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PECULIARITIES OF PROSECUTOR – REPRESENTATIVE LEGAL RELATIONSHIP AT THE PRE-TRIAL STAGE

Annotation

The article includes the analysis of the basis for prosecutor's representation of the people who suffered from material and moral harm afflicted by a crime during the criminal case as well as for defense of the state interests in criminal procedures. Peculiarities of prosecutor – representative legal relationship at the pre-trial stage are defined. The content of statement of claim in criminal case is revealed.

It is declared in the article 41 of Constitution of Ukraine that everyone has the right to own, to use and to dispose the property, results of the headwork and creative activity. Nobody can be illegally deprived of the property law. The private property law is inviolable [1]. According to the article 1 of the First report to the Convention of the United Nations about the protection of human rights and basic freedom, ratified by Verhovna Rada of Ukraine 17.07.97, every physical or juridical person has the right to own the property peacefully. Nobody can be deprived of the property, only in behalf of the society and on the conditions foreseen by the law or general principles of international law [2].

Embodying these principles, article 28 of CPC foresees an opportunity in criminal case to bring to the accused or to the persons who bear the liability the civil action which is tried by the court with the criminal case [3].

Carrying out the supervision of laws following by inquest bodies and pre-judicial investigation, directed on compensation of the harm caused by crimes, the public prosecutor not only provides steady execution of law requirements concerning the rights of the injured and

civil claimant, but also in cases when it is demanded to protect the interests of the state, and also citizens who because of the health and from other valid reasons cannot protect the rights, is obliged, according to a part second of article 29 CPC of Ukraine, to bring or support the civil action sent to the victim about the indemnification caused by the crime.

In connection with the increasing of crimes against the property among other kinds of crimes last years the activity of bodies of Public Prosecutor's office in criminal procedure got more active that has caused many questions about the application of criminal-procedural norms which regulate action proceeding. Among them there are problems of definition of the bases for initiation by the public prosecutor of proceeding's infringement in criminal process, debatable questions of finding-out the form of the statement of claim about the compensation of the harm put by the crime, many pressing questions which arise during the proceeding by the civil action in criminal procedure. An essential contribution in development of theoretical and practical problems which arise during the action proceeding in criminal procedure was carried out in works of the fol-

lowing scientists: V.Azarov, S.Alpert, J.Baulin, M.Goshkovskiy, J.Groshevoy, Z.Zinatullin, Y.Klimenko, E.Kovalenko, O.Kuchinska, V.Malyarenko, M.Nikonenko, E.Nikulin, T.Prisyazhnyuk, M.Cheltsov, J.Ciganyuk, V.Shadrin and others.

These authors pay attention to the general dispositions of action proceeding in criminal legal proceedings; in particular in a context of the rights of the victim on compensation, however the peculiarities of prosecutor's action proceeding in criminal legal proceedings are almost not investigated.

Checking criminal cases examined by the investigator, the public prosecutor pays attention to timeliness and productivity of actions which are used for solving the crimes by which the harm to the citizens or juridical persons was caused; the completeness of using of the actions foreseen by the law to reveal the character and the size of this harm and also to provide its compensation.

In case when the person who has committed the crime had not compensated the caused harm in the voluntary order, the most effective legal method of reinstatement of the violated rights and interests is claim. The statement of claim can be presented both within the framework of criminal case and in civil legal proceedings.

In general the institute of the civil action in criminal procedure is a problem multifaceted and is not settled enough at a legislative level.

The effective criminal-procedural law does not contain the notion of the civil active in criminal case. The practical contents and scientific value of such notion consists in realizing of limits of use of the claim form of protection of the suffering persons' subjective rights violated by the crime, differences of the given form of protection from others foreseen by the legislation. Thus, the notion of civil action needs the fixation in the Criminal-Procedural Code of Ukraine.

Usually in literature the civil action in criminal procedure is determined as the require-

ment of the person whom the crime caused material harm, to the accused or to the persons who bear the liability for actions of accused, about the compensation of the material harm caused by the crime which is declared within the framework of criminal case and is examined by the court together with criminal case [4; 6]. As a whole it is possible to agree with such notion, however only in view of that fact that the subject of presentation of the claim can be not only the person whom it was caused both material and moral harm by the crime but also other authorized persons.

The special subject who has the right to declare claims of the specified category is the public prosecutor. From the analysis of norms of the Law of Ukraine «About Office of Public Prosecutor», CPC of Ukraine it is foreseen that participation of the public prosecutor in procedure by the civil action in criminal legal procedure is carried out in two forms: filing of the claim in the interests of the person or maintenance of the claim declared by other person. In both cases the law stipulates its procedural activity in this direction by the protection of the state interests and the rights of some categories of citizens.

Civil claimants in claim procedure after the initiative of the public prosecutor are physical and juridical persons in which interests the civil action has been declared, but not the public prosecutor. The marked persons are the subjects of disputable financially legal relations which require protection of the subjective right violated by the crime, and only to these subjects financially legal consequences of the decision accepted by the court concerning the claim of the public prosecutor are extended.

However, the public prosecutor cannot be considered also the representative of the claimant as he registers the claim not by claimant's order and is not connected with his will. Both in case of presentation of the claim and in case of maintenance of the claim declared by other persons the public prosecutor is a body which carries out supervision of legality.

In case of bringing of the action about compensation of the harm caused by the crime,

the public prosecutor is obliged to provide proofs concerning the bases of the claim and the size of losses. It is possible to define the following bases for the statement by the public prosecutor of the claim about compensation of the harm caused by the crime:

- 1) The fact of fulfillment of the crime (existing of criminal case);
- 2) presence of harm;
- 3) a causal connection between crime and harm;
- 4) infringement of interests of the state and also citizens who on the health condition and from other valid reasons cannot protect the rights.

The contents of harm as the bases of the statement of the civil action in criminal case are complex and volumetric and includes in itself property harm (a straight direct property harm; the incomes did not received as a result of the crime; charges on renewal of health of the victim; charges on a burial place of the victim in case of his death and payment to disabled members of his family; the charges connected with payment of compensation of harm caused by the crime (recourse requirements) and moral harm caused by physical and juridical persons.

According to the effective civil legislation moral harm consists of physical pain and sufferings which the physical person has tested in connection with mutilation or other damage of health; in psychical sufferings which the physical person has tested in connection with illegal behavior concerning him, his members of family or close relatives; in psychical sufferings which the physical person has tested in connection with destruction or damage of property; in humiliation of honour, dignity and also business reputation of the physical or juridical person, such harm is an estimated concept and can be appreciated only by that person whom it has been caused [5]. Thus, to the bodies of Office of Public Prosecutor is inexpedient to show statements of claim for compensation of moral harm as they are based, first of all, on statements of the injured party.

Besides, the specificity of claim activity of the bodies of Office of Public Prosecutor is caused by the presence of the bases for representation of interests of the state and citizens in court. In case of infringement as a result of criminal activity of interests of the state the public prosecutor should sue in interests of the corresponding body if the specified body does not sue independently. In the second case the public prosecutor should support such claim in the court.

Also the effective criminal-procedural code contains the indication of the entering of claims by the public prosecutor about the means collecting spent by the health care institution on hospitalization of the person, harmed by the crime. According to the item 93-1 of CPC of Ukraine the means spent by the health care institution on hospitalization of the person, harmed by the crime, except of the case of such harm at excess of limits of necessary defense or in a condition of strong psychic excitement which has suddenly arisen as a result of illegal violence or offence by the victim, are collected by the court after the passing of sentence according to the claim of the health care institution, of the Ministry of Finance of Ukraine or the public prosecutor, foreseen by the effective criminal-procedure legislation.

However it is necessary to note that an opportunity of bringing the action of the public prosecutor in interests of bodies of the government, property rights and interests which are violated by the crime, does not delivered from their duty to care of the renewal of the fixed rights and interests, compensation of harm. Transposition of this duty on bodies of the Office of Public Prosecutor can cause an indulgence of activity of the specified bodies concerning protection of the rights and the interests of the state violated by the crime and on the other hand to increase duties of the public prosecutor which can negatively influence on realization of other functions.

Including the stated we think that the priority of the public prosecutor concerning

the protection of interests of the state consists not only in suing in interests of the government about compensation of the harm caused by the crime, but also in demanding from bodies of the government of independent bringing of the corresponding claim. It is necessary to take into account that fact that at the bringing of the actions about collecting the harm caused by the crime the State Tax is not collected, thus the bodies of the government will not have additional expenses.

In connection with above-stated we consider that it is necessary to add to the effective legislation the norms directed on activization of activity of the enterprises, establishments, organizations directed on the assuming of the measures on collecting of harm caused by the crime in the interests of the state.

Concerning bringing of the claim about compensation of the harm caused by the crime in interests of the physical person, in practice there are difficulties at definition of the reasons for which the person independently does not owe an opportunity to sue and to protect the interests in court.

Yes, article 36-1 of the Law of Ukraine «About Office of Public Prosecutor» foresees that the basis of representation in court of interests of the citizen is his inconsistency through a physical or material condition, old age or from other valid reasons independently to protect independently violated or contest rights or to realize procedural powers [7].

The analysis of positions of the order of the General public prosecutor of Ukraine № 6 from 26.11.06 leads to the conclusions that public prosecutors are obliged to represent interests of minors, invalids, people of elderly age, persons who had suffered as a result of Chernobyl accident in court.

However, in each concrete situation the public prosecutor independently determines the

bases for representation of interests of citizens. So the bases that were not marked higher can be determined also as respectable.

In consideration of that fact that in separate international documents is paid attention to roles of public prosecutors in following the rights of victims at realization of criminal legal proceedings, claim activity of bodies of Office of Public Prosecutor in sphere of compensation of the harm caused by the crime is an effective action on renewal of the violated rights and freedom of the person and the citizen. The stated direction of public prosecutor's activity is qualified according to the European standards of public prosecutor's activity but not settled enough for the present time at a legislative level and demands improvement.

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