

Prospects for Developing Private Prosecution in Criminal Proceedings in the Russian Federation

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ABSTRACT

The work analyses the prospects for the development of private prosecution in criminal proceedings in the Russian Federation. On the one hand, criminal proceedings are public, this is its objective condition explained by the legal nature of criminal procedure as the state's reaction to a crime. Therefore, criminal proceedings cannot become private, and private proceedings should not dominate. On the other hand, it is possible that there may be some expansion in the range of crimes for which private prosecution is involved. The work highlights the substantive and procedural conditions for attributing acts to private prosecution: low public danger, encroachment primarily on the rights and freedoms of a particular person, and the absence of the need to carry out investigative measures aimed at removing material objects. In addition, there is justification for the inadvisability of private prosecution cases for crimes with administrative precedence. It has been argued that placing a case on a private charge is intended to facilitate, not to complicate, the victim's access to justice.

Keywords: *criminal procedure, publicity, private prosecution, victim, administrative issue preclusion*

1. INTRODUCTION

Criminal proceedings are public in nature. It should be noted that this state is not caused by the undemocratic nature of the state, but is inherent in the criminal process of all countries. A private beginning in criminal proceedings dominated only in ancient times and the Middle Ages, which was due to the weakness of the central state power [1], and then lost its dominant character. The fact is that by its social nature, criminal procedure is a reaction to a crime, which is a socially dangerous act that encroaches not only on the interests of a particular victim, but also on certain social relations [2]. At the same time, social relations are, in fact, the interests of some individuals and legal entities that are potentially threatened by the person committing a criminal act. In other words, the culprit commits a crime because he negatively or contemptuously treats the values accepted in society, does not consider them as his own. Because of this attitude, he may at any time commit such an act against any person. This situation threatens all members of society and requires a state intervention.

2. LITERATURE REVIEW

It is the state that is entrusted with the enforcement function. In any democratic society, it is not the victim himself who should be responsible for suppressing and solving criminal acts, but the competent state authorities: the police, the agencies of inquiry and pre-trial

investigation, the prosecutor's office and the court as the body that examines the criminal case on its merits.

Full-scale protection of victims' rights, regardless of the type of crime, is possible only in public criminal proceedings. As it was noted that all crimes had the characteristic of public danger, criminal proceedings in general could only be public. Akimova N.V., who analyses the problems of criminal policy, notes that the latter, "without a holistic ideological foundation, is not a purposeful course followed by the state, but rather a convulsive reaction to emerging threats of a criminal nature" [3]. Unfortunately, something similar can be said about criminal procedure policy, which in a sense is secondary to criminal law. In the science of criminal proceedings, it is proposed to virtually abandon public and build criminal proceedings on a private basis, and on the contrary, to cancel private prosecution as such.

However, the public legal nature of criminal proceedings does not exclude the presence and certain expansion of private prosecutions. It should be noted that, in general, private beginnings in criminal procedure activities should be considered an exception, they cannot dominate and occupy too big a place, as it contradicts the nature of social relations over which criminal procedure activities arise and develop. At the same time, maintaining a balance between private and public interests does not exclude some increase in private manifestations in criminal proceedings [4] [5]. As Baranov A.M. correctly noted, "The art of criminal procedure policy is to offer the most appropriate legal

procedures to the society, out of all the means already known to the civilization, in some period of time" [6].

3. RESULTS AND DISCUSSION

The private prosecution cannot be considered a "foreign" phenomenon for criminal proceedings, "taken" from private law and artificially introduced into the fabric of criminal proceedings. The private prosecution is well within the framework of criminal procedure legal relations, has no fundamental differences from them and naturally complements certain areas of the criminal procedure law.

The limited availability of private foundations is both quantitative and qualitative. Quantitative limitations mean that there cannot be too many crimes for which cases are privately charged. This is explained precisely by the fact that crimes encroach on socially important public relations protected by the state, if the act does not pose a public danger, it is usually subject to decriminalization. Qualitative limitations apply to the manner in which criminal proceedings are conducted in private prosecution cases. Clearly, private prosecution cannot have a normative design that would make it difficult for a victim to access justice. For example, assigning the victim an independent responsibility to establish the circumstances of the crime that cannot be effectively clarified by a person without state power contradicts the constitutional right to access to justice.

Some increase in private prosecutions in public criminal proceedings is primarily due to a certain respect for the victim's opinion that the perpetrator of a criminal act should be prosecuted. This is the main factor in the legislative classification of a crime as private prosecution. It is unacceptable to proceed from procedural efficiency, the desire to rid the public authorities of the investigation of any crimes. Such "optimization" is completely inappropriate in this case, as it would directly violate the constitutional right of the victim to access justice.

A certain increase in the number of private prosecution cases can be attributed to some increase in the dispositive nature of criminal proceedings. This is possible when the interest of the victim from a social point of view is more protected when he or she is given the opportunity to initiate a criminal prosecution in connection with the commission of a specific crime, or voluntarily abandons the criminal prosecution. In turn, such a state takes place when the refusal to prosecute does not suffer important rights of the victim, and leaving the crime without state response in the form of criminal punishment does not cause negative social consequences.

It is important to define the criteria according to which it will determine the scope of cases related to the private prosecution. It is very problematic to establish such criteria rigidly. It seems that the list of crimes, the cases of which are private charges, should be determined by "re-examination" of specific elements provided for in the particular conditions of the RF Criminal Code. However,

some of the circumstances that would qualify cases as private charges could be proposed.

First, the crime should not pose an increased public danger. It goes without saying that all the acts enshrined in the particular conditions of the RF Criminal Code are socially dangerous. However, the point here is that only those crimes that infringe on the personal rights of a particular victim, without directly affecting the rights of other entities, can be considered private charges. Accordingly, such acts as the involvement of minors in the commission of crimes or other antisocial acts (Criminal Code, CL. 150 and 151), failure to fulfil obligations to bring up a minor (Criminal Code, CL. 156) or failure to pay for the maintenance of children or incapacitated parents (Criminal Code, CL. 157) may not be considered private charges. These crimes directly infringe on the lawful rights of persons who are unable to defend their rights independently (in this case, the rights are understood not as procedural powers of a participant in criminal proceedings, but as basic general civil rights directly fixed in the Constitution of the Russian Federation or arising from its provisions). In other words, for the above-mentioned offences, minors are either victims or persons participating in the crime under the influence of another entity. One cannot ignore the fact that such crimes have extremely negative public resonance. Treating cases of such crimes as private charges, the refusal of the state from compulsory criminal prosecution for their commission will inevitably be perceived in society as a kind of "relaxation", and in fact - as an incentive for such acts. However, the list of private prosecution cases could well be expanded to include property-related crimes, as is the case, for example, in Switzerland, where more than 10 crimes are classified as private prosecution [7], or in Spain, where the situation is similar [8].

Secondly, proof in cases involving private prosecution should not be accompanied by search and seizure of material objects, including restricted use. In order to detect and obtain such facilities, it is necessary to carry out investigative actions, including those permitted by the court, which in the conditions of private prosecution will have no one to carry out. The victim, although acquiring the procedural status of a private prosecutor, remains a person without public authority. Therefore, assigning him the appropriate duties will knowingly lead to the impossibility of establishing the circumstances of the act and the correct qualification of the actions of the perpetrator. Ultimately, the victim will remain unprotected and his or her violated rights will not be restored.

In other words, for the victim, placing the case on a private charge should not be accompanied by an actual imposition of additional obstacles to access justice and protection from criminal assault. However, it may be difficult to establish certain legally relevant circumstances. Thus, the scientific literature rightly draws attention to the fact that in libel cases there are difficulties in ascertaining the intention of the person reporting information, not to express his own point of view, but to knowingly create a distorted image of the victim [9].

Thirdly, private prosecution cases must have a preventive focus. In other words, it is appropriate to consider private charges as crimes for which prosecution can prevent the commission of similar but much more serious criminal acts. For example, it is well known that the timely prosecution of a person (at least without bringing the case to the verdict and sentencing) for causing minor harm to health is a factor deterring that person from committing crimes such as murder and serious harm to health. The very procedure of carrying out criminal proceedings against a person can have a serious preventive and educational impact on him/her, forcing him/her to abandon socially dangerous behaviour. Therefore, in private prosecution cases, reconciliation between the victim and the accused is generally the most desirable outcome. In the Russian science the main way to achieve correction of the person who has committed a crime is traditionally considered criminal punishment [10]. However, in private prosecution cases, one can do without it. On the one hand, the accused has a proper preventive effect, and on the other hand, the person does not bear criminal punishment, does not acquire a criminal record and the associated negative social consequences. This is a very humane and expedient way of resolving a criminal law conflict, making it possible to respect and restore the interests of the victim and not to limit the interests of the person involved in the commission of the act beyond the necessary measure.

4. CONCLUSION

The procedural way in which such cases are conducted is of great importance. In theory, there are two possible procedural constructions for this category of criminal cases. The first structure is that the victim initiates criminal proceedings on his own by filing an application to that effect and also has the right to demand that the prosecution be terminated by conciliation with the accused, otherwise the criminal case is treated in the same way as public prosecution. The second structure means that private prosecution cases are of the same order as currently envisaged. The victim not only has exclusive rights to initiate criminal proceedings, but also to collect evidence, formulate the charge and support it before the court. Accordingly, in private prosecution cases, there are no stages of criminal proceedings or preliminary investigations as they exist in public prosecution cases. A victim's application is submitted to a justice of the peace whose decision to accept the application for its production (provided that the formal and a number of substantive requirements for the application are met) corresponds in terms of its legal consequences to the initiation of criminal proceedings.

It seems that the criminal procedure law should retain the second option. It should be noted that it is not at all a matter of relieving the bodies of preliminary investigation of some elements of crime, thus reducing the burden on them, etc. Such circumstances should not play a decisive role.

Thus, based on a combination of substantive and procedural criteria, private charges should include crimes against health, personal non-property rights and certain property rights. However, the evidence in such cases must be predominantly personal. In view of the above, it may be suggested that the so-called "relative" embezzlement, which does not involve the use of violence against the victim (e.g. theft of property by a family member, if his actions are considered to constitute a crime, rather than a civil relationship related to the disposal of common family property), be considered a private charge.

It is obvious that the legislator is right, by preventing private prosecution in cases of crimes committed by entities with immunity from prosecution. It would appear that the decision was taken first and foremost in the light of the interests of the victims. When they are opposed by an entity vested with state powers (e.g., a member of the Federation Council, a member of the State Duma, a prosecutor, or the head of an investigative body), it is quite problematic to talk about the full factual equality of the victim and the person being held criminally liable and, consequently, about the victim's ability to independently and effectively collect evidence and bring charges.

More importantly, in private prosecution cases, the victim must fully control the fate of the criminal prosecution. If the preliminary investigation or inquiry body carries out criminal procedure activities in the same way as in the case of public prosecution, there is a mandatory conflict between the public legal interests of the preliminary investigation body and the private legal interests of the victim. Reconciliation of the parties, which is socially the most desirable outcome in private prosecution, will be considered by the preliminary investigation body as a marriage at work, and such decisions will be blocked in every way contrary to the will of the victim. Therefore, it is wrong to mix the interests of different entities in a single criminal case, as these interests may become multidirectional, and in the conditions of public criminal proceedings the interest of the preliminary investigation bodies will dominate in cases of private prosecution, "substituting" the interest of the victim.

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