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Foreign legislation on the participation of legal entities in criminal procedure relations

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Abstract

This paper reviews a comparative study of law and the regulation of the participation of legal entities in criminal proceedings. Author makes a comparative study of legislation of CIS countries, enforcement practices and theoretical positions.

Keywords

Legal persons, criminal and procedural relations, civil suit.

Introduction

Current legislation in many countries is ambiguous considering legal entities as members of criminal procedure relations. Someone approaches the issue from the perspective of restrictive measures, for instance, when the entity cannot be recognized aggrieved, but can be recognized as a civil plaintiff. Other legislative provisions aimed at provid-

ing opportunities for the participation of legal entities in the criminal procedure relations, beginning from their participation in bail hearing and ending with the right of legal entities to compensation for the illegal actions of the persons involved in criminal proceedings.

In this context, those provisions of foreign legislation generate the interest, which more fully regulate the participation of legal entities in the criminal

procedure relations. In this article we will investigate the question of formation of legislative rules on the participation of legal entities in criminal procedure relations in the CIS countries.

Participation of legal entities in criminal procedure relations

Legislation of CIS countries contains many fairly similar legal requirements, regulations and standards. But there are legal provisions unknown to Russian law, which we would like to enlarge upon the point.

According to Art. 75 of the Criminal Procedure Code (CPC) of the Republic of Kazakhstan, the injured in criminal proceedings is considered a person, in which respect there is reason to suppose that directly a crime caused him moral, physical or property damage. Regarding the possibility of recognition of the injured as a civil plaintiff, the Art. 77 of the CPC of the Republic of Kazakhstan stipulates that a civil plaintiff can be both physical and legal persons. Moreover, under the laws of the Republic of Kazakhstan, civil plaintiffs can be recognized not only at the initiative of the interested persons or entities, but also at the discretion of the prosecutor. According to Art. 78 of the CPC of the Russian

Federation a civil defendant can be both physical and legal persons¹.

Participation of legal entities in the criminal procedural relations in criminal procedure legislation of the Republic of Kazakhstan is also possible during such bail hearing when a bail can be made by the legal entity as well.

The Code of Criminal Procedure of the Republic allocates the entire chapter dedicated to the civil claim in the criminal process. This chapter contains the definition of a civil claim, terms of its filing, possibility of recognition and refusal to recognize the civil plaintiff and other issues. But we would like to draw attention to one important feature, which is provided in the Art. 167 of the CPC of the Republic of Kazakhstan – in an adjudication of civil claim brought in a criminal case, the grounds, conditions, amount and method of compensation are determined in accordance with the rules of civil, labor and other laws. This statutory provision indicates on a complex, integrated nature of legal relations arising in regard to adjudication of civil claim in criminal proceedings, as well as on the ability to use a complex of legal requirements for proper treatment and resolution.

¹ *Criminal procedure code of the Republic of Kazakhstan [Ugolovno-protsessual'nyi kodeks Respubliki Kazakhstana]*, Yurist, Almaty, 2001, p. 77.

Furthermore, according to Art. 46 of the CPC of the Republic of Kazakhstan, legal entities have the right to compensation for damage caused by unlawful actions of the body conducting the criminal proceedings.

Thus, the legal entities are full participants in criminal procedure relations in the legislation of the Republic of Kazakhstan.

The other way resolved the issue in the legislation of the Republic of Belarus. A legal entity may participate in criminal procedure relations only as a civil plaintiff. Article 52 of the Code of Criminal Procedure of the Republic of Belarus refers to individuals who may be recognized as civil plaintiffs – a physical or legal person, in which respect there are reasonable grounds to suppose that it was harmed. And also the resolution of the Plenum of the Supreme Court of the Republic of Belarus on 30.06.2005 No. 6 "On the practice of rules application of the Code of Criminal Procedure regulating the participation of an injured in the criminal process" indicates that in the sense of the Art. 49 of the CPC the injured can be recognized only physical person who suffered physical, property or moral damage directly by a crime or by a socially dangerous act of the deranged provided under criminal law.

Here indicated that legal entity which suffered damage by a crime or a socially dangerous act of the deranged, exercise its rights by filing a civil action². Consequently, according to criminal procedure relations under the Belarusian law, the legal entity is not involved as wronged, it may be a participant of criminal procedure relations only as a civil plaintiff.

Legal entities may also be recognized as civil defendants – this provision follows from the Art. 54 of the CPC of the Republic of Belarus, if the entity can be charged with liability for the actions of the accused.

These explanations we find in the Resolution of the Plenum of the Supreme Court of the Republic of Belarus on June 24, 2004 No. 8 "On the practice of claims examination by courts in the criminal process". Physical and legal entities are recognized by civil defendant only when the latter may be imposed the liability for the actions of the accused by force of law and in connection with the action brought (Articles 54, 152 of the CPC)³.

Participation of legal entities in criminal proceedings under the laws of Armenia is very similar to the legisla-

2 "Criminal procedure code of the Republic of Belarus" ["Ugolovno-protsessual'nyi kodeks Respubliki Belarus"], available at: <http://www.levonevski.net>

3 Ibid.

tion of the Russian Federation. Legal entities may participate in criminal procedure relations as civil plaintiffs, civil defendants, as well as persons who may participate in such preventive measures choosing as bail of the organization.

In common with most legislative acts of CIS countries, legal entity cannot be wronged in criminal proceedings in Armenia. Article 60 of the Code of Criminal Procedure of Armenia provides for the recognition of physical or legal entity as civil plaintiff that filed the claim during the criminal proceedings, in which respect there are reasonable grounds to suppose that it suffered property damage⁴. And it is worth noting that only property damage may be reimbursed. As to other types of harm and damage caused to the business reputation of the legal entity, the criminal procedure legislation of Armenia does not consider this issue.

Legal entities may be involved in criminal proceedings as civil defendants. Article 74 of the CPC of Armenia indicates that legal entity shall be deemed a civil defendant, if by law it can be imposed property responsibility for the actions of the accused, which caused property damage⁵.

4 "Criminal procedure code of the Republic of Armenia" ["Ugolovno-protsessual'nyi kodeks Respubliki Armeniya"], available at: <http://yurodel.com/zakony>

5 Ibid.

Participation of legal entities is provided in the process of choosing such preventive measure as a bail of the organization as well. Article 146 of the CPC of Armenia states that bail of the organization is a written commitment of a credible legal entity that it warrants by its authority and paid sum of money for a proper conduct of the suspect or the accused, his appearance on call of the body conducting the criminal proceedings, as well as execution of other procedural commitments⁶.

The opportunities of exercise of rights of the injured and civil plaintiff to compensation for damage caused by property crime are provided by the legislator of Armenia in the Chapter 20. Criminal procedural law of Armenia defines a complex nature of arising relations on resolving the civil action. Article 154 of the CPC of Armenia indicates that a civil suit is generally considered by the rules of criminal procedure, but allows for the possibility to use the rules of civil procedure legislation insofar as it does not conflict with the rules of the Code of Criminal Procedure during its adjudication.

Determining the value of res judicata judgment or decision of the court on a civil action, criminal procedure law

6 Ibid.

emphasizes that *res judicata* court's decision on the same civil action, the court decision on the refusal acceptance of civil plaintiff from the claim or the approval of settlement agreement, as well as the presence of an enforceable court judgment by which the claim is denied, or it is upheld in full or in part, exclude subsequent initiation of civil action. At the same time, the Art. 155 of the CPC of Armenia establishes the possibility of bringing a civil action in civil proceedings in case of non-use of such rights as a civil plaintiff in the criminal process.

All these data suggest the identical approach of many legal rules and regulations to the issues governing the participation of legal entities in criminal procedure relations.

The Art. 61 of the CPC of the Republic of Moldova recognizes physical or legal person as a civil plaintiff to whom caused material or moral harm by the crime. Injured in the Moldovan legislation can only be individuals, while civil plaintiffs can be both physical and legal entities. An admissibility of recognition of civil defendant as a legal entity also provided by the Art. 73 of the CPC⁷.

7 "Criminal procedure code of the Republic of Moldova" ["Ugolovno-protsessual'nyi kodeks Respubliki Moldova"], available at: <http://yurodel.com/zakony>

An opportunity of legal entity to participate otherwise, in addition to civil plaintiff and civil defendant, also provided in the election of such preventive measure as bail of the organization (see Art. 180 of the CPC of Moldova).

There again, the Art. 219 of the CPC of Moldova indicates on the possibility of filing a civil suit both by physical and legal entities⁸. Moreover, this provision contains a very important designation. This suit is allowed if these persons had suffered material, moral damage or, depending on the circumstances, damage to business reputation. Thus, the Moldovan legislation in addition to material and moral damages provides monetary compensation for harm caused to business reputation.

Under applicable laws of Moldova, civil action in the criminal proceedings may be brought on compensation:

- of property in kind or the value of the property, lost or destroyed in the course of wrongdoing;
- of expenses on the purchase of the lost or destroyed property, restoration of the quality, marketable condition and repairing damaged property;
- of the benefits lost in result of wrongdoing;

8 Ibid.

– of moral damage or, depending on the circumstances, damage to business reputation.

In addition, current legislation provides that should be understood by the material damage caused in connection with the wrongdoing. These expenses include:

- expenses on treatment and care of the injured;
- expenses on funeral;
- expenses on the payment of insurance compensation, benefits, pensions;
- expenses incurred in connection with the contract performance of property protection.

Criminal procedure legislation of Estonia contains enough precise regulation of the participation of injured and civil parties in criminal proceedings.

The Part 1 of the Art. 40 of the CPC of Estonia states that injured is a person suffered by moral, physical or property damage by the committed crime⁹. This provision of law is not entirely clear whether the legal entities included in this category of participants. Such standards are also contained in the Article 41 of the CPC of Estonia, which include the participation of civil plaintiff in criminal

⁹ "Criminal procedure code of the Republic of Estonia" ["Ugolovno-protsessual'nyi kodeks Respubliki Estonii"], available at: <http://yurodel.com/zakony>

proceedings. Legislator indicates that the person who has suffered property damage from a crime shall have the right to bring ... a civil action in criminal proceedings¹⁰.

Procedure for recognition of injured and civil plaintiff is ascertained in the Art. 114 of the CPC of Estonia. Part 2 of this rule contains the following definition – having investigated that property damage caused to the enterprise, institution, organization or person caused by the act of crime, the investigator shall explain them or their representatives the right to bring a civil action.

Article 43 of the CPC of Estonia establishes the possibility of involvement of parents, guardians or other persons, as well as enterprises, institutions and organizations as civil defendant, which by virtue of the law shall be financially responsible for damages caused by criminal activity.

As for the order of filing the action, it is ascertained in the Art. 42 of the CPC of Estonia. Civil action may be brought against the accused or persons, enterprises, institutions and organizations bearing financial responsibility for his actions.

The criminal procedure legislation of Estonia explicates not on the legal

¹⁰ Ibid.

entities as a generic term applied in most of the legal provisions of other countries, but on such participants of the process as enterprises, institutions or organizations. But it should be noted a very important point. According to the General Part of the Civil Code of Estonia, the legal entity is a legal subject that can be private or public law entity. If the Article 25 of the Civil Code of Estonia indicates private legal persons such as general partnership, joint stock companies and others, the Part 2 of this rule treats the state and local authorities as public law entities. But we did not find the definition of enterprises, institutions and organizations in the civil law that certainly raises some terminological difficulties¹¹.

The last in our study is the criminal procedure legislation of the Republic of Ukraine.

According to Art. 50 and 51 of the CPC enterprises, institutions and organizations may be recognized as civil plaintiffs and civil defendants. This reflects the similarity of the terminology used to refer to a legal in the criminal procedure legislation of Estonia. However, the theory of criminal procedural law of Ukraine has the following instruc-

tions. If property damage was **deleterious to legal entity** as a result of criminal activity, it can act only as a civil plaintiff under its representative¹².

The possibility of participation of enterprises, organizations and institutions in the criminal process is also determined by their opportunity to file a petition on crime. And also determined by the fact that they can be deposited any values or property subject to forfeiture with a view to ensuring the civil action. Determining the choosing of such preventive measure as bail, Ukrainian legislation provides in the Art. 154-1 the possibility of a legal entity to enter money or other tangible assets as a collateral foundation for appropriate behavior, compliance with obligations not to leave its permanent residence or temporary stay without the permission of the relevant officials.

Participation of enterprises, organizations and institutions in the performance of investigative activities provided during the execution of search and seizure. Article 181 of the CPC of Ukraine states that the search and seizure in the premises occupied by enterprises, insti-

11 "The common part of the Civil Code of Estonia" ["Obshchaya chast' GK Estonii"], available at: <http://yurodel.com/zakony>

12 Yanovich, Yu.P. (1998), *Criminal proceedings in Ukraine. Textbook for reading up for state (finals) examination* [Ugolovnyi protsess Ukrainy: posobie po podgotovke k gosudarstvennomu (vypusknomu) ekzameni], Kharkiv, p. 68.

tutions and organizations, conducted in the presence of their representatives¹³.

Conclusion

Thus, the study of the legislation of CIS countries has allowed us to come to certain conclusions.

1. Most legal regulations of criminal procedure law provide for the participation of legal entities as full participants of criminal procedure relations empowered to claim their rights and interests in criminal proceedings.

2. Participation of legal entities in criminal procedure relations as civil plaintiff and injured for most procedural sources are presented as complex inter-industry relations, being regulated not only by criminal procedural law, but also by civil and civil procedural law.

3. Participation of legal entities in other criminal procedure relations is conditioned by a special nature of their occurrence, in particular, the choosing of the preventive measure to the accused, the use of the legal entity authority to address other issues that are indirectly regulated by the criminal procedure legislation.

¹³ "Criminal procedure code of the Republic of Ukraine" ["Ugolovno-protsesual'nyi kodeks Respubliki Ukrainy"], available at: <http://yurodel.com/zakony>

References

1. "Criminal procedure code of the Republic of Armenia" ["Ugolovno-protsesual'nyi kodeks Respubliki Armeniya"], available at: <http://yurodel.com/zakony>
2. "Criminal procedure code of the Republic of Belarus" ["Ugolovno-protsesual'nyi kodeks Respubliki Belarus"], available at: <http://www.levonevski.net>
3. "Criminal procedure code of the Republic of Estonia" ["Ugolovno-protsesual'nyi kodeks Respubliki Estonii"], available at: <http://yurodel.com/zakony>
4. *Criminal procedure code of the Republic of Kazakhstan* [Ugolovno-protsesual'nyi kodeks Respubliki Kazakhstana], Yurist, Almaty, 2001, 208 p.
5. "Criminal procedure code of the Republic of Moldova" ["Ugolovno-protsesual'nyi kodeks Respubliki Moldova"], available at: <http://yurodel.com/zakony>
6. "Criminal procedure code of the Republic of Ukraine" ["Ugolovno-protsesual'nyi kodeks Respubliki Ukrainy"], available at: <http://yurodel.com/zakony>
7. "The common part of the Civil Code of Estonia" ["Obshchaya chast' GK

Estonii"], available at: <http://yurodel.com/zakony>

8. Yanovich, Yu.P. (1998), *Criminal proceedings in Ukraine. Textbook for read-*

ing up for state (finals) examination [Ugolovnyi protsess Ukrainy: posobie popodgotovkekgosudarstvennomu (vypusknomu) ekzameni], Kharkiv, 256 p.

Зарубежное законодательство об участии юридических лиц в уголовно-процессуальных отношениях

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Аннотация

В статье рассматриваются вопросы сравнительно-правового исследования регламентации участия юридических лиц в уголовном процессе. Сравнительному исследованию подвергнуто законодательство стран СНГ, правоприменительная практика и теоретические положения.

Ключевые слова

Юридические лица, уголовно-процессуальные отношения, гражданский иск.

Библиография

1. Общая часть ГК Эстонии. [Электронный ресурс]. – Режим доступа: <http://yurodel.com/zakony>
2. Уголовно-процессуальный кодекс Республики Армения. [Электронный ресурс]. – Режим доступа: <http://yurodel.com/zakony>

3. Уголовно-процессуальный кодекс Республики Беларусь. [Электронный ресурс]. – Режим доступа: <http://www.levonevski.net>
4. Уголовно-процессуальный кодекс Республики Казахстана. – Алматы: Юрист, 2001. – 208 с.
5. Уголовно-процессуальный кодекс Республики Молдова. [Электронный ресурс]. – Режим доступа: <http://yurodel.com/zakony>
6. Уголовно-процессуальный кодекс Республики Украины. [Электронный ресурс]. – Режим доступа: <http://yurodel.com/zakony>
7. Уголовно-процессуальный кодекс Республики Эстонии. [Электронный ресурс]. – Режим доступа: <http://yurodel.com/zakony>
8. Янович Ю.П. Уголовный процесс Украины: пособие по подготовке к государственному (выпускному) экзамену. – Харьков, 1998. – 256 с.