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Research Article

ENSURING COMPENSATION FOR DAMAGES AT THE STAGE OF THE PRE-INVESTIGATION CHECK

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ABSTRACT

This article highlights some of the problems associated with ensuring compensation for harm caused by a crime at the pre-investigation stage, in particular, the transfer of physical evidence to the rightful owners.

KEYWORDS

Damage, property damage, arrest, civil defendant, compensation for damages, pre-investigation check.

INTRODUCTION

At the stage of pre-investigation verification, investigative actions for a personal search and seizure while ensuring compensation for property damage caused by a crime are of great importance. These investigative actions are carried out mainly at the time of detention of a person and involve the seizure of substances and objects that belong to the victims of the crime, as well as certain valuables obtained by selling or deceiving them. Subsequently, these items are returned to their owners in the manner prescribed by law. However, this procedure was introduced somewhat contrary to the interests of persons representing their interests in criminal proceedings.

In particular, Article 208 of the Code of Criminal Procedure contains a provision that "Material evidence, the issue of which remains until the decision of the court on the verdict that has entered into legal force, the determination or decision of the interrogating officer, investigator, prosecutor to

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dismiss the case." A similar provision is contained in Article 287 of the Code of Criminal Procedure.

Only in Article 210 of the Code of Criminal Procedure there are several conditions under which the property must be returned to the owner, and they are formulated as follows: "perishable items, essential items for daily maintenance; domestic animals, poultry and other animals to be kept must be returned to their owners no later than after the necessary investigative actions have been carried out" [1]. The question of the return of money, valuables and other things seized from the suspect in the crime and belonging to the victim of the crime, their actual owners at the stage of pre-trial investigation, preliminary investigation and trial remained unclear. Today, in investigative practice, these items are returned to their owners on receipt, being considered by the investigator as "things necessary in everyday life," or on other grounds not provided for by law.

In the course of our research, when studying the materials of the pre-trial investigation, we noticed that in most cases, officials of the pre-trial investigative body at this stage do not transfer the values belonging to the victim of the crime to the owner, and we can indicate that this is mainly due to:

1) the refusal of the interrogating officer or investigator, if there are signs of a crime, to accept the materials of the pre-trial investigation into their office work due to the fact that the received material evidence, material values and other property are not attached to these materials;

2) evasion of the officials of the pre-trial investigation body from liability, i.e. from the conviction that the material evidence, material values and other property obtained will be needed in the process of proof at a later stage of the investigation or trial. For example, citizen A. citizen B. in 2020, a criminal case was initiated against him under paragraph." b "h. 3 art. 168 of the Criminal Code of the Republic of Uzbekistan on the fact of fraud of the "Samsung A50" telephone set, a preventive measure was applied in relation to him in the form of detention for proper behavior, and the telephone set was recognized as material evidence. However, due to the fact that A. fled from the investigation, the case was considered only in 2022, that is, after his arrest, and was found guilty on the basis of the verdict of the Bukhara City Criminal Court dated August 23, 2022, while the telephone, recognized as material evidence, was returned to the victim B. on the basis of this verdict [2]. In our opinion, the property rights of the victim would not have been limited if all the necessary actions related to this material evidence had been taken at the stage of the pre-trial investigation and returned to its rightful owner.

3) the existence of an opinion that it will be easy for the participants in the process who own property to ensure their participation in the process of pre-trial investigation.

4) inability to impose on them the obligation to keep these things in their original form for a certain period of time when transferring the received material evidence, material values and other property to their owners. True, in investigative and judicial practice at the time of the transfer of material evidence to their owners, it is arranged to obtain from them a receipt for the preservation of these things in their condition until the court verdict enters into legal force. However, there is no liability for failure to comply with the obligations specified in this extract. That is, the Criminal Code and the Code of Administrative Responsibility of the Republic of Uzbekistan do not

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establish liability for failure to fulfill the duties assigned to him to store valuables recognized as material evidence. Criminal liability for non-compliance with the procedure for storing property is established only if a procedural action has been taken in respect of property recognized as material evidence to seize it (Article 233 of the Criminal Code). However, seizure of property cannot be carried out at the stage of pre-investigation investigation.

4. Another reason is that during the conduct of investigative actions related to the process of proving the received material evidence, material values and other property, a certain period is not set. In most investigative actions carried out at the stages of pre-trial investigation and preliminary investigation, it is not specified in what time frame it should be carried out. It is not procedurally regulated to secure the received material evidence, material values and other property as evidence through an investigative action to examine things and documents during the pre-trial investigation. An inspection may be carried out as part of investigative actions permitted to be carried out in the course of a pre-trial investigation. But this is not always possible (due to the large number of things and documents in quantitative terms or due to the fact that at the time of these investigative actions, separate technical means are required for their examination), and in such cases they can be considered as a separate investigative action. (Article 140 of the Code of Criminal Procedure). But these actions cannot be carried out at the stage of pre-trial investigation. It goes without saying that these material values can be returned to their owners only after a pre-trial investigation is carried out against them at the stage of inquiry or investigation.

In Art. 82 of the Code of Criminal Procedure of the Republic of Uzbekistan, it is established that after the necessary investigative actions have been carried out, valuables, and funds after photographing and filming or video filming, are subject to return to their rightful owners, if the identification marks of banknotes are subsequently not demanded in the process of proof, and the decision on them must be made by the investigator, investigator or judge [3]. Article 97 of the Code of Criminal Procedure of the Republic of Belarus establishes that physical evidence may be returned to their owners before the legal settlement of the case, if they do not harm the record keeping [4].

Another investigative action related to physical evidence, material values and other property obtained at the stage of the pre-investigation check is the investigative action of the examination. Officials conducting pre-trial investigations are not always in a hurry to assign expert examination actions related to them, and this situation often arises in cases where there are enough grounds for initiating a criminal case even without an expert opinion obtained as a result of this action. That is, this is due to the opinion that an investigative action can be carried out even by an interrogating officer or the investigator himself after a criminal case has been initiated.

Also, the legislation does not regulate the questions of how long after receiving things, objects and other valuables, investigative actions should be carried out in connection with them, in particular, when it is necessary to appoint an examination. This situation becomes one of the most frequently observed problems not only at the preliminary investigation stage, but also during the preliminary investigation process. In particular, in case of crimes related to road traffic, a person who has become a victim of a crime has the opportunity to receive a vehicle belonging to him after an investigative action for an expert examination, and in most cases this action is not

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carried out immediately (before the investigation, no reason is given to believe that an official of the body of inquiry does not have the opportunity to appoint an examination due to the heavy workload or the "accelerated" implementation of these actions, as he pursues material gain).

In particular, on July 11, 2022, at approximately 2:30 pm, citizen A. In the Lazetti car belonging to his friend B., he was driving along highway No. the center of the district, without the relevant documents, and when he reached the 2nd kilometer of this road, he violated the current traffic rules. An autotechnical examination of the person who committed the accident and the trial in this case was carried out on August 1, 2022, and over the past 20 days, citizen B . . He did not have the opportunity to get his car [5].

Also on July 20, 2022, at about 12 o'clock, citizen S., on the basis of a power of attorney D., drove a personal car of the CHEVROLET SPARK brand, moving along Achchisoy street, Zangiata district, Bozsu district, Achchisoy street, towards the center of Zangiata district, Bozsu district moving in the direction opposite to the car it is driving. The driver of the GBASPG MATIZ BEST car driven by E. collided with the vehicle and inflicted moderate bodily injuries. At the same time, a forensic-autotechnical-transport-trace examination was carried out on August 10, 2022, and the victim was able to take his car out of the penalty area only a few days after the completion of the examination. caused damage to himself and his relative's car, he had to pay 550,000 soums for temporary storage of the car in the penalty area. At the same time, citizen D., the person responsible for conducting the case, was not involved in the case as a civil plaintiff, and no measures were taken to secure the civil claim. As a result, it was not possible to compensate for material damage in the amount of more than 15 million in total at the judicial stage [6].

As can be seen from the above examples, until the investigative actions are carried out, the owner of the property is not only deprived of the opportunity to freely dispose of his property, but is also forced to pay for its storage in the penalty area against his will.

E.N. Kleshchina [7; P. 107] emphasized that the untimely resolution of the issue of returning to the victim the property discovered at the investigation stage before the investigation further exacerbated the difficulties that lay on his shoulders. We believe that this limits the ability of persons who have suffered property damage as a result of a crime to enjoy their rights associated with the possession of property for a certain period of time, and also forces them to excessive expenses.

In our opinion, in this case, Article 210 of the Code of Criminal Procedure does not interfere with the work, and before the start of the investigation, an official of the investigative body, investigator, inquiry officer or court must return to the legal owner of any thing, object and other valuables recognized as material evidence even before the final decision is made in the case, the way out may be the introduction of the rule of self-reflection. At the same time, cases that do not interfere with the work of the case consist in the fact that these items are not required later in the process of proof and it is determined to whom they belong. In some foreign countries, in particular the Greek Criminal Procedure Code (Article 269), it is established that if the owner of physical evidence and other seized property has filed an application for the return of this property and this does not prevent the operation, he must satisfy this application [8] .

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Given the above, we propose to supplement Article 210 of the Criminal Procedure Code of the Republic of Uzbekistan with parts three and four:

"Evidence must also be returned to the rightful owners at their request after the necessary investigative actions in connection with them, if they are not required in the process of subsequent proof, and also if they are not used to satisfy a civil claim or if there is no need to establish a legal owner.

Unreasonable delay by persons responsible for the proceedings of the case is not allowed to carry out the necessary investigative actions related to material evidence".

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