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State Authorities As Subject Of Obligation Relations Arising From Damage

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Abstract: The article describes the issues related to the participation of state bodies as a "state institution" and a "legal entity" in liability relations arising from damage (hereinafter referred to as "delict relations"). Also, the tort liability of state institutions is explained. It is justified in which cases the obligation of state bodies to compensate the damage is assigned to the state and in which cases to themselves.

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

Proposals and recommendations on improving the mechanism of compensation for damage caused by state bodies have been developed in our national legislation. In order to ensure timely and complete compensation of damage caused to citizens and legal entities by state bodies and their officials in the course of exercising their powers, it was scientifically justified that a special fund of the state should be established.

Key words: obligations arising from damage, delict liability, damage, compensation, delinquent, victim.

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

A number of scientists from foreign countries, for example Leyland Peter, Anthony Gordon (Oxford University) [1, p. 458-480]. 245-261], Ahmet Bozdağ (Marmara University) [4, p. 33-48] studied one or another aspect of the research topic.

In our scientific research, we have come to the conclusion that each state, while giving authority to its bodies, must always ensure that these powers are exercised correctly and precisely in the prescribed manner. It has been scientifically proven that if the state cannot guarantee that the authority given to the state bodies and their officials will be carried out without any errors, then it should also undertake the obligation to compensate the damage caused to individuals and legal entities as a result. We have studied some issues regarding the participation of state authorities in tort liability relations [5-10].

It should be noted that at the international level, there is no universally recognized procedure for compensation of damage caused to individuals and legal entities by state bodies and their officials.



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In our research, the legislation of some foreign countries on this issue was studied. Also, the scientific approaches of national and foreign scientists to the topic were analyzed. In the end, it became possible to study and collect the advanced achievements of foreign countries, to develop proposals and recommendations on the introduction of optimal mechanisms for compensation of material and moral damages into our national legislation.

General and special methods of scientific knowledge were used in the research. The method of analysis and synthesis and rationale was used to determine the participation of state bodies as legal entities in delict relations. The dialectical method made it possible to review the state of scientific research on the topic. The comparative-legal method was used in the analysis of the legal norms of the Republic of Uzbekistan regarding delict relations with the participation of state bodies. The method of statistical data analysis determined the amount of damage caused by state bodies and officials in our country and the extent of recovery to the victim. The logical-semantic method was used to determine the content and importance of delict liability of state bodies as legal entities. Using the normative-dogmatic method, the content of normative legal documents regulating delict relations with the participation of state bodies was analyzed. Using the method of legal modeling made it possible to develop proposals for optimization of the national civil legislation in matters of responsibility of state bodies and their officials. The studied materials are based on the legislation of the Republic of Uzbekistan and foreign countries, including Turkey, Ukraine, the Russian Federation, Belarus, Kazakhstan and a number of other countries of the CIS, as well as national and foreign scientists. consists of the scientific works of a.

Liability for damage caused by state bodies and their officials is a special type of obligation relationship arising from damage. Obligations arising from damage or liability for damage are also referred to as the institution of "delict" in scientific treatment. The delict institution is widely used in the legislation of many countries of the world (England, France, Germany, Turkey, Ukraine, the Russian Federation and other CIS member states) as universal provisions protecting the violated rights and interests of individuals.

The establishment of the institution of compensation for damages caused by state bodies and their officials in our national legislation dates back to the time when the country was part of the former Union. More specifically, Article 56 of the Constitution of the former Uzbek SSR adopted on April 19, 1978 states that "Citizens of the Uzbek SSR have the right to recover damages caused by the illegal actions of state and public organizations, as well as officials while performing their official duties" [11, 18 p.], the constitutional norm was established.

Akademik H. Rahmonkulov stated that Article 481 of the Civil Code of the Uzbek SSR, adopted in 1963, contained a provision on compensation for damages caused to citizens as a result of illegal actions committed by state management bodies, public organizations and their officials during the performance of their official duties, but this norm says that it is not used in practice, because the procedure for recovering the damage caused is not clearly defined by law [12, p. 100].

Of course, it should be noted here that in the former USSR Constitution, the former Uzbekistan SSR Constitution and the Civil Code, compensation for property or material damage caused by state bodies and officials is provided only in an official way, but compensation for moral damage was not defined in any legislation of that time. B. expressed his reaction to this problem. Hamrokulov said that "... in the former CCCP legislation, compensation for moral damage is not



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prescribed as a type of liability, but this legal entity arose in the European state at the beginning of the European Communist Party. A person living in Europe claims that moral damage was caused to him in the territory of the former CCCP, and seeks compensation for it. couldn't do it. Cababi says that the legal document of the former CCCP did not provide for compensation for moral damage" [13, 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 the damage caused by their actions" [1, p. 458]. In fact, in the history of England, the Crown Proceedings Act [14] adopted in 1947 made a fundamental change in the issue of delict liability of the Crown, administrative bodies and officials. Article 2 of this Law is called "Delict liability of the Kingdom" and it defines the responsibility of the Kingdom and administrative bodies for the damage caused by illegal actions (inaction), the procedure and grounds for compensation.

Turkish researcher Şölen Külahçı rightly points out that "one of the indispensable principles of the legal state is the responsibility of the state for illegal actions and compensation for the damages caused to individuals" [3, p. 34].

At this point, 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, and that it defines some optimal mechanisms for compensation of damage caused by state bodies and officials. For example, Chapter 57 of the Code entitled "Obligations arising from damage" is devoted to the institution of delict, which includes: responsibility for damage caused by state bodies, self-government bodies of citizens, as well as their officials, bodies conducting pre-investigation investigations, inquiries, preliminary investigations. , together with issues such as responsibility for damage caused by the illegal actions of the prosecutor's office and the court, the procedure for compensation for damage to the life and health of a citizen and moral damage was determined [15, p. 490-512].

But life is rapidly developing and social relations are expanding. These processes, in turn, create the need to improve the institutions of effective protection of the rights and interests of the individual in civil law, to abandon unjustified rules and to develop directly applicable legal norms that meet the requirements of advanced international standards.

It should be noted separately that the Republic of Uzbekistan "The concept of improving the civil legislation of the Republic of Uzbekistan" [16], approved by the President's Decree No. F-5464 dated April 5, 2019, started a new era of the development of the delict institution in our national legislation. In the concept, urgent tasks such as improving the law of obligation, improving the institution of civil-legal responsibility, and ensuring a fair procedure for compensation of damages were defined. Today, an interdepartmental commission consisting of industry representatives, practitioners, experts, scientific community and law creators is working on the implementation of these tasks.

In Articles 15, 990 of the Civil Code of the Republic of Uzbekistan, state bodies are defined as the subjects of delict relations. In addition, it is assumed that state bodies are responsible subjects in



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delict relations in the status of a legal entity (institution) (for example, as the owner of sources of excess risk, as an employer, etc.).

At this point, it should be noted that in some countries, for example, in the civil legislation of the Republic of Turkey, "damage caused by state bodies and their officials" is not defined as a separate type of delict and it is considered as "responsibility of the employer". For example, "Employer's liability" is regulated in Article 66 of the Law of the Republic of Turkey "On Obligations" adopted in 2011.

It should also be noted that "Damage caused by state bodies and their officials" is recorded as a separate type of delict in the civil legislation of most of the CIS countries. When the laws of these countries were analyzed, it was found that there are some ambiguities and problems related to the research topic. In particular, these problems:

- the specific mechanisms of compensation for damages caused by these crimes have not been established;
- financial sources of compensation for damages are not specified in the legislation;
- it is related to the fact that there are ambiguities in the question of which state bodies and in which cases the compensation should be imposed on officials.

In addition, it is highly controversial that in civil legal documents, the obligation to compensate for damages caused by illegal decisions and illegal actions (inaction) of state bodies and officials is assigned to a specific state body, and that no special fund has been established to compensate such damages. For example, the Civil Code of the Russian Federation (Article 16) [18]; Civil Code of the Republic of Kazakhstan (Article 267, 922) [19]; Civil Code of the Republic of Belarus (Article 15) [20]; It is defined in the relevant articles of the Civil Code of the Republic of Azerbaijan (Article 1100) [21] and the Civil Code of the Republic of Uzbekistan (Article 15) [15].

In our opinion, it is appropriate to create special financial sources for compensation of damages caused by illegal decisions and illegal actions (inaction) of state bodies and officials. This, in turn, increases the possibility of timely and full compensation of the damages caused to the victims. In addition, it is possible that the state body will not always have enough funds to cover the damage.

It is also important to determine the damage caused by the state body as a "legal entity" (institution). In this matter, I.S. Kokorin: "Determining the responsibility of the internal affairs bodies depends on what kind of activity caused the damage. For example, if the damage was caused as a result of the implementation of economic activity, on the basis of Article 1064 of the Civil Code of the Russian Federation, on general grounds, if it was caused during the implementation of criminal-procedural activities, on the basis of Article 1070 of the Civil Code of the Russian Federation" [22, p. 53] says that responsibility arises. V. Vlasov said that "it is correct to impose legal responsibility on the state in the event of damage caused by the actions of a specific law enforcement institution or official, and when participating in civil-legal relations as a subject of civil law, they themselves are responsible as a legal entity" [23, p. 24] emphasizes.

In conclusion, as I.S. Kokorin pointed out, 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 by the internal affairs bodies in the course of criminal-procedural activities, but also all the damage caused by them in general.



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While researching the system of legal regulation of delict relations with the participation of state bodies, Professor O. Okyulov said that "civil legal regulation today mainly has a two-level system (Civil Code - special laws) and sometimes a three-level system" [24, p. 14] we understand that their thoughts are true. Because the participation of state bodies as a delinquent in delict relations is legally regulated by the Civil Code - separate laws and legal documents possible

Scholars who researched the civil liability of police officers under German law stated that "The issue of civil liability of federal police officers is governed by the Federal Police Act (Section 3 entitled 'Indemnification') and the relevant provisions of the German Civil Code (Civil Code, 2002) regulated by" [2, p. 4]. That is, it can be said that in German law, these relations are mainly regulated in two steps. In our country, these delict relations are regulated by three-level legal documents, which consist of: the Civil Code, special laws [25] and Decisions of the Cabinet of Ministers (for example, Decision No. 235 of 24.04.2017) [26].

Of course, the fact that these relations are regulated by different legal norms, on the one hand, complicates the process of correct resolution of disputes, and on the other hand, it makes it difficult to achieve a uniform legal regulation of these relations. For example, in part 3 of Article 15 of the Civil Code of the Republic of Uzbekistan, it is stated: "If the damage was caused by the fault of the officials of the state bodies, self-governing bodies of citizens, the compensation of the damage can be assigned to the officials of these bodies by the decision of the court", " Article 46, Part 2 of the Law on Internal Affairs Bodies: "Damage caused to individuals and legal entities due to the illegal actions or inaction of an employee of the internal affairs body shall be compensated by the internal affairs bodies at the expense of extra-budgetary funds, this amount shall be recovered from the guilty person. is taken", the rule is established.

The inconsistency in the above norms is that the Code stipulates that in the event of an official's fault, the obligation to compensate for damages is imposed on him, while in the law, compensation is provided by the internal affairs body, regardless of whether the official is at fault or not. In addition, according to the code, an official can be obliged to compensate damages only by a court decision, while the law does not provide for this provision. Also, the fact that the law does not provide an explanation of how to resolve the issue of whether an employee is guilty of causing damage or not can lead to cases of unjustified delict liability being imposed on the civil servant or unjustified recourse claims.

According to the rule set forth in Article 46, Part 2 of the Law of the Republic of Uzbekistan "On Internal Affairs Bodies", the damage caused by the employee's illegal actions or inaction can be compensated from the extra-budgetary funds of the internal affairs bodies, and this amount can be recovered from the guilty person later.

Article 1001, Part 3 of the Civil Code of the Republic of Uzbekistan stipulates that "... the state that paid for the damage caused by officials has the right of recourse against these persons in cases where the guilt of such persons is determined by a legally binding judgment of the court." That is, the civil servant can demand recourse only when the employee's guilt is determined by the court. Accordingly, it is appropriate to include the words "this amount will be recovered from the person found guilty later by the court" in the content of this norm.

Based on the above, it can be said that it is necessary to unify public and civil law norms regulating delict relations with the participation of state bodies. In this case, it will be necessary to clearly



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demarcate the norms of public and civil law, exclude from the legal documents the norms that are interpreted differently or require clarification in the matter of their application in practice.

Another problem related to the topic of research is the growing number of disputes related to the damage caused to citizens and legal entities by state bodies and their officials, and the situation of timely and full recovery of these damages to the victims is not satisfactory. For example, during 12 months of 2019, 537 officials, and during 6 months of 2020, 459 officials caused damage to citizens and legal entities. Also, during the 6 months of 2020, 172 billion delivered by the above entities. 260 mln. 114 billion of material damage in the amount of soums. 267 mln. sum was charged. That is, 44% of the total damages were not ensured to be recovered from the victims for various reasons [27]. This means that our work in this field is still far from perfect and is not free of flaws.

In a legal state, the obligation of the state to compensate the damage caused to a citizen or a legal entity as a result of the activities of state bodies and officials related to the powers of the authorities is an important guarantee of the protection of the rights and interests of individuals. Of course, the civil legislation of each state has its own time for damage caused to citizens. Although it is important to determine the appropriate mechanisms for full and partial compensation, ensuring its practical implementation is a separate issue.

It can be concluded from the above that every country should have a system of full guarantee of the rights and interests of individuals, their personal and property rights. The establishment of a special budget fund for the timely and full compensation of the damage caused by state bodies and officials in the exercise of their powers serves as a full guarantee of human rights.

In civil law, relations related to damage caused by state bodies and their officials are complex civil-legal relations regulated by norms of public and private law. It participates in these relations as a state body and a legal entity (institution).

As a result of the research, the following conclusions were reached:

- it is necessary to understand the relations related to the participation of the state body in the delict relationship, the damage caused to citizens and legal entities in the course of the performance of their functions and tasks assigned by law. The obligation to compensate for such damage should also be focused on the state budget;
- may harm citizens or legal entities in the use of assets assigned to state bodies based on the right of operational management. Such damage is not related to the exercise of their powers. Therefore, the obligation to compensate for such damage should be covered from their extra-budgetary funds;
- it is necessary to unify legal norms regulating delict relations with the participation of state bodies. There should be a norm that clearly defines the procedure for state compensation for damages caused by illegal actions of state bodies, and it should be clearly defined from which state funds and in what order the damage will be compensated.

In short, the establishment of a special state fund for compensation of damages caused by state bodies and officials serves as a guarantee of timely and full compensation of damages.

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