

Civil Action and Pretrial Procedures in Criminal Cases

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Abstract

This article centers on civil action in pretrial procedures in criminal cases taken to repair damage caused by the crime. The authors highlight that the aforementioned issues in the Russian legal practices reason the need to reinvent approaches to a unified model for managing proceedings of filing and securing a civil suit as the most effective method to repair damage caused by a crime. In addition, it is important for the authorities to formulate a unified approach to compensation practices.

The correct implementation of the litigation rules can ensure guarantees for the victim, and further for the civil party to receive compensation for the damage caused by the crime.

According to the obtained results, the authors conclude that a civil action is an effective mechanism to secure reparation for damage caused by a crime. By filing a civil suit, the laws of the Criminal Procedure Code are implemented which stipulate the restoration of victims' rights, including the claims being settled in favor of the civil party.

Key-words: Damage Caused by a Crime, Pretrial Proceedings, Investigator, Enquirer, Civil Suit.

1. Introduction

One of the most important activities of the pre-investigation bodies is ensuring the restoration of damage to a victim by a civil action.

2. Materials and methods

The research methodology on civil action centers on special law methods such as historical and comparative methods, formal analysis, synthesis, sociological methods, e.g. questionnaire, conversation, interview.

The historical method reviews the evolution of the civil suit filed to demand reparation of damage caused by a crime and decrees the elements of this legal institution based on current scientific and practical issues.

The comparative method reviews international legal standards and the experience of foreign countries in the civil action under criminal proceedings. This method also contributed to the authors' point of view on the implementation of good practices of civil action used in foreign countries into the Russian realia.

The formal method helps characterize the current situation on the issues that arise when filing and securing a civil suit in criminal cases. It also helps analyze the identified problems as well as classify them and suggest a solution.

Analysis and synthesis were used to provide real data on the effectiveness of civil action as the main mechanism to repair damage caused by a crime. These methods help reveal weaknesses in criminal procedures of the pre-investigation bodies.

The sociological methods help obtain empirical data as well as analyze and systemize them.

All things considered, the aforementioned methodology helps obtain new data on patterns of the development of civil action in criminal proceedings, its development to improve the performance of the pre-investigation bodies to ensure the reparation of damage to the victim.

3. Results analysis

Since the Roman Empire, a long line of research has been dedicated to the issues of legal action. In recent years, there has been a surge in scientific interest in this mechanism. The reason for this may be that criminal policy aims not only to convict the guilty party but also to guide them in the right direction to restore the rights of the victim. It also concerns the pre-investigation bodies and judges to take action to ensure the reparation of damage caused by the crime.

It can be stated that civil action in criminal proceedings appeared under the Judicial Reform of 1864 when the Charter of Criminal Proceedings was adopted (Glyan'ko, 2016: 114-117).

It is noteworthy that filing a suit as a way to protect the violated rights was further developed in the Code of Laws of the Russian Empire. According to its provisions, filing a suit was a widespread

practice to demand reparation of damage caused by a crime (Svod zakonov Rossiyskoy Imperii, 1914: 152-153).

In the analysis of the civil action in the criminal proceedings of pre-revolutionary Russia, it is possible to state that the academic community of the period was complimentary of including a civil action in the criminal proceedings. In this way, A. Trainin and V. Sluchevskiy (1914: 136-137) outlined that there were many cases when it was necessary to ensure cooperation between civil and criminal courts to resolve civil suits.

According to S. Pozdnyshev (1913: 113), a civil action in criminal proceedings helps “reduce labor, costs, and time expenditure” as well as avoid “discrepancies between decisions of criminal and civil court”.

However, even then some scholars considered it unnecessary to introduce civil action into criminal proceedings. For instance, G. Sliozberg (1890: 257) stated that it would violate the principle of the equality of rights and disturb the balance between prosecution and defense. In addition, M. Parfenova (2012: 18) highlighted the lack of progressivity and effectiveness of civil action under the Charter of Criminal Proceedings. According to T. Sushina (2016: 137), it is high time the civil action was excluded from criminal justice. Nevertheless, the issue of civil action in criminal proceedings is gaining momentum.

According to its legal nature, a civil party is believed to be the embodiment of restorative justice since the victim can claim damages through the civil party’s rights and obligations.

Outlining the essence of the claim, S. Suprun (2010: 95) states that the request should be of procedural nature. Meanwhile, according to O. Selednikova (2008: 59), a civil action in the criminal proceedings can be referred to as a set of demands in material terms and decisions following the review.

It is important to mention that a civil action is a crucial procedural mechanism through which a victim can seek redress and compensation for damage. Given the specific nature of reparation and the difficulties in restoring the violated rights of victims, it is crucial to highlight the importance of civil action in criminal proceedings which should be considered as one of the most effective mechanisms of reparation.

The enforcement experience of foreign countries can serve as an example of the viability and effectiveness of the civil action as a compensation mechanism. The civil action in criminal proceedings is implemented in different ways in the USA, France, Germany, Scotland, Northern Ireland, etc.

Supposedly, one of the most developed civil action procedures is represented in the German Code of Criminal Procedure (Strafprozeßordnung – StPO). In Germany, addressing a victim’s property

claims in the criminal proceedings [Adhasionsverfahren] includes the right of the victim or their legatee can file a property claim against the accused under §§ 403-406 of StPO. In this case, the property claim, which was caused by a crime and has not been filed yet, is under the jurisdiction of the civil court (§ 403 para 1 of StPO). The provisions of § 404 (para 1) of StPO facilitate the submission of a motion with a property claim compared with filing a claim in the civil court. Judges of local courts who operate in criminal cases single-handedly can refuse to make a decision provided there are grounds stipulated in § 406 (para 1, sentences 3-6) of StPO. These grounds include a lack of material or formal validity or cannot be resolved in criminal proceedings. If the criminal court rejects the request, this decision cannot be appealed (§ 406a para 1 of StPO). However, the claimant can file the claim again through the civil court under § 406 (para 3, sentence 3) of stop (Golovnenkov et al., 2012; Vilenskiy, 1991).

Another positive example can be seen in reparation practices in France. According to the French Code of Criminal Procedure, a civil party has a right to a representative and can report on that at any time during the investigation to the investigating judge. Thus, it can be concluded that the provisions of the Code aim at the reparation of damage, including the involvement of representatives.

It is also crucial to mention the civil action practices in the Azerbaijan Republic. The Code of Criminal Procedure has a chapter devoted to it. Particularly, Ch. XIX “Civil claims in criminal proceedings” incorporates ten articles (Art. 179-188) (Ugolovno-protssessual'nyy kodeks Azerbaydzhanskoy respubliki, 2000) that regulate filing and investigating the civil claim in criminal proceedings. Those provisions accumulated in one chapter have a positive influence on the effectiveness of the reparation of damage caused to the victim. Thus, we deem it vital to suggest to the Russian legislators to implement such practice into the criminal procedure and formulate similar legislative acts.

It seems relevant to suggest a solution to problems in reparation to the victim through filing and investigating a civil claim in criminal proceedings.

These days, the theoretical framework of criminal procedure includes civil action as a subsidiary mechanism. To enhance the activities of the preliminary investigation bodies and the court to make reparation to the victim, it is possible to appeal to the provisions of the criminal procedure legislation without exceeding criminal proceedings.

V. Bozhyev described the elements which are necessary to recognize a person as a civil party. According to Art. 44 Para 1 of the Criminal Procedure Code of the Russian Federation, there should be a direct causal link between the crime and the damage, the monetary equivalent of the damage (material

and moral); a formal procedural decision on the recognition of a person as a civil party (Bozh'yev, 2003: 102).

However, it is widely discussed if the civil action is necessary in criminal proceedings. V. Shadrin is one of the opponents of a civil action as a mechanism of reparation. He argues that it is unprofitable to use public resources to prepare and review civil claims in criminal proceedings (Rokhlin et al., 2001: 56).

On the other hand, we cannot fully agree with this point of view. According to Art. 6 of the Criminal Procedure Code of the Russian Federation, public resources are already aimed at protecting the rights and freedoms of those who suffered in crime. In this case, a civil action serves as a means for the preliminary investigation bodies to perform their duties to restore the rights of crime victims and ensure reparation.

I. Misnik (2010: 116) provides quite controversial arguments that there should not be a direct link between the results of the investigation and the wellbeing of the victim, i.e. the victim should receive reparation irrespective of any factors.

On the one hand, the author has a point in stating that the State should not only ensure the reparation for the victim but also create conditions for it to be realized.

On the other hand, the aforementioned statement (if taken literally) can be criticized for diminishing the investigator's role who function as public representatives in ensuring the reparation. The investigator's effectiveness contributes to the successful implementation of theoretical basis into practical results to restore the rights of victims and provide them with reparation.

Describing the interconnection between different types of legal relations, E. Kanygina (2016: 215) highlights that the relevance of including the civil action into the framework of criminal proceedings is conditioned by a strong link between civil and criminal responsibilities. Thus, A. Chuvilev and V. Azarov (1987: 70) state that a civil claim gains publicity under the framework of criminal proceedings. It can be added that publicity attributes particular importance to the mechanism of civil action since the restorative justice practices, including the compensation for the damage caused by a crime, become more and more in demand.

V. Batuev also mentions the public aspect in the compensation activities and pinpoints that the State ensures the rights and legitimate interests of the society and individuals. Thus, ensuring the rights and legitimate interests of the victim can be addressed as the statewide objective (Batuev, 1999: 25).

According to V. Pushkarev (2020a, 2020b), this issue is of utmost importance under current conditions when the majority of crimes are committed in the economic sphere, on the Internet (crypto

chain sphere), and not only do they cause damage but also raises issues of claiming the property seized illegally.

It is also crucial to mention that in the majority of cases ensuring the rights and legitimate interests of the victim is addressed through the civil claim and reparation to the victim who suffered in a crime.

According to K. Bobrov (2008: 21), among problems in reviewing the claims in the preliminary investigation in the criminal case, there are reluctance and inability of the preliminary and judicial authorities to resolve the criminal case and the claims during the same trial. In addition, V. Balovneva (2013: 14) states that the opportunity (including the realized opportunity) of the victim to have their demands satisfied does not mean that it will happen simultaneously with the announcement of the final court ruling or prior to it.

However, assuming all the aforementioned problems are real, it should be mentioned that they should not have a negative influence on exercising the legal rights of crime victims to receive compensation as a civil party in criminal proceedings.

To justify the relevance of the civil action in criminal proceedings, it seems reasonable to formulate its definition and include it into the criminal procedure law.

Analyzing the provisions of the Criminal Procedure Code of the RSFSR, the Criminal Procedure Code of the Russian Federation, and the requirements of the current legislation, it is possible to conclude that they do not include the definition of the civil party. According to Z. Zinatullin and Z. Khuramshina (2010: 61), it may cause the undervaluation of this mechanism and its social value. In addition, it has a negative effect on the mechanism of the civil action in criminal proceedings and, consequently, it may threaten the development of this mechanism and practices of reparation.

4. Conclusion

A comprehensive analysis of the aforementioned opinions and a variety of the suggested definitions of the civil action help conclude that its definition may be formulated as follows: “A civil claim in criminal proceedings is a legitimate claim of a crime victim to obtain compensation for non-material, physical and material damage can be filed from the start of the court’s investigation of the case and till the end of the investigation in the court of the first instance”.

Thus, if during the preliminary investigation the victim has not received compensation for the damage (e.g. the stolen property has not been found, the accused has not paid the compensation, etc.), the investigator shall explain to the victim his/her rights on compensation for damage (Art. 42 Para 4

of the Criminal Procedure Code of the Russian Federation) and suggest to file a claim on recognizing him/her as a civil party. Not only should the investigator inform the victim or his/her representative on the right to file a civil claim, but also explain its mechanism in understandable terms.

It should be mentioned that, under the provisions of the current legislation, the personal responsibility of the investigator to ensure the compensation is not enough. Meanwhile, the investigator has a vital role in ensuring a civil claim during the preliminary investigation since all the procedures that they carry out not only fulfill their direct objectives but also aim to compensate for the damage through the civil action mechanism.

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