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## CONDITIONS AND PROCEDURE FOR REIMBURSEMENT OF PROCEDURAL EXPENSES IN MISDEMEANOR PROCEEDINGS

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**Summary**

*Often in contentious relationships, parties seek only the restitution of damages, while applying penal and misdemeanor sanction measures typically remains a subsidiary matter, which most often provides only moral satisfaction to the victims.*

*At the same time, in providing such satisfaction, the state incurs significant expenses related to the penal or misdemeanor procedures it is obliged to conduct. Although for a long time, the issue of reimbursing procedural costs was not a subject of discussion, in recent decades, multiple discussions have been initiated, and a judicial practice related to the recovery of penal procedural expenses has consistently emerged, and later, that of misdemeanor procedural expenses as well.*

**Key-words:** procedural expenses, misdemeanor proceedings, recovery of procedural costs.

**Introduction.** As rightfully stated, legal liability is the keystone of jurisprudence, and the ultimate goal of legal liability is to restore the parties to the position they were in prior to the emergence of the contentious legal relationship; therefore, the issue of restitution of damages inherently represents a matter of great importance.

It must be noted that in specialized literature, particular attention has always been given to issues of civil liability, administrative liability, criminal and misdemeanor liability, and in this context, to subjects dedicated to the manner and conditions of restitution of damages resulting from civil, criminal, misdemeanor, and other such damages [3, p.123-135].

**Discussions and results obtained.** However, regrettably, less attention has been paid to the issue concerning the reimbursement of expenses incurred by the state concerning the examination and adjudication of criminal and misdemeanor cases. Yet, the expenses borne by the state in the investigation and prosecution of a crime or misdemeanor are costs causally linked to the criminal act committed, whether it is a felony or a misdemeanor.

This subject is particularly debatable in connection with the commission of misdemeanors.

There are still persistent opinions that the issue of compensating expenses related to the establishment of misdemeanors cannot be addressed because they are insignificant and unimportant [2, p.121].

First and foremost, in discussing our subject, we will start with a clarification regarding the

nature of procedural expenses, also referred to as court costs. Although these represent expenses largely borne by the state (state budget) in connection with the examination of a misdemeanor case, it is necessary to distinguish them from the expenses borne by the parties in the process, also related to this process, as well as from the expenses incurred by the state to maintain public order and security, which are not procedural expenses.

Thus, throughout the activity of the public authorities involved in ensuring and maintaining the rule of law, they incur a series of expenses.

From this series of expenses, we can distinguish those related to the remuneration of personnel, maintenance of service spaces, procurement and maintenance of equipment and mechanisms used in the service process (vehicles, weapons, special means, etc.), personnel training, as well as other categories of expenses, all of which are characterized by the fact that they do not directly result from the commission of the offense or misdemeanor, and are not directly related to the number or content of the offense or misdemeanor. Here, it should be noted that regardless of whether the offense or misdemeanor has been committed or not, these expenses will still be borne by the state (budget).

At the same time, the state also incurs other categories of expenses that would not have occurred if the offense or misdemeanor had not occurred. We refer to expenses related to the consumption of fuel for the police crew to travel to the scene of the incident. We refer to expenses related to various consumables in the process of investigating the scene of the offense or misdemeanor. We refer to expenses related to conducting various expertise, translations, requests, and information acquisitions. We refer to expenses related to the services of translators, and interpreters. We refer to expenses related to the lifting and storage of goods, including vehicles, weapons, explosives, and other categories of goods, including when their storage requires special conditions. We refer to expenses related to the detention of detained and arrested persons. We also refer to other categories of expenses, all of which are characterized by the fact that they are strictly related to the commission of the offense or misdemeanor, and moreover, they are directly dependent on this fact. In other words, if the offense or misdemeanor had not occurred, these expenses would certainly not have taken place.

The issue of repairing (recovering) these expenses is the subject of an action by the state against the guilty perpetrator.

However, numerous issues arise here because, until now, the procedures and conditions for recovering these expenses have not been appreciated. Judicial practice is not uniform in this regard, and in some cases, even confusion arises.

The first of the issues we consider necessary to address is related to the basis of liability.

In practice, we encounter many cases where the applicant for the recovery of expenses incurred in misdemeanor proceedings seeks restitution invoking the grounds of tort liability. At the same time, the legislator even dictates the necessity of identifying a clear basis for holding the perpetrator of the offense or misdemeanor responsible, yet does not limit liability solely to tort. In this regard, Article 776 of the Civil Code establishes obligations arising from contract, tort (delict), and from any other act or fact capable of producing them under the conditions of the law [1, art.776].

Therefore, inducing grounds for tort liability for the recovery of expenses related to the examination of the misdemeanor case does not represent a successful solution. Firstly, this does not constitute a situation of damage. Secondly, its amount is not always within the perpetrator's control. Thirdly, concerning these expenses, we cannot invoke other characteristics of tort liability, such as the possibility of applying negotiation for the form and amount of compensation, as

well as exoneration from liability.

Thus, we must deduce that such liability cannot be based on direct tort, since misdemeanor procedural expenses are not the result of the direct act of the misdemeanor, but merely its cause.

Therefore, we will refer to the fact that the misdemeanor's liability for misdemeanor procedural expenses represents expenses that are incurred as liability based on the following conditions:

- There is a misdemeanor offense, and the person is found guilty of committing this misdemeanor offense;
  - Procedural expenses are incurred in the misdemeanor proceedings and result from the misdemeanor proceedings;
  - The procedural expenses are necessary for the misdemeanor proceedings;
  - The offender has not compensated or personally borne these expenses.
- Continuing, we will briefly outline the essence of each of these conditions.

Every person against whom misdemeanor proceedings have been initiated is entitled to benefit from the effects of the presumption of innocence. Thus, the person suspected of committing a misdemeanor cannot be obliged to bear the consequences of a misdemeanor sanction until they have been found guilty, nor can they be obligated to any other obligations, including pecuniary obligations, resulting from the acknowledgment of guilt in committing the misdemeanor.

Therefore, until the person is found guilty of committing the misdemeanor, they cannot be imposed with the expenses related to the procedural steps taken against them.

Furthermore, if it is found that the person is not guilty of committing the misdemeanor, or if the misdemeanor does not exist (lack of misdemeanor elements), all expenses incurred by the authority examining the misdemeanor case will remain the responsibility of the state (local) budget. At the same time, if it is found that the report of the misdemeanor case was intentionally false or abusive, the person who made it may also be required to bear the burden of recovering these expenses.

Regarding the second category of conditions - that procedural expenses should be incurred only within the misdemeanor proceedings and as a result of the misdemeanor proceedings - we will refer to the fact that procedural expenses can be borne not only by the authority examining the misdemeanor case but also by the parties to the proceedings. For this reason, it must be noted that only expenses incurred within the proceedings can serve as the subject of restitution by the misdemeanorant. Thus, expenses incurred before the misdemeanor proceedings, as well as those incurred after the conclusion of the proceedings, cannot be identified as misdemeanor procedural expenses and therefore cannot be charged to the misdemeanorant.

Therefore, expenses for conducting expertise to identify the technical condition of the damaged vehicle and certain circumstances of the accident, to establish conviction for the victim regarding the correctness of the decision adopted by the investigating officer, including determining whether there are grounds for appealing the case, cannot be considered procedural expenses once the misdemeanor proceedings have ceased. These expenses, although causally related to the misdemeanor, once incurred outside the misdemeanor proceedings, will not be subject to a duty of the misdemeanorant to recover these expenses.

Regarding the third condition - that procedural expenses must be necessary within the misdemeanor proceedings, it should be mentioned that the obligation of the misdemeanorant to bear procedural expenses is not without limits. They can be obliged to reimburse only those expenses that could not have been avoided and without which the finality of the proceedings could not have been achieved. For example, in the process of examining a case of a road traffic accident, the

investigating officer is required to order technical automotive expertise, which entails expenses. Such procedural action must be carried out by the investigating officer because both participants in the accident claim compliance with traffic rules, and neither of them admit to committing any violation resulting in the accident. Following the expertise, if a violation of traffic rules by one of the participants in the accident is established, the investigating officer, in addition to the imposed sanction, also determines the obligation to reimburse the expenses for conducting the expertise. These expenses, in the circumstances of the case, were necessary to establish the truth. At the same time, in the absence of a statement from the participants in the accident regarding the extent and significance of the damage caused by the accident, the investigating officer is not entitled to order a mereological expertise of the condition of the transport unit, as such procedural action is not necessary and justified for this case, and therefore the expenses related to conducting such expertise cannot be charged to the misdemeanant.

As for the fourth category of conditions - that the misdemeanant has not compensated or personally borne these expenses, we refer to the situation where, within the proceedings, alongside other parties, the misdemeanant may bear certain procedural expenses. These include expenses for legal representation, expenses related to conducting expertise, costs for administering evidence, and others. All these expenses remain procedural expenses but remain solely the responsibility of the misdemeanant. They cannot be compelled to recover them. Therefore, although classified as procedural expenses, they cannot serve as the subject of a recovery order.

At the same time, it is not excluded that the misdemeanant may also be entitled to recover certain expenses. We refer to those procedural expenses borne by the misdemeanant that justify certain claims of theirs

To illustrate the same traffic accident scenario, we can also consider the situation where one of the participants in the accident, being the sole suspect in the commission of the misdemeanor and having borne the expenses for the technical automotive expertise, thereby demonstrating that the other participant in the accident also violated traffic rules, which caused the accident. Therefore, they may claim proportional compensation for the expenses incurred in conducting this expertise.

Moreover, during the misdemeanor proceedings, the misdemeanant may personally compensate procedural expenses. For example, Government Decision No. 557 of 2018 establishes that the person whose vehicle has been subject to towing and parking may compensate the expenses for the evacuation and storage of the vehicle directly to the economic agent who assisted the police in the vehicle evacuation process [4].

From here, the methods of compensating misdemeanor procedural expenses emerge, where the misdemeanant or another participant in the misdemeanor proceedings can achieve this restitution procedure mainly in two ways:

- Voluntary procedure,
- Forced execution procedure.

The voluntary execution procedure is characteristic of all legal systems, including those of the European Union [2, p.124]. It involves the voluntary actions of the person obligated to compensate for the value of procedural expenses by making payments, usually monetary, into the account of the direct beneficiary or the authority managing the misdemeanor case, which in turn is entitled to transfer the compensated amounts to the rightful recipient. Usually, such a procedure is manifested through the drafting of an agreement, and sometimes it is also the basis of regulatory provisions [2, p.125].

The forced execution procedure is characteristic of situations where the misdemeanant

does not directly compensate procedural expenses, and in this regard, the procedure for obligating compensation through the prism of execution is applied.

In conclusion, we mention that the issue of misdemeanor procedural expenses represents an ongoing subject, but largely warrants a more advanced theoretical-practical development, especially considering that the frequency of misdemeanor cases dictates more significant procedural expenses overall, sometimes even exceeding those related to criminal procedure. From this perspective, it is evident that the domestic legislator is expected to provide a more careful and detailed approach to this subject.

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