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The issue of civil claims enforcement in a criminal procedure

Abstract. The article discusses the issue of a civil plaintiff in the Polish criminal proceedings. The issue has been the subject of discussion in the Polish literature and judicature. A civil plaintiff in criminal proceedings constitutes the injured person who has the rights of a party in litigation. Until the commencement of the judicial proceedings the plaintiff may file a civil complaint against the accused for the purpose of litigating property claims directly resulting from the commission of crime. A claim is brought by means of issuing a procedural writ known as a suit. The civil plaintiff is temporarily excused from the obligation to pay a fee relating to filing a civil complaint. The injured person becomes a civil plaintiff not when he files a claim to a court or a prosecutor but when the court issues the order of admission of the civil complaint.

By exercising his rights, a civil plaintiff may file evidence motions, ask the interrogated persons questions and appeal against the verdict concerning civil claims. However, a civil plaintiff may submit evidence for only those circumstances which constitute bases of his civil claims, i.e. facts which have an impact on the basis and amount of claims, therefore he does not have the right to have a say in the degree of penalty. In a situation when the civil plaintiff joins this role with the role of a subsidiary prosecutor, he is granted with the right to take a stand in all the issues being important for the settlement in criminal proceedings, including the punishment.

In respect of a civil complaint, the court may: admit the complaint, reject the admission, leave it unheard, grant or dismiss it. The rejection of the admission of a civil complaint may take place when the claim has no direct connection with the charges included in the indictment, the complaint has been filed by an unauthorised person, the same claim is the object of another proceedings valid and final decision has been issued with respect thereto. A complaint is left unheard when the plaintiff does not show up until after the commencement of the judicial examination and has not filed for the examination of the case in his absence. In the event when the civil complaint is left unheard, the civil plaintiff may file for passing the suit to a court having a jurisdiction over civil cases.

Key words: civil claims, criminal law, victims of crimes, the verdict concerning civil claims, the civil complaint

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Jautājums par civilprasību izpildes iespējām kriminālprocesā

Anotācija. Rakstā tiek apskatīts jautājums par civilprasītāja tiesībām Polijas kriminālprocesā un tiesvedībā. Par civilprasītāju kriminālprocesā tiek atzīts cietušais, kuram ir vienas no pusēm status un attiecīgas tiesības tiesā izskatāmās krimināllietas ietvaros. Līdz tiesvedības uzsākšanai prasītājs var iesniegt civiltiesisko prasību pret apsūdzēto personu ar mērķi apmierināt savas materiālas pretenzijas, kuru pamats ir rādies tieši izdarīta kriminālnozieguma rezultātā.

Lai kļūtu par civilo prasītāju nepietiek ar to, ka cietušais iesniedz savu prasību tiesai vai prokuroram, ir nepieciešams lai tiesa pieņemtu attiecīgo lēmumu par prasības pieņemšanu izskatīšanai.

Realizējot savas tiesības civilais prasītājs var sniegt paskaidrojumus, iesniegt pieradījumus, uzdot jautājumus pratināmām personām un pārsūdzēt lēmumus, kas attiecas uz viņa civilprasību. Vienlaikus, civilprasītājs var iesniegt tikai tādus pierādījumus, kuri ir attiecināmi uz tiem apstākļiem, kas veido viņa civilprasības pamatu, bet civilprasītājam nav tiesību izteikt savu viedokli par apsūdzētas personas vainas pakāpi un piespriežamā soda apmēru.

Attiecībā uz civilprasību, tiesa var atzīt prasību, atteikties pieņemt prasību vai atstāt prasību bez izskatīšanas. Atteikums pieņemt prasību un izskatīt to var būt šādos gadījumos: kad prasījums nav tieši saistīts ar apsūdzībā minētājiem faktiem, kuri ir iekļauti apsūdzības aktā; sūdzību ir iesniegusi uz to nepilnvarota persona; šī prasība jau ir citas tiesvedības objekts vai attiecībā uz to jau ir pieņemts spriedums. Prasība tiek atstāta bez izskatīšanas ja prasītājs neierodas uz tiesas sēdi un neiesniedz arī iesniegumu ar lūgumu izskatīt to bez viņa klātbūtnes. Gadījumā, ja civilprasība tika atstāta bez izskatīšanas, civilprasītājs var savu civilo prasību iesniegt tiesai, kurai ir jurisdikcija civillietu izskatīšanai.

Atslēgas vārdi: civilprasība, krimināltiesības, cietušais.

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Вопросы принудительного исполнения гражданских требований в уголовном процессе

Аннотация. В статье рассматривается вопрос о правах гражданского истца в польском уголовном судопроизводстве. Гражданским истцом в уголовном процессе является потерпевший с правами одной из сторон в суде по данному процессу. До начала судебного разбирательства истец может подать гражданский иск против обвиняемого с целью удовлетворения его имущественных претензий, возникших непосредственно в результате совершенного преступления.

Пострадавший становится гражданским истцом не тогда, когда он подает иск в суд или прокуратуру, но когда суд выносит постановление о принятии гражданского иска к рассмотрению. Осуществляя свои права, гражданский истец может представлять доказательства, задавать вопросы допрашиваемым лицам и обжаловать решения, относящиеся к его гражданскому иску. В то же время, гражданский истец может представлять доказательства только относительно тех обстоятельств, которые составляют основу его гражданского иска, но не имеет права высказывать свое мнение о степени вины и мере наказания совершившего преступное деяние лица.

В отношении гражданского иска, суд может: признать иск, отказаться принять иск, оставить иск без движения. Отказ от приема гражданского иска может иметь место в случае, если требование не имеет прямой связи с обвинениями, включенными в обвинительный акт; жалоба была подана не управомоченным лицом; данное требование уже является объектом другого разбирательства или по нему уже вынесено решение. Жалоба оставляется без рассмотрения, если истец не является на судебное разбирательство и при этом не подает заявление о рассмотрении дела в его отсутствие. В случае, если гражданский иск был оставлен без рассмотрения, гражданский истец может подать иск в суд, обладающий юрисдикцией по гражданским делам.

Ключевые слова: гражданский иск, уголовное право, потерпевший.

Introductory notes

One of the fundamental rights of the injured person in the Polish criminal law is the possibility of redressing damage caused by an offence. This right constitutes a value protected both by the acts of domestic and international law (mainly by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[1], the European Convention of 24 November 1998 on the Compensation of Victims of Violent Crimes and the Council Framework Decision on the standing of victims in criminal proceedings[2]). The latter enables to bring forth a number of basic, however, not always obvious from the perspective of an individual national legal system, issues by stating in Art. 9 pos. 1 that each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner. Such a stand is predominant in the contemporary Polish criminal law. In the Polish legislation in force, the injured person has the right to choose from between two options of enforcing claims for compensation of damage in a criminal procedure. The injured person might bring a civil action in accordance with the regulations relating to section III chapter 7 of the Code of Criminal Procedure, or file a motion for redressing damage on the basis of Art. 46 § 1 of the Penal Code. No doubts are raised in relation to the fact that exercising both these ways is inadmissible. This regulation is specified in Art. 65 § 1 pt. 6 of the CCP, according to which a court can reject a civil complaint if a motion for ordering a redress of damage was filed [Compare: 1, 457; 2, 446-460]. The subject of further deliberation devoted to the rights of an injured person is a civil complaint in the criminal proceedings, known as adhesion action.

Bringing a civil action by the injured person

Pursuant to Art. 62 of the CCP, the injured person may, until the commencement of the judicial examination at the main trial, file a civil complaint against the accused in order to litigate, within the framework of the criminal proceedings, his property claims directly resulting from the offence. The regulation embedded in Art. 62 of the CCP indicates the injured person's right in criminal proceedings to bring a civil action, known as adhesion action, in order to litigate claims resulting directly from the offence committed against him. Adhesion action in criminal proceedings is admissible both in public and private cases from claims. When the complaint is brought, the court is required to settle not only the issue of criminal responsibility but also the issue of civil responsibility.[3]

The right to institute a civil (adhesion) action by the injured person does not limit their scope of rights to perform as the subsidiary prosecutor. Moreover, the injured person is not obligated to perform as the subsidiary prosecutor next to the public prosecutor. The injured person might bring only an adhesion action or join it with the status of subsidiary or private prosecutor. Thus, an obvious assumption arises, namely that exercising the right to the enforcement of civil law claims by the injured person is dependent on its being recognized. The resignation from this right does not limit the possibility of a civil procedure.

By means of a civil action one can enforce only pecuniary claims, also those resulting from the infringement of personal interests, in the form of money recompense for personal injury, and only such which directly result from the offence. Therefore, within the scope of such an action the enforcement of personal[4] and pecuniary claims resulting directly from the offence is inadmissible. In the Polish literature, it is rightly taken notice of

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1 Adopted by the United Nations General Assembly on Nov 25, 1985.

2 Adopted by the Member States of the Council of Europe on Mar 15, 2001. (OJ EU of Mar 22, 2001)

3 It should be added that the legislator in Art. 334 § of the CCP, sentence 2, imposed an obligation on the public prosecutor handing up an indictment to the court to instruct the injured person about the rights associated with enforcing pecuniary claims.

4 The Code of Criminal Procedure of 1997 in the section relating to adhesion complaint introduced few changes as opposed to the former Code of Criminal Procedure of 1969. Therefore, the hitherto opinions and jurisdiction on this matter are quite elaborate. Hence, still current is the opinion of the Supreme Court of 2nd February 1971, V KRN 7/71, in which it explained that the enforcement of personal claims in a civil complaint in criminal proceedings is inadmissible. OSNKW 1971/6/90.

that «directness» occurs when there are no direct links between the action which meets the criteria of an offence and the infringement of or threat to the personal interest of a given subject; in other words, when an action has a direct impact on his personal interest. It is not, however, necessary for the damage to be caused to the financial situation already existing at the time of crime being committed; it may also be associated with deprivation of an expected benefit [3, 212]. Thus, pecuniary claims enforced by means of adhesion actions might include both losses incurred by the injured person (damnum emergens), as well as lost benefits he might have achieved if no loss was incurred (lucrum cessans), if they result directly from the offence.

«Instituting» a civil action by the injured person should be performed in the form of a procedural writ (suit) meeting the general requirements for procedural writs in a criminal procedure (Art. 126 of the Code of Civil Procedure), as well as the requirements set by the Code in Art. 187. If a suit does not fulfill the formal requirements of a procedural writ, the requirements will be removed in accordance with the regulations and results determined in the Code of Civil Procedure. A civil complaint can be submitted already during preparatory proceedings, which does not, however, mean, that the agency conducting preparatory proceedings has the right to decide about admitting the complaint. Such a decision belongs to the court and is made after the case comes in with the indictment. Only then does the injured person get the status of a civil plaintiff in criminal proceedings.

It is also worth taking notice of the fact that in case of the injured person's death, his closest relatives may, within the period specified in Art. 62 of the Code of Criminal Procedure file a civil complaint in order to litigate their property claims directly resulting from the offence.

Deadline to file a civil complaint

Prima facie regulation of Art. 62 of the CCP imposes on the injured person an obligation to file a civil complaint until the commencement of the judicial examination at the main trial. This interesting not only from the practical point of view and concerning the nature of such a deadline issue raises disputes in the Polish literature. Presented is a stand according to which the deadline to file an adhesion complaint is not a deadline in the strictly procedural sense that is a preclusive deadline [Compare: 4, 396]. A predominant belief is that it is a preclusive deadline which cannot be restored. It is maintained in case of overruling a judgment and bringing a case before another examination in a first instance court, as long as the submission occurs before the commencement of the judicial examination [Compare: 5, 228; 6, 81; 7, 230].

It should be remembered that by exercising the possibility to file a motion for ordering the obligation to redress the caused damage (as specified in Art. 46 § of the Penal Code) the injured person does not any longer have the right to bring an adhesion action before the court.

Admittance and rejection of admitting a civil complaint

In the Polish law, pursuant to Art. 65 § of the CCP, before instituting a judicial examination, the court shall reject a civil complaint if:

1) the civil complaint is inadmissible by reason of some special provision,
2) the claim has no direct connection with the charges included in the indictment,
3) the civil complaint has been filed by an unauthorized person,
4) the same claim is the object of another proceedings or a valid and final decision has been issued with respect thereto, or
5) there is an obligatory joint participation, on the side of defendants, of a public, local government or social institution, or of a person who is not participating as the accused.

§ 2. If the civil complaint is in proper form, and the circumstances set forth in § 1 do not

occur, the court shall issue a decision on the admission of the civil complaint.

§ 3. The court shall leave the private complaint unheard, even if previously admitted, if after the commencement of the judicial examination, any of the circumstances listed in § 1, comes to light.

§ 4. The refusal of the court to admit a civil complaint, or the fact that it has been left unheard pursuant to § 3, shall not be subject to interlocutory appeal.

If the court rejected a civil complaint or left it unheard, a civil plaintiff may litigate their claim in

a civil procedure. If, within the period of 30 days from the date of admitting or leaving the complaint unheard, the civil plaintiff files to pass the suit to a court having a jurisdiction over civil cases. The day of filing the complaint is considered as the day of filing it in criminal proceedings.

Criteria for granting a civil complaint

The legislator limited the possibility of granting a civil complaint only to a situation when the accused is convicted (Art. 415 § of the CCP). In such a situation the criminal court either grants or dismisses a civil complaint in whole or in part. However, in case of another verdict, that is an acquitting one, conditionally or unconditionally discontinuing proceedings, the court does not substantially settle the filed complaint but leaves it unheard (Art. 415 § of the CCP). Granting a complaint is equal to awarding the plaintiff a certain amount of money. If the awarded civil complaint or the imposed obligation to regress damage (partially) or exemplary damages do not cover the whole damage, the injured person may sue for additional damages in separate civil proceedings.

It should be noted that both in literature [Compare: 8, 505; 9, 224; 10, 357] and jurisdiction [11] there is a very strong stand according to which a civil plaintiff may submit not only the evidence associated with the amount of the filed complaint but also the circumstances relating to the guilt of the offender, if establishing the guilt of the offender, in the criminal law understanding, is at the same time the condition of a substantial ruling within the scope of civil complaint in criminal proceedings, whereas the injured person may submit the evidence concerning the circumstances relating to the legal qualification of the offence only if the legal qualification is important from the point of view of the basis or the scope of a claim.

The withdrawal of a civil complaint by the injured person

There is an apt belief in the literature stating that in order to withdraw a suit at a trial in the adhesion procedure the provision of Art. 203 § 4 of the Code of Civil Procedure should be applied. The provision makes the effectiveness of withdrawing a civil complaint as well as resigning from or limiting the complaints dependent on the decision of the court. The court may recognize the withdrawal of a suit as inadmissible if the circumstances indicate that such an action is against the law or the principles of community life, or it leads to the evasion of the law [compare: 12, 183; 13, 244; 14, 25; 15, 141; 16, 179; 17,196; 18, 439].5 Thus, a civil plaintiff may withdraw the filed complaint; however, he maintains the rights of a party until the date on which the order on discontinuance of the proceedings concerning a civil complaint becomes valid and final. It should be added that until the moment the order becomes valid a civil plaintiff may appeal against the withdrawal of the lawsuit.[6]

[5] The predominant ideas of the doctrine are in correspondence with the jurisdiction. (compare the resolution of the Supreme Court of Jun 11, 1970, VI KZP 8/69, OSNKW 1970, pp. 7-8, item 94 and the resolution of Oct 26, 1984, IV KR 240/84, OSNKW 1985, pp. 5-6, item 40).

[6] Compare: the resolution of the S.C. of Nov 24, 1999, I KZP 40/99, OSNKW 1-2/2000, item 6, the resolution of the SC pf Feb 24, 2006, I KZP 50/05, OSNwSK 2006/1/444.

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