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PARTICIPATION OF STATE AUTHORITIES IN DELICT OBLIGATION RELATIONS: PROBLEMS AND SOLUTIONS

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ABSTRACT

The article covered the formation of norms on compensation for damage caused by state bodies, the participation of state bodies in delict relations as a "state institution" as well as a "legal entity" and the importance of this. Also, the specific aspects of delict responsibility of public institutions were explained. It was substantiated in which cases the obligation of state bodies to compensate for damage should be paid from the state budget and in which cases at the expense of their own extra-budgetary funds.

The opinions of Civilist scientists expressed by officials of state bodies on the issue of compensation for damages caused by unlawful decisions, illegal actions (inaction) were analyzed. From foreign countries, for example, Germany, England, Turkey, Ukraine, the legislation of the Russian Federation and a number of CIS countries has been studied.

In our national legislation, proposals and recommendations have been developed to improve the mechanism of compensation for damage caused by state bodies. In the process of exercising the powers of power by state bodies and their officials, it was scientifically substantiated that it is necessary to establish a special fund of the state in order to ensure timely and full compensation for damage to a citizen and legal entity.

KEYWORDS

Obligations arising from damage, delict liability, damage, damage compensation, delinquens, victim.

INTRODUCTION

In international civilism, there are unanimous opinions that the damage caused by government bodies and their officials is a special type of deli. However, in national and foreign literature there are controversial opinions on the issue of the financial source of compensation for damage caused by state bodies and their officials (funds of the state budget – the amount of guilty officials).

In the scientific research of a number of scientists in foreign countries, one or another aspect of the research topic was studied. For example: масалан Leyland Peter, Anthony Gordon (Oxford University) [1, p. 458-480], Galiya I. Chanysheva, Oleksandr S. Yunin, Nadiia V. Milovska, Roman V. Pozhodzhuk, Viktoriia V. Mazur [2], Şölen Külahçı (Cyprus International University) [3, p. 245-261], Ahmet Bozdağ (Marmara University) [4, p. 33-48]

In our scientific research, we came to the conclusion that each state should ensure that these powers are always carried out correctly and accurately in the prescribed manner, while giving authority to its bodies. It was scientifically substantiated that if the authority that the state, state bodies and their officials give cannot guarantee the exercise of its power free of absolute error, it must undertake the obligation to compensate for both the damage caused to the individual and the legal entity as a result of this. On the issue of the participation of state bodies in delict commitment relations, we studied some problems [5-10].

It should be noted that at the international level, a generally recognized unified procedure for compensation for damage caused to individuals and legal entities by state bodies and their officials is not established. In our study, the legislation of some foreign countries on this issue was studied. The

scientific approaches of national and foreign scientists to the topic were also analyzed. In the end, it became possible to study and collect advanced achievements of foreign countries, develop proposals and recommendations for the introduction into our national legislation of optimal mechanisms for compensating for material and moral damage.

The study used general and special methods of scientific knowledge. The method of analysis and synthesis, as well as logic, was used to determine the participation of state bodies as legal entities in delict relations. And the dialectical method made it possible to consider the state of scientific research on the topic. The comparative-legal method was used in the analysis of the norms of the law of the Republic of Uzbekistan on delict relations with the participation of state bodies. The method of analysis of statistical data has determined the extent of damage caused by government bodies and officials in our country and the extent to which the victim is in a state of recovery. The logical-semantic method was used to determine the content and significance of delict responsibility of state bodies as a legal entity. With the help of the normative-dogmatic method, the content of regulatory legal acts regulating delict relations with the participation of state bodies was analyzed. Through the use of the legal modeling method, it made it possible to develop proposals to optimize National Civil Law in matters of responsibility of state bodies and their officials. The materials studied consist of the legislation of the Republic of Uzbekistan and foreign countries, including Turkey, Ukraine, the Russian Federation, Belarus, Kazakhstan and several other CIS countries on the subject of research, as well as scientific work of national and foreign scientists.

Liability for damage caused by state bodies and their officials is a special type of liability relationship arising

from damage. Obligations arising from damage or liability for damage are also referred to in scientific circulation as the “delict” Institute. The delict Institute is widely used in the legislation of most countries of the world (in England, France, Germany, Turkey, Ukraine, the Russian Federation and other CIS member states) as universal rules that protect the violated rights and interests of individuals.

In our national legislation, the formation of the institution of compensation for damage caused by state bodies and their officials coincides with the period when the country was part of the former Union. More precisely, in Article 56 of the Constitution of the former Uzbek SSR, adopted on April 19, 1978, “the grajdans of the Uzbek SSR have the right to recover damages caused by the actions of state and public organizations, as well as officials during the performance of their service duties” [11, on p18.], that the constitutional norm was defined.

Academic H.Rahmonkulov says that article 481 of the Civil Code of the Uzbek SSR, adopted in 1963, was a rule regarding the payment of damages to citizens as a result of illegal actions committed by state management bodies, public organizations and their officials during the performance of their service duties, but this norm has not been applied in practice due to the fact that the procedure for compensation for damage caused is not clearly established by law [12, on p100].

Of course, in this place, it should also be noted that in the Constitution of the former USSR, the Constitution of the former Uzbek SSR and the Civil code, compensation for property or material damage caused by state bodies and officials is provided for in an official manner, but compensation for moral damage is not established by any legislation of that time.

Expressing his reaction to this problem, Hamrokulov said, "... although compensation for moral damage was not prescribed as a type of liability under the former CCCP legislation, this legal entity appeared in the European countries at the beginning of the XX century. A fyqapo living in Europe claimed that he suffered moral damage in the territory of the former USSR, and could not pay compensation for it. In the previous USSR legal document, moral damages were not covered” [13, on p 29]

Leyland Peter and Anthony Gordon note that "before the adoption of the Crown Proceedings Act of 1947 in England, there was a different position on the tort liability of the Crown and administrative authorities, but today their tort liability is exactly the same as that of other private law subjects, that is, for wrongful acts. they can also be sued for damages caused by their actions" [1, on p 458].

Indeed, in the history of England, The “Crown Proceedings Act” [14] Act, adopted in 1947, made a fundamental change in the issue of delict responsibility of the Kingdom, administrative bodies and officials. Article 2 of this law is called the “delict responsibility of the Kingdom”, which defines the responsibility of the Kingdom and administrative bodies for damages caused by unlawful acts (inaction), the procedure and grounds for compensation for damages.

Turkish researcher Şölen Külahçı said that “one of the integral principles of the legal state is that the state is responsible for illegal actions and that it compensates for the damage caused to individuals” [3, 34-B.], emphasizes the rightful opinion.

At the same time, it should be noted that the Civil Code of the Republic of Uzbekistan, adopted in 1997, is fundamentally different from the Civil code of the

former Uzbek SSR, which establishes somewhat optimal mechanisms for compensation for damage caused by state bodies and officials. For example, Chapter 57 of the code entitled “obligations arising from harm” is devoted to the delict Institute, which provides: responsibility for damage caused by government bodies, citizens' self-government bodies, as well as their officials, bodies carrying out the investigation before the investigation, along with issues such as inquiry, preliminary investigation, prosecution authorities and responsibility for damage caused by unlawful actions [15, on p 490-512].

But life is developing rapidly, and social relations are expanding. These processes, in turn, lead to the need to improve the institutions of effective protection of the rights and interests of the individual in civil law, to abandon the rules that do not justify themselves, and to develop legal norms that directly follow the requirements of Advanced International Standards.

Separately, it should be noted that the “concept of improving the civil legislation of the Republic of Uzbekistan” approved by the decree of the president of the Republic of Uzbekistan dated April 5, 2019 No. F-5464 [16] ushered in a new period of development of the delict Institute in our national legislation. The concept defined such urgent tasks as improving the right of obligation, improving the institution of civil legal responsibility, ensuring a fair procedure for compensation for damage. Today, an interdepartmental commission consisting of representatives of the industry, practitioners, specialists, the scientific community and lawmakers is operating to carry out these tasks.

In Articles 15, 990 of the Civil Code of the Republic of Uzbekistan, state bodies are defined as subjects of delict relations. In addition, in the status of a legal

entity (institution) of state bodies, it is also implied to be a responsible subject in delictual relations (for example, as the owner of surplus sources of risk, as an employer, etc.)

At this point, it should be noted that in some states, for example, in the civil legislation of the Republic of Turkey, “the damage caused by state bodies and their officials” is not defined as a separate type of delusion, and this is treated as “the responsibility of the employer”. For example, Section 2 of the law of the Republic of Turkey “on obligations”, adopted in 2011, is normalized in Article 66 of “liability relations arising from holes” “[17].

It should also be noted that in the civil legislation of most states within the CIS, “damage caused by state bodies and their officials” is noted as a separate type of deli. When analyzing the laws of these states, it was found that there are some uncertainties and problems related to the subject of the study. In particular, these problems:

- failure to establish clear mechanisms for compensation for damage caused by these delicacies;
- lack of clarification of financial sources of damage compensation in the legislation;
- compensation for damage is due to the presence of inaccuracies in the question of which cases should be imposed on the state body and in which situations on officials.

In addition, it is quite obvious that in civil law documents, the obligation of state bodies and officials to compensate for the damage caused by unlawful decisions, illegal actions (inaction) is imposed on a particular state body, and a special fund is not established in order to compensate for such damages.

For example, the Civil code of the Russian Federation (16-art.) [18]; Civil code of the Republic of Kazakhstan (267, 922-art.) [19]; Civil code of the Republic of Belarus (15-art.) [20]; Civil code of the Republic of Azerbaijan (1100art.) [21] and the Civil Code of the Republic of Uzbekistan (15-art.) [15] defined in the relevant articles.

In our opinion, it is desirable that special financial resources are formed to compensate for the losses caused by unlawful decisions and unlawful actions (inaction) of state bodies and officials. This, in turn, increases the chances of compensation for the damage caused to the victims in a timely and complete way. In addition, there is no possibility that the state body does not always have enough funds to compensate for the damage.

It is also important to determine the damage caused by the activities of the state body as a “legal entity” (institution). In this matter I.S. Kokorin highlights: “the determination of the responsibility of the Internal Affairs bodies depends on what kind of activity the damage was caused by. For example, if the damage was caused by the implementation of economic activities on general grounds according to Article 1064 of the RF GK, on the basis of Article 1070 of the RF GK if it was caused in the process of carrying out criminal-procedural activities” [22, p. 53] responsibility says origin. V.Vlasov, on the other hand, states that “in the event of a fact of damage caused by the action of a specific law enforcement institution or official, it is correct to impose legal responsibility on the state, and in civil legal relations they themselves will be liable as a legal entity when participating in the status of a subject of Civil Law” [23, p. 24].

When we conclude about it, I.S.Kokorin noted that it is in accordance with the general principles of civil law to impose on the state the obligation to compensate not

only the damage caused in the process of carrying out criminal-procedural activities of the internal affairs bodies, but in general all the damage caused by them.

While we are researching the system of legal regulation of delict relations with the participation of state bodies, Professor O.Okhyulov's "civil legal regulation today has mainly a two – tier (Civil Code-special laws) and sometimes a three-tier system” [24, 14 p.], we realize that their thoughts are true. Because, it can be seen that the participation of state bodies in the relationship of the delicacy as a delicacy is legally regulated by the Civil Code – separate laws and sub-legislative acts.

Scientists who have studied the civil legal liability of police officers under German law say that “the issue of civil legal liability of federal police officers is regulated by the Federal Policy Act (Section 3 called “compensation for damages”) and the relevant provisions of the German Civil Code (Civil Code, 2002)” [2, 4-b.]. That is, it can be said that in German law these relations are mainly regulated by two tiers. In our country, however, these relations of delicacy are regulated by three-tier law documents, which include: Civil Code, special laws [25] and decisions of the Cabinet of Ministers (for example, 04/24/2017. Resolution No. 235) [26]

Of course, the fact that these relations are regulated by various norms of law, on the one hand, complicates the process of resolving disputes correctly, and on the other hand, makes it difficult for the same legal regulation of these relations. For example, in Part 3 of Article 15 of the Civil Code of the Republic of Uzbekistan: “the compensation of damage by the decision of the court can be entrusted to the officials of these bodies if the damage is caused by the fault of officials of state bodies, citizens' self-government

bodies“, Article 46 of the law”on internal affairs bodies: ” The role of harm caused to individuals and legal entities due to illegal actions or inaction of an employee of the internal affairs body is compensated by the internal affairs bodies at the expense of extra-budgetary savings, the amount of which is subsequently levied on the guilty person, ” the rule is established.

The inconsistency in the above norms is that the code establishes that in the event of the official's fault, the obligation to compensate for the damage is assigned to him, and the law establishes that the official is compensated by the internal affairs body regardless of whether there is a fault or not. In addition, according to the code, only by decision of the court is it possible to impose an obligation on an official to compensate for damage, while the law does not provide for this rule. Also, the law does not provide an explanation in what order the question of whether there is an employee's fault in causing damage is resolved in practice, which in an unjustified way can cause situations of loading delictual responsibility or unjustifiably requiring a regress.

According to the rule established in Part 2 of Article 46 of the law of the Republic of Uzbekistan “On internal affairs bodies”, the harm caused by the illegal actions or inaction of the employee can be compensated at the expense of extra-budgetary savings of the internal affairs bodies, and this amount can then be collected from the guilty person.

Part 3 of Article 1001 of the Civil Code of the Republic of Uzbekistan “...it is established that the state that paid the damage caused by officials has the right to regress in relation to these persons in cases where the fault of such persons is determined by the judgment of the court, which entered into legal force. That is, an

employee can make a regress request to a civil servant only when the fault of the employee is determined by the court. Accordingly, it is advisable to include in the content of this norm the words “this amount will be charged from the person who was later found guilty by the court.”

Based on the foregoing, it can be said that it is necessary to unify the norms of public and civil law regulating delictual relations with the participation of state bodies. In this case, it will be necessary to exclude from the law the norms that clearly delimit the norms of public and civil law, which are interpreted differently or require clarification on the issue of their application in practice.

Another of the problems associated with the subject of the study is the growing conflict of damage caused by state bodies and their officials to citizens and legal entities, as well as the unsatisfactory state of timely and full compensation of these damages to victims. For example, for 12 months of 2019, there was a situation of damage to citizens and legal entities by 537 officials, and for 6 months of 2020 by 459 officials. Also, during the 6 months of 2020, 172 billion were delivered by the above subjects. 260 million. 114 billion of material damage in sum. 267 million. the sum is levied. That is, 44% of the total damage caused was not provided for the collection of victims for various reasons [27]. This means that our work in this area is still far from perfect and is not without flaws.

The obligation of the state to compensate for the harm caused to a citizen or legal entity as a result of the activities of state bodies and officials in a legal state in connection with the powers of power is an important guarantee of protecting the rights and interests of persons. Of course, although it is considered important in the civil legislation of each state to establish in the

appropriate order the optimal mechanisms for timely and full compensation of damage to citizens, ensuring the implementation of this in practice is a separate issue.

From the above, we can conclude that each country should have a system of full guarantee of the rights and interests of individuals, their personal and property rights. The organization of a special budget fund in order to timely and fully compensate for the damage caused by state bodies and officials in the activities of the implementation of the powers of power also serves as a full guarantee of human rights.

In Civil Law, relations related to damage caused by state bodies and their officials are a complex civil legal relationship regulated by the norms of public and private law. It is involved in relations in the status of a state body and a legal entity (institution).

As a result of the study, the following conclusions were drawn:

- it is necessary to understand the relationship between the participation of the state body in the relationship of delict, in connection with the damage caused to citizens and legal entities in the process of carrying out the functions and functions imposed by law by them. The obligation to compensate for such damage should also be paid to the budget funds of the state;

- the use of property attached to state bodies on the basis of the right to operational management can harm citizens or legal entities. Such damage is not associated with the activities of the implementation of their authority. Therefore, the obligation to compensate for such damage must be compensated at the expense of their extra-budgetary funds;

- it is necessary to unify the norms of law governing delict relations with the participation of state bodies. It should be clearly defined to be the norm that clearly determines the procedure for compensation by the state for damages caused by unlawful actions of state bodies, at what expense and in what order the damage will be compensated by the state.

In conclusion, the organization of a special state fund for compensation for damage caused by state bodies and officials serves as a guarantee of timely and full compensation for damage caused.

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