

SUMMARY

Key Words: Civil liability to customs authorities, officials of the customs bodies, damages, moral damages

Subject matter: Civil liability for damage caused by customs authorities

Author: Bzhedugov Murat B.

Supervisor: Dovgaluk, Natalya Vladimirovna, candidate of legal Sciences

The supervising organization: Pyatigorsk State University

The relevance of the research topic: Problems of civil liability is one of the most pressing problems of scientists in the field of civil rights. Thus, one of such liability is the liability for damage caused by customs bodies and their officials. Realizing their duties, the customs authorities and their officials can cause physical and moral harm to citizens or property damage to legal entities, which causes a civil liability and the reimbursement of such damage. That is, the civil liability of the customs authorities is responsible for the harm of wrongful actions of officials of these bodies in the exercise of their duties.

The application of article 1069, 1070 of the civil code, which establishes special grounds for liability for damage caused by unlawful actions of customs authorities and their officials, since the enactment of part two of the Civil code of the Russian Federation has generated and continues to generate many difficult questions in the science of civil law and in law enforcement. It is therefore not surprising that the number of Chapter 59 GK of the Russian Federation, article 1069, 1070 of the Russian Federation has been in the field of view of the constitutional Court of the Russian Federation. Besides, as the practice of arbitration and General courts in damages cases on the civil liability of the customs authorities are fairly common. It should also be noted that questions of civil liability for damage caused by customs bodies and their officials, are unexplored in science, therefore requires a separate study within this issue.

The above provisions demonstrate the relevance of this work, dealing with the issues of responsibility for damage caused to the customs authorities.

Objective: to perform works of scientists on problems of liability for harm caused by customs authorities, as well as the legislation of the Russian Federation to identify the characteristics of law enforcement investigated the Institute, and also search of ways of improvement of legislation in the field of public relations.

Tasks:

- to explore the concept and characteristics of civil liability;
- to perform grounds and terms of civil liability;
- to consider the General concepts of damages; to explore the specificity of the subject composition of the obligation of reparation of damage caused to the customs authorities;
- to perform General and special conditions of liability of the customs authorities;
- explore the features of compensation of moral harm caused to the customs authorities;
- to consider ways of improving legislation in the sphere of civil liability for damage caused by customs authorities.

Theoretical and practical significance of the study is the substantiation of

conclusions and proposals for improving normative legal regulation of civil liability and damages. The resulting research findings, and practical suggestions could ensure the growth of the scientific level in the field of legal regulation of institutes of civil liability and redress, contribute to the development of normative legal base which regulates these legal relations. The results of the study can be used in law-making activities in the preparation of normative acts on the implementation of rights protection mechanism.

The results of the study:

1. The recognition of the right to compensation of harm, caused by illegal actions of bodies of state power is the great historic merit of the legislator, whose value as an important measure towards the protection and conservation of the property and personal non-property rights and intangible benefits from any illegal encroachments and violations, including by the customs authorities, cannot be overstated.

In this case, the liability of the customs authorities for the harm caused illegal actions defined has significant features. So, the law limited the composition of the tortfeasor by restricting its not just law enforcement and judicial authorities. Clearly and exhaustively defined by a list of malicious actions: the unlawful prosecution; illegal application as a measure of restraint taking into custody or house arrest; unlawful bringing to administrative responsibility in form of administrative arrest. The civil liability extends to the harm caused to legal entity as a result of unlawful bringing to administrative responsibility in the form of administrative suspension of activities.

2. The illegality of actions of customs authorities and their officials is harming the citizen must be proved to have entered into force court decision or acquittal, termination of criminal or administrative case on rehabilitative grounds of the victim.

Responsibility of customs authorities is reflected in the damages in full, irrespective of the guilt of officials of customs bodies. A characteristic feature of compensation for harm caused by state bodies is a mismatch of persons, cause damage to property or the identity of the citizen, and individuals that offsets the harm caused. The subject structure of persons, the unlawful actions of a tortfeasor to the person or property of a citizen or the property of a legal entity, legally defined in article 1069, 1070 of the civil code.

These include and customs authorities, including authorities carrying out the inquiry. In article 1069, 1070 of the civil code provided that damage caused to the person and property of a citizen and also harm caused to the property of a legal entity shall be compensated by the Treasury of the Russian Federation, Treasury of a constituent entity of the Russian Federation or the Treasury of the municipality, the state or municipal formation in the face of the appropriate financial bodies. There is no doubt that the establishment of a legal regime in which the harm is compensated by the Treasury, greatly improves the efficiency of the Institute of compensation of harm, as it provides citizens with more reliable source of payment, timely protection and complete restoration of social justice.

3. The injury caused by other actions of customs bodies and their officials shall be compensated on General grounds stipulated in the acts of the authorities. Conditions of occurrence of the right to reparation are: the decision of the court;

acquittal; termination of criminal case on rehabilitating grounds; termination of case on administrative violation in the absence of the event or corpus delicti, or for other reasons. Are not grounds for redress: the termination of the case on non-rehabilitating grounds (Amnesty, lapse of time, death of the accused, etc.); if the citizen self-incrimination contributed to the application to him of the illegal actions (if self-incrimination is not caused by violence, threats and other unlawful measures).

5. Reimbursed in full: lost earnings and other labor income; legal costs; recovered in pursuance of the sentence of fines; fees of the victim for legal aid; seized or confiscated property, etc.; any other property damage.

Damage, expressed in monetary form shall be indexed at the time of refund. Along with compensation for property damage, the victim is entitled to moral damages.

6. The General conditions necessary for responsibility to for any of the offences, acquire a certain specificity in application to tort relations of customs authorities.

Recommendations

1. To date, the special Federal law regulating the compensation for damage is not accepted, and therefore prior to its adoption in practice are guided by the norms of the legislation adopted during the Soviet period. Obviously, this law needs to be enacted in the near future as the norms of existing Decrees adopted in the period of the Soviet Union, contrary to the spirit and the letter of Russian law and its ideology.

In addition, prior to the development of the act it is necessary to amend article 1070 of the civil code, are grouped in part 3 of this article the provisions regarding terms of compensation for harm caused at implementation of justice. And add a reference to the fact that the obligation to establish the guilt of the judges of the court sentence "is not applicable in determining the violation by the judge of the right to access to justice, or when unreasonable delay in the execution of their duties".

2. In the analysis of normative acts regulating compensation for damage caused by illegal activities of customs authorities, should pay attention to the rule, under which damages are not recoverable, if the injured person through voluntary self-incrimination prevented the establishment of the truth and thereby contributed to the onset of negative consequences for himself. As seen, such a limitation contradicts the norms of article 53 of the Constitution of the Russian Federation and item 1 of article 1070 of the civil code and therefore should not be used.

3. In accordance with the rules on full compensation for harm not only the damages but also kompensiruet moral damage. Based on the concept of losses to property losses include: first, the loss of earnings or other income over the entire period of unlawful restriction of liberty (including pension or allowance, the payment of which was suspended in connection with illegal deprivation of liberty); secondly, property (including money, monetary deposits and interest on them, bonds and the fallen wins, other assets), confiscated or turned into the income of the state by the court or withdrawn by the bodies of inquiry or preliminary investigation, as well as property that is seized; third, the amount paid in fines, court costs or other expenses incurred in connection with the illegal actions; fourth,

the cost of legal aid. This seems to be in addition to the above losses to compensate expenses on treatment and professional training.

4. Today, the courts are extremely reluctant to make decisions on the reimbursement of lost profit, citing weak evidence base, to present victims. This seems to strengthen the level of protection of victims, on the basis that the individual, his rights and freedoms are the Supreme value, and unlawful deprivation of liberty is, along with causing harm to life and health one of the most serious offences, it would be lawful to provide in the light of article 1069, item 1 of article 1070 of the civil code, compensation in excess of the injury.

As is seen, these changes will improve the enforcement mechanism of the Institute of compensation for damage caused by customs authorities.