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LEGAL ISSUES OF REGULATING THE INSTITUTION OF CIVIL ACTION IN CRIMINAL PROCEEDINGS

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Аннотация. Бұл мақалада авторлар ұлттық құқықтағы қылмыстық іске қатысты сот талқылауы сатысында азаматтық талап институтының мәні мен мазмұнын қарастырады. Азаматтық талап институты іс жүргізу құқығының дербес институты болып табылатындықтан, осы институттың өмір сүруіне және оны отандық құқықта жүзеге асыру шараларына ғалымдардың концепциялары мен көзқарастары зерттеледі. Осыған байланысты жұмыста тек ұғымы мен мазмұны ғана емес, сонымен қатар қылмыстық процесте азаматтық талап қою мерзімі де қарастырылады. Қылмыстық іс қозғалғаннан кейін және осы қылмыстық істі бірінші сатыдағы сотта қарау кезінде сот тергеуі аяқталғанға дейін азаматтық талап қою құқығы 1997 жылғы ҚР ҚІЖК-де, сондай-ақ 2014 жылғы ҚР ҚІЖК-де белгіленген. Бұдан кейін анықталады шамадан тыс кеңейту заң шығарушы мерзімдерін азаматтық талап қойылған.

Түйін сөздер: азаматтық талап-арыз, қылмыстық сот ісін жүргізу, қылмыстық іс, мүліктік құқықтар, талапкер, іс жүргізу заңнамасы, кінәлә адам, жәбірленуші.

Аннотация. В данной статье авторы рассматривают сущность и содержание института гражданского иска на стадии судебного разбирательства относительно уголовного дела в национальном праве. Исследуются концепции и взгляды ученых на само существование данного института и мерах его реализации в отечественном праве, в связи с тем, что институт гражданского иска является самостоятельным институтом процессуального права. В этой связи в работе рассматриваются не только понятие и содержание, но и сроки предъявления гражданского иска в уголовном процессе. Право предъявлять гражданский иск после возбуждения уголовного дела и до окончания судебного следствия при разбирательстве данного уголовного дела в суде первой инстанции было установлено еще в УПК РК 1997 года, также как и в УПК РК 2014. На основании чего в работе

Ключевые слова: гражданский иск, уголовное судопроизводство, уголовное дело, имущественные права, истец, процессуальное законодательство, виновное лицо, потерпевший.

Abstract. In this article, the authors consider the essence and content of the institution of civil action at the stage of judicial proceedings in relation to a criminal case in national law. The author studies the concepts and views of scientists on the very existence of this institution and the measures of its implementation in domestic law, due to the fact

that the Institute of civil claim is an independent Institute of procedural law. In this regard, the paper considers not only the concept and content, but also the timing of a civil claim in criminal proceedings. The right to bring a civil action after the criminal proceedings and the conclusion of the judicial investigation in the proceedings of the criminal case in the court of first instance was established in the code of criminal procedure code of the Republic of Kazakhstan 1997, as well as in the criminal procedure code of the Republic of Kazakhstan 2014. On the basis of which the work determines the excessive extension of the legislator's terms for filing a civil claim.

определяется чрезмерное расширение законодателем сроков предъявления гражданского иска.

Key words: civil action, criminal proceedings, criminal case, property rights, plaintiff, procedural law, guilty person, victim.

A specific procedural form of justice is a trial. Establishing the specificity of judicial proceedings as a form of justice, according to some scientists, the tasks of judicial proceedings are similar to the General tasks of justice in criminal cases [1; 41]. V.M. Bozrov does not agree with this, and his opinion is more accurate. "This statement is not entirely accurate, because along with the General tasks that are inherent in criminal justice, this stage also has specific tasks that are faced by the court of cassation or any other form of justice, can not be identical with the tasks that are solved at the stage of trial" [2; 102, 130-131]. Therefore, article 1 of the Constitution of the Republic of Kazakhstan recognizes human and civil rights and freedoms as the highest value and, according to article 76, they are provided with justice . It is in the administration of justice that the judiciary exercises its powers.

Full consideration of the circumstances of the criminal case in accordance with what actually took place, an objective analysis of these circumstances under the criminal law and on the basis of this decision on the criminal responsibility of the person or his acquittal is the essence of the trial. In this case, the filing of a civil claim can be carried out at the stage of preliminary investigation or in court proceedings and before the end of the judicial investigation.

Methods

In the course of the work, such General scientific methods of cognition as universal, logical, as well as private scientific methods - special – legal, formal-legal and intersectoral. The universal method is the methodological basis of scientific research, which determines the methods that are essentially characteristic for use in it. The logical method of research is based on the concept of correct thinking, implemented through analysis and synthesis.

The special legal method is characterized by the consideration of the legal institution with the definition of the provisions and norms of legislation, as well as their interpretation. Formal-legal (legal-dogmatic or technical-legal) allows you to explore the object of consideration regardless of its historical, social or political content, that is, through the use of formal logic, the formation of concepts and contents of certain legal categories is carried out. Using the intersectoral method, it

becomes possible to study the legal norm of one branch of law together with the provisions of other branches of law, that is, it is applicable to research on legal categories that are common not only in this sphere of public relations, but also legal relations themselves, implemented in the civil legal field.

Normative resolution No. 2 of the Supreme Court of the Republic of Kazakhstan «On the practice of applying legislation regulating the rights and obligations of persons who have suffered from crimes" dated April 24, 1992 determined the possibility of compensation for moral damage in a monetary amount in Kazakhstan . It provides an interpretation of the victim's right to claim compensation for non-pecuniary damage in monetary terms, while recognizing it as a civil plaintiff.

There are different opinions of scientists regarding the institution of civil action in criminal proceedings. According to V. p. Bozhev, doctor of law, Professor, honored worker of science of the Russian Federation, a civil suit is not only a way to protect the subjective rights of citizens, but also a single one for civil and criminal proceedings. This opinion does not change the essence of consideration of a civil claim in criminal proceedings. Here, it is also an award claim. Being a specific procedural form of consideration of a dispute about law, when considering a civil claim, procedural guarantees of the parties must be provided [3; 432].

According to Z.Z. Zinnatulin, doctor of law, Professor, consideration of a civil claim in criminal proceedings is carried out because the illegal act of the suspect, accused, defendant or civil defendant violates the norms of criminal and civil legislation. Thus, this is the basis for applying both criminal and civil liability. It is precisely on the basis of this unity of grounds that we can talk about the possibility of considering a civil claim in criminal proceedings [4; 14].

On this topic, S.N. Bachurin, candidate of legal Sciences, stands out among Kazakhstani legal scholars, who in his work "On the issue of consideration of a civil claim in a criminal case" defines the concept of a civil claim in a criminal process. Civil action in criminal proceedings is a complex criminal procedure institution, which is a set of rules that regulates public (criminal procedure) relations regarding the property or material nature of the consequences of a crime in the field of criminal proceedings, and therefore, due to the unity of material civil relations in criminal and civil processes, it includes elements of the civil procedure method of regulation [5; 12].

We could agree with this opinion, although the concept of a claim is still a civil institution, and therefore its content is of a civil nature. In relation to the legal provision on the position of participants in criminal proceedings, a civil claim is already an institution of criminal procedure law.

In the work "Ways of ensuring a civil claim in criminal proceedings", doctor of law, Professor T.A. Khanov also gives an understanding of this Institute of procedural legislation. For Hanowa

civil action in criminal procedure is the treatment of the person concerned to the court at the stage of criminal proceedings concerning the restoration of property rights of defendants or persons who are responsible for his actions, for damages that were caused by offense or socially dangerous act of the deranged". At the same time, he argues that this institution serves to ensure the basic constitutional principles of the Republic of Kazakhstan, that is, regarding the judicial protection of civil, including property, rights [6; 39].

Based on the presented points of view of scientists, it can be argued that they are similar, that is, the very existence of the institution of civil action in criminal proceedings is determined by the specifics of the criminal process. But still relevant questions remain about the subject, content, procedure for consideration and resolution, the scope and implementation of the process of proving a civil claim.

The above-mentioned opinions on the essence of this institution define a civil claim as a complex institution, as a separate Institute of criminal procedure law, or as a civil procedure Institute regulated by the methods of civil procedure legislation.

In criminal proceedings, civil claims of individuals and legal entities may be considered for:

- compensation for property and moral damage caused directly by a criminal offense or socially dangerous act of an insane person;
- reimbursement of expenses for burial, treatment of the victim, amounts paid to him as insurance compensation, benefits or pensions;
- reimbursement of expenses incurred in connection with participation in the investigation, preliminary investigation and in court, including expenses for representation [7; article 166].

Proving a civil claim submitted in a criminal case is regulated by the criminal procedure law. According to it, the duty to prove the nature and amount of damage that was caused by a criminal offense, as circumstances that are included in the subject of proof in the case [7; part 2 of article 166], lies with the prosecution. This is also defined in the Resolution of the Supreme Court of the Republic of Kazakhstan "On consideration of a civil claim in criminal proceedings", according to which the burden of proff falls on the civil plaintiff [8; article 13]. According to Lebedev N.N., Lobacheva S.V., based on the content of the civil claim, the behavior of its participants, this institution is subject to regulation through the civil procedure method. This is confirmed by the fact that the Civil procedure code establishes the burden of proof for both parties to the claim, which expresses the essence of the claim itself [9; article 72]. Article 166 of the Criminal procedure code of the Republic of Kazakhstan also speaks about the application of the civil procedure method of regulation, in particular, about the possibility of applying of the civil procedure legislation if there are gaps in the criminal procedure legislation.

This means that a civil claim in criminal proceedings is an institution that combines the norms of both criminal procedure and civil procedure legislation.

The question of whether the institution of civil action in criminal proceedings is appropriate is repeatedly raised by scientists. Borzov V.M. speaks about the relevance of the application of this institution in the criminal case, and therefore it is impossible to apply a civil claim in the criminal process. The reason for this is various subjects and methods of legal regulation of civil and criminal proceedings. Therefore, civil claims related to compensation for material, moral damage, etc., cannot be considered simultaneously with the conduct of criminal proceedings.

Opponents of this point of view hold the position of preserving the institution of civil action in criminal proceedings, as well as expanding the scope of this institution. This institution saves the time of participants in the legal relationship in terms of restoring the rights of the injured party, thereby acting as an additional guarantee of ensuring its rights and freedoms.

The highest value of the state is the individual, his rights and freedoms, legal interests, including property interests. At the same time, the position of the legislative power is to protect the rights of the individual by all legal means of protection.

Then the presence of a civil claim in criminal proceedings is contrary to this objective to ensure that the recognition of the defendant of the requirements set out in the complaint, may have an impact not only on plaintiff, but on the position it will occupy during the court process.

In this matter, the legislative power is committed to maintaining this institution within the framework of criminal procedure legislation. However, the question of establishing the limits of the action of the studied institution in criminal proceedings remains relevant. At the moment, there are no legal norms that characterize the scope and boundaries of a civil claim in criminal proceedings.

A possible increase in the functions of investigative bodies and the introduction of legislative changes in the implementation of criminal proceedings is also a limiting factor in resolving this issue. In particular, Shadrin V. determines that the boundaries of satisfaction of property claims are established so that this process does not complicate the activities of reviewing and resolving a criminal case. But according to subparagraph 37 of paragraph 1 of article 6 of the Law "On internal Affairs bodies of the Republic of Kazakhstan", the protection of life and health, and property of persons is the responsibility of the internal Affairs bodies [10]. While the Criminal procedure code of the Republic of Kazakhstan does not set as objectives of the criminal process protect the rights and interests of the individual, although established as principles of the criminal process to protect the rights and freedoms of man and citizen, the inviolability of property, houses [11]. Protection of the rights and interests of the injured party should be the basis for the appointment of criminal

proceedings. We believe that this circumstance is a gross omission of the legislator and requires legislative consideration.

Why should the exercise of the rights and protection of the legitimate interests of the injured party depend on the capabilities of state bodies and officials investigating a particular case? After all, the right to a civil claim established by law must be secured against every citizen of the state.

A claim can be made not only in the course of a preliminary investigation. The legislator establishes the possibility of filing a civil action by any person who directly suffered material or moral damage by the criminal offence or criminal act insane, or his representative since the beginning of the pre-trial investigation until the end of the judicial examination [7; part 1 of article 167]. At the same time, there is an obligation to take measures to ensure civil action by the criminal prosecution body under the law [7; article 171]. If these measures to ensure compensation for damage that was caused by a criminal offense were not carried out by the investigator, investigator or Prosecutor, then at the trial, the court shall issue an order to take measures to ensure compensation for damage that was caused by a criminal offense. According to the criminal procedure law, the criminal prosecution authority is obliged to comply with this decision [7; article 325].

In relation to the scope of a civil claim, the legislator also determines its position in relation to the recovery of moral damages. According to the Resolution of the Supreme Court “On application by courts of the legislation on compensation of moral harm”, the judicial authority conducting the criminal proceedings must implement measures for compensation of moral harm [12].

The very presentation of a civil claim by this person determines whether it can be recognized as a civil plaintiff. Articles 58, 73 and 167 of the Criminal procedure code of the Republic of Kazakhstan establish a list of those who have the right to bring civil claims in criminal proceedings. These are individuals and legal entities who have suffered harm as a result of a crime or an act prohibited by criminal law of an insane person, their legal representatives and representatives, the Prosecutor.

Under article 73 of the Criminal procedure code of the Republic of Kazakhstan, these persons have the right to apply to criminal proceeding with a civil claim when the circumstances established in the case confirm that they were harmed directly by a crime or socially dangerous act of an insane person. And, in addition, when there are only sufficient grounds for causing harm to these persons.

We consider it necessary to make additions to the above-mentioned article regarding the recognition of the victim as a civil plaintiff in order to implement guarantees to ensure it, as well as when applying measures to secure a civil claim. This opinion is also held by A. Grinenko, who identified the need to introduce a mechanism for automatically establishing the status of a civil plaintiff for the victim, in particular, when the procedural status of the victim and the civil plaintiff

coincided. This opinion was justified by the need to reduce procedural procedures and procedural documents.

Here there is a violation of the right of the victim to bring a civil claim. Criminal procedure legislation defines the need to explain the possibility and necessity of exercising this right, and not to compel the writing of a claim.

Clarification of the rights of the victim, the private Prosecutor, the civil plaintiff, the civil defendant and their representatives presiding over their rights in the main trial is carried out in the preparatory part of the trial. In addition, as is a clarification of the victim's right to reconciliation with the defendant, including by means of mediation in cases of private prosecution, as well as in cases of criminal offences and crimes of medium gravity committed for the first time and in cases determined by part two of article 68 of the criminal code [7; article 359].

The claim presented since the initiation of the criminal case, but before trial, as in finished and unfinished crime or a prohibited by the criminal law act insane and when the accused is not installed.

The main trial involves a civil plaintiff, a civil defendant, or their representatives. If the civil plaintiff or his representative does not appear in court, the claim may be left without consideration. In this case, the legislator establishes the possibility of considering a civil claim in civil proceedings. The right of a civil plaintiff or his representative to request consideration of a civil claim in the absence of a civil plaintiff is determined. But, in addition, the appearance of a civil plaintiff or his representative will not matter if the need to consider the claim is recognized by the court or supported by the Prosecutor.

The absence of a civil defendant or his representative may not prevent the consideration of a civil claim in criminal proceedings [7; part 5 of article 339]. In addition, Kazakh procedural legislation defines the duty of the court to determine the relation of the defendant to the plaintiff's claim nor in the preparatory part of court session [7; article 320], either at the beginning of the judicial investigation [7; article 345].

On the basis of this, it seems necessary to join the opinion of scientists about the disclosure of the civil claim simultaneously with the indictment [13; 167]. The need to announce a civil claim and thus establish the defendant's attitude to it is manifested when the civil plaintiff did not appear at the court session and did not apply for consideration of the claim in his absence, and the Prosecutor did not Express his attitude to the civil claim.

This is best done before the definition of order of examination of evidence [7; article 366], since the court is important to know whether evidence concerning the civil claim, in the absence of the civil plaintiff.

In addition, the code of criminal procedure of 2014, in contrast to the code of criminal procedure of 1997, does not contain three articles directly related to the recognition of an individual or legal entity as a civil plaintiff, refusal to recognize a civil plaintiff and involvement in the case as a civil defendant [7; articles 164-166]. In this case, the legislator limited himself to considering the concepts of "civil plaintiff" and "civil defendant" in articles 73 and 74 of the CPC of the Republic of Kazakhstan.

This introduces confusion and uncertainty in the process of considering the claim in criminal proceedings. And any inaccuracy and uncertainty leads to a possible violation and infringement of the property rights of individuals and legal entities who made a claim.

A civil action has the purpose of compensating for property and moral damage that was caused directly by a criminal act or an act committed by an insane person. In addition, this includes expenses for burial, treatment of the victim, amounts that were paid to him as insurance compensation, benefits or pensions, as well as expenses related to participation in the investigation, preliminary investigation and in court, including expenses for representation.

The right to bring a civil action after the criminal proceedings and the conclusion of the judicial investigation in the proceedings of the criminal case in the court of first instance was established in the CPC of the Republic of Kazakhstan 1997, as well as in the CPC of the Republic of Kazakhstan 2014. On the basis of which it is possible to determine the excessive extension of the terms of filing a civil claim.

The very meaning of a civil claim in criminal proceedings can be determined:

1) article 113 of the criminal procedure code of the Republic of Kazakhstan itself establishes the nature and extent of the harm caused by the crime as a circumstance that is subject to proof. Therefore, this setting has not only civil and legal significance, but also criminal law;

2) when considering a civil claim within the framework of the criminal process, the judicial procedure solves the problem of restoring the property rights of a person who has suffered property damage as a result of a crime;

3) consideration in one criminal process of a civil claim for the restoration of property rights of a person who suffered property damage as a result of a crime is convenient for the civil plaintiff;

4) consideration of a civil claim in criminal proceedings is also convenient for the court, as it serves to implement the task of a full study of the evidence in the case to resolve all claims, which is possible when using and evaluating the evidence collected in the criminal case;

5) consideration of a civil claim in a criminal case provides savings of effort and funds, as well as the exclusion of making different decisions on the same issues;

6) consideration of claims in criminal proceedings leads to strengthening the implementation of the educational function of the criminal process. That is, a criminal penalty is applied to the perpetrator, and the obligation to compensate for the harm caused by his criminal actions [14; 401].

However, the positive characteristics of the research Institute are the saving of state financial recourses for the implementation of the proceeding, the release of the plaintiff (the injured party) from paying the state fee, and the use of an effective procedure for the appearance of the defendant on the court. A civil claim in criminal proceedings is a means of protecting the rights and interests of a person and a citizen, which contributes to a better identification of the guilty party, preventing the presence of different judgments on the same issues, and also helps to establish the burden of proof of the defendant's guilt on the investigating authorities and the Prosecutor, and not on the plaintiff.

The institution of civil action is a necessary component of criminal proceedings. The effectiveness of its implementation contributes to improving the situation of persons who have suffered moral damage and / or property damage as a result of violation of the criminal law. Therefore, this institution needs to be improved and further developed in order to fully implement the principles of competition and equality of the parties to legal proceedings.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫ ЭКОЛОГИЯЛЫҚ КОДЕКСІНІҢ ЖОБАСЫН ҚАБЫЛДАУ АЯСЫНДА АҚТӨБЕ ОБЛЫСЫНЫҢ ҚОРШАҒАН ОРТАНЫ ҚОРҒАУДЫҢ ӨЗЕКТІ МӘСЕЛЕЛЕРІ

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Аннотация. Мақалада Ақтөбе өңіріндегі негізгі экологиялық мәселелер және мемлекеттік органдардың қоршаған ортаға және адам денсаулығына әсерін алдын-алу, болдырмау, шектеу және салдарын жою жөніндегі іс-әрекеттері қарастырылған. Сонымен қатар, жұмыста аталған мәселелер бойынша Қазақстан Республикасының Экологиялық кодексі жобасының негізгі ережелері белгіленген. Осы нормативтік құқықтық акті қабылдау туралы Қазақстан Республикасы Президентінің соңғы Жолдауында айтылған [1]. Атап айтқанда, мақалада қазіргі кезде табиғи объектілер мен ресурстардың жағдайы, олардың адам өмірі мен денсаулығына әсері зерттелген. Табиғат пайдаланушылардың өсіп келе жатқан өндірістік белсенділігінің нәтижелері табиғи ресурстарды үлкен көлемінде пайдалануға, демек олардың жағдайының нашарлауына әкеледі. Аймақтың су ресурстары (Елек, Сазды өзендері), химиялық ластануға ұшыраған атмосфералық ауа, жер ресурстары тұрғындардың өміріне әсер етудің негізгі көзі болып табылады. Ұлттық экологиялық заңнамаға жетпистен