

Russian Federation as the Subject of the Civil Liability

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Abstract: The article is devoted to the analysis of the theoretical provisions, which are the fundamentals for the legal regulation in the civil offence liability sphere of the Russian Federation, as well as to the analysis of the existing trends in the legal regulation of such relations. The public law entities, being equal participants of the civil relations and acting in the turnover equally with other subjects of the civil law, have nevertheless specific character of the status in the property liability sphere of the latter for the broken obligation or the caused damage. The general fundamentals are viewed of the state liability in the civil law and special grounds for its liability. The general conclusion is justified that the state liability for the civil offence has a private nature.

Key words: Civil legal liability • Liability of the state • Illegal actions of the state bodies and officials • Federal treasury • Property sanctions

INTRODUCTION

In the Russian civil science the liability is understood as one of the forms of the state enforcement which consists of the property sanctions imposed by the court on the offender. The penalty sanctions are the additional property encumbrance for the offender and are aimed at the restoration of the property sphere of the complainant [1].

The civil liability of the state is derived from the general legal principle of the responsibility of the state to the man who is a determinative element in creating the legal construction of the constitutional state. The state, as a subject of the civil liability, follows the generally acknowledged principles [2, 3] and functions of the delictual liability [4, 5].

The special status of the state as the subject of the civil law is vividly expressed both in the issues of the legal control of the state liability conditions and execution of the court judgement including the property sanctions using the treasury funds.

Apart from the international legal liability, which is characterized by having the state immunity [6], in the internal civil turnover, the Russian Federation is to bear absolute liability for all its obligations in case they are defectively performed in accordance with the regulation of Article 126 of the Russian Federation Civil Code.

We can give the general principles used for the Russian Federation liability exercising (and the liability of other public law entities) in the civil law.

- In accordance with Article 124 of the Russian Federation Civil Code, the Russian Federation, acting in the civil turnover equally with other civil relations subjects, correspondingly bears civil liability on equal basis.
- The Russian Federation is liable for only its own obligations but not for the obligations of the legal persons created by it, except for some cases provided by the law, which characterize its specific features as the subject of the civil liability. We need to note that the Russian Federation, similar to the other civil law subjects, is liable for the debts of the legal person created by it in case the corresponding guarantee (warranty) was given for the obligations of the third parties.
- The Russian Federation is liable for its obligations with all the property that belongs to it, except for the property that was forwarded to the legal persons for the economic or operational control and the property which can only by in the state possession.

Special grounds for the civil liability of the state. Together with the mentioned general principles of the public legal entity liability in the civil law, we need to mention the cases of the state and other public legal entity liability which is imposed in the special norms of the law. Here we see the details of their contractual and non-contractual liability.

Firstly, the particular and principle importance for the state characteristic belongs to Article 16 of the Russian Federation Civil Code, in accordance with which the losses caused for a citizen or a legal person in the result if the illegal action (or failure to act) of the federal bodies, local bodies of officials, including the cases of issuing the act that does not comply with the law or other normative act, are to be compensated by the Russian Federation, the Russian Federation territory or municipal entity. In Article 170 of the Russian Federation Civil Code, a special norm is given within the framework of the general rule for the liability for the damage caused by the illegal actions of the investigation bodies, examination bodies, the prosecution service and the court; such a damage is compensated irrespectively of the guilt of the officials, but in case the damage was caused during the court procedures, the guilt of the judge should be defined in the court judgement having the legal force.

Secondly, there is subsidiary liability of the of the state bodies for the obligations of the legal persons created by them [7]. Such liability comes into force for the obligations of the state enterprise in case its property is deficient (Item 5 of Article 115) and for the obligations of the state body in case its funds are insufficient (Item 2 of Article 120). Similar liability is taken by the state in case of the unitary enterprise goes into bankruptcy (Item 3 of Article 56).

Thirdly, the state liability can come into force in case the state accepted warranty (guarantee) for the obligations of other subjects of the civil law (Item 6 of Article 126 of the Russian Federation Civil Code). The order of such warranty accepting is defined in the Russian Federation Budget Code. The state warranties are widely used as a form of the state support in different spheres, causing significant interest of the economic entities.

And, finally, fourthly, in cases when the state obtains property by way of inheritance (under the will or as the escheated property), the state is liable for the ancestor's debts within the limits of the property cost and in accordance with the general rules of the inheritance law (Article 1175, Item 3 of Article 1151 of the Russian Federation Civil Code).

The mentioned cases show the specifics of the Russian Federation liability in particular and characterize its civil legal status.

Civil liability of the state for losses. Speaking about the civil liability of the state for the inflicted loss, we need to understand that the liability incurs when there are sufficient grounds for it defined in the Russian Federation Civil Code. This means that the amount of loss and its causal relation to the state's (state bodies') actions

should be proved by the complainant and the state in the name of the body representing it can refer to the absence of guilt, in case the law does not provide for its no-fault liability (Articles 401, 1070 of the Russian Federation Civil Code).

In accordance with the rules of the current Russian Civil Legislation, the compensation is paid at the expense of the corresponding budget (federal, territorial, local).

A special order of the state liability incurrence is in the fact that due to the direct law order it is liable at the expense of the treasury and in accordance with the norms of the current legislation in case a person or a legal person claims for a compensation, the defendant for this claim will be the Russian Federation in the name of the corresponding financial or other authorized body.

The forced order of such judgment execution is provided in the regulations of the budget legislation and is so excluded from the general order: this characterizes absolutely all the cases of the state (public legal entities') liability and refers also to other cases of the forced judgment execution for the claims against the state.

The elements of the civil offence making the grounds for the state liability include general and special conditions of liability. The special conditions are the conditions referring to the legal status of the offender and the conditions referring to the character of his activities. The conditions availability is provided by the public legal nature of the state and the activities of some particular offenders and this means their special status as of the civil law subjects.

Special characteristics of the state liability for the damage caused by its bodies and officials. The specifics of the grounds for the civil liability of the state, predetermined by its public legal status, is specially manifested in defining the norms of the state liability for the actions of its bodies and officials (Article 16 of the Russian Federation Civil Code).

Though there are fundamental works in the Russian legal science devoted to the juridical liability of the public authorities [8], the issue of the state compensation for the damage caused by the state bodies are still in the background of the research interest. The analysis of the court practice shows significant difficulties in defining the size and collection the compensation for the damage caused by the state bodies and officials [9].

In accordance with the norms of Article 54 of the current Constitution of the Russian Federation, everyone has the right to get the state compensation of the loss incurred due to the illegal actions (or failure to act) of the state bodies or officials. So, the right for the compensation of the loss inflicted by the state has a form

of the constitutional principle in Russia. We need to specially note, that due to the legal position formulated by the Russian Federation Constitutional Court, these regulations are valid also for the legal persons.

The mentioned constitutional provisions are specified in Articles 16⁹, 1069, 1070, 1071 of the Russian Federation Civil Code. Having actually broadened the limits of the liability, the Russian Federation Civil Code has established that the state is liable for the damage caused not only by the state bodies but also by the local bodies (and their officials); the Code provided for the types of the illegal actions: juridical actions and actual actions (failures to act) and issuing if the illegal law act; the Code named the citizens and the legal persons as the possible complainants (and so – as the subjects having the right for the compensation); the Code defined the compensation source – the treasury of the correspondent public legal entity.

We need to note that term “state bodies” is understood by the Russian legislator as the bodies of the executive (administrative) power and law-making representative bodies of the state power having wide power authorities not only in the administrative sphere.

The liability of the public legal entities for the damage caused by the law enforcement bodies and the courts is special type of the civil liability [10] in relation to the state liability for the damage caused by the bodies and officials, with this, those institutions are characterized by a known solidarity, as delivering justice and administrative management are the forms of appearance of the same governmental (public) power.

In general, the state (other public legal entities’) liability for the damage caused during the power exercising activities has a civil legal nature because 1) it has a compensational but not a punitive character; 2) it has a property character; 3) it is collected for the benefit of the complainant; 4) when defining the liability size, the civil legal notions of the loss and the damage are used; 5) the liability norms are contained in the text of the Russian Federation Civil Code and this demonstrates the legislator’s opinion about which branch the norm belong to; 6) the civil (arbitration) procedure is used as a procedural form of the enforced collecting.

The novelty of the Russian Federation Civil Code is Article 16.1 about the compensation for the loss by the state. One needs to distinguish between the damage compensation as the state liability and the compensation for loss due to the legal actions of the state bodies and their officials. The liability incurs only for the illegal actions and the compensation is to be paid for the loss caused by legal actions.

CONCLUSION

Summarizing the results of the research performed and characterizing the current Russian legislation, let us make the following principal conclusions.

Together with the general ground for the civil liability of the public legal entities (for breaking the obligations, subsidiary liability, etc.), the legislator lays special emphasis on the special cases of the state liability (for illegal actions of the state bodies, for guarantee, for the legal persons created by the state etc.).

The Russian legislation provides for a special order of the state (other public legal entities) liability incurrence: the mentioned subjects are liable by means of the treasury and in case a citizen or a legal person claims for a loss compensation, the Russian Federation will be a defendant for this claim. Mentioning the Russian Federation as a corresponding financial or other authorized body only defines the procedural characteristics of the case. The defendant in the disputes of such a type will be not a state body but a corresponding public legal entity. The state body or an official are admitted to the court procedure exclusively as the procedural representatives.

Acknowledging the special features of the civil liability incurrence, resulting from the public legal nature of the state as the sovereign (which has refused in these relations from his right realization), does not speak of its public legal nature but of the availability of numerous public elements in the private legal relations with the state participation. And this is the manifestation and the realization of the general legal principle of the reasonable combining of the public and the private fundamentals in the legal regulation.

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