



DAMAGE CAUSED AS A RESULT OF ILLEGAL ACTIONS (INACTION) OF A STATE BODY OR ITS OFFICIAL: ISSUES OF COMPENSATION AND RECOVERY AUTHOR CONTRIBUTIONS

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Development of scientific conclusions and proposals on compensation for damage caused as a result of illegal actions (inaction) of a state body or its official.

Abstract: The article scientifically analyzes the relationships related to compensation for damages caused by illegal actions (inaction) of a government body or its official. It also clarifies the principles of a "social state" and a "legal state" applied in the international legal arena when compensating for this type of harm.

Opinions expressed by civil law scholars regarding compensation for damages caused by illegal decisions and illegal actions (inaction) of government officials are analyzed. The legislation of foreign countries such as Germany, England, Turkey, Ukraine, the Russian Federation, and a number of CIS countries has been studied.

Proposals and recommendations have been developed to improve the legal mechanisms for compensation for damages caused by illegal actions (inaction) of a government body or its official. In order to ensure timely and full compensation for damage caused to individuals and legal entities by state bodies and their officials in the exercise of their powers, the creation of a scientifically justified special state fund has been proposed.

Research methods: Historical, comparative-legal and systematic approaches, analysis and synthesis, deduction and induction, and generalization are used in this scientific research.

Results and main conclusions: Article 55 of the newly revised Constitution of the Republic of Uzbekistan stipulates that "everyone has the right to compensation by the state for damages caused by illegal decisions, actions or inaction of state bodies or their officials." This provision became the basis for our scientific research to conclude that every state, while granting power to its bodies, must always guarantee that these powers are exercised correctly and precisely in the prescribed manner. Accordingly, if the state cannot guarantee that the authority granted to state bodies and their officials will be exercised without any errors, then it should take responsibility for compensating the damage caused to individuals and legal entities as a result. Consequently, it was concluded that it is necessary to develop a separate law on compensation for damage caused as a result of illegal actions (inaction) of a state body or its official. The author has already conducted some research on these issues [5-10].

Keywords: government body, official, liabilities resulting from causing harm, tort liability, damage, compensation, offender, victim.

INTRODUCTION

In the international legal arena, there is no universally recognized unified procedure for compensating damage caused to individuals and legal entities as a result of illegal actions (inaction) of subjects of public law. The legislation of foreign countries establishes different legal mechanisms for compensating this type of damage. In our national legislation, there is also



no unified system for compensating this type of damage, and there are cases when these relations are regulated sometimes by administrative and sometimes by civil legislation. In addition, the problem of forming financial sources for compensating damage caused by state bodies and their officials is also one of the pressing issues awaiting resolution.

MATERIALS AND METHODS

A number of foreign scholars, such as 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] have studied various aspects of the research topic. International documents, legislation of foreign countries, and national legislation on the topic were also analyzed. In this scientific research, scientific methods of inquiry such as historical, comparative-legal, and systematic approaches, analysis and synthesis, deduction and induction, and generalization were used.

RESULTS

In the international legal arena, there is a consensus that damage caused by state bodies and their officials is a separate type of tort. However, there is no single approach to the question of which branch of law these relations relate to. In foreign and national legislation, relations related to compensation for damage caused as a result of unlawful actions (inaction) of a state body or its official are sometimes regulated by administrative, labor, and sometimes by civil law norms. For example, in the USA, England, and Germany - public law, in Turkey - public and labor law, and in Ukraine - civil law and special legal norms. This situation raises the question of which court has jurisdiction over disputes arising from these relations and within which area of law it is necessary to resolve them.

Having studied the existence of several types of damage (delicts) caused by state bodies and their officials in the legislation of foreign countries, it can be seen that the analysis of the Civil Code of the CIS countries mainly provides for the following types:

- damage caused to a citizen or legal entity as a result of the adoption by a state body of an act that does not comply with the legislation, as well as illegal actions (inaction) of their officials;
- damage caused by illegal actions of bodies carrying out pre-investigation checks, inquiry, preliminary investigation, prosecutor's office, and the court.

In this regard, Ukraine should be recognized as one of the states that has reflected in its legislation a number of new types of these delicts. Because, in Chapter 82 of the Civil Code of Ukraine, entitled "Compensation for Damage," in addition to those provided for in other CIS countries (Civil Code), the following new types of delicacies are established:

- compensation for damage caused by officials and employees of state authorities (Article 1174 of the Civil Code);
- compensation for damage caused as a result of lawmaking activities of state bodies (Article 1175 of the Civil Code);
- compensation for damage caused as a result of illegal actions of bodies carrying out operational-search activities, pre-trial investigation bodies, the prosecutor's office, and the court.

(Article 1176 of the Civil Code);

- compensation (compensation) for damage to an individual who has suffered from a crime

(Article 1177 of the Civil Code). [11].

In addition, the legislation of Ukraine also contains a separate Law "On the Procedure for Compensation for Harm Caused to a Citizen by Unlawful Actions of Bodies Carrying Out Operational-Investigative Activities, Pre-trial Investigation Bodies, the Prosecutor's Office, and the Court"[12].

Turkish researcher Şölen Külahçı rightly asserts that "one of the inalienable principles of a state governed by the rule of law is the responsibility of a state body for its unlawful actions and compensation for damages caused to individuals as a result" [3, p. 34]. Article 49 of the Law on Obligations of the Republic of Turkey dated January 11, 2011 No. 6098 (Türk Borçlar Kanunu) norms the rule that "a person who has caused harm to another by an unlawful act is obliged to compensate for this harm"[13], i.e., the principle of "general delict." The legislation of the Republic of Turkey, recognizing the principle of the "Main Delikt," regulates individual delicts on the basis of separate laws. In particular, the Law "On Civil Servants," adopted on July 14, 1965, No. 657 (Code of Civil Servants), applies to compensation for damage caused by state bodies and their officials [14]. According to Article 13 of this law, persons who have suffered damage from the performance of official duties by employees file a lawsuit not against the employee who caused the damage, but against the relevant body.

According to Turkish law, the official responsible for the obligation to compensate for damages is not the official, but the relevant state body where he serves. Turkish lawyer Ahmad Bozdog, commenting on the positive aspects of this legal procedure established by law, says: "If the legislation assigned the obligation to compensate for damage caused by a state body employee in their official activities to them, state employees would not always properly perform their functional duties to avoid falling into this situation due to such inconveniences" [4]. Accordingly, Turkish law places the obligation to compensate for damages caused by officials on state bodies. This provision is enshrined at the constitutional level in Article 129, Part 5 of the Turkish Constitution, which states: "Claims for compensation for damages arising from errors made by civil servants and other state officials in the exercise of their powers shall be brought against state bodies in accordance with the procedure and conditions established by law" [15]. Accordingly, in the legislation of the Republic of Turkey, damage caused by state bodies and their officials is considered as "employer's liability" and is regulated by Article 66 "Employer's Liability" of Section 2 of the Law of the Republic of Turkey "On Obligations" adopted in 2011 "Obligatory Relations arising from Delicts" [13].

In addition, Turkish legislation provides for provisions in Article 12 of the Law No. 2577 "On Administrative Procedures" [16] of January 6, 1982, on compensation for losses caused by unlawful administrative activities of state bodies (Adari Yargilama Usulü Kanunu), which stipulates that "persons may file lawsuits for the recovery of administrative actions that violate their rights and losses caused by them."

According to Leyland Peter and Anthony Gordon, "Before the adoption of the "Crown Proceedings Act" in England in 1947, there was no criminal liability of the Royal and administrative bodies, and today they can also be held liable in court for damage caused by their illegal actions" [1, p. 458]. Indeed, in English history, the "Crown Proceedings Act"[17] adopted in 1947 established new rules regarding compensation for damages caused by unlawful



decisions, illegal actions (inaction) of the king, administrative bodies, and officials. Article 2 of this Law is called "Liability of the Crown in tort," which defines the issues of liability for damage caused as a result of illegal actions (inaction) of the Kingdom, administrative bodies and their officials, the procedure and grounds for compensation for damage.

Although US law is similar to English law regarding damage caused by state bodies, it is one of the first countries to introduce a procedure for state compensation (compensation) for damage caused by crime. The 1984 U.S. Victims of Crime Act (VOCA) provides for compensation from the state if it is impossible to recover the damage caused by the crime from the perpetrator. In addition, in 2004, the US adopted the Law "On the Rights of Victims of Crime," which established the need for full and timely restitution (full and timely restitution as provided in law) of damages to victims of any crime in the manner prescribed by law. As can be seen from this, in the USA, damage caused by state bodies and officials, if it arose as a result of their criminal actions, is compensated by a special fund created by the state.

DISCUSSION

As can be seen from the foregoing, there is no universally recognized unified procedure for compensation for damage caused to individuals and legal entities as a result of unlawful actions (inaction) of a state body or its official in the international arena. However, it should also be noted that the UN adopted the Declaration "On the Basic Principles for the Administration of Justice for Victims of Crime and Abuse of Power" on November 29, 1985 [18]. Although this declaration establishes international standards for the effective protection of the rights of victims of crime and abuse of power, this document, by its legal nature, is declarative.

Analysis of the legislation of foreign countries on compensation for damage caused as a result of illegal actions (inaction) of a state body or its official shows that there are 2 different trends in world practice in the issue of compensation for this type of damage. These are concepts based on the principles of a "social state" and a "legal state," which serve as a benchmark in establishing national rules for compensation for this type of damage.

In the legislation of states that prioritize the principle of a "social state," the category of "guilt" is not an important condition for compensation for damage caused to individuals by a state body or its official. In any case, the damage is compensated from budget funds or by social funds specializing in compensating for such losses. The innocence of subjects of public law does not prevent compensation for damages, and this doctrine is based on the fact that the state declares itself "social." For example, the USA can be cited as one such country. In the USA, on May 25, 2020, US citizen George Floyd died as a result of an illegal act by a police officer during the arrest of a person. The city council unanimously approved the decision of the Minneapolis administration to pay \$27 million in compensation to the family of George Floyd [19]. It is noteworthy that compensation was paid without proving in court that the actions of the police officer were illegal (without a verdict being read). The procedure for compensation for damage caused by the police and subjects of public law in general, without resolving the issue of guilt, is established by US law.

In states that recognize the principle of a "state governed by the rule of law," the illegality of a decision, action, or inaction of a state body or its official must be proven in court, and the issue of compensation for damages is based on this. In cases and in the manner prescribed by law, damages caused by lawful actions or by the fault of officials are compensated. Also, the law defines the category of "guilt" as an important condition for compensation for damage and



provides for the assignment of the obligation to compensate for damage in cases where the official is guilty of causing the damage.

Accordingly, each state, defining in its national legislation the legal mechanisms for compensation for damage caused by subjects of public law, must first determine in advance which principle will be given priority. After all, both theories are an ideal that any democratic state should strive for, and they are separate ways of building a civil society.

The formation of the institution of compensation for damage caused by state bodies and their officials in our national legislation coincides with the period when the country was part of the former Union. Specifically, Article 56 of the Constitution of the former Uzbek SSR, adopted on April 19, 1978, stipulated that "Citizens of the Uzbek SSR have the right to compensation for damage caused by unlawful actions of state and public organizations, as well as officials, in the performance of their official duties" [20, p. 18]. Academician Kh. Rakhmonkulov notes that Article 481 of the Civil Code of the Uzbek SSR, adopted in 1963, contained a provision on compensation for damage caused to citizens as a result of unlawful actions of state administration bodies, public organizations, and their officials in the performance of their official duties, but this norm was not applied in practice, since the procedure for compensation for damage caused was not clearly defined by law [21, p. 100]. This means that at that time, norms for compensation for damage caused as a result of unlawful actions (inaction) of a state body or its official were established for formality.

In this regard, it should be noted that the Civil Code of the Republic of Uzbekistan, adopted in 1997, differs fundamentally from the Civil Code of the former Uzbek SSR in that it establishes more optimal mechanisms for compensation for damage caused by state bodies and officials. For example, Articles 990, 991 of Chapter 57 of the Code "Obligations arising from causing harm" establish liability for damage caused by state bodies, bodies of citizen self-government, as well as their officials, for damage caused by illegal actions of bodies carrying out pre-investigation checks, inquiry, preliminary investigation, prosecutor's office, and the court. Article 15 of the Civil Code specifies the legal mechanisms for compensation for such losses.

However, life is developing rapidly, and social relations are expanding. These processes, in turn, necessitate the improvement of institutions for the effective protection of the rights and interests of the individual in civil law, the rejection of unjustified rules, and the development of directly applicable legal norms that meet the requirements of advanced international standards. Article 55 of the Constitution of the Republic of Uzbekistan in the new edition stipulates that "Everyone has the right to compensation by the state for damage caused by illegal decisions, actions, or inaction of state bodies or their officials." Also, the Law of the Republic of Uzbekistan dated April 21, 2021 No. 3PY-683 amended Article 15 of the Civil Code, indicating that damage caused to a citizen or legal entity as a result of the adoption by a state body of an act that does not comply with the legislation, as well as illegal actions (inaction) of their officials, is compensated at the expense of extra-budgetary funds of the state body, and its financial sources have been clarified.

It should also be noted that when analyzing the relevant laws of most CIS countries, it was revealed that there are some uncertainties and problems related to the subject of the research. In particular, these are:

- lack of clear procedures and legal mechanisms for compensation for damage caused as a result of unlawful actions (inaction) of a state body or its official;



- the legislation establishes compensation for losses, but does not specify from which financial sources it will be recovered;

- the presence of uncertainty in which cases compensation for damages should be assigned to the state body and in which situations to officials.

In addition, it is quite controversial that civil legislation assigns the obligation to compensate for damage caused as a result of illegal decisions, illegal actions (inaction) of state bodies and officials to a specific state body, and a special fund has not been created to compensate for such damage. For example, the Civil Code of the Russian Federation [22, Art. 16]; Civil Code of the Republic of Kazakhstan [Articles 23, 267, 922]; Civil Code of the Republic of Belarus [24, Art. 15]; It is established by the relevant articles of the Civil Code of the Republic of Azerbaijan [25, Art. 1100] and the Civil Code of the Republic of Uzbekistan [26, Art. 15].

In our opinion, it is advisable to form special financial funds to compensate for losses caused as a result of illegal decisions and illegal actions (inaction) of state bodies and officials. This, in turn, increases the possibility of timely and full compensation for the damage caused to the victims. In addition, there is a possibility that the state body does not always have sufficient funds to compensate for the damage.

Studying the system of legal regulation of delikt relations with the participation of state bodies, we understand the truth of Professor O. Okyulov's opinion that "civil legal regulation today mainly has a two-stage (Civil Code - special laws) and sometimes a three-stage system" [27, p. 14]. According to scholars who have studied the civil liability of police officers under German law, "The issue of civil liability of federal police officers is regulated by the Law on the Federal Police (Section 3 entitled "Compensation for Damages") and the relevant provisions of the German Civil Code (Civil Code, 2002) " [2, p. 4]. That is, it can be said that in German legislation, these relations are regulated mainly in two stages. In our country, relations related to compensation for losses caused as a result of illegal decisions and illegal actions (inaction) of state bodies and officials are regulated by three-tier legislation, which consists of: the Civil Code [26], special laws [28] and resolutions of the Cabinet of Ministers [29].

Of course, the regulation of one type of relationship by legal norms of different levels, on the one hand, complicates the process of proper dispute resolution, and on the other hand, makes it difficult to regulate it uniformly. For example, if part 3 of Article 15 of the Civil Code states: "By the fault of officials of state bodies, bodies of citizen self-government, damage caused, by a court decision, compensation for damage may be assigned to officials of these bodies," then Article 46 of the Law "On Internal Affairs Bodies"

Part 2: "Damage caused to individuals and legal entities by unlawful actions or inaction of an internal affairs officer is compensated by internal affairs bodies from extra-budgetary funds, with subsequent recovery of this amount from the guilty person." That is, the discrepancy in these norms lies in the fact that the Code assigns the obligation to compensate for damage in the presence of an official's fault to him, and the law stipulates that it is compensated by the internal affairs body regardless of the presence or absence of the official's fault. Moreover, according to the Code, the obligation to compensate for damages to an official can only be imposed by a court decision, while a special law does not provide for this rule. Also, the law does not provide an explanation of the procedure for resolving the issue of whether the employee is guilty of causing harm, which in law enforcement practice can lead to cases of

unjustified imposition of the obligation to compensate for harm on a civil servant or the imposition of a recourse claim.

Another circumstance is that, according to the rule established by part 2 of Article 46 of the Law "On Internal Affairs Bodies," damage caused by an employee's unlawful actions or inaction is compensated from the extra-budgetary funds of the internal affairs bodies, and this amount can subsequently be recovered from the guilty person. Part 3 of Article 1001 of the Civil Code states that..."the state that compensated for the damage caused by officials has the right of recourse against such persons in cases where the guilt of such persons is established by a court verdict that has entered into legal force." That is, a recourse claim can be filed against a civil servant only if the employee's guilt is established by the court. Accordingly, it is advisable to change the content of the norm established in part 2 of Article 46 of the Law "On Internal Affairs Bodies" to "this amount is subsequently recovered from the person found guilty by the court."

CONCLUSION

Based on the foregoing, the following can be stated:

firstly, it is necessary to unify the norms of public and civil law regulating relations related to compensation for damage caused as a result of unlawful actions (inaction) of a state body or its official. In this case, it is necessary to clearly delineate the norms of public and civil law, to exclude from legislative acts norms that are interpreted differently or require clarification on the issue of their application in practice;

secondly, based on the requirements of the constitutional norm, the development and adoption of the Law of the Republic of Uzbekistan "On Compensation for Harm Caused by Unlawful Actions (Inaction) of a State Body or its Official";

thirdly, in order to compensate for losses caused as a result of unlawful actions (inaction) of a state body or its official, it is necessary to create a special budget fund and take into account the inclusion of fines collected for corruption offenses in the sources of its formation.

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Informed Consent Statement

Not Applicable.

Data Availability Statement

The Data Presented In This Study Are Available Upon Request From The Relevant Authors.

Conflicts Of Interest

The Authors Declare No Conflicts Of Interest.

Ethics Statement

Our Institution Does Not Require Ethical Approval For Reporting Individual Cases Or Series Of Cases.

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