevention, Moscow: SPARK, 1998, pp. 114–116.]

On 28 September 1977, the Committee of Ministers of the Council of Europe adopted Resolution (77) 27, "On Compensation for Victims of Crime" [*Criminal Violence Against Women and Children: International Standards of Counteraction: Collection of Documents*,

compiled by V.S. Ovchinsky, Moscow, 2008, pp. 193–195]. The resolution reasonably acknowledged the available mechanisms for compensation but noted that, in practice, the compensation provided to victims was often insufficient [*Ibid.*, pp. 193–195].

For this reason, member states of the United Nations were encouraged to develop **special measures for compensating victims**, grounded in principles formulated by the UN, to ensure justice and promote social solidarity.

These documents establish that if compensation for harm suffered by a victim cannot be provided from the offender's own means, the state should provide redress in the form of **financial assistance or charitable compensation**. In compensating damage resulting from a crime, the process should aim to be as **complete and equitable as possible**, taking into account the nature and consequences of the harm, and, where appropriate, specifying minimum and maximum compensation amounts based on practical and economic considerations [Warpakhovskaya, E.M., *Issues of Legal Regulation of Compensation for Victims of Crime in International Legal Standards and the Legislation of Certain States*, *Siberian Legal Bulletin*, No. 3 (58), 2012].

In restoring the rights of crime victims, it is recommended to **repeatedly review and refine compensation rules**, and to establish normative legal acts that ensure reasonable and timely compensation from the state budget or specially created funds in cases where criminal liability cannot be effectively enforced—such as when the offender remains unidentified, lacks sufficient financial resources, has died, or when the harm results from terrorist acts.

The Declaration underscores situations in which “if full compensation cannot be obtained from the offender or other sources, states should provide financial compensation measures.” Legal scholar V.S. Shadrin emphasizes the need to draw researchers' attention to “establishing principles of justice for victims of crime and abuse of power” [Shadrin, V.S., *Ensuring Individual Rights in the Investigation of Crimes*, Moscow, 2000, p. 157].

A comparative legal analysis of the criminal procedure legislation of several foreign countries has revealed specific features in how states regulate the issues faced by crime victims.

For example, under France's Criminal Procedure Code, adopted on 3 January 1977, **any person who has personally suffered harm as a result of a crime or wrongful act is entitled to claim compensation**.

The law “On Compensation for Damage to Crime Victims” introduced new provisions into the French Criminal Procedure Code regulating the payment of compensation to victims of crime. Under this law, a victim gained the right to receive compensation from the state for harm suffered as a result of a crime **until the moment it is paid**.

In this process, the offender is brought before the court, which, in addition to the main sentence, issues a decision on compensation. The state itself, through the claims procedure, recovers from the convicted person all costs associated with paying the compensation to the crime victim [Kobets, P.N., *Foreign Experience in Compensating Crime Victims in the Criminal Process*, *Russian Investigator*, 2011, No. 7, pp. 34–37].

In Uzbekistan, the establishment of an “**Association for the Support of Crime Victims**” would be a highly appropriate measure. Following this, it would be necessary to implement mechanisms to **legally regulate the allocation and management of the association's funds**.

Thus, at present, the issue of state support for crime victims in the Republic of Uzbekistan is particularly urgent. This concern is not only related to the disappointing statistics on court decisions regarding compensation for harm caused by crimes, but also to Uzbekistan's obligations under **international commitments** it has undertaken.

Classification of victims in criminal cases can be outlined as follows:

- a) When the offender has been identified and held criminally liable, the victim's ability to seek redress depends on their own resources;
- b) When the offender is unknown or the crime remains unsolved, the victim's ability to claim compensation is limited;
- c) Cases where the victim's own actions created the possibility of victimization.

This approach in law enforcement practice exposes a range of challenges and, at times, can lead to **unjustified subjectivity** in procedural decision-making.

The second key aspect is **improving the legislative framework regulating the status of victims**. Based on the considerations above, the process of restoring the rights of physical and legal persons in criminal proceedings should be legislatively regulated as follows:

1. Amend Article 54 of the Criminal Procedure Code of the Republic of Uzbekistan to include a new provision:

2. "Crime victims are physical and legal persons who suffer harm as a result of acts leading to criminal liability. In cases involving crimes recognized by the state (e.g., terrorism, extremism), victims are entitled to mandatory judicial protection. In such cases, the harm suffered by victims shall be fully compensated by the state and society."

References

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