



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 23

Moscow

13 October 2020

On the Practice of Court Consideration of Civil Lawsuits in Criminal Cases

Constitutional guarantees of rights of a victim of crime to access to justice and restitution of damages (Article 52 of the Constitution of the Russian Federation) are in particular realised through application of the manner of court consideration of a civil lawsuit in a criminal case, stipulated in criminal procedure legislation and established as a legal mechanism of effective court protection of the victim's rights.

In order to ensure the uniformity of judicial practice of consideration and adjudication of civil lawsuits in criminal cases, as well as with regard to the issues encountered by the courts, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", hereby rules to provide the following clarifications to the courts:

1. It is brought to the attention of the courts that proceeding from Part 1 of Article 44 of the Criminal Procedure Code of the Russian Federation (hereinafter – the CrPC RF), both a natural and a legal person may file a civil lawsuit in a criminal case with a claim for restitution of property damages, where there are reasons to believe that the damages were directly caused by the crime; a natural person may also claim for compensation of moral harm caused by the crime.

2. In a criminal case on a crime that caused damage to property assigned to the possession, use and disposal of a state or municipal unitary enterprise, state or municipal institution (Item 4 of Article 214 and Item 3 of Article 215 of the Civil Code of the Russian Federation, hereinafter also referred to as the CC RF), such an enterprise, institution may of its own accord file a civil lawsuit in the case, whereby it is recognised as a civil plaintiff.

By virtue of Part 3 of Article 44 of the CrPC RF, a prosecutor may file a lawsuit for the protection of interests of state and municipal unitary enterprises, as well as of the interests of the Russian Federation, constituent entities of the Russian Federation, municipal entities; it is not necessary to recognise the prosecutor as a civil plaintiff.

3. If the victims of a crime in a criminal case are an underage person, or a person recognised as legally incapable or legally impaired in the manner stipulated in law, or persons who cannot protect their rights and lawful interests on their own for other reasons, the civil lawsuit for the protection of interests of these persons may be filed by their statutory representatives, drawn to obligatory participation in the criminal case, as well as by a prosecutor (Part 3 of Article 44, Part 2 of Article 45 of the CrPC RF). In such instances, recovery with regard to lawsuits filed in the interests of an underage person is performed for the benefit of the underage.

4. In accordance with Part 1 of Article 45 of the CrPC RF, the legal person recognised as a civil plaintiff in a criminal case may be represented by advocates, as well as other persons eligible in accordance with the Civil Code of the Russian Federation to represent its interests (e.g. a person who, by virtue of law, other legal act or constituent document of the legal person, is authorised to act on its behalf).

When the head of the organisation or another eligible person represents the interests of the legal person in a court session, her/his powers must be confirmed by corresponding documents certifying her/his status and the fact of vesting of such powers (Part 3 of Article 53 of the Civil Procedure Code of the Russian Federation, hereinafter also referred to as the CPC RF).

5. Taking into account the requirements of Part 1 of Article 54 of the CrPC RF, where a civil lawsuit is filed in a criminal case, the natural or legal person liable for the damages caused by the crime in accordance with the Civil Code of the Russian Federation must be drawn to participation as a civil defendant, in which regard a corresponding ruling (decree) is adopted.

By implication of Item 1 of Article 1064 of the CC RF, the damage caused by a crime is subject to full restitution by the person guilty of the crime; therefore, by general rule, the accused person is drawn to participation as the civil defendant. Herewith, where the law puts the duty of restitution of damages upon a person that is not the one who caused the damage, such a person, in particular a legal person, is drawn as the civil defendant.

In particular, during consideration of criminal cases on crimes pertaining to damages caused by an employee of an organisation (legal person) in performance of labour (service, official) duties (e.g. on crimes stipulated in Part 2 of Article 109, Articles 143, 238 of the Criminal Code of the Russian Federation, hereinafter – the CrC RF), a legal person is drawn to participation in the case as the civil defendant (Article 1068 of the CC RF); if, in commission of the crime, the damage was caused by an ultrahazardous object (e.g. in cases on crimes stipulated in Articles 263, 264 of the CrC RF), the owner of the ultrahazardous object is drawn to participation (Article 1079 of the CC RF).

Since the damage resulting from illegal actions (failure to act) of officials of state bodies, local self-government bodies is restituted, accordingly, at the expense of the funds of the Russian Federation, the funds of a constituent entity of the Russian Federation or the funds of a municipal entity (Articles 1068, 1070, 1071 of the CC RF), in criminal cases (e.g. on crimes stipulated in Articles 285, 286 of the CrC RF), the representatives of the financial body acting on behalf of the treasury or the principal managers of budgetary funds within the corresponding sphere are drawn to participation in the trial (Article 1071 of the CC RF).

6. Where the damage is caused by a crime committed by an underage who does not have income or other property sufficient to restitute the damage, taking into account Article 1074 of the CC RF and Article 155.1 of the Family Code of the Russian Federation, her/his parents (adoptive parents) or guardians, or the organisation for orphans and children left without parental care, in which the underage was under supervision, are drawn to participation as the civil defendant along with the accused.

7. When considering criminal cases, the courts should take into account the provisions of Part 3 of Article 1080 of the CC RF, stating that if a person unlawfully takes another's property which is later damaged or lost due to actions of a different person acting independently of the former person, the former is responsible for the damages caused. For example, in cases on crimes stipulated in Article 166 of the CrC RF, property damage arising as a result of later theft, destruction or damaging of

the stolen automobile by an unknown person is subject to recovery from the accused, where a civil lawsuit for restitution of such damage is filed against her/him.

8. The courts should take into account that the property damages subject to restitution include, apart from those indicated in the charges, the damages resulting from destruction or damaging of another's property by the accused, where said actions comprised the manner of commission of the crime (e.g., damaging alarm or CCTV devices, breaking of a lock, damage to the door or window during entry into premises, damage to the automobile for the purpose of its theft) and did not require independent qualification under Article 167 or Article 168 of the CrC RF.

9. If the crime results in damages for a person whose property is insured, then, taking into account the provisions of Article 1072 of the CC RF, where the court has information that the victim, civil plaintiff received the insurance, the sum is subject to recovery in the part not covered by the insurance. As a rule, it is not necessary to draw a representative of the insurer to participation in the trial in such cases.

10. In cases on crimes resulting in death of a person, the person that actually incurred the burial costs may, by virtue of Article 1094 of the CC RF, file a civil lawsuit for their restitution. Herewith, if a burial allowance was paid out, this does not influence the amount of recoverable costs.

11. Proceeding from Part 3 of Article 42 of the CrPC RF, the costs incurred by the victim due to her/his participation in the preliminary investigation and the trial, including representation costs, are not subject matter of the civil lawsuit; issues pertaining to their restitution are resolved in accordance with provisions of Article 131 of the CrPC RF on procedural costs.

12. By implication of Part 1 of Article 44 of the CrPC RF, property claims, although pertaining to the crime, but related, in particular, to subsequent restoration of violated rights of the victim (e.g. on recovery of interest for the use of another's monetary funds, on invalidation of a civil law contract, on restitution of damages in case of death of the breadwinner), as well as recourse claims (on restitution of expenses of insurance organisations, etc.) are subject to adjudication in the manner of civil proceedings. In this part, the court leaves the civil lawsuit in the criminal case without consideration, indicating the motives for this decision in the ruling (decree) or in the judgment of conviction.

13. It is brought to the attention of the courts that by implication of Item 1 of Article 151 of the CC RF, a civil lawsuit for compensation of moral harm (physical or moral suffering) may be filed in a criminal case, when such harm was caused to the victim by criminal actions violating her/his non-property rights (e.g. right to inviolability of the home, right to privacy, private and family secret, copyright and neighbouring rights) or infringing upon her/his non-material values (life, health, dignity, etc.).

Proceeding from the provisions of Part 1 of Article 44 of the CrPC RF and Articles 151, 1099 of the CC RF in their interrelation, a civil lawsuit for compensation of moral harm is also subject to court consideration when a crime infringing upon another's property or other material values also results in harm to non-property rights or non-material values of the victim (e.g. in case of violent robbery, larceny with illegal entry into one's home, fraud perpetrated with the use of one's personal data without one's consent).

Moral harm is compensated in monetary form independent of the property damages subject to restitution.

14. If, in a criminal case on a crime that resulted in death of a person, several close relatives and (or) close ones of the deceased (and if there are no such persons, or it is impossible for them to participate in criminal proceedings – several relatives) are recognised as victims, each of them may file a civil lawsuit with independent claims for compensation of moral harm. The court should take into account the facts indicating that physical or moral suffering was caused to these particular persons.

15. The courts should take into account that if there is no civil lawsuit in a criminal case, the court, during the preliminary hearing or the preparatory part of the court session, clarifies to the victim her/his right to file a lawsuit, independent of whether this right has been clarified to her/him by the preliminary investigation bodies.

Where the statement of claim (application) of the plaintiff for restitution (compensation) of damages (harm), attached to the materials of the criminal case, does not allow to determine the nature of stated claims, their factual grounds, volume and amount, which precludes the consideration of the lawsuit, the court should suggest it to the civil plaintiff participating in the court session to remedy the existing deficiencies without returning the statement to the plaintiff.

16. Proceeding from the fact that a civil lawsuit may be filed during the period between the initiation of a criminal case and termination of the judicial investigation during consideration of the criminal case in a court of first instance (Part 2 of Article 44 of the CrPC RF), where a guilty verdict is handed in proceedings in a court with participation of the jury, the civil lawsuit may be filed until the final moment of studying the facts pertaining to discussion of consequences of the verdict in accordance with Part 3 of Article 347 of the CrPC RF.

17. If a civil lawsuit is filed during the preliminary hearing or in the court session, and also if the preliminary investigation bodies failed to take the necessary procedural decisions where there was a civil lawsuit in the case, the court adopts rulings (decrees) recognising the corresponding person as the civil plaintiff and drawing another corresponding person to participation as the civil defendant. The court may issue such rulings (decrees) in the manner stipulated in Part 2 of Article 256 of the CrPC RF that does not oblige the court to retire into the deliberations room and to state the adopted decision in the form of a separate procedural document. In these instances, the decision adopted in the courtroom is entered into the minutes of the court session.

18. In accordance with Article 268 of the CrPC RF, the court clarifies to the civil plaintiff and its representative, to the civil defendant and its representative (provided that they are participating in the court session) their rights, duties and liability during the trial, stipulated, correspondingly, in Articles 44, 45, 54 and 55 of the CrPC RF.

If the victim is recognised as the civil plaintiff, in addition to the rights stipulated in Part 2 of Article 42 of the CrPC RF the court clarifies to her/him other rights that he/she is vested with as the civil plaintiff in accordance with Part 4 of Article 44 of the CrPC RF: the right to support the civil lawsuit, to provide explanations and testimony in its regard, to renounce the stated civil lawsuit prior to the moment when the court retires to the deliberations room to adopt the judgment of conviction or acquittal.

If the accused is recognised as the civil defendant, the rights that he/she is vested with as the civil defendant are also explained to her/him: the right to know the nature of the stated claims and the facts on which they are founded, to object against the stated civil lawsuit, to provide explanations and testimony on the merits of the lawsuit (Items 1–3 of Part 2 of Article 54 of the CrPC RF).

19. Where there are corresponding grounds, both during the preliminary hearing and the trial the court takes measures to secure the civil lawsuit, if the preliminary investigation bodies failed to do so. By virtue of Part 2 of Article 230 of the CrPC RF, such measures may be taken by the court upon the motion of the victim, of the civil plaintiff, their statutory representatives or representatives, or of the prosecutor.

20. During judicial investigation, for the purpose of adjudicating the civil lawsuit filed in the case, the court clarifies it with the civil plaintiff and (or) her/his representative (prosecuting official, if the civil lawsuit is filed by the prosecutor) whether they support the lawsuit and suggests to read out the claims stated therein, after which it clarifies whether the defendant, civil defendant and (or) her/his representative acknowledge the civil lawsuit.

The trial participants, whose interests are affected by the civil lawsuit, are granted an opportunity to express their position in its regard and, where necessary, to provide additional materials pertaining to the lawsuit. The court also hears the opinion of the prosecuting official regarding the civil plaintiff's lawsuit.

21. The courts should proceed from the premise that taking into account Item 4 of Part 1 of Article 73 of the CrPC RF, the burden to prove the nature and amount of property damage caused by the crime lies on the prosecuting official.

Property damages caused directly by the crime, but exceeding the limits of the charges stated against the defendant (medical costs incurred by the victim due to harm to the health; burial costs, when the crime results in death of a person; costs of repairing the damaged property in case of illegal entry into one's home, etc.) are subject to proof by the civil plaintiff by providing the court with the corresponding documents (payment slips, cashier's receipts and sales slips, etc.).

The civil plaintiff substantiates before the court her/his claims regarding the amount of compensation for moral harm caused by the crime.

22. If the civil plaintiff renounces the lawsuit – which may be done at any moment of proceedings in the criminal case, but before the court retires into the deliberations room to adopt the judgment – the court, pursuant to Item 11 of Part 4 of Article 44 of the CrPC RF, clarifies it to the plaintiff that such renunciation results in termination of proceedings regarding the lawsuit.

If the civil plaintiff confirms that he/she renounces the lawsuit before the pleadings begin, the court may adopt the decision to terminate proceedings in regard of the civil lawsuit while in the courtroom, recording it in the minutes (Part 2 of Article 256 of the CrPC RF). If the renunciation of the civil lawsuit is stated during the pleadings, such a decision is indicated in the operative part of the court decision finalising the case.

23. The courts should take into account that holding the trial in a special manner (Chapters 40 and 40.1 of the CrPC RF) does not exempt the court from the duty to study the issues pertaining to the civil lawsuit and adopt a decision in its regard. In particular, when adopting a judgment of conviction, the court may satisfy the civil lawsuit, if its claims proceed from the charges with which the accused person agreed, and nothing precludes the court from adjudicating the lawsuit on its merits.

24. Pursuant to Item 10 of Part 1 of Article 299 of the CrPC RF, when adopting a judgment of conviction, the court is obliged to discuss, in regard of every civil lawsuit filed in the criminal case, whether the civil lawsuit should be satisfied, for whose benefit and in what amount.

When resolving such issues, the court, in writing the descriptive part and the statement of reasons of the judgment of conviction, cites the motives substantiating the full or partial satisfaction of the claim or refusal to satisfy it, indicates the amount and, where necessary, the calculation of the sum of claims to be satisfied, as well as the law on the basis of which the decision regarding the civil lawsuit is adopted.

Herewith it should be presumed that the nature of the damage caused by the crime and the amount of claims subject to satisfaction are established by the court based on the body of evidence studied during the court session; such evidence is cited in the court sentence, in particular where the civil defendant acknowledges the lawsuit.

25. In determining the manner of recovery in the court sentence, the courts should take into account that property damages caused by joint actions of several defendants are recovered from them jointly and severally; however, acting upon the motion of the victim and in her/his interests, the court may provide for damages to be recovered in shares (Article 1080 of the CC RF).

If a civil lawsuit filed against several defendants is satisfied, the operative part of the court sentence should indicate, what sum is subject to joint and several recovery, and

what sum is subject to recovery from each of them as shares, and also for the benefit of which civil defendant recovery is performed.

If property damage was caused by the defendant jointly with another person, in whose regard the case was severed into separate proceedings, or who was exempted from criminal liability on non-rehabilitating grounds, the court imposes the duty to restitute the damages in full upon the defendant. If a judgment of conviction is later adopted against the person, the case in whose regard was severed into separate proceedings, the court may impose upon her/him the duty to restitute the damages jointly and severally with the earlier convicted person, in whose regard the civil lawsuit was satisfied.

26. When resolving, within the framework of a criminal case, a lawsuit for compensation of moral harm caused to the victim by the crime, the court is guided by Articles 151, 1099, 1100, 1191 of the CC RF, in accordance with which the following should be taken into account in determining the amount of compensation for moral harm: the nature of physical and (or) moral suffering caused to the victim, related to her/his individual features; the measure of guilt of the defendant; her/his material status; other concrete facts of the case, impacting the decision of the court with regard to the lawsuit filed. In any instance, when determining the amount of compensation for moral harm, the requirements of reasonableness and fairness should be taken into account.

If the court establishes the facts of unlawful or immoral conduct of the victim that provided a reason for the crime, these circumstances are taken into account in determining the amount of compensation for moral harm.

27. During the trial, the court should take exhaustive measures to resolve the civil lawsuit in the case on its merits, so that the rights of the victim, violated by the crime, are timely restored; in adopting the judgment of conviction, the court should avoid transferring the issue of amount of restitution of civil claims for consideration in civil proceedings without corresponding grounds.

Herewith it should be noted that if additional calculations are necessary, in particular if they pertain to specifying the amount of property damages, which is significant for qualification of the act and determining the amount of the charges, even if such calculations require for the trial to be postponed, this does not constitute grounds for transferring the issue of the amount of restitution of civil claims for consideration in civil proceedings.

If, pursuant to Part 2 of Article 309 of the CrPC RF, the court recognised the right of the civil plaintiff to satisfaction of the civil lawsuit and transferred the issue of the amount of restitution for consideration in civil proceedings, the sentence must always contain the motives of such a decision.

28. When presenting for execution an effective sentence containing a decision to recognise the civil plaintiff entitled to satisfaction of the civil lawsuit with transfer of the issue of amount of restitution for consideration in civil proceedings, the court that adopted the judgment of conviction forwards the following to the court that has jurisdiction over the civil lawsuit in accordance with the rules stipulated in the Civil Procedure Code of the Russian Federation (where so stipulated in law – taking into account the will of the civil plaintiff): copies of the judgment of conviction, of the decision of the court of appeal, copies of the statement of claim (application) and decisions on recognition of persons as the civil plaintiff, civil defendant or an excerpt from the minutes of the court session, copies of other case materials confirming the stated claims and necessary for resolving the issue regarding their amount. In any instance, the civil plaintiff must be notified about what court said materials are forwarded to.

29. If the property of the accused and of persons bearing material liability for her/his actions in accordance with the law was arrested within the framework of a criminal case in order to ensure execution of the sentence in the part of the civil lawsuit, then if the civil lawsuit is satisfied, the court indicates the property commensurate to the stated claims in the sentence. Arrest of such property is preserved until the sentence is executed in the part of the civil lawsuit.

30. It is brought to the attention of the courts that when a judgment of acquittal or a ruling (decree) to terminate the criminal case on grounds stipulated in Item 1 of Part 1 of Article 24 of the CrPC RF (absence of the fact of the crime) and Item 1 of Part 1 of Article 27 of the CrPC RF (non-involvement of the defendant in commission of the crime) is adopted, the court refuses to satisfy the civil lawsuit (Part 2 of Article 306 of the CrPC RF).

Where there are other grounds to adopt a judgment of acquittal (e.g. the act of the defendant does not contain the elements of a crime) or other grounds to terminate the criminal case, in particular non-rehabilitating grounds, the court leaves the civil lawsuit without consideration, indicating it in the decision that the plaintiff preserves the right to file the lawsuit in civil proceedings.

31. A court of appeal, proceeding from Part 1 of Article 389.22, Article 389.24 and Item 3 of Part 1 of Article 389.26 of the CrPC RF in their interrelation, may amend the sentence in the part of the civil lawsuit and increase the amount of restitution of material damages (provided that this does not influence the qualification of actions of the convicted person established by the court and the volume of the charges) and (or) increase the amount of compensation of moral harm solely on the basis of a prosecutor's appeal or the appeal of the victim, private prosecutor, civil plaintiff, their statutory representatives and (or) representatives, and only within the sum of the civil lawsuit filed in accordance with Part 2 of Article 44 of the CrPC RF.

If the court of appeal establishes that in the part of the civil lawsuit satisfied in regard of several convicted persons the sentence determines the manner of recovery incorrectly (joint and several or share-based), the court may amend the sentence in this part, determining the correct manner of such recovery.

32. Where violations are discovered in appellate proceedings, committed by the court in regard of consideration of the civil lawsuit and irreparable in a court of appeal, the sentence is subject to reversal in this part, with the civil lawsuit transferred for consideration in civil proceedings. The court that adopted the sentence severs the necessary materials in regard of the civil lawsuit for its consideration on the merits (if the lawsuit is within the jurisdiction of this court) or transfers these materials to the court that has jurisdiction over the civil lawsuit in accordance with the rules stipulated in the Civil Procedure Code of the Russian Federation.

33. If the sentence is reversed by the court of appeal with remand of the criminal case for a new trial in regard of a person related by joint and several liability to another convicted person (other convicted persons), the restitution of the whole sum of property damages is imposed upon the convicted person (persons), in whose regard the sentence is upheld.

If a judgment of conviction is adopted after the new consideration of the case, the duty to retribute the property damages jointly with the person or persons earlier convicted for this crime, in regard of whom the civil lawsuit was satisfied, may be imposed upon the convicted person.

34. It is recommended to the courts of appeal and cassation to react to every instance of violation or limitation of rights of the victim and of the civil plaintiff, committed during inquiry, preliminary investigation or consideration of the criminal case by a

lower court. Where necessary, if there are grounds stipulated in Part 4 of Article 29 of the CrPC RF, in particular when it is established that the issue of the amount of restitution was transferred for consideration in civil proceedings without corresponding grounds, it is recommended to adopt special court decrees (rulings).

35. In view of adoption of this ruling, the following are recognised ineffective on the territory of the Russian Federation:

- Ruling of the Plenary Session of the Supreme Court of the USSR No. 1 of 23 March 1979 “On the Practice of Court Application of Legislation on Restitution of Material Damages Caused by a Crime”, as amended by Ruling of the Plenary Session of the Supreme Court of the USSR No. 7 of 26 April 1984;
- Ruling of the Plenary Session of the Supreme Court of the USSR No. 9 of 13 December 1974 “On the Practice of Court Application of Decree of the Presidium of the Supreme Soviet of the USSR of 25 June 1973 ‘On Restitution of Funds Spent on Medical Treatment of Citizens Who Became Victims of Criminal Actions’”.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov