

## ASSESSMENT OF THE PROPERTY DAMAGE CAUSED BY A CRIME IN PRE-TRIAL CRIMINAL PROCEEDINGS: QUESTIONS OF THEORY AND PRACTICE

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### ABSTRACT

This study examines the methods used to assess property damage in pretrial criminal proceedings, with a focus on identifying gaps between legal theory and practical application. The purpose is to evaluate the effectiveness and consistency of current procedures in determining the value of stolen or damaged properties. The authors present methods for assessing property damage caused by a crime, as well as measures of control by the heads of the preliminary investigation bodies aimed at improving the activities of employees, departments headed by them to establish the nature, cost and amount of property damage caused by crimes. The results reveal significant challenges, including the inconsistent

application of assessment methods, a formalistic approach by investigators, and delays in accurately determining damage. These issues often lead to court decision errors and inadequate victim compensation. The conclusion emphasizes the need for better training of investigators, stricter adherence to procedural guidelines, and improved methods for assessing property damage to enhance fairness and efficiency in criminal proceedings. Recommendations for reform are also proposed to bridge the gap between theory and practice in this critical area of criminal law.

**Keywords:** property damage assessment; criminal property valuation; crime victim compensation; forensic commodity expertise; pretrial criminal proceedings

## **AVALIAÇÃO DE DANOS MATERIAIS CAUSADOS POR UM CRIME EM PROCEDIMENTOS CRIMINAIS PRÉ-JULGAMENTO: QUESTÕES DE TEORIA E PRÁTICA**

### **RESUMO**

Este estudo examina os métodos usados para avaliar danos materiais em processos criminais pré-julgamento, com foco na identificação de lacunas entre a teoria jurídica e a aplicação prática. O objetivo é avaliar a eficácia e a consistência dos procedimentos atuais na determinação do valor de propriedade roubada ou danificada. Os autores apresentam métodos para avaliar danos materiais causados por um crime, bem como medidas de controle pelos chefes dos órgãos de investigação preliminar visando melhorar as atividades dos funcionários, departamentos chefiados por eles para estabelecer a natureza, o custo e o valor dos danos materiais causados por crimes. Os resultados revelam desafios significativos, incluindo a aplicação inconsistente de métodos de avaliação, uma abordagem formalista por investigadores e atrasos na determinação precisa dos danos. Essas questões geralmente levam a erros de decisão judicial e compensação inadequada às vítimas. A conclusão enfatiza a necessidade de melhor treinamento dos investigadores, adesão mais rigorosa às diretrizes processuais e métodos aprimorados para avaliar danos materiais para aumentar a justiça e a eficiência em processos criminais. Recomendações de reforma também são propostas para preencher a lacuna entre teoria e prática nesta área crítica do direito penal.

**Palavras-chave:** avaliação de danos materiais; avaliação de propriedade criminal; compensação de vítimas de crimes; perícia forense de mercadorias; processos criminais pré-julgamento.

### **1 INTRODUCTION**

In contemporary criminal proceedings, the accurate assessment of property damage caused by crimes is a critical component that directly impacts the judicial process (Adygezalova *et al.*, 2023) and fair compensation of victims (Ivanov *et al.*, 2023). This process not only ensures that victims receive restitution for their losses but also helps maintain the integrity of the judicial system by establishing the facts of the case clearly and accurately. Property damage assessments are essential in determining the severity of a crime and can directly influence the outcome of a trial, including sentencing and the awarding of

damage (Krainova *et al.*, 2024). Therefore, accurate valuation methods are essential for promoting fairness, transparency, and public trust in the legal process. This aspect of criminal law involves a complex interplay of legal, procedural, and practical considerations. The efficiency and accuracy of damage assessments can influence the overall effectiveness of the criminal justice system, ensuring that justice is not only served but also perceived to be served by the public (Svirin *et al.*, 2023).

The Russian Federation's legal framework provides detailed guidelines for handling property damage assessments during pretrial criminal proceedings (Chirkov *et al.*, 2022). These legal provisions outline the steps that investigators must follow in determining the value of damaged or stolen property, including the use of forensic expertise and documentary evidence. The goal of these guidelines is to standardize practices across investigations and ensure that victims receive fair compensation and that offenders are held accountable for their actions. Despite these detailed frameworks, there are still discrepancies in how these procedures are applied in real-world cases, leading to inefficiencies and inaccuracies. However, despite these guidelines, numerous challenges persist in practice. These challenges include the difficulty of determining the exact value of stolen or damaged property, the formal approach often adopted by investigators, and the inconsistent application of assessment methods. Such issues can lead to delays in the judicial process, erroneous court decisions, and inadequate compensation for victims.

Given the high stakes involved in property damage assessments, the consequences of errors or delays can be profound. These issues not only affect the timely resolution of cases but can also undermine public confidence in the justice system if victims feel that their losses are not adequately addressed. Furthermore, inconsistent practices in damage assessment can lead to disparities in how similar cases are treated, creating a perception of inequity and injustice. It is crucial to bridge the gap between theoretical legal provisions and their application in practice to improve the fairness and efficiency of criminal proceedings. Given the high stakes involved, it is imperative to explore and address the gaps between theoretical provisions and practical applications in this field.

The purpose of this research is to analyze the existing methods for assessing property damage within the framework of pretrial criminal proceedings and to identify the practical challenges faced by investigators in applying these methods. The study aims to evaluate the consistency and accuracy of these methods, determine the factors contributing to their ineffectiveness, and propose recommendations for improving the process to ensure fairer outcomes for victims and the judicial system.

## 2 Materials and methods

As the main method in the process of writing this scientific article, the authors used a general scientific systematic method of cognition, which allowed them to substantiate the theoretical and practical aspects of improving the activities of participants in pretrial proceedings to assess property damage caused by a crime.

A formal logical method consists of analyzing the essence and content of the activities of participants in pretrial proceedings to assess property damage caused by a crime.

The specific sociological method used in the survey of investigators and interrogators allowed us to develop ways to improve the law enforcement practice of assessing property damage caused by a crime.

The methods of analysis and synthesis made it possible to identify existing problems in the law enforcement practice of the activities of participants in pretrial proceedings to assess property damage caused by a criminally punishable act.

## 3 Results analysis

In terms of the extent to which property damage is caused as a result of committing criminal acts, it is necessary to refer to statistical data, from which it clearly follows that these issues must be considered.

For example, in 2023, in Russia, the established amount of property damage caused by crimes committed in the field of economics in completed criminal cases amounted to more than 83 billion rubles. To ensure compensation for property damage, property with more than 34 billion rubles was seized; property, money, and valuables were seized and voluntarily repaid with more than 28 billion rubles.

Ensuring compensation for harm caused by crimes, with the exception of other purposes, aims to exclude criminal enrichment among offenders (Dung *et al.*, 2021; Ivanov *et al.*, 2021). This measure regulates a set of criminal laws, criminal procedures, and civil and civil procedure norms. However, currently, the effectiveness of this activity remains low.

Studying investigative and judicial practices to study the problems associated with assessing property damage caused by a crime, the authors established that, in the process of investigating crimes where the result is causing property damage, especially in multiple episode cases, the investigator (inquirer) must repeatedly bring charges because, at the initial

stage of the investigation, it was difficult to establish the exact amount, name and value of all property that is the subject of the crime.

As a result of such mistakes, many prosecutors have sent criminal cases for additional investigation. Therefore, in particular, in criminal case No. XXXXXXXX on charges of A. committing a crime under paragraph "b" of Part 2 of Article 158 of the Criminal Code of the Russian Federation (Criminal Code of the Russian Federation No. 63-FZ, 1996), the amount of damage caused by the crime has not been established, and commodity expertise has not been carried out.

Returning to criminal case No. XXXXXX on B. 's accusation of attempted robbery, the prosecutor noted that in the statement, victim K. indicated that she had stolen money in the amount of 35 thousand rubles, but the amount of damage was not indicated in the protocols of investigative actions.

The investigator of the same unit, during the investigation of criminal case No. XXXXXX on charges of D. under Part 2 of Article 159 of the Criminal Code of the Russian Federation, did not establish the value of the stolen phone and did not appoint a commodity expert examination.

Such examples also indicate a formal approach to determining the nature and size of stolen property, as well as assessing its value. In particular, twice criminal case No. XXXXXX against A. was returned by the prosecutor for additional investigation due to the investigator's failure to resolve contradictions about the amount of damage caused, as indicated in the indictment and statement.

Often, in the process of preliminary investigation, officials in the production of criminal cases do not establish the circumstances to be proven, namely, the nature and extent of the harm caused by the crime (paragraph 4, part 1 of Article 73 of the Code of Criminal Procedure of the Russian Federation (Criminal Procedure Code of the Russian Federation No. 174-FZ, 2001). Moreover, on the basis of analytical review data, the largest number of criminal cases were returned because of the failure to establish the amount of material damage caused by the crime (Pushkarev *et al.*, 2020; Ivanov *et al.*, 2022).

Another example is typical here. The Kuzminsky interdistrict prosecutor of Moscow returned for additional investigation criminal case No. XXXXXXXX on charges of B, committing a crime under Part 3 of Article 30 and paragraph "b" of Part 2 of Article 158 of the Criminal Code of the Russian Federation, because the investigator, in violation of the requirements of Article 73 of the Code of Criminal Procedure, did not establish the amount of damage caused and the time of the crime.

By reacting so strictly to violations committed, prosecutors do not go beyond procedural control but at the same time clearly comply with the requirements for compliance with criminal procedure legislation.

Thus, judicial practice states the following:

When making a decision on the return of a criminal case to the prosecutor, the court should proceed from the fact that a violation at the pretrial stage of the right of the accused to judicial protection guaranteed by the Constitution of the Russian Federation and the right of the victim to access justice and compensation for damage excludes the possibility of a lawful and reasonable sentence (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 1, 2004).

A significant violation of the law, i.e., the cancellation of the sentence, is recognized by the failure of the court to determine the specific amount of damage caused to the victim by the crime.

As seen from the analysis, errors and violations are still fundamental and indicate poor theoretical and practical training of individuals conducting preliminary investigations in criminal cases, as well as their often formal attitudes toward their duties (Nguyen *et al.*, 2020, p. 122).

Violation of the norms of criminal procedure legislation in determining the exact amount of property damage caused entails a change in the court sentences that have entered into force on complaints from convicted persons.

Thus, by the verdict of the Shuisky City Court of the Ivanovo region dated December 23, 2010, B. was convicted under Article 30 and paragraph "a" of Part 3 of Article 158 of the Criminal Code of the Russian Federation for attempted theft as part of a group of persons by prior agreement, with illegal entry into a dwelling and causing significant damage to a citizen. The victim D., in his testimony at the stage of the preliminary investigation, estimated the property belonging to him (a shaving machine and two pairs of sneakers) in the amount of 4,000 rubles and confirmed the significance of the damage in the case of theft for his family, whose income was 12,000 rubles for three people. At the same time, the materials of the criminal case include the conclusion of a commodity expert examination to determine the value of the stolen property. This conclusion, which calls into question the validity of the court's conclusion about the significance of the damage that could have been caused by the theft of property, was given by a competent person, but the conclusions set out in it did not receive any assessment in the verdict. The Presidium of the Ivanovo Regional Court, having reviewed the verdict on the supervisory complaint of the convicted person, changed it by a

resolution dated September 2, 2010, excluding the indication of a qualifying sign of attempted theft of property from the house of D. – "causing significant damage to a citizen." The sentence of convicted B. was reduced.

Notably, the nature of the property damage caused should be most accurately determined by the person conducting the preliminary investigation via a set of investigative actions. Nevertheless, during the judicial review of a criminal case, the courts establish specific circumstances affecting the establishment of the nature and amount of property damage caused and exclude facts that would seem to have already been proven by the preliminary investigation authorities.

For example, B., to take possession of someone else's property, approached a previously unknown minor N. and openly stole a gold chain and a gold cross worth 1,000 rubles from the neck of the latter. These actions were qualified by the investigator as robbery with significant damage to a citizen (paragraph "d" of part 2 of Article 161 of the Criminal Code). The victim also insisted on the significance of the damage caused. However, the court, resolving the criminal case, indicated in the verdict: "The damage is not significant, since, according to the court, the money necessary for the family is not spent on the purchase of luxury goods for a minor" (Marfikin, 2003, p. 246).

The amount of property damage caused is determined on the basis of the actual value of the stolen or damaged property or the acquired right to someone else's property, as well as the amount of lost profit.

In terms of methods for assessing property damage caused by crimes, a sufficient number of these methods are used in the practical activities of preliminary investigations. Officials conducting the preliminary investigation should clearly know them and apply them in their practical activities.

Similarly, Malinovskaya (2015) argues that "in cases of theft of other people's property, material damage can be determined on the basis of the value of the stolen object recorded in the owner's payment documents (cash register, sales receipt, bank account statements, if the purchase was made by cashless payments). However, such data may be missing" (p. 161).

E. A. Malinovskaya's analysis highlights the lack of concrete procedural measures for investigators to determine the value of stolen property in criminal cases. Despite the legislator's awareness of these gaps, they are often not effectively implemented in pretrial investigations, leading to inconsistencies in property damage assessment. This omission results in a lack of clarity for investigators, who are left without a standardized approach to

establish the actual worth of stolen or damaged assets. The absence of well-defined guidelines exacerbates the challenges faced by law enforcement agencies, ultimately affecting the accuracy and fairness of the investigation process.

Given the practical difficulties that arise from these inadequacies, it is essential to delve into the various methods currently employed in determining the value of property involved in criminal offenses. By identifying the most frequently used approaches, we can better understand both their advantages and limitations, providing a clearer framework for investigators. This will not only streamline the assessment process but also ensure more consistent and reliable outcomes in property damage evaluations:

1. The assessment of the value of property damage is carried out by providing various documents for the property, which reflect their initial purchase price (waybills, receipts, certificates from trade organizations on the value of goods similar to stolen goods, etc.).

2. The assessment of the stolen property is made from the words of the victim. In preparation for the interrogation, the victim, if he does not have receipts for purchases, can check prices in stores. Moreover, the source of property valuation is only its testimony.

At the same time, according to a note to Article 158 of the Criminal Code of the Russian Federation, significant damage to a citizen, which is included in the subject of evidence in cases of theft and robbery, is determined by taking into account his property status but cannot be less than two thousand five hundred rubles. The property status is clarified as follows:

- According to the victims, witnesses (for example, relatives, neighbors of the victims);
- based on the number of dependents (for this, it is necessary to have copies of birth certificates of children and other supporting documents in the case file);
- based on the amount of salary or other income of the victim, for which it is necessary to request salary certificates from the workplace;
- from other circumstances (for example, a relative of the victim is seriously ill and has a need for the systematic use of expensive medicines - a medical doctor's opinion is necessary here; or the family (Pushkarev *et al.*, 2019) is in a difficult situation owing to any exceptional circumstances: dismissal from work, purchase of housing, etc.).

3. In some cases, if it is impossible to determine the value of a property via these methods, forensic examinations are carried out.

If the owner does not have documents confirming the value of the lost property (due to the prescription of the purchase of the thing, the expiration of the warranty period, for other

reasons), if necessary, it is possible to appoint a forensic commodity expert examination, as a result of which an assessment of industrial (nonfood) and food products will be carried out. During commodity expertise, the quality of goods and their quantity, origin, authenticity, commodity classification, value, etc., are checked, controlled, evaluated or determined (Manokhova, 2020).

In cases where tax crimes are committed, the property of taxable objects is hidden, which is achieved by distorting the quantitative, qualitative and cost characteristics of goods or materials. A forensic commodity examination is also appointed here with a preliminary inspection of production, warehouse, retail and other premises used to generate income (Zvyagin, 2012, p. 54).

Comprehensive accounting and technological expertise are based on the results of studies of the production process, finished products, documents reflecting production operations, containers, and packaging used for the transportation of goods, taking into account the unaccounted savings of raw materials and unaccounted products (Babaeva *et al.*, 1990, p. 93).

To establish the amount of property damage, the investigator (inquirer) also has the right to contact a specialist qualified as a commodity expert and carry out his activities in his or her specialty or to an appraiser acting in accordance with the Federal Law "On Valuation Activities in the Russian Federation".

4. In addition, it is advisable to involve the specified specialist in the evaluation of real estate; securities that are not traded at organized auctions (with the exception of investment units of open and interval mutual funds); property rights (with the exception of receivables that are not sold at auctions); precious metals and precious stones; products made from them, as well as scraps of such products; collectible banknotes in rubles and foreign currency; and items of historical or artistic value.

5. The ability to carry out inventories and documentary inspections as ways to establish property damage caused by a crime is provided for various sources. The fact that this type of definition of property damage is relevant in criminal procedure legislation is also indicated by the fact that their appointment and conduct are possible at the initial stage of a criminal case (Part 1 of Article 144 of the Code of the Criminal Procedure of the Russian Federation).

The Federal Law "On Accounting" also contains one of the mandatory conditions for conducting an inventory: "An inventory is mandatory... when identifying the facts of theft, abuse or damage to property" (Federal Law No. 402-FZ, 2011).

6. Interrogating workers about the products they actually produced and the wages they received during the investigation of crimes related to embezzlement at enterprises and organizations engaged in the production of products.

7. Inspection and forensic examination of invoices for the sale of finished products.

8. When committing traffic crimes, the nature and amount of damage caused to vehicles are confirmed via calculations made by insurance companies, which are attached to the materials of the criminal case. To assess the cost of a vehicle, it is possible to request relevant information from an insurance company or to withdraw an insurance policy for a vehicle, where the cost of the car will be indicated, to involve a specialist appraiser who will draw up an appropriate conclusion while taking into account the depreciation of the object.

9. When determining the amount of stolen property, when a person has committed fraud, embezzlement or embezzlement, it should be borne in mind that theft of property with its simultaneous replacement with less value is qualified as theft in the amount of the value of the seized property.

While the investigator (inquirer) has several tools at their disposal—such as victim and witness testimonies, expert consultations, and the examination of relevant documents—to determine the exact nature and extent of the property damage caused, this process is often hindered by practical limitations. In theory, thorough investigations should yield precise data regarding the value of stolen or damaged property. However, the effectiveness of these methods depends heavily on their consistent application and the thoroughness of the investigative process. In many cases, this ideal standard is not met, leading to gaps in damage assessment.

On this basis, the authors explored the primary methods for assessing property damage in criminal cases. Despite the availability of these techniques, a survey conducted among pretrial investigators revealed that a significant portion of these methods remain underutilized in practice. This gap between theory and execution underscores the need for improved training and more stringent oversight in applying these assessment methods.

On the basis of the results of consideration of the issues raised, the authors propose a number of measures that should be taken by the heads of the preliminary investigation and inquiry bodies aimed at improving the activities of employees and their departments to establish the nature, cost and amount of property damage caused, as well as to compensate victims of crimes.

First, it is necessary to hold monthly hearings of employees of the units headed by him on the status and progress of work on compensation for victims of a crime. The assessment of

identified deficiencies and measures to eliminate them are timely reflected in management documents.

It is also necessary to organize classes with employees for investigation and inquiry to study actions aimed at compensating for the damage caused by the crime.

The heads of the preliminary investigation and inquiry bodies should monitor the timely and high-quality execution of the instructions of investigators and inquirers to establish the location of stolen property and take measures aimed at subsequent compensation for the damage caused by the committed crime.

To organize the mandatory assignment of tasks to departments (departments) of special technical measures to establish the locations of stolen communication equipment, laptops, tablets, and computers through technical measures.

The abovementioned managers should monitor in more detail the conduct by employees of the preliminary investigation bodies of checks on the facts of legalization and sale of stolen property for the presence (absence) of signs of a crime under Articles 174 and 175 of the Criminal Code of the Russian Federation.

#### **4 CONCLUSION**

In conclusion, this article has successfully explored the primary methods for assessing property damage caused by criminal acts, highlighting both theoretical frameworks and their practical applications. The main objective was to identify the gaps between established legal guidelines and their implementation in investigative processes. On the basis of the analysis of case studies, surveys, and statistical data, the objectives of this research were largely achieved. Although comprehensive methods for damage assessment exist, their inconsistent application by investigators during pretrial proceedings remains a significant challenge. This inconsistency often leads to delays, errors in court decisions, and insufficient compensation for victims.

Summarizing the significance and methods of assessing property damage caused by a crime, the authors are convinced that only the comprehensive activities of the preliminary investigation bodies to assess property damage caused by a crime will make it possible to compensate the victim for the damage caused as much as possible, and as one of the purposes of criminal proceedings, the protection of the rights and legitimate interests of persons and organizations affected by crimes will achieve its final goal.

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