

LEGAL RELATIONS ARISING BETWEEN AN INVESTIGATOR AND A LEGAL ENTITY THAT HAS SUFFERED FROM A CRIME IN THE CRIMINAL PROCESS OF THE RUSSIAN FEDERATION

Sergey Rastoropov

Higher School of Economics University – Russia
<https://orcid.org/0009-0005-8105-4514>
s.v.rastoropov@mail.ru

Viktor Pushkarev

Higher School of Economics University – Russia
<https://orcid.org/0000-0002-3536-6497>
vvp77r@rambler.ru

Pavel Fadeev

Moscow University of the Ministry of Internal Affairs of Russia named by V.Ya. Kikot – Russia
<https://orcid.org/0000-0001-5767-0329>
fadeev.p.v@bk.ru

Svetlana Grimalskaya

Finance University under the Government of the Russian Federation – Russia
<https://orcid.org/0000-003-4654-9616>
svetlana.grimalskaya@mail.ru

Margarita Chikovani

Moscow University of the Ministry of Internal Affairs of Russia named by V.Ya. Kikot – Russia
<https://orcid.org/0009-0002-4387-9679>
m.a.chikovani@mail.ru

ABSTRACT

In the article, the authors consider the most pressing issues concerning the essence and content of legal relations arising between an investigator and a legal entity who has suffered from a crime in the criminal process of the Russian Federation. It is established that a legal entity appears as a subject of both public and private law, entering into civil, administrative, criminal, labor and criminal procedural legal relations. The authors substantiate the position that the investigator plays a decisive role in the preliminary investigation. He is interested in ensuring that the participation of the victim and his representative in the investigation process is as active as possible, therefore it is the investigator who must ensure that they can exercise their procedural rights. In conclusion, the authors conclude that in the current situation, it is in no way possible to limit the participation of a legal entity injured by a crime in criminal proceedings only as a civil plaintiff, whose rights are much narrower than those granted to such a participant in the process as the victim. In this regard, the recognition of legal entities as victims expresses the true meaning of this legal institution, which is enshrined in the provisions of criminal procedure legislation.

Keywords: Victim; Criminal proceedings; Criminal procedural legal relations; Property damage; Damage to business reputation; Moral harm.



RELAÇÕES JURÍDICAS QUE SURGEM ENTRE UM INVESTIGADOR E UMA ENTIDADE JURÍDICA QUE SOFREU UM CRIME NO PROCESSO CRIMINAL DA FEDERAÇÃO RUSSA

RESUMO

No artigo, os autores consideram as questões mais urgentes relativas à essência e ao conteúdo das relações jurídicas que surgem entre um investigador e uma pessoa jurídica que sofreu um crime no processo penal da Federação Russa. Fica estabelecido que uma pessoa jurídica aparece como sujeito de direito público e privado, entrando em relações jurídicas civis, administrativas, criminais, trabalhistas e processuais penais. Os autores fundamentam a posição de que o investigador desempenha um papel decisivo na investigação preliminar. Ele tem interesse em garantir que a participação da vítima e de seu representante no processo de investigação seja a mais ativa possível, portanto, é o investigador que deve assegurar que eles possam exercer seus direitos processuais. Em conclusão, os autores concluem que, na situação atual, não é possível, de forma alguma, limitar a participação de uma pessoa jurídica lesada por um crime em processos criminais apenas como um autor civil, cujos direitos são muito mais restritos do que aqueles concedidos a um participante do processo como a vítima. Nesse sentido, o reconhecimento das pessoas jurídicas como vítimas expressa o verdadeiro significado dessa instituição jurídica, que está consagrada nas disposições da legislação processual penal.

Palavras-chave: Vítima; Processos criminais; Relações jurídicas processuais criminais; Danos à propriedade; Danos à reputação comercial; Danos morais.

1 INTRODUCTION

This article is devoted to the study of the interaction between an investigator and a legal entity recognized as a victim in criminal proceedings. However, before proceeding to a direct consideration of the legal relations that arise between these participants in criminal proceedings, it seems necessary to turn to the very origins, namely, to the concept of criminal procedural legal relations.

2 MATERIALS AND METHODS

As the main method in the process of writing this scientific article, the authors used a general scientific systematic method of cognition, which made it possible to comprehensively consider and fully analyze controversial issues concerning the essence and content of legal relations arising between an investigator and a legal entity victim of a crime in the criminal process of Russia.

The method of a systematic approach made it possible to consider the organizational and procedural aspects of the emergence of legal relations between an investigator and a legal entity victim of a crime in the criminal process of Russia.



The use of analysis and synthesis methods made it possible to identify existing problems in the implementation of the rights and obligations of a legal entity, a victim of a crime, in criminal proceedings.

The application of the comparative legal method made it possible to study in detail the domestic legislation and foreign experience regulating the legal relations arising between the investigator and the legal entity victim of a crime. Using this method, it was possible to identify existing problems, suggest ways to solve them, and formulate specific proposals.

As a result of the application of this methodology, the authors obtained new knowledge regarding the legal relations arising between an investigator and a legal entity that has suffered from a crime in the criminal process of the Russian Federation.

3 RESULTS

Discussing the role of criminal procedural legal relations, many procedural scientists believe that legal relations do not play a significant role in the criminal process, and argue that the activities of the court, prosecutor, investigator and bodies of inquiry represent unilateral powers (Cheltsov, 1962, p. 231; Galkin, 1962, p. 60; Ivanov et al., 2022a, p. 591).

The concept of legal relations proposed by V.P. Bozhyev (1975) is closest to us: "a criminal procedural legal relationship is always the result of regulating the behavior of citizens, state bodies and officials when initiating a criminal case, investigating it, litigation and during production at other stages of the criminal process" (p. 77).

We agree with the position of those scientists who hold the opinion that in criminal proceedings one subject can exercise his rights only if another subject is endowed with appropriate responsibilities (Bozhev, 2002, p. 104; Bulatov, 2002, p. 23; Kechekyan, 1995, p. 24). Thus, criminal procedural legal relations are bilateral in nature. With regard to our participants in criminal proceedings, namely, the investigator and the legal entity injured by the crime, it can be argued that they are no exception, and the legal relations arising between them directly depend on the rights and obligations of each (Ivanov et al., 2021b). But, at the same time, according to B.A. Galkin (1962, p. 80): "in the criminal process, an important role belongs to the authorities" powers. And in this we cannot disagree with him, since in our case it is the investigator, being a representative of the authority, who directs the preliminary investigation and the decisions he makes relate directly to the legal entity to whom the crime has caused harm and who is recognized as a victim in accordance with the procedure established by law (Ivanov et al., 2021a; Pushkarev et al., 2019a, p. 7950).



However, the investigator does not have the right to abuse the authority granted to him. Within the limits of his competence, he must direct his efforts specifically to protect the rights and legitimate interests of a legal entity that has suffered from a crime. To balance the rights and obligations of subjects of criminal procedural relations, there is a very effective tool - criminal procedural responsibility. It is criminal procedural responsibility that encourages participants in criminal proceedings to mutually comply with their obligations and fulfill their assigned duties. And here, as Z.F. Kovriga (1984) reasonably asserts, "... the question of liability is legitimate in all cases when it comes to compliance or non-compliance of the purposeful activities of participants in the proceedings with the requirements imposed by the criminal procedural situation" (p. 27).

Having considered the essence of criminal procedural relations and the criminal procedural responsibility arising from them, let us proceed to the study of the legal relations arising between the investigator and the victim - a legal entity precisely through the prism of the bilateral interaction we have identified, and, accordingly, the rights of one participant and the duties of the other.

So, the investigator is an official authorized to carry out a preliminary investigation of criminal cases in the form of a preliminary investigation (paragraph 40 of Article 5 of the Code of Criminal Procedure of the Russian Federation). This participant in the criminal proceedings is classified as a participant on the part of the prosecution (Chapter 6 of the Code of Criminal Procedure of the Russian Federation). Nowadays, investigators can be officials in the civil service of the Investigative Committee of the Russian Federation, the internal affairs bodies of the Russian Federation and the bodies of the Federal Security Service of the Russian Federation.

All investigators in the investigation of crimes enjoy equal procedural rights and perform the same procedural duties, regardless of their departmental affiliation. To solve the tasks that must be solved during the preliminary investigation of criminal cases, investigators are endowed with a relatively wide range of procedural powers, enshrined in Part 2 of Article 38 of the Criminal Procedure Code of the Russian Federation.

The powers of the investigator represent a system of his procedural rights and obligations necessary and sufficient to establish the presence or absence of circumstances to be proved in a criminal case, and the subsequent transfer of the case to the court for consideration on the merits or termination of the criminal case (Shumilin, 2006, p. 59).

According to B.T. Bezlepkin (1998), which we fully share:

the protection of the rights and legitimate interests of the victim in criminal proceedings is not a private matter of the victim himself. By actively fighting crimes,



the state sets before the investigative body, the prosecutor and the court, along with other tasks, the task of fully protecting the rights and legitimate interests of the victim violated by the crime. (p. 70).

It should also be noted here that the investigator plays a decisive role in the preliminary investigation. He is interested in ensuring that the participation of the victim and his representative in the investigation process is as active as possible, therefore it is the investigator who must ensure that they can exercise their procedural rights.

Thus, the investigator has the right to demand from the victim and his representative the presentation of objects and documents necessary to establish the actual circumstances. An important form of involving the victim and his representative in the collection of evidence is his participation in the production of individual investigative actions in cases and within the limits established by criminal procedure legislation. As the study of practice shows, the investigative actions in which the victim or representative most often takes part include interrogation, inspection, search, seizure, identification, investigative experiment, appointment and production of forensic examination (Pokhmelkin & Ilyina, 1977, p. 45).

In this regard, many authors rightly argue that a significant number of investigators quite rightly consider their procedural activities as activities aimed primarily at protecting the victim from a crime. In the course of exercising his functions, the investigator must ensure that procedural actions and decisions meet the needs and interests of the participants in the process (Bozhev, 1975, p. 23; Ivanov et al., 2022b, p. 497; Pushkarev et al., 2020, p. 283). At the same time, the position of the victim does not always coincide with the position of the investigator. Often, the victim takes a passive position to assist the investigator in investigating criminal cases. The opinion of V.A. Pokhmelkin and L.V. Ilyina (1977) deserves attention here, who reasonably assert the following:

The activity of the investigator in proving is carried out regardless of the position of the victim. If the latter is not active enough, this does not necessarily entail adverse consequences for him. The circumstances in which the victim is interested in establishing must be proved by the investigator. (p. 45).

D.N. Kozak and E.B. Mizulina (2004) speak even more "radically" about the position of the victim, according to whom

the victim is free to take a passive position in criminal proceedings. At the same time, he has no right to interfere with the investigation and consideration of a criminal case (to evade appearance at the summons of the investigator (inquirer), the prosecutor and the court; to give deliberately false testimony or refuse to testify; to disclose the data of the preliminary investigation). Otherwise, he may be brought to procedural (Articles 113 and 117 of the Code of Criminal Procedure of the Russian Federation)



or criminal liability (art. 307, 308, 310 of the Criminal Code of the Russian Federation). (p. 172).

Naturally, we share the opinion about the need for active behavior of a victim of a crime, and, in particular, a representative of a legal entity. It should be added that the actions of the investigator and the legal entity, the victim of a crime, during the investigation of a criminal case should be synchronous. Only then will each of them achieve their immediate goal in criminal proceedings: the investigator – to establish the actual circumstances of the criminal case and expose all persons guilty of committing a crime, and the victim – to protect violated rights and compensate for the harm caused by the crime (Ivanov et al., 2022c).

From the moment of recognition of a legal entity as a victim, the investigator who made this decision is obliged to carry out the following most significant, in our opinion, measures aimed at protecting the rights and legitimate interests of a legal entity victim of a crime.

1. To hand over to the representative of the legal entity copies of certain procedural documents (resolutions on the initiation of a criminal case; resolutions on the recognition of this person as a victim and in the future, if there is a statement of claim, also as a civil plaintiff).

2. Notify in writing the representative of the legal entity, the victim of the crime, of the charge.

3. In accordance with paragraph 20 of Part 2 of Article 42 of the Code of Criminal Procedure, to acquaint a representative of a legal entity with complaints and representations received in a criminal case, as well as with the progress and results of consideration and resolution of complaints received (Articles 123-127 of the Code of Criminal Procedure).

4. Provide the victim and his representative with copies of the necessary documents, promptly notify the date and the time of the investigative actions carried out with their participation, as well as provide an opportunity to familiarize themselves with the protocols of the relevant investigative actions.

5. In accordance with Part 8 of Article 162 of the Criminal Procedure Code of the Russian Federation, notify the victim and his representative in writing about the extension of the preliminary investigation period.

6. Consider petitions submitted by the victim and his representative. Thus, in accordance with Article 122 of the Code of Criminal Procedure of the Russian Federation, the investigator is obliged to notify the person who filed the petition about the satisfaction of the petition or about the complete or partial refusal to satisfy it.



7. Considering the preliminary investigation completed, in accordance with Article 216 of the Code of Criminal Procedure of the Russian Federation, at the request of the victim or his representative, to acquaint them with the materials of the criminal case.

We have provided a far from complete list of the duties of an investigator aimed at protecting the rights and legitimate interests of a victim of a crime. In more detail, all the powers of the investigator to carry out actions aimed at realizing the victims of their rights and obligations during the investigation of a criminal case will be discussed in the following chapters of the work.

Examining the relationship between the investigator and the legal entity victim of a crime, one cannot but say that the investigator plays a huge role in the full-fledged performance of his duties by a representative of a legal entity. The outcome of the criminal case also depends on how actively the investigator will involve the representative in the preliminary investigation. The process of participation of natural victims in the investigation is not so problematic, even if the investigator does not fully fulfill his duty to protect the rights of this victim. This is due to the fact that the harm caused by the crime was directly caused to an individual, and therefore his behavior at the psychological level will already be aimed at identifying the perpetrators of the crime and compensating for the harm caused by the crime. However, in the case of participation in a criminal case by a representative of the victim, who is a legal entity, such a psychological aspect is often absent from the representative, since the harm is caused not to him personally, but to the organization he represents by virtue of his official position. All of the above suggests that the investigator's duty to protect the rights and interests of the victim, who is a legal entity, acquires a deeper meaning.

At the same time, speaking about the duties of an investigator aimed at ensuring the rights and legitimate interests of a legal entity injured by a crime, we must not forget that the criminal procedure law gives the victim not only rights, but also provides for certain duties that he must strictly fulfill. Moreover, failure by the victim or his representative to fulfill these duties may entail the application of certain measures of a criminal procedural or even criminal-legal nature to them (drive, criminal liability for refusing to testify and for knowingly false testimony, etc.).

Thus, it can be concluded that the rights and obligations of the investigator are fully combined with the rights and obligations of the victim, in our case, a legal entity. Only with their full mutual respect can the legal relations between these participants in criminal proceedings be called valid and mutually complementary, since the rights of one of these subjects must be combined with the duties of the other and vice versa.



Summing up on the issue of the relationship between the investigator and the legal entity victim of the crime, I would like to note the point of view of V.G. Ulyanov (2002), which we fully share: "Active work with the victim, satisfaction of his justified petitions and granting him as many rights as possible during the preliminary investigation, as a rule, in the interests of the investigator" (p. 47). For our part, we consider it necessary to add that only the addition of the investigator's actions by mutual actions on the part of the legal entity injured by the crime will lead to a successful investigation of the criminal case, and therefore timely protection of the rights and legitimate interests of the victim of the crime by the person conducting the preliminary investigation.

For several decades, the issue of the possibility of recognizing a legal entity as a victim has been the subject of discussions among process scientists. To date, since the entry into force of the Criminal Procedure Code of the Russian Federation in 2001, the accumulated practical experience has fully justified the need to recognize legal entities as victims of crimes. This conclusion is confirmed by the sociological research conducted by us among the employees of investigative departments. In particular, 67.5% of respondents responded positively to the question of whether the situation of legal entities has improved after the CPC of the Russian Federation provided the opportunity to recognize these persons as victims of crimes. 32.5% of the respondents gave a negative answer.

The possibility of recognizing legal entities as victims of crimes undoubtedly gives them a greater amount of authority to protect their violated rights as a result of a criminal act committed against them. Taking into account the realities of economic relations in Russia, legal entities are the most important participants in them, and, consequently, the protection of their rights and legitimate interests is becoming increasingly important for the state and society (Pushkarev et al., 2019b). And, as S.V. Kruglov (2006) rightly notes,

the greatest urgency in the issue of giving the status of a victim to a legal entity arises these days. Corporations and other large business associations formed in the country have huge material resources and financial resources. And these resources are concentrated not only in the hands of one person, but are the property complexes of a legal entity. (p. 47).

In continuation, describing the full scale of the activities of legal entities, S.V. Sholokhov (2003) absolutely correctly asserts that

the profits of enterprises inevitably attract criminal elements who, through the creation of pseudo-entrepreneurial commercial organizations, sophisticated fraudulent schemes or more banal, but still criminal ways, take control of shares, buildings, structures, equipment, products, etc. (p. 13).

And, as a result, property damage and damage to business reputation are caused not to



a specific individual, but to a legal entity, which, in connection with a crime committed against him, simply needs protection in the person of the state and its authorities.

4 CONCLUSIONS

Based on the conducted research and a detailed analysis of the legal relations arising between the investigator and the legal entity victim of the crime, the authors came to the following conclusion. In the current situation, it is in no way possible to limit the participation of a legal entity, a victim of a crime in criminal proceedings, only as a civil plaintiff, whose rights are much narrower than those granted to such a participant in the process as the victim. In this regard, the recognition of legal entities as victims expresses the true meaning of this legal institution (Dung et al., 2021), which is enshrined in the provisions of the criminal procedure legislation.

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