



## THE ROLE AND SIGNIFICANCE OF SEARCH AS A MEANS OF FORCIBLE SEIZURE OF PROPERTY IN ORDER TO COMPENSATE FOR DAMAGE CAUSED BY A CRIME

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### ABSTRACT

The article deals with the criminal procedure, psychological and tactical aspects of conducting a search, as one of the most important investigative actions carried out in order to compensate for the damage caused by a crime at the stage of preliminary investigation. The authors substantiate the position that when conducting a search, the investigator (inquirer) should focus his efforts on such aspects of its production that directly affect the effectiveness of all activities aimed at compensating for damage caused by a crime. It is established that the importance of conducting a search in the general array of procedural actions aimed at compensating for damage caused by a crime is also evidenced by specific examples from the practical activities of preliminary investigation bodies. In conclusion, the authors propose to supplement Article 182 of the Code of Criminal Procedure with Part 17 stating that search may be carried out for the purpose of detecting and seizing objects, documents and valuables that, in accordance with Articles 81 and 82 of this Code, are subject to return to the rightful owner, if this is possible without prejudice to evidence.

**Keywords:** Pre-trial criminal proceedings; Investigative actions; Investigator; Inquirer; Suspect; Accused.



# O PAPEL E A IMPORTÂNCIA DA BUSCA COMO UM MEIO DE APREENSÃO FORÇADA DE PROPRIEDADE PARA COMPENSAR OS DANOS CAUSADOS POR UM CRIME

## RESUMO

O artigo trata dos aspectos processuais penais, psicológicos e táticos da realização de uma busca, como uma das mais importantes ações investigativas realizadas para compensar os danos causados por um crime na fase de investigação preliminar. Os autores fundamentam a posição de que, ao conduzir uma busca, o investigador (inquiridor) deve concentrar seus esforços nos aspectos de sua produção que afetam diretamente a eficácia de todas as atividades destinadas a compensar os danos causados por um crime. Fica estabelecido que a importância da realização de uma busca no conjunto geral de ações processuais destinadas a compensar os danos causados por um crime também é evidenciada por exemplos específicos das atividades práticas dos órgãos de investigação preliminar. Em conclusão, os autores propõem a complementação do artigo 182 do Código de Processo Penal com a Parte 17, estabelecendo que a busca pode ser realizada com a finalidade de detectar e apreender objetos, documentos e valores que, de acordo com os artigos 81 e 82 desse Código, estejam sujeitos à devolução ao legítimo proprietário, se isso for possível sem prejuízo da prova.

**Palavras-chave:** Processos criminais pré-julgamento; Ações investigativas; Investigador; Inquiridor; Suspeito; Acusado.

## 1 INTRODUCTION

Among the investigative actions aimed at finding the desired items, a special place is rightfully occupied by a search. A search is one of the most important investigative actions in the structure of evidentiary activities of bodies and officials conducting preliminary investigations, including those aimed at compensating for damage caused by a crime.

A search as a type of proof of a person's involvement in a committed crime has been known to the domestic criminal process since the XV century. However, the concept of "search" in the current meaning did not appear immediately. Initially, a search meant interviewing people who might have known something about the incident (Lozhkov, 2008, p. 93).

## 2 MATERIALS AND METHODS

As the main method in the process of writing this scientific article, the authors used the general scientific system method of cognition, which allowed us to substantiate the role and significance of search as a means of forced seizure of property in order to compensate for damage caused by a crime.

A formal-logical method that consists in analyzing the nature and content of a search as a means of forcible seizure of property in order to compensate for damage caused by a



crime.

The specific sociological method used in the survey of investigators and inquirers made it possible to develop ways to improve the law enforcement practice of conducting a search for the purpose of forcible seizure of property and compensation for damage caused by a crime.

The historical and legal method allowed us to study the genesis and legal nature of such an investigative action as a search conducted for the purpose of forcible seizure of property and compensation for damage caused by a crime.

The methods of analysis and synthesis made it possible to identify existing problems in the law enforcement practice of conducting a search for the purpose of forcible seizure of property and compensation for damage caused by a criminal offense.

### 3 RESULTS ANALYSIS

In the modern interpretation of D. Y. Mantsurov (2008), a search is understood as "an investigative action taken by an investigator to find and seize instruments of crime, objects and valuables obtained by criminal means, as well as other items that may be relevant to the case" (p. 26). Here we should add the conclusion of D. Y. Mantsurov with the position that the search is carried out not only for the purpose of searching for the specified objects, which goes without saying, but its conduct also involves solving such a problem as compensation for damage caused by a crime.

We are close to the point of view of the authors, who very accurately noted the role of conducting a search not only as a search investigative action, but also designated it, as one of the procedural circumstances implemented in the activities of an investigator to compensate for damage caused by a criminally punishable act (Pushkarev et al., 2019a, p. 7951). In particular, V.A. Bulatov (2002) noted that "the activity of an investigator to establish and seize property (things, money, securities, etc.), with the help of which the damage caused can be repaid, is carried out during a search" (p. 53).

V. A. Bulatov's argument should be supplemented with arguments that this activity of the preliminary investigation bodies refers to the so-called compulsory compensation for harm, when they conduct a series of investigative actions aimed at searching for the stolen person and attaching the discovered person to the criminal case as material evidence. The purpose of this type of activity of preliminary investigation bodies, first of all, is to compensate for property damage caused by a crime.

Speaking about the optimal choice of the moment of performing this investigative action,



we can take as a basis the data obtained by V. P. Bakhin, V. S. Kuzmichev, and E. D. Lukyanchiv (1990), who established that

the most favorable situation for using this technique is usually formed at the initial stage of the investigation. According to the analysis of criminal cases, conducting searches on the day when a criminal case was initiated was effective in 82 % of cases, and then the effectiveness of this investigative action sharply decreased: within three days - up to 25%, within 10 days - up to 15%. (p. 22).

The most important role of a search as one of the investigative actions aimed at compensating for damage caused by a crime is also confirmed by the interviewed employees of practical departments. Thus, when asked which investigative actions have the greatest effect on creating conditions for real compensation for damage caused by a crime in pre-trial criminal proceedings, the majority of respondents (52.9 %) indicated that such a search is the most effective.

Psychological aspects of conducting a search, according to M. I. Enikeev (1996),

call on the investigator (inquirer) to take into account the fact that a hidden vital event, fear of exposure, seizure of property create a "hotbed of affectation" in the mind of the searched person, which functionally rebuilds all the mental activity of the searched person. Defense mechanisms are formed spontaneously. (p. 365).

At the same time, M. I. Enikeev's arguments regarding the purely psychological background in the behavior of the searched person need to be corrected and supplemented. It should be noted here that the negative reaction of the person being searched also has a procedural aspect.

Certain negative reactions of the person being searched (comments addressed to the investigator (inquirer), evasion of answers to questions asked to him before the search begins) should also be entered in the protocol of the investigative action, for example, statements about the voluntary transfer of property should be indicated in it. In the future, when the search objects found during the search actions of the investigator (inquirer) are forcibly seized, a clear connection will be traced between the reaction of the searched person before the search begins with the successful completion of this investigative action and the search for property subject to seizure. Against this background, clear, confident actions of the investigator (inquirer) together with other persons involved (a criminal investigation officer, a district authorized police officer, a forensic specialist, a dog handler inspector, etc.) can cause both a sincere confession and a voluntary release of the property sought, including the one that is subject to return to the victim in the order of compensation for damage caused by a crime.



This argument is also important for further consideration of the criminal case in court, since the judge, having read the search protocol, will be able to more accurately perceive all the details of its conduct, and not question the reliability of the results obtained.

The search is carried out both directly in the home of the suspect (accused), and in other places where, according to operational data, there may be property that is important for the case, and is also subject to return to the owner or other legal owner as compensation for the damage caused. For some crimes where harm is caused to the victim – a legal entity, a search may be carried out in the premises of the legal entity itself (for example, at the workplace of a suspect or accused) (Dung et al., 2021; Van Tien et al., 2021). The search is subject to valuables acquired by criminal means, as well as the property of the suspect (accused), which is subject to inventory, and which may later be seized in order to compensate for damage. It is possible to search both the suspect (accused) and other persons, if there is information that they are hiding the above-mentioned valuables (Part 1 of Article 182 of the Code of Criminal Procedure of the Russian Federation).

The question of what items, documents, property, valuables and where exactly to look for during a search should be resolved by the investigator (inquirer) as accurately as possible even before the start of its conduct. At the same time, the investigator (inquirer) must also determine in advance what else should be done, along with conducting a search, to ensure compensation for property damage caused. It is necessary not to delay the conduct of further procedural actions that affect the full compensation of property damage caused by a crime. The investigator (inquirer) is recommended to conduct their inspection as soon as possible after the search and seizure of the desired objects, identify the seized property by the victim, and recognize the identified objects as material evidence in the case.

It is worth noting that the analysis of the materials of criminal cases studied by us naturally showed that objects that were then recognized as material evidence were most often seized during the inspection of the scene – 40.2 % and the search-18.2 %.

As E. M. Lifshits and R. S. Belkin (1997, p. 95) correctly point out, sometimes in practice a search is substituted by requesting and attaching the necessary items and documents to the case, which in some cases leads to the fact that interested persons have the opportunity to replace, hide or partially destroy the required objects. This remark is most relevant when it comes to specific property that was, for example, the subject of theft, and in the future, when establishing its location, is subject to return to the victim. In addition, it should be noted that with the adoption of the Code of Criminal Procedure of the Russian Federation, there are more procedural ways to attach such evidence. In particular, the study of the materials of criminal cases allows us to conclude that the practice of seizing objects and documents



during various types of inspections, including at the stage of initiating a criminal case, has become more widespread.

When conducting a search, the investigator (inquirer) should focus his efforts on such aspects of its production that directly affect the effectiveness of all activities aimed at compensating for the damage caused by the crime.

In particular, the author, taking into account the specifics of the production of this investigative action, offers the following recommendations aimed at unifying the search procedure and achieving the set goal:

- offer to voluntarily hand over items and documents relevant to the criminal case, as well as items prohibited in civil traffic (narcotic drugs, weapons, explosives, etc.);

- when conducting a search, it is mandatory to seize the diaries of suspects (accused persons) with their personal records as necessary conditional handwriting samples, as well as phone books, business cards, address books with personal data of a circle of acquaintances;

- when viewing computers, laptops, tablets, etc. that are not being seized, the search report reflects their main characteristics (processor, RAM, number of hard magnetic disk drives, number of logical disks, size of occupied and free memory), as well as usernames, passwords, email addresses, Skype, etc. ISQ, the MAC address of the network card (Pushkarev et al., 2019b, p. 2565).

- it is advisable to check the contents of the personal bags of the home owner (suspect, accused) for the presence of plastic bank cards, flashcards for managing bank accounts with the Bank-Client program (Pushkarev et al., 2021, pp. 397-398);

- when conducting a search for the purpose of further seizure of the property of the suspect, the accused takes photographs of the property, while the general appearance and identification features of the property (names, model, number, etc.) should be visible on the photographs;

- find out the ownership of the discovered property, if there are documents (warranty cards), it is possible to photograph these documents without withdrawing them.

Compliance with these recommendations will allow us to study in more detail the ownership of the discovered and seized property, the financial situation of the suspect (accused) and his close relatives, and as a result, will increase the effectiveness of activities aimed at establishing the nature and amount of damage caused by a crime, with a view to further its full compensation (Hong et al., 2020).





The importance of conducting a search in the general array of procedural actions aimed at compensating for damage caused by a crime is also evidenced by specific examples from the practical activities of preliminary investigation bodies.

Thus, a criminal case was sent to the court of the Moscow Department of the Ministry of Internal Affairs of the Russian Federation on charges of B., K., K. and M. of committing crimes under Part 1 of Article 209, Part 2 of Article 209, paragraph " a " of Part 4 of Article 162 (16 crimes), Part 3 of Article 222 of the Criminal Code of the Russian Federation. It follows from the case file that the accused B. formed an ethnically stable armed group, which included the abovementioned accomplices. In the period from April to August 201.99, members of the gang committed 16 robberies on lottery clubs and bookmakers in Moscow. Criminal actions of the gang members caused damage totaling more than 3,000,000 rubles. During the preliminary investigation, funds in the amount of 550,000 rubles, found during a search of one of the accused, were seized. Subsequently, during the consideration of the criminal case in court, these funds were distributed in favor of the victims.

The value of a search as an investigative action in the overall complex of measures carried out by law enforcement agencies for further compensation for harm is also confirmed by the figures of various reports. Thus, according to statistical data obtained by the GIAC of the Ministry of Internal Affairs of Russia, the active joint work of investigators (inquirers) and employees of operational services to search and seize (search, seizure) stolen property, recognize it as material evidence, and then return it to its rightful owners made it possible to compensate the victims for damage in the amount of 4 billion 470 million rubles, which is 34.3 % of the amount of damage compensated. More than 551 million rubles were reimbursed through the withdrawal of funds and valuables, with their return to the victims.

#### 4 CONCLUSIONS

Summing up the significance of conducting a search as a method of compensating for damage caused by a crime, we should refer to the wording of this investigative action in the current criminal procedure legislation. The analysis of Articles 182, and 184 of the Code of Criminal Procedure clearly shows both the function of removing and attaching objects that are important for the event under investigation, and their search function. However, according to our deep conviction, which was formed as a result of referring to the theoretical foundations of conducting a search and analyzing the materials of practical activity, an unambiguous conclusion follows. This conclusion is that in the current Code of Criminal Procedure of the Russian Federation, it is necessary to clearly define such a



function of the specified investigative action, as compensation for damage caused by a crime.

In our opinion, the investigator's (inquirer's) awareness of such a search function will encourage them to better prepare the process of production of the specified investigative action. By analogy with Part 16 of Article 182 of the Code of Criminal Procedure of the Russian Federation, the author proposes to supplement this article with part 17 of the following content: "A search may be carried out in order to detect and seize objects, documents and valuables, which, in accordance with Articles 81 and 82 of this Code, are subject to return to the rightful owner, if possible without prejudice to proof."

These amendments to the current criminal procedure legislation will allow for a more thorough approach to conducting a search, and as a result, in the activities of the investigator (inquirer), a clear conviction will be created about the need for its production for further compensation for damage caused by the crime.

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