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# Х А Б А Р Ш Ы С Ы

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**ВЕСТНИК**

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК  
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***NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.***

***Қазақстан Республикасы Ұлттық ғылым академиясы «ҚР ҰҒА Хабаршысы» ғылыми журналының Web of Science-тің жаңаланған нұсқасы Emerging Sources Citation Index-те индекстелуге қабылданғанын хабарлайды. Бұл индекстелу барысында Clarivate Analytics компаниясы журналды одан әрі the Science Citation Index Expanded, the Social Sciences Citation Index және the Arts & Humanities Citation Index-ке қабылдау мәселесін қарастыруда. Web of Science зерттеушілер, авторлар, баспашылар мен мекемелерге контент тереңдігі мен сапасын ұсынады. ҚР ҰҒА Хабаршысының Emerging Sources Citation Index-ке енуі біздің қоғамдастық үшін ең өзекті және беделді мультидисциплинарлы контентке адалдығымызды білдіреді.***

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E-mail: yahyaev89@inbox.ru**CONDITIONS FOR THE OCCURRENCE OF OBLIGATIONS TO COMPENSATE  
FOR DAMAGE CAUSED BY LAWFUL ACTIONS OF STATE BODIES, AS WELL AS  
THEIR OFFICIALS**

**Abstract:** Changes in civil legislation have created a separate type of tort obligations, in which the state compensates for damage caused to the person or property of a citizen or the property of a legal entity by lawful actions of public authorities. Along with the tort obligations that are well covered in the scientific literature, these issues concerning the lawful actions of the State that cause harm to citizens or legal entities are ignored. In the article, the author conducts a comparative legal analysis of the conditions for the emergence of obligations to compensate for damage caused by lawful actions of the state.

The research is based on general scientific methods of cognition, as well as special legal ones (comparative legal, technical legal, formal legal). On the basis of the conducted research, the author draws conclusions about the legal nature of the obligations under study, and also makes an attempt to identify the existing problems of the emergence of obligations to compensate for damage caused by lawful actions of state bodies. The main problem of the study of obligations to compensate for harm is to determine the conditions of their occurrence, the characteristics of lawful harm caused by state bodies, leading to the emergence of obligations to compensate for harm.

Obligations to compensate for rightfully caused harm are conditioned by the protection of subjective rights. These obligations exist for the purpose of compensation for the restoration of the right violated by the lawful actions of State bodies in the event that public interests prevail over personal ones.

Examining tort obligations, as the most widely covered in the scientific literature, it was concluded that they are very similar to obligations for compensation for rightfully caused harm, and pursue the same goal: restoring the position of the injured person.

**Key words:** harm caused by lawful actions of public authorities, obligations for compensation of harm, tort obligations.

**Introduction.** In accordance with article 53 of the Constitution of the Russian Federation, every citizen has the right to compensation for damage caused by illegal actions or inaction of state bodies [1]. Also in the article 16.1 of the Civil code provides for the development of new independent areas of tort liabilities: the possibility of damages to the person or property of the citizen or property of a legal person that inflicted by lawful actions of public authorities or their officials. In this case, the damage is compensated only in those cases that are provided for by law [2].

The main problem of the study of obligations to compensate for harm is to determine the conditions of their occurrence, the characteristics of lawful harm caused by state bodies, leading to the emergence of obligations to compensate for harm.

Currently, in the process of compensation for losses and harm caused by State bodies and their officials, the courts apply procedural legislation that is not subject to application, because they do not impose mandatory conditions for tort liability. However, it should be noted that in modern conditions

there are legal institutions that allow you to establish mandatory conditions for tort liability, without creating judicial precedents and prerequisites for abuse of law.

Obligations that arise as a result of harm lawfully caused by state bodies are regulated by Article 16.1 of the Civil Code of the Russian Federation "Compensation for damage caused by lawful actions of state bodies, local self-government bodies, as well as officials of these bodies" [2]. This article states that damage caused to the person or property of a citizen, or to the property of a legal entity by lawful actions of state bodies, is subject to compensation "in cases and in accordance with the procedure provided for by law".

Obligations to compensate for rightfully caused harm are conditioned by the protection of subjective rights. These obligations exist for the purpose of compensation for the restoration of the right violated by lawful actions of state bodies in the event that public interests prevail over personal ones [11].

Studying the institute of tort obligations, we

classified the grounds as follows. The grounds for tort obligations to compensate for harm include an objective basis (necessary protection of social relations from encroachments), a legal basis (law), and an actual basis (offense).

This approach is also applicable to the study of obligations that are the object of study in this article.

Thus, it should be noted that the existence of a legal basis is the most important condition for the emergence of an obligation to compensate for damage.

**Analysis of publications.** As mentioned above, this issue has not been sufficiently studied, so it is necessary to draw conclusions based on the comparative analysis. Examining tort obligations, as the most widely covered in the scientific literature, it can be concluded that they are very similar to obligations to compensate for lawfully caused harm, and pursue the same goal: to restore the position of the injured person [6,7]. However, these institutions differ in the grounds for the occurrence of obligations.

For employees of the internal affairs bodies, the basis of liability for the damage caused is an offense committed by them in the performance of their official duties, which is expressed in causing harm to the person and (or) property of the victim. Thus, it can be said that the basis for the emergence of obligations to compensate for damage caused by the lawful actions of state bodies is the lawful infliction of harm.

Here it is necessary to answer the question, what is considered legitimate harm? As you know, a legitimate act is one that does not violate the norms of objective law, and also does not violate the norm of subjective law. Therefore, lawful harm is a behavior that violates someone's subjective rights, but does not violate the objective rights [5].

Thus, the fact that lawful infliction of harm does not always create conditions for the emergence of obligations for its compensation becomes significant. Here, the law first determines the legality of causing harm, and then establishes the need for its compensation.

For example, the Federal Law " On Countering Terrorism " of March 6, 2006 No. 35-FZ (ed. of 18.03.2020) [3] states that actions that cause harm to health or property (Article 22) during the suppression of a terrorist act are lawful.

To be a legal fact, the offense must meet certain conditions. For this purpose, such a concept as "the composition of the offense" is used. Elements of the offense: the basis of the committed actions, the object of protection, the purpose of causing harm, the method of action, the limits of actions in time, the conditions of legality of causing harm.

This scientific approach is most applicable to criminal law, because in the case of all the listed elements of the offense, the behavior is recognized as socially useful, despite the harm caused, and the person is released from criminal liability.

However, civil law is mainly concerned with the property sphere of the victim, so the composition of the offense cannot answer the main question: is it necessary to compensate for the rightfully caused harm in each specific case. Losses that are caused as a result of illegal actions or inaction of state bodies are compensated from the state treasury (Article 16 of the Civil Code of the Russian Federation). But in the event that the damage is caused by lawful actions of state bodies, only the damage is subject to compensation. Thus, Article 16.1 of the Civil Code of the Russian Federation refers to compensation for damage, that is, compensation for actual losses incurred, which does not belong to the field of civil liability, since there are legitimate actions of state bodies that have authority. Therefore, it can be assumed that it will be necessary to prove the existence of damage, since this is the main and first of the conditions necessary for the occurrence of obligations for compensation.

Any action can be attributed either to legitimate or illegal, so it is necessary to clearly separate these concepts [8]. Thus, the second condition is the legality of causing harm. The mandatory conditions also include a causal relationship between lawful actions and the harm caused (the third condition).

**The results of the research.** Article 16.1 of the Civil code provides for the development of new independent areas of tort liabilities: the possibility of damages to the person or property of the citizen or property of a legal person that inflicted by lawful actions of public authorities or their officials. In this case, the damage is compensated only in those cases that are provided for by law.

The main problem of the study of obligations to compensate for harm is to determine the conditions of their occurrence, the characteristics of lawful harm caused by state bodies, leading to the emergence of obligations to compensate for harm.

Obligations to compensate for rightfully caused harm are conditioned by the protection of subjective rights. These obligations exist for the purpose of compensation for the restoration of the right violated by the lawful actions of State bodies in the event that public interests prevail over personal ones.

In paragraph 1 of article 1064 of the civil code stipulates that "the harm caused to the person or property, ... shall be reimbursed", and in paragraph 3 of article 1064 of the civil code States that "the harm caused by lawful actions shall be compensated in cases prescribed by law". Therefore, the law must specify compensation for harm - this is a necessary condition for the emergence of obligations to compensate for harm caused by lawful actions.[11].

Therefore, despite the emergence of new norms regarding the protection of citizens from illegal or lawful actions of state bodies, we believe that it is necessary to adopt a special law regulating the relationship between the state and citizens in the public legal sphere [9]. This is because the above-mentioned grounds for emergence of obligations on

compensation of harm shall not entail obligations: the lawful infliction of harm is a release of liability, and law alone do not establish liabilities until harmed. Here we see that in the composition of the offense, which entails the obligation to compensate for harm, instead of illegal actions, there are lawful actions, as well as the law on compensation for harm caused by these actions.

Thus, with the help of the new law, it would be possible to take into account the specifics of the legal situation of the state and civil servants when interacting with individuals. For example, the legal composition of the factual basis must include conditions of extreme necessity that determine the possibility and legality of causing harm. Also, in our opinion, it would be necessary to prescribe the need for compensation by the state to the victim of harm in accordance with Article 1076 of the Civil Code of the Russian Federation [4]. Also, the legal composition can include the circumstances of an emergency situation, which regulate the formation of an act on the requisition of civil property for state needs.

So, according to Article 8 of the Civil Code of the Russian Federation, the fact of causing harm is the basis for the emergence of obligations for its compensation. The basis for the occurrence of obligations to compensate for damage caused by lawful actions of state bodies, local self-government bodies, as well as their officials is the legal composition of the fact of lawful damage and the law regulating the need for compensation for such damage.

Lawful infliction of harm is characterized by the following signs. The legality of causing harm by officials of State bodies, local self-government bodies, as well as persons to whom the State has delegated authority, in each specific case should be enshrined in the law. Otherwise, in accordance with the principle of the General tort is the infliction of unlawful harm. Actions of officials or a normative act, the adoption of which caused harm, are lawful, do not violate the norms of objective law. In case of exceeding the official powers granted to the official by the law in certain circumstances, causing harm is illegal. They are of an extraordinary nature, committed in extreme cases for the purpose of self-defense or protection of third parties (society, state, citizens, organizations), therefore they are socially useful, socially necessary. The legality of causing harm is realized in the actions of officials, so the infliction is intentional. Causing harm by inaction is impossible. Lawful infliction of harm is always the exercise of a subjective right or the performance of a duty. In most cases, the lawful infliction of harm by officials of State bodies is the performance of duties. Harm is caused to the person or property of organizations by State bodies, local self-government bodies, officials of these bodies or persons to whom authority has been delegated.

There are quite a lot of cases of harm caused by lawful actions in practice, it is possible with the necessary defense, for example, or in conditions

of extreme necessity. Also, harm can be caused by lawful actions in the performance of the duties assigned to the person, such as, for example, when extinguishing a fire, when detaining a person who has committed a crime, etc. All the examples given of lawfully caused harm are provided for by law. The law establishes clear boundaries within which the harm is considered to be legitimate. Not always causing harm by lawful actions entails obligations for their compensation. Compensation for such harm is the exception rather than the rule. In our opinion, the most complex and, at the same time, the least researched is the issue of compensation for damage caused by the lawful actions of state bodies and their officials. Most authors are of the opinion that the harm caused by the State in the person of its organs is not subject to compensation. [11].

As for the concept of "conditions for the occurrence of obligations to compensate for harm", it can be concluded that conditions are signs of the fact of causing harm, which allow us to call the harm lawful, and entails the obligation to compensate it. Such conditions should include the following set of them: the presence of harm, the causal relationship between harm and the lawful actions of the harmer, the legality of the actions of the harmer, excluding tort liability for him, the presence of a legal norm that establishes compensation for harm [10].

In the case of lawful infliction of harm, the causer of harm and the person who is obliged to compensate for it do not always coincide in one person. Often, responsibility is imposed on the person in whose interests the harmer acted. This is the case, for example, in the case of compensation for damage caused in a state of extreme necessity (Article 1067). Liability for damage caused by State bodies and their officials is imposed on the State, i.e. state and municipal bodies, citizens and organizations can act on the side of the debtor in the obligations under consideration.

The object of obligations as a result of lawfully caused harm is compensation, which the debtor is obliged to provide to the creditor. In practice, this compensation occurs, as a rule, in the form of compensation for losses. As V. S. Shevchenko rightly notes, one or another form of compensation for harm can be defined by a special regulatory legal act regulating a specific type of obligations for compensation for harm caused by lawful actions.

**Conclusion.** Thus, obligations to compensate for harm lawfully caused by State bodies can be considered a separate type of obligation, along with tort obligations. These obligations are not an exception to the rules on tort liability due to the fact that they differ in their legal nature, the grounds for their occurrence and the functions performed. The Civil Code states that the fact of causing harm is the basis for the emergence of obligations for its compensation. The basis for the occurrence of obligations to compensate for damage caused by lawful actions of state bodies,



local self-government bodies, as well as their officials is the legal composition of the fact of lawful damage and the law regulating the need for compensation for such damage. Also, the obligations considered in the article are characterized by the uniqueness of cases; a special circle of persons endowed by the state with power functions; as well as the volume and order of compensation for the damage caused. The Civil Code of the Russian Federation provides for the development of a new independent direction of tort obligations: the possibility of compensation for damage to the person or property of a citizen or the property of a legal entity that is caused by the

lawful actions of public authorities or their officials. In this case, the damage is compensated only in those cases that are provided for by law. It is necessary to summarize the conclusions on the occurrence of the obligation to compensate for the rightfully caused harm. So, the basis of such obligations is the fact valid harm under the following conditions: the legality of actions of the tortfeasor, the existence of a causal connection between the lawful act and the come harm, and also if there is a special provision in the law on the duty to compensate the damage caused according to legitimate action.

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### **МЕМЛЕКЕТТІК ОРГАНДАРДЫҢ, СОНДАЙ-АҚ ОЛАРДЫҢ ЛАУАЗЫМДЫ АДАМДАРЫНЫҢ ЗАҢДЫ ІС-ӘРЕКЕТТЕРІНЕН КЕЛТІРІЛГЕН ЗИЯНДЫ ӨТЕУ ЖӨНІНДЕГІ МІНДЕТТЕМЕЛЕРДІҢ ТУЫНДАУ ШАРТТАРЫ**

**Аннотация:** Азаматтық заңнамадағы өзгерістер азаптау міндеттемелерінің жеке түрін қалыптастырды, онда мемлекет азаматтың жеке басына, мүлкіне заңды тұлғаның мүлкіне немесе мемлекеттік органдардың заңды әрекеттері арқылы келтірілген залалды өтейді. Ғылыми әдебиеттерде жеткілікті түрде көрсетілген азаптау міндеттемелерімен қатар, мемлекеттің азаматтарға немесе заңды тұлғаларға зиян келтіретін заңды әрекеттеріне қатысты бұл мәселелер назардан тыс қалады. Мақалада мемлекеттің заңды әрекеттері салдарынан келтірілген зиянды өтеу жөніндегі міндеттемелердің туындау шарттарының салыстырмалы құқықтық талдауы келтірілген. Зерттеу жалпы ғылыми таным әдістеріне, сондай-ақ арнайы құқықтық (салыстырмалы құқықтық, техникалық-құқықтық, формальды-құқықтық) әдістерге негізделген. Зерттеу негізінде зерттелетін міндеттемелердің құқықтық табиғаты туралы тұжырымдар жасалды және мемлекеттік органдардың заңды әрекеттері салдарынан келтірілген зиянды өтеу бойынша міндеттемелердің туындауының қазіргі проблемаларын анықтауға әрекеттер жасалды.

Зиянды өтеу жөніндегі міндеттемелерді зерттеудің негізгі проблемасы олардың туындау шарттарын, зиянды өтеу жөніндегі міндеттемелердің пайда болуына әкеп соғатын мемлекеттік органдардың заңды түрде зиян келтіру сипаттамаларын анықтау болып табылады. Заңды түрде келтірілген зиянды өтеу жөніндегі міндеттер субъективті құқықтарды қорғаумен негізделген. Бұл міндеттемелер мемлекеттік мүдделер жеке мүдделерден басым болған жағдайда мемлекеттік органдардың заңды әрекеттерімен бұзылған құқықтарды қалпына келтіру үшін өтемақы төлеу мақсатында бар. Азаптау міндеттемелерін қарастыра отырып, олар заңды түрде келтірілген зиянды өтеу міндеттемелеріне өте ұқсас және сол мақсатты көздейді: жәбірленушінің жағдайын қалпына келтіру

**Түйін сөздер:** Мемлекеттік органдардың заңды әрекеттерінен келтірілген зиян, зиянның орнын толтыру жөніндегі міндеттемелер, азаптау бойынша міндеттемелер.

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### **УСЛОВИЯ ВОЗНИКНОВЕНИЯ ОБЯЗАТЕЛЬСТВ ПО ВОЗМЕЩЕНИЮ ВРЕДА, ПРИЧИНЕННОГО ПРАВОМЕРНЫМИ ДЕЙСТВИЯМИ ГОСУДАРСТВЕННЫХ ОРГАНОВ, А ТАКЖЕ ИХ ДОЛЖНОСТНЫХ ЛИЦ**

**Аннотация:** Изменения в гражданском законодательстве сформировали отдельный вид деликтных обязательств, при которых государство возмещает ущерб, причиненный личности или имуществу гражданина или имуществу юридического лица правомерными действиями публичных органов. Наряду с достаточно хорошо освещенными в научной литературе деликтными обязательствами, данные вопросы, касающиеся правомерных действий государства, причиняющих вред гражданам

или юридическим лицам, остаются без внимания. В статье проводится сравнительно-правовой анализ условий возникновения обязательств по возмещению вреда, причиненного правомерными действиями государства. Исследование основано на общенаучных методах познания, а также специально-юридических (сравнительно-правовой, технико-юридический, формально-юридический). На основе проведенного исследования сделаны выводы о юридической природе изучаемых обязательств, а также были сделаны попытки обозначить существующие проблемы возникновения обязательств по возмещению вреда, причиненного правомерными действиями государственных органов. В статье 16.1 Гражданского кодекса РФ предусматривается развитие нового самостоятельного направления деликтных обязательств: возможность компенсации ущерба личности или имуществу гражданина или имуществу юридического лица, который нанесен правомерными действиями органов публичной власти или их должностных лиц. В этом случае ущерб возмещается только в тех случаях, которые предусмотрены законом. Основная проблема исследования обязательств по возмещению вреда состоит в определении условий их возникновения, характеристик правомерного причинения вреда государственными органами, приводящих к возникновению обязательств по возмещению вреда. Обязательства по возмещению правомерно причиненного вреда обусловлены защитой субъективных прав. Данные обязательства существуют с целью компенсации для восстановления права, нарушаемого правомерными действиями государственных органов в том случае, когда общественные интересы преобладают над личными. Данный вопрос недостаточно изучен, поэтому были сделаны выводы на основе проведенного сравнительного анализа. Исследуя деликтные обязательства как наиболее широко освещенные в научной литературе, был сделан вывод, что они очень схожи с обязательствами по возмещению правомерно причиненного вреда и преследуют ту же цель: восстановление положения потерпевшего лица.

**Ключевые слова:** вред, причиненный правомерными действиями органов государственной власти, обязанности по возмещению вреда, деликтные обязательства.

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