International Journal of Innovative Technology and Exploring Engineering (IJITEE)
ISSN: 2278-3075 (Online), Volume-9 Issue-1, November 2019

Civil Action as One of The Ways of Damage Compensation

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Abstract*: This article is devoted to damage compensation, as exemplified by administrative law through the filing of a civil lawsuit. The paper attempts to conduct a comprehensive analysis of ways to compensate for damages caused by unlawful conduct during an administrative offense. For example, a certain parallel has been drawn between the sources of criminal procedural law and administrative law in filing a civil lawsuit for damage reparation. In addition, the norms of the current legislation of the Russian Federation governing the filing of a civil lawsuit in the framework of proceedings on administrative offenses are analyzed. As an example, petty hooliganism was chosen as one of the most common offenses in Russia. The article also reflects the existence of differences in the concepts of "harm", "loss" and "damage". At the same time, loss is considered to be a more common form of expression of property (material) harm in civil law relations.

***Keywords*: administrative responsibility, administrative offense, civil action, criminal process.**

I. INTRODUCTION

A. Introduction of the Problem

Currently, the civil law lacks a clear distinction between the concepts of "harm", "loss" and "damage". Many civilists recognize this distinction as debatable, which is due to the lack of a clear legislative distinction between the concepts.

Thus, in accordance with Article 1064 of the Civil Code of the Russian Federation (hereinafter – the Civil Code of the Russian Federation) harm is defined as any derogation of a material or non-material benefit protected by law, any adverse change in a benefit protected by law, which may be material or non-material (intangible) [1].

In turn, in civil law relations, the more common form of expression of material harm is losses.

In this case, loss means the following [2]:

– "real damage" (loss or damage to property, as well as expenses incurred (or possible future expenses) by a person whose right has been violated, in order to restore it);

– loss of profit (the income that was not received or that was not received in full, which the person (to whom the injury was caused) could receive under normal conditions of civil commerce, provided that his/her rights are respected).

Thus, it can be said that the concept of "damage" refers to the concept of "real damage" as part of it.

In accordance with Article 52 of the Constitution of the Russian Federation, the rights of victims of crimes and abuses of power are protected by law. The state provides victims with access to justice and compensation for damages.

Speaking about damages in a process different from the civil process, it is necessary to pay attention to such an institution as a civil lawsuit in a criminal process [3, 4].

Some elements of this institution are not borrowed but came to the modern criminal procedure code of the Russian Federation (hereinafter – the Code of Criminal Procedure of the Russian Federation) from their predecessors. One of such sources is the "Charter of Criminal Proceedings of 1864".

Thus, Russian law of the 2nd half of the XIX century did not contain precise instructions regarding the application of the rules of civil procedure to the examination of civil claims in criminal proceedings. At the same time, the judicial practice of this period convinces that only civil, material, but not procedural law rules are compulsory when considering civil lawsuits in criminal proceedings.

The court practice of the civil lawsuit in the criminal process that was formed at that time was significantly different from that established in civil proceedings. First, the consideration of claims for damages caused by crime was not subject to any clerical or court fees. Secondly, the resolution of the lawsuit when considering a criminal case was made based not on formal evidence, but on the basis on which the issue of guilt is resolved, since the answer to this question depended on the satisfaction of the civil lawsuit or the refusal to satisfy it. The process of proving was regulated by criminal code norms in much more detail in comparison with civil proceedings [5].

Having passed through many years, a civil lawsuit in the criminal process has undergone a number of significant (radical) changes, but even nowadays, these claims are not subject to state duties (Part 2 of Art. 44 of the Code of Criminal Procedure of the Russian Federation, hereinafter – CCP of RF).

Thus, the person conducting the investigation of a criminal case, when establishing the circumstances evidencing the infliction of property damage by crime, must take measures to establish the property of the suspect or the accused (or persons who,

Revised Manuscript Received on November 30, 2019.

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in accordance with the legislation of the Russian Federation, are liable for the harm caused by the suspect or the accused. Such persons include parents, legal representatives, etc.), the cost of which provides compensation for the harm caused, and to seize this property (Art. 160.1 of CCP of RF). In addition, the prosecutor makes or supports a civil lawsuit filed under a criminal case, provided that it is required for the purpose of protection of the rights of citizens, public or state interests (part 6 of article 246 of CCP of RF).

The status of a civil plaintiff and a civil defendant is fully stipulated in Articles 44, 45, 54, 55 of CCP of RF.

At the same time, the legislator has not yet resolved the issue of the application of civil procedural law in the consideration of a civil lawsuit in the criminal process, and of the relationship of criminal procedure and civil procedure.

In turn, in accordance with CCP of RF, representatives of a civil plaintiff and a civil defendant who is a legal entity, along with lawyers, may be persons of other capacities authorized in accordance with the Civil Code of the Russian Federation to represent his interests (part 1 of article 45, part 1 of article 55 of CCP of RF); an individual or legal entity who, in accordance with the Civil Code of the Russian Federation, is responsible for the harm caused by the crime, can be brought in as a civil defendant (part 1 of article 54 of CCP of RF).

B. Importance of the Problem

Problematic issues related to filing civil lawsuits have been repeatedly raised by various scholars, including within the framework of criminal procedure law. Thus, some issues are considered in the work of Aleksandrova O.V. “Features of the proceedings and resolution of a civil action in the criminal process under the legislation of the late XIX century // Bulletin of the Kostroma State Technological University”. At the same time, the historical aspect of filing civil lawsuits is described in more detail in the work of Soynikov M.A. “Civil lawsuit in criminal proceedings: history, modernity, prospects.” [6] Speaking about the practice of filing civil lawsuits in administrative proceedings, the work of the judge of the Cherkessk City Court of the Karachay-Cherkess Republic, Kotsubin Yu.M. “On compensation for damage in considering cases of administrative offenses”.

II. METHODS

In the process of research, theoretical, general philosophical methods (dialectics, system method, analysis, synthesis, analogy, deduction, observation, modeling), traditional legal methods (formal and logical), etc. were used. The method of analogy that allowed to come to conclusions about the need to eliminate legal "gaps" in administrative law, by analogy with the criminal procedure law, can be pointed out as the main one. But only a combination of all the above methods allowed us to identify problematic issues and suggest possible ways to resolve them.

III. RESULTS

It has been established that one of the tasks of the legislation on administrative offenses is the protection of the lawful economic interests of individuals and legal entities, including the protection of the property rights of victims (Article 1.2 of the Code of Administrative Offenses of the Russian Federation (CAO RF)). In turn, Part 1 of Art. 25.2 of CAO RF determines that the victim is an individual or legal entity who has suffered physical, property or moral damage as a consequence of an administrative offense.

It was revealed that the legislator does not allow a victim of hooligan actions to file a civil lawsuit in the framework of administrative proceedings, for example, at the stage of consideration of an administrative offense case by law enforcement agencies.

In the course of the study a proposal was made to change the legislation. So, in the course of consideration of cases on administrative offenses, it is advisable to provide for the possibility of filing a civil lawsuit by analogy with the existing criminal procedure legislation, for which it is necessary to make appropriate changes to CAO RF. In our opinion, the consideration of such cases by judges only looks reasonable, but this approach will bring citizens closer to the realization of their rights to administer justice.

IV. DISCUSSION

Speaking of administrative offenses, it should be noted that, in our opinion, it is advisable to understand the constitutional provision on access to justice and compensation for damage caused to victims in a broad sense, taking into account victims of administrative offenses.

It should be noted that in some component elements of administrative offenses causing damage is one of the signs of the objective side. A striking example is the offense provided for in part 1 of article 20.1 of CAO RF is “Petty hooliganism”. Petty hooliganism is formulated by the legislator as a violation of public order, expressing obvious disrespect for society, accompanied by foul language in public places, offensive harassment of citizens, as well as destruction or damage to another's property.

In this article, we are only interested in the damage caused, namely the destruction or damage to someone else's property. At the same time, one of the tasks of the legislation on administrative offenses is the protection of the legitimate economic interests of individuals and legal entities, including the protection of property rights of victims (Article 1.2 of CAO RF). In turn, Part 1 of Art. 25.2 of CAO RF determines that the victim is an individual or legal entity who has suffered physical, property or moral damage as a consequence of an administrative offense [7].

Therefore, in the event of property damage (destruction or damage to property), its owner (natural or legal person) must be recognized as a victim [8, 9].

At the same time, the legislator does not allow a victim of hooliganism to file a civil lawsuit in the framework of administrative proceedings, for example, at the stage of consideration of an administrative offense case by law enforcement agencies. At the same time, the resolution of the issue of compensation for damage in the course of administrative proceedings for victims is the most effective and less costly (in the procedural sense) means of restoring their property rights [10].

For these purposes, Part 1 of Art. 4.7 of CAO RFprovides that a judge, when considering an administrative offense case, has the right, in the absence of a dispute about compensation for property damage, simultaneously with the appointment of an administrative penalty, decide on the compensation for property damage. Disputes about damages are resolved by the court in civil proceedings.

If the case of an administrative offense is considered by other authorized bodies or officials (in accordance with Articles 23.2 and 23.2 of CAO RF, cases of administrative violations provided for in Part 1 of Article 20.1 of CAO RF may be considered by Juvenile Affairs Commissions as well as authorized police officers), the dispute about the compensation of property damage is resolved by the court in civil proceedings (part 2 of article 4.7 of CAO RF). Disputes about the compensation of moral harm caused by an administrative offense are also considered by the court in civil proceedings (Part 3 of Article 4.7 of CAO RF).

In our opinion, this approach only contributes to the refusal of victims in cases of administrative offenses from compensation for damage caused to them. This happens due to various circumstances, including the small cost of damaged (destroyed) property, the disproportion of the time and money costs for filing a lawsuit, and the unwillingness of citizens to apply to judicial instances, and not knowing their own rights, as well as the lack of qualified legal help [11].

We believe that in the interests of citizens (victims), during the consideration of cases on administrative offenses, it is advisable to provide for the possibility of filing a civil lawsuit by analogy with the existing criminal procedure legislation, for which it is necessary to make appropriate changes to CAO RF. Of course, in our opinion, the consideration of such cases is possible only by judges, but this approach will bring citizens closer to the realization of their rights to administer justice. As rightly noted by I. Zaitsev, one of the obvious results of the reform of Russian justice can be considered radical changes in civil proceedings relating to the proceedings arising from administrative and legal relations. First of all, with the adoption of the Code of Administrative Offenses, the jurisdiction of the court of cases related to misconduct of citizens has significantly expanded. An administrative warning only is unviable to appeal to the court [12].

The Russian Constitution mentions administrative proceedings and distinguishes it from the civil process (part 2 of article 118 of the Constitution of the Russian Federation), although traditionally administrative justice in Russia is exercised in a civil procedural form.

The resolution of issues posed depends, in our opinion, on whether administrative lawsuits are admissible in Russian law, and whether possible administrative lawsuits correspond to the principal provisions of modern civil procedural science. The legal literature is well aware of the advisability of administrative lawsuits in our law [13].

V. CONCLUSION

Despite the constant reform of the legislation of the Russian Federation, the issues of accessibility of justice and the citizens' protecting their rights in court remain relevant to this day. At the same time, the introduction of amendments to CAO RF, which provide for filing a lawsuit during the consideration of cases on administrative offenses, will allow citizens (victims) to be brought closer to the realization of their legal rights to administer justice.

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