

ON THE ISSUE OF PROCEDURAL LEGAL ADVOCATION OF A CIVIL PLAINTIFF IN CRIMINAL PROCEEDINGS: DOCTRINE AND PRACTICAL PROBLEMS, WAYS TO OVERCOME THEM

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Annotation. The issue of the procedural status of a civil plaintiff in criminal proceedings and the issue of a person's right to compensation for damage caused by a criminal offense has always been in the center of attention of lawyers - academics and practicing practitioners. The relevance of the chosen topic and the purpose of the research is due to certain doctrinal and practical gaps in the criminal procedural legislation of Ukraine, as well as contradictions between the norms of criminal procedural law, civil procedural law, and the provisions of inheritance law, which arise in the conditions of criminal proceedings, and are caused by death (or the condition, which makes it impossible to participate) of the injured person, who is a civil plaintiff in a civil claim for damages, at the stage of pre-trial and judicial criminal proceedings. Taking into account the set goal of criminal proceedings, which consists, among other things, in compensating the injured person for the moral and (or) property damage caused to him by a criminal offense, in this article the author not only analyzes individual scientific views and examines the relevant legal norms regulating procedural procedure of criminal legal succession, however, attention is emphasized and own proposals are made to improve the legal mechanism of legal succession of a participant in criminal proceedings, such as a civil plaintiff in a civil claim for damages presented in criminal proceedings. In conducting scientific research, the author used the formal-logical (dogmatic) method in interpreting the normative content of laws and formulating the definitions of individual legal concepts of the research issues, as well as the method of systemic-structural analysis, which contributed to the study of types of legal conflicts and gaps. Based on the results of the scientific research, the author outlined separate doctrinal and practical problems of the studied issue, and outlined the conclusions regarding the need to improve the current version of the Criminal Procedure Code of Ukraine and clarify the procedural rights of the civil plaintiff during procedural succession in criminal proceedings, by adding a new article to the Criminal Procedure Law, and made suggestions to the specified edition.

Key words: civil plaintiff in criminal proceedings, civil claim in criminal proceedings.

1. Introduction.

According to Article 3 of the Criminal Procedure Code of Ukraine, one of the participants in criminal proceedings is the victim. The legislator determined the procedural status of the victim, fixed his rights and obligations, and also determined the participation in criminal proceedings of the representative and legal representative of the victim. Also, taking into account the provisions of Art. 61, Art. 128 of the Criminal Procedure Code of Ukraine, the right of the injured person to file a civil lawsuit in criminal proceedings is defined [1]. However, the Criminal Procedure Code of Ukraine contains a number of gaps and contradictions, including with other laws, which can lead to serious problems in practice when a civil plaintiff realizes his procedural status in criminal proceedings.

2. Analysis of scientific publications.

The work of M.I. Goshovsky, V.T. Nor, V.Ya. Ponarin, S.A. Alpert, O.V. Krykunov, O.P. Kuchynska, Yu.V. Tsyganyuk, V.O. Hryniuk, O.Yu. Kostyuchenko, V.P. Shibiko, E.V. Demchenko, L.L. Neskorozhena, M.V. Sirotkina, B.L. Vashchuk At the same time, the process of transferring the rights and responsibilities of a victim who has been sued in a criminal proceeding to other persons remains insufficiently developed, does not always meet international standards of access to justice, which is due to insufficient research on the problems of legal regulation and causes the need for further thorough and comprehensive treatment of the specified topic.

3. The aim of the work.

The above indicates the need to continue conducting scientific research, analyzing normative developments with the aim of further improving both the legal institution of the civil plaintiff in the criminal process, and the means of ensuring his rights and legitimate interests in the case of legal succession.

4. Review and discussion.

According to Part 1 of Article 61 of the Criminal Code of Ukraine, a civil plaintiff in criminal proceedings is a natural person who has suffered property and/or moral damage as a result of a criminal offense or other socially dangerous act, a legal entity who has suffered property damage as a result of a criminal offense or other socially dangerous act, and as well as the bond issuing administrator, who, in accordance with the provisions of the Law of Ukraine "On Capital Markets and Organized Commodity Markets", acts in the interests of bond owners, which criminal offense or other socially dangerous act caused property damage, and which (which) in the manner established by this Code, filed (filed) a civil lawsuit." According to Part 2 of Article 61 of the Criminal Procedure Code of Ukraine, the rights and obligations of a civil plaintiff arise from the moment of filing a statement of claim with a pre-trial investigation body or a court. However, the law provides for cases when the victim cannot personally take part in the criminal process for certain reasons. Thus, according to Part 6 of Article 55 of the Criminal Procedure Code of Ukraine, if a person dies as a result of a criminal offense or the person is in a state that makes it impossible for him to submit a corresponding application, the provisions of Parts One - Three of this Article apply to close relatives or family members of such a person. One person from among close relatives or family members who submitted an application to be included in the proceedings as a victim is recognized as a victim, and several persons may be recognized as victims upon the relevant petition. However, this distribution of rights and obligations and their implementation by other persons, although objectively justified, causes a number of problems. The Criminal Procedure Code of Ukraine does not contain a single definition of the concept of legal successor in criminal proceedings. The dictionary of the Ukrainian language provides the following definition of legal successor - a person to whom all rights and obligations or individual rights of another person have been transferred [2]. However, criminal-procedural legal succession is interpreted from the norms of the Code of Criminal Procedure of Ukraine, individual articles of which contain different elements of this concept. But this fact does not diminish the importance and need for the existence of norms in the criminal procedural legislation that would determine the legal status of the victim's successor, in particular, in terms of the rights regarding the civil claim filed by the victim.

We completely agree with the opinion expressed by M.I. Goshovsky. and Kuchynska O.P., that in order not to give criminals the opportunity to avoid responsibility or reduce the degree of their guilt, the rights and legal interests of the deceased must be realistically ensured. Failure to recognize his close relatives as victims in court practice is considered a significant violation of the criminal-procedural law, which entails the annulment of the verdict [3]. Gerasymchuk O.P. notes that the death of the victim in itself does not stop the proceedings in a criminal case. The goals of the criminal process must be achieved under any circumstances. By law, the rights that belonged

to the victim are transferred to his close relatives, and in the future it is they who are entrusted with the realization of these rights [4].

However, the current wording of Part 6 of Article 55 of the Criminal Procedure Code of Ukraine does not provide an answer to the problematic questions: can a person other than a relative be appointed as the legal successor of the victim, in the event that the victim has no relatives (or they have not been established, or are in captivity, that makes it impossible to participate in criminal proceedings and is especially relevant in the conditions of the legal regime of martial law in Ukraine), whether such an appointed person, who is not a relative of the victim, will have the right to receive compensation for damages under a civil lawsuit in criminal proceedings, a decision on the appointment legal successor in the case of a plurality of persons (heirs) who have expressed their intention to enter into criminal proceedings in the status of a civil plaintiff, the issue of determining the moment from which legal succession begins, etc. The listed questions emphasize the relevance of the study of this issue.

Procedural legal succession of a civil plaintiff in a criminal process is proposed to be considered from the point of view of a broader institution of legal succession of a victim in a criminal process.

In this context, valid proposals for supplementing the Code of Criminal Procedure of Ukraine with norms that regulate the procedural status of legal successors in criminal proceedings, in particular, regarding the addition of Article 58-1 of the Code of Criminal Procedure of Ukraine "the legal successor of the victim", and the expansion of the concept of the legal representative of the victim under Article 59 of the Criminal Code of Ukraine, etc., were made by scientists Kuchinska O.P. and O.V. Shchygol [5].

The conclusion regarding the necessity of supplementing the Code of Criminal Procedure of Ukraine with a new article "successor of the victim" is also supported by, for example, Nestor N.V. in her study of ensuring the rights and legitimate interests of the victim in criminal proceedings in Ukraine [6].

As stated above, according to the text, rights (including those not exercised by the injured person or (and) the civil plaintiff) are transferred to the procedural successor based on the principle of dispositiveness. Yes, Mudrak I.V. observes that the institution of legal succession brings some elements of discretion into the criminal process, and therefore the will of a person to represent the interests of the victim, exercising his rights, must, of course, be taken into account, and the criminal procedural activity of such a person will influence the further course of criminal proceedings and the issuance of the appropriate sentence procedural decision. Therefore, the procedure for the refusal of the legal successor of the victim to participate in criminal proceedings in the event of the death of the latter should be regulated, among other things [7].

The position of V.V. Navrotska regarding the principles of dispositive procedural participation of the legal successor of the civil plaintiff in the criminal process is also considered justified, which stated that, in her opinion, the replacement of the legal predecessor on the side of the civil plaintiff can only take place if the legal successor of material rights and obligations agrees to this replacement and to enter the process. That is, this is also a manifestation of the principle of dispositiveness. This circumstance is the second condition of procedural legal succession on the part of the civil plaintiff. If there is no such agreement, then, obviously, the civil action in the criminal case should be closed. When material legal succession occurs with respect to several persons (in the case of division and separation of a defunct legal entity), the relevant law enforcement body must inform each of them that they may acquire the status of a civil claimant through procedural legal succession. The entry or, on the contrary, the non-entry into the process of one or more of them should in no way affect the possibility of exercising the corresponding right by the remaining persons. This circumstance should also be considered as a manifestation of the principle of dispositiveness [8].

Supporting the proposals of scientists regarding the need to clearly define the concept, rights and duties of the "legal successor of the victim" in separate articles of the Criminal Procedure Code of Ukraine and developing the topic of introducing proposals to improve the Criminal Procedure Code of Ukraine when determining the legal successor of the victim, we consider it appropriate to supplement the Criminal Procedure Code of Ukraine with Article 61-1 of the following content:

“Article 61-1. Successor of the civil plaintiff

1. The legal successor of a civil plaintiff may be a person involved at any stage in criminal proceedings as the legal successor of the victim under Article 58 of this Code, in the event of filing a civil lawsuit or maintaining a civil lawsuit in criminal proceedings in the manner specified by this Code.
2. A person cannot be the legal successor of a civil plaintiff, if he represents or has represented another person in this case, whose interests in this case conflict with the interests of the injured person.
3. All actions taken by the victim in relation to the civil claim, before the entry of the legal successor, are binding on the legal successor in the same way as they were binding on the person he replaced.
4. The legal successor of the civil claimant enjoys the procedural rights of the civil claimant, except for those procedural rights which are exercised by the victim personally.
5. From the moment the victim acquires the ability to independently exercise his procedural rights as a civil plaintiff, the successor’s participation in the proceedings shall cease.”

In this context, it should be noted that not all rights that belonged to the victim in a civil lawsuit may be transferred to his successor in the criminal process. In particular, the conclusion about such restrictions follows from the institution of inheritance. According to Article 1216 of the Civil Code of Ukraine, inheritance is the transfer of rights and obligations (inheritance) from a deceased natural person (testator) to other persons (heirs) [9]. Therefore, if a person directly affected by a criminal offense, by virtue of the provisions of Part 1 of Article 61 of the Criminal Code of Ukraine, has the right to compensation for both property and non-property (moral) damage, then, in the order of inheritance, the right to receive compensation for moral damage to the heirs, taking into account the content of the restrictions of part 3 of Article 1230 of the Civil Code of Ukraine, it does not pass. The specified norm contains the provision that the right to compensation for moral damage, which was awarded by the court to the testator during his lifetime, passes to the heir. From this follows the conclusion that in the event that the civil claim filed in the criminal proceedings contained a claim for compensation for moral damage, however, the victim died during the criminal proceedings and the consideration of the case, then the proceedings in the part of consideration of the civil claim for compensation non-pecuniary damage is closed, even, for maintaining the claim by the legal successor of the victim.

The Supreme Court also adheres to the indicated approach. In particular, in the decision of the Supreme Court dated December 6, 2022 in case No. 155/98/19, proceeding No. 51-572km22, the court, providing a legal assessment of the fact of the plaintiff’s death and the brought civil claim for compensation for damage caused by a criminal offense, referred to clause 7 part 1 of article 255 of the Civil Code of Ukraine, according to which the court by its decision closes the proceedings in the case, if: the death of a natural person has occurred or he has been declared dead or the legal entity that was one of the parties to the case has been terminated, if disputed legal relations do not allow legal succession, as well as, on Article 1230 of the Civil Code of Ukraine, that the corresponding right to compensation for moral damage by legal succession is not allowed in this case, and indicated the need to close the proceedings in the part of the civil claim of the specified victim.

In the applied law enforcement of legal succession in a civil lawsuit in criminal proceedings at the level of court practice, the other most common reasons for refusing the entry of a representative are singled out: when a representative of a civil claimant applies to the court to declare him a victim of a criminal offense in the order of legal succession due to the death of the victim; for missing documents confirming the fact of accession to the rights of the heir, etc.

The analysis of the decisions of the court of first instance for the period from January 1, 2023 to September 1, 2023 in the Unified State Register of Court Decisions allows us to generalize the procedure for the procedural registration of the civil plaintiff’s succession in criminal proceedings. Thus, the decision of the court of first instance, by which the issue of replacement of the victim and the civil plaintiff is resolved, enters into force from the moment of its announcement and is not subject to a separate appeal, and consideration of the issue of replacement is carried out by the court not on its own initiative, but, based on the principle of dispositive at the request of an interested person. Taking into account the problem of the lack of a clear definition of the concept of legal successor of a civil

plaintiff in the Criminal Procedure Code of Ukraine, when analyzing the wording used by the courts when adopting the resolute part, the use of different terminology is also seen: from "...replace the civil plaintiff with his legal successor..." (for example, the resolution of the Nemyriv District Court of the Vinnytsia Region from March 21, 2023, case No. 140/601/17) to "involve participation in the criminal proceedings ... as a victim and civil plaintiff of the legal successor..." (as in the decision of the Shchor District Court of the Chernihiv Region dated May 8, 2023, case No. 749/519/22), etc.

Taking into account the above, the question of the expediency of further scientific developments in the context of expanding the provisions of Article 392 of the Criminal Code of Ukraine regarding the right to appeal the decision on the refusal to replace the civil plaintiff with his legal successor in criminal proceedings, separately from the appeal against the court decision, in order to prevent the restriction of rights, also arises. of the injured person and compliance with the principle of procedural economy.

The foregoing proves the relevance and necessity of further scientific research in order to overcome doctrinal and practical problems in the issue of the legal status of a civil plaintiff in criminal proceedings.

5. Conclusions.

Current legislation establishes the rules for the participation of the victim in general, and the civil plaintiff in particular, in criminal proceedings, determines the procedure for involving close relatives and family members of the victim, and also regulates the transfer of his procedural rights and obligations to them, including, in the part that concerns a civil claim brought in a criminal proceeding, however, the specified provisions are not always applied properly in court practice. The Code of Criminal Procedure of Ukraine contains a number of gaps and conflicts that cause practical problems, as well as generate contradictions in scientific legal theory. Also, the analysis of scientific developments in the specified field shows the low scientific development of the material. The subject of further research may be to overcome the outlined problematic issues with the aim of solving the imbalance of the procedural legal status of the civil plaintiff in criminal proceedings and strengthening the protection of his rights and legitimate interests in criminal proceedings, by supplementing the Code of Criminal Procedure of Ukraine.

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