The Notion of "Legitimate Interest" In Russian Criminal Court Proceedings

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Abstract

The study is dedicated to a set of issues concerning the definition of the category "legitimate interest", "personal interest" of the participants in the criminal process, the study of the concept, causes and conditions for legitimate interest development in criminal proceedings, since the priority of the democratic state governed by the rule of law is determined precisely by the rule of rights and legitimate interests of an individual.

Analyzing these definitions proposed in the doctrine of criminal proceedings, one can see the lack of a clear consolidation of "legitimate interest" concept in the Criminal Procedure Code of the Russian Federation (hereinafter referred to as the CPC RF).

The insufficiency of theoretical developments of the named problem entails the appearance of contradictions and incomplete reflection of the real interests of an individual in the criminal process norms and in the law enforcement activities of the criminal justice bodies. Thus, legal regulation is ineffective, an individual remains unprotected.

Key words: legitimate interest; personal interest of participants in criminal proceedings; participants in the criminal process; protection of individual rights.

1. Introduction

The Universal Declaration of Human Rights of 12/10/1948, the International Covenant on Civil and Political Rights of 12/16/1966 oblige states to protect and ensure observance of human rights and freedoms as the highest value of the legal space. On the basis of international principles, the Constitution of the Russian Federation of 1993 proclaims and consolidates the abovementioned provisions. It is the state that should become an instrument to ensure the rights and freedoms of a citizen, a guarantor of real protection of his legitimate interests in case of their violation [1].

Implementing this provision within the framework of the Art. 6 the CPC RF stipulates that the purpose of criminal proceedings is equally the protection of the rights and legitimate interests of persons and organizations, victims of crimes, and protection of an individual from unlawful and unreasonable accusation, conviction, restriction of his rights and freedoms. Analyzing the norms of the CPC RF, it should be said that the presence of incompleteness of many of its provisions aimed at the implementation of international standards and constitutional principles does not contribute to their implementation. This applies, in particular, to the area of the "legitimate interests" category.

In the last decade, close attention has been paid to the study of legitimate interest problems in the CPC RF, since legal regulations affecting the rights, obligations and legitimate interests of criminal proceedings subjects are currently being transformed. Along with this, a new doctrine of the concept and meaning of legitimate interest has appeared in the theory of law, inextricably linked with the peculiarities of its sector affiliation [2]. A comprehensive study of the legitimate interests of participants has not been conducted in criminal justice. It follows from the foregoing that this problem remains largely unresolved and requires further, primarily, comprehensive study.

2. Methods

The primary study methods are the basic dialectical method of formal-logical, legal and social phenomenon cognition, systematic approach of scientific knowledge, analysis, and also the logical-legal and system-structural methods.

The basis of the study of "legitimate interest" category are the works of such authors as Yu.A. Anishina [3], G.A. Vardanyan [4], O.V. Gladysheva [5], A.V. Grinenko [6], V.V. Matyuk [7], M. Romanov [8], S.I. Ryabokonev [9], A.V. Spirin [10], V.V. Subochev [11], E.A. Tsvetkova [12], M.G. Cheprasov [13], M.E. Cheremisinova [14], A.V. Chernyshov [15] and others. The comparative legal method was also used as one of the means of studying this legal phenomenon, since the need to analyze foreign experience in considered concept regulation remains relevant for its application in Russia, which predetermined our interest in a wide range of foreign research in this area. Among them are the works of such scholars as T.T. Dyussebayev [16], L. Ferrara [17], S. Jain [18], R.S. Montoya Camarena [19], S. Rowan [20], P.C. Vasquez [21] and others.

3. Results and Discussion

The term "interest" is used in regulations, including the articles 30, 36, 55 of the Russian Federation Constitution, in the texts of more than 300 federal laws in force and more than 7,000 other regulatory legal acts. Directly for the criminal process, the significance of the study of interest lies in the fact that the CPC RF uses this category not only when characterizing the legal status of legal proceedings subjects, but also as an element that determines the purpose of the criminal process (see the Article 6 of the CPC RF). The following formulations are found in the CPC RF: “protection of rights and legitimate interests” (the Articles 6, 44, 45, 119, 147, 161, 318); “protection of rights and interests” (Article 49); “harm to interests…” (Art. 23) and others.

Legitimate interests are both a powerful legal means and a form of existence of the interests themselves in the legal space of society, it is both a form of legal activity and its source, because interest does not “cease” to move public relations. They continue the mission of law - to regulate social relations, but at a qualitatively special level of merging with the motivational attitudes of participants in legal relations within the framework of existing legal permissibilities. Legitimate interests are the "fuse" of the law from inefficiency in case of inadequate perception of the incentives and restrictions laid down in the legal prescriptions by a subject consciousness. They are the ground for maneuver within the already existing positive regulations [11].

Legitimate interest is the desire of a subject to enjoy a certain social benefit and, in some cases, seek protection from the competent authorities in order to satisfy the interests that do not contradict the norms of law, which to a certain extent is guaranteed by the state in the form of legal permissibility, reflected in objective law or arising from its general meaning. Legitimate interest has a dual nature. It must be considered both as a derivative of social interest and as an effective legal remedy [2].

The legitimate interest of a person is the desire of a person for a certain good, condition, to satisfy a need, provided that the implementation of this desire is not prohibited by law and is not provided with a clearly fixed legal obligation of other persons to promote such implementation. Good can act as material, spiritual (moral), etc. [22].

A kind of foundation, the basis for studying the category of "legitimate interest" at the present stage became the works by A.V. Malko and V.V. Subochev, who, in fact, for the first time in Russian legal thought, made an attempt to cover the main aspects of legitimate interests, to formulate them in the form of a paradigm that would be able to set the direction for all future scientific research on this issue [23].

In relation to criminal procedural law, legitimate interests have their own specifics. V.M. Kornukov rightly notes that the meaning and purpose of such interests is that they can contribute to the improvement of legislation, as they allow to reveal its unused reserves in terms of regulating the issues related to the protection of the interests of an individual [24]. At the same time, attention should be paid to the fact that in criminal proceedings, legitimate interest, as a rule, is associated with the personal interest of some subjects of legal relations.

It is appropriate to cite in this regard the statement by A.A. Tushev: “Regulation of the activities of criminal procedural legal relation subjects can be carried out by granting rights and assigning duties. It depends on whether the actors are acting to defend a private or public interest. The behavior of participants in the criminal process who have a personal interest in a case outcome (suspect, accused, victim, civil plaintiff, civil defendant) is mainly regulated by granting them rights of a general and specific nature. The behavior of the participants protecting public interests (investigator, inquiry officer, bodies of inquiry, prosecutor, court) is regulated mainly by imposing duties (powers) of a general and specific nature on them” [25]. Obviously, without personal interest, the development of a legitimate interest is

impossible. However, in this aspect, it is necessary to distinguish between the legal categories of "personal interest" and "legitimate interest".

At the same time, one should recall the definition of private interest adjacent to the above categories, proposed, in particular, by Yu.A. Anishina, as a conscious desire that arose in an individual to satisfy the needs recognized by the state and secured by law, related to the protection of rights and legitimate interests, prompting him to specific legally recognized actions [3].

L.I. Ilnitskaya interprets the personal interest of a participant in a criminal process as an interest conditioned by the fact that a committed crime directly, personally affects a subject, and expressed in the desire of a victim, a suspect, an accused, a civil plaintiff or a civil defendant to achieve a certain outcome of a criminal case. She also proposed an interpretation of legitimate interests, as not secured by subjective rights and obligations and protected by ways and means that do not contradict the criminal procedure law, the aspirations of a victim, a suspect, an accused, a civil plaintiff or a civil defendant to achieve a socially significant result [26].

According to O.V. Gladysheva, legitimate interests in criminal proceedings should be understood as aspirations encouraged (supported) by law to achieve a specific goal. The owner (carrier) of the relevant interest has the right to be guided by it in his procedural behavior due to the encouragement (stimulation) of this desire by the law via establishing and endowing the owner of these interests with a set of subjective rights and obligations [5].

Along with this, the studied legal phenomenon has been developed in the works of process scientists devoted to the peculiarities of the conceptual apparatus of the legitimate interests of a particular participant in the process. Let us give as an example the author's definition of the legitimate interests of an accused person, proposed by M.G. Cheprasov: “The legitimate interests of an accused personality are a system of certain socio-cultural, biomedical, psychological, property and legal elements, enshrined in the legislation of the Russian Federation, implemented through the execution of criminal proceedings against him” [13].

We consider it is appropriate to point out that there is no single approach to the definition of legitimate interests in the criminal procedure doctrine. An omission in the presented definitions, in our opinion, is the indication absence of the evaluative nature of legitimate interests in the norms of criminal procedure law. An evaluative nature may be inherent in subjects defending their legitimate interests in legal proceedings (a suspect, an accused, etc., as well as a convicted person, for example, applying for his parole).

If we focus on the concept of a victim contained in the current legislation, then to raise the effectiveness of activities to ensure his rights and legitimate interests at the initial stage of criminal proceedings, it is necessary to improve the regulatory framework for ensuring the rights and interests of a person who has suffered from a crime, to the stage of a criminal case initiation.

The concept of "legitimate interests" of an accused is also very significant for the entire Russian criminal process, because the personality of an accused is the central figure of the preliminary investigation, and therefore is reasonably of interest for the study. In the meanwhile, it should be considered that the rights and obligations of the accused granted by the criminal procedure law are aimed at achieving his interests in criminal proceedings. The activity of a defender (a lawyer) also has a similar direction. Meanwhile, this category has not been designated by the legislator, and therefore the question remains open regarding both the concept and a number of problematic aspects that need to be resolved, namely, the lack of a clear idea concerning the presence of the main features of this category; development of the content and the structure of an accused legitimate interests in the criminal process; definition of the criminal procedural model for the implementation of the legitimate interests of an accused in Russian criminal proceedings as a guarantee of their observance, as well as the significance of this model in the relationship between the interests of the accused and the victim.

4. Conclusions

1. Legitimate interest in the criminal process is formed as the result of the rights and interest violation of some persons by the committed crime and the resulting need to restore their previous state or as the result of bringing other persons to criminal liability.

2. They substantiated the definition of the personal interest of a participant in the criminal process as an interest conditioned by the fact that the committed crime directly, personally affects a subject, and expressed in the desire of a victim, a suspect, an accused, a civil plaintiff, a civil defendant to achieve a certain outcome of a criminal case. The means of implementation and ensuring personal interests, first of all, are the procedural rights granted to the

participants by law; as well as general provisions of the criminal procedure legislation (general permissions and general prohibitions); the activity of the bodies leading the process [26].

3. So as to implement efficiently the bnefits of the victim in the CPC RF, it is advisable to fix his concept as a person in respect of whom there are sufficient grounds to believe that a crime has caused property, physical or moral damage to an individual or that a legal entity property or business reputation has been damaged.

4. The legitimate interests of an accused is a system of certain social-cultural, biomedical, psychological, property and legal elements, enshrined in the legislation of Russia, implemented through the performance of criminal proceedings in relation to him. External components are the duties of the preliminary investigation officials, the prosecutor and the court [13].

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