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ON THE CIVIL LIABILITY OF LEGAL ENTITY DIRECTORS AND GOVERNMENTAL UNIT HEADS

Vladimir A. Babakov (a)*
*Corresponding author

(a) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, vladbabakov@yandex.ru

Abstract

One of the most important conditions for the effective participation of any person at law in civil law relations is the concept of civil liability, which makes it possible to bring delinquents to justice. We find a significant difference between types of civil liability with regard to legal entities and governmental units. The article proves that it is necessary to take into account certain restrictions, which stem from the specifics of the two categories of parties to a legal relationship. There is also a need to unify regulatory approaches to civil liability of persons exercising corporate control as well as to legal entity executive bodies and governmental unit officials, we mean persons who caused property damage. It is necessary to supplement Article 173 of the Russian Civil Code with Part Two covering transactions made by a person or authority that represents the state in civil transactions. When a transaction contradicts the legally restricted goals of the activity of this person or authority, it should be declared invalid by court on the claim of the state or another person for whose benefit the restriction is established. It is also necessary to supplement Articles 1069 and 1081 of the Russian Civil Code, Chapter 4 of the Russian Civil Procedure Code, Chapters 4 and 5 of the Russian Arbitration Procedure Code with provisions obliging the court to locate and bring to trial those officials whose actions or inactions caused harm.

Keywords: Civil liability of officials

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1. Introduction

In the last decade, the issues of civil liability have evoked theoretical and practical interest. This is especially true for persons exercising corporate control over the activities of legal entities, including single and collective executive bodies, various founders/participants, etc. (Kolesnikova, 2018; Shitkina & Butkova, 2019). This also includes officials of governmental units (Gutnikov, 2019). In many studies aimed at identifying the legal status of the state in civil law relations, emphasis is placed on the need to strengthen the legal protection of contractors from illegal actions or inactions of the state. Scholars describe tools, which simplify prosecution of the state and guarantee that injured parties can get recovery from it. There are also tools to extend the list of things, which can be given to injured parties in case the state does not fulfill its obligations, etc.

This approach has a serious defect that is not mentioned by its authors though it does influence the development of civil transaction field. According to legal theory and practice, the state is an institution existing at the expense of society. That is why it should express the interests of society, taking into consideration multidirectional vectors of interests and forces. Thus, it seems justified to create legal tools to protect the state from unjustified penalties. And when the creditor's claims are valid, material liability should be imposed on wrongdoers but not on faithful participants of civil law relations. However, the current legislation and theoretical concepts offer no such tools.

From the point of legal theory, the effectiveness of the way the state reflects public interests depends on two major factors: the quality of legislation in itself and the quality of the way it is implemented. The objective contradiction between private and public interests in civil law relations where the state is involved has always triggered negative trends in legal regulation of these interests. Consequently, there has been imbalance between the interests in one way or another. In Russia, the major social concepts of the rule of law and civil society are still undeveloped or, in fact, absent. This entails misunderstanding of how important it is to implement public legal interests. Also, this causes special attention to the protection of the state's and social interests in the international and national judicial practices. Thus, it is extremely necessary to increase the impact of civil law in the sphere in question.

At the same time, the issue of the establishment of an effective institution to protect the state by civil law measures and the issue of the state's liability cannot be solved exclusively through civic methods and tools. In particular, it is possible to solve the issue by improving the institution, which we are talking about. The improvements should take place in criminal law, civil law, administrative law, and procedural rules.

Another aspect of the problem is related to the need to effectively implement civil law rules. Practice indicates that only by studying the mechanisms of how legislation is implemented it is possible to observe the way law is functioning and improve those elements of the legal system, which hinder or nullify the effective regulation of social relations. In this context, it is extremely important to change the notion of the state's legal personality and the legal personality of the state bodies, bearing in mind that the state itself and its bodies are involved in civil law relations. It is also necessary to develop a way to protect the state by civil law tools. This conclusion stems from the fact that before protecting the state, it would be logical to answer the question what the state is. In fact, the question is about the state's role in civil law relations.

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Thus, there is an urgent need to introduce the notion of the state's legal personality as well as the legal personality of the state's bodies as parties to civil law relations. And it is also necessary to develop a way to protect the state by civil law tools.

It has been found that a legal duty is of great importance while the tool of the civil law protection of the state is being implemented. The requirement to compensate for the harm caused to the state as well as the exercising of authority and administration powers by an official is, in its legal nature, an obligation but not a right of a party to legal relations. This is because a true interest of the state is always a public one. Consequently, the interest cannot depend on the will of the official who is implementing it.

2. Problem Statement

To justify civil liability of the aforementioned persons with regard to legal entities, experts usually note that a legal entity, being an independent party to civil law relations, shall acquire civil rights and accept civil liability via its bodies (Article 53 (1) of the Russian Civil Code). For example, Vlasova and Udalova (2020) emphasize that under Article 53 (3) of the Russian Civil Code, what a legal entity is going to do is determined and implemented by persons who work for the relevant management bodies and are charged with the duty to act in the interests of the legal entity in a reasonable way. In the civil law theory, it is indisputable that the bodies of a legal entity stand for this legal entity, which means that the actions of the persons working for such bodies are the actions of the legal entity itself.

The long-standing question in the legal scholarship about whether it is possible to view the single executive body of a legal entity as a subject, which might incur civil liability with regard to its involvement in civil law relations is likely to be answered positively. It is also necessary to establish clear criteria for imposing such liability (Russian Supreme Court Judgment No 304-JeS16-20219(2) of September 29, 2017, in the Case No A45-23837/2015; The 18th Arbitration Court of Appeal Judgment of June 18, 2019, in the Case No A76-20250/2015; The 11th Arbitration Court of Appeal Judgment of June 5, 2019, in the Case No A65-29464/2018). The criteria should be based on well-developed legal regulations. Thus, after committing a tort, the single executive body of a legal entity entails civil liability. This means that the tortfeasor must compensate for losses caused to a legal entity at the request of the person empowered to act on behalf of it (Article 53.1 (1) of the Russian Civil Code).

Scholars are equally interested in the issues of civil liability of officials for damage caused to governmental units or by governmental units. The boundary situation is where harm is caused by the directors of a legal entity and this legal entity has been created by a governmental unit. A governmental unit's liability is regulated, among other documents, by the provisions of the Federal Law "On State and Municipal Unitary Enterprises". Article 25 of the Law contains rules on the liability of employers for losses caused by their misconduct to other enterprises. The owner of the injured enterprise has the right to file a claim against the director of the injuring enterprise to get compensation for damage caused.

The legislators recognize that the ways executive bodies and the heads of governmental units are brought to justice have a lot in common. In fact, they have a common legal nature i.e., liability is imposed on persons exercising corporate control over legal entities (Jani, 2019; Pal'kina, 2018; Shitkina & Butkova, 2019).

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3. Research Questions

The aforementioned aspects make it necessary to study whether it is possible to bring together legal entity directors' liability and the liability of governmental units' heads. Of course, the elements, which can not be unified, must stay distinct.

4. Purpose of the Study

The purpose of this study is to find ways to optimize the civil liability of those who actually make decisions determining the specifics of legal entities and governmental units involved in civil-law transactions, which sometimes entail property damage to subjects of civil law relations (Jani, 2019; Shitkina & Butkova, 2019).

5. Research Methods

The methodological basis of our study consists of general scientific methods: dialectics, historical materialism, genetic method, analysis, synthesis, analogy as well as functional, systematic, and structural approaches along with abstraction and concretization. Linguistic analysis and special legal research methods have also been applied.

6. Findings

We outlined a number of problems that require solution, they are as follows:.

1. To develop criteria for the estimation of the efficiency of legal entity management and governmental unit management.
2. To reflect the concept of public interest in legal rules.
3. To determine the conditions for the cooperation of commercial and cost-effective goals of governmental units and public interests.
4. To highlight the problem of insufficient control and monitor the parties to legal relations in question.
5. To further develop the concept of civil liability for violation of the aforementioned rules.

7. Conclusion

1. We propose to fix a unified normative approach to the civil liability of the persons in question. However, the directors of legal entities should be responsible for the economic efficiency of their activities since it is the main criterion for assessing the situation under consideration. The work of governmental units' officials should be estimated from the point of two equivalent criteria i.e., economic efficiency and compliance of their activities with public interests.

An equally important factor to successfully implement this proposal is a proper procedural regulation of how civil liability is imposed on the officials of governmental units. Article 8 (2)(3) of the Russian Constitution covers protection of private legal interests in civil transactions. The Article says that private, state, municipal and other forms of ownership are equally recognized and protected. It is necessary to note that private ownership is protected by the very nature of private interest but state ownership is

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deprived of such natural protective tools. State property is kind of "property without an owner". This fact should be offset by establishing the civil duty of officials. To protect state property, there should be liability for non-fulfillment of this duty as well as procedural tools to guarantee the identification of officials who failed to fulfill their civil duties and, by that, triggered imposition of civil liability on this or that governmental unit. It is necessary to adopt rules to cover court trials related to compensation for damage caused by the Russian Federation, the constituents of the Russian Federation, and municipalities. Respondents in such cases should be officials whose actions or inactions provoked the damage in question.

To implement the proposed tool, it is necessary: a) to make courts identify the relevant official and bring him/her to trial as a co-respondent; b) to expand the subject-matter jurisdiction of arbitration courts, allowing them to consider such cases when claims against the state are filed in arbitration courts. The tool of civil law protection of the state, except cases where disputes are settled out of court, should work exclusively within the framework of the judicial competence. The two forms of protection (jurisdictional and non-jurisdictional) cannot be equally used within the tool of civil protection of the state since it is impossible to find out the details of "harmful" legal relations, which the parties were involved in, without an independent third party (court). The court should consider the case in compliance with procedural rules, the basic principles of legal proceedings, etc. For this reason, independent actions of the right holder (the state) within the framework of a non-legal form of protection are unacceptable when referred to the legal relations in question. The leading role of the legal duty in the tool of civil protection of the state has been set up. The demand for compensation for damage caused to the state as well as the exercise of administrative powers by an official is, by its legal nature, a duty. It is not a right of the party to civil law relations under consideration because the true interest of the state is always of a public nature. Thus, the implementation of such an interest cannot be made dependent on the presence or absence of the official's will. We mean the official who implements such an interest. Among other things, this conclusion is made on the basis of the law enforcement practice and the opinions of the European Court of Human Rights. This shows the ineffectiveness of the tools of civil protection of the state. Through these tools the state gets the authority to bring to justice those officials who, by their actions or inactions, triggered harm to contractors and incurred liability on the state.

To implement our proposal it is necessary to provide a greater unification of regulations meant for governmental units and legal entities as parties to civil law relations. In particular, it is crucial to amend Article 1064 of the Russian Civil Code. Article 1064 establishes general grounds for liability for harm caused but the state is not on the list of the subjects entitled to compensation.

2. Article 125 of the Russian Civil Code should be worded as follows:

Article 125. The Procedure of Participation of the Russian Federation, of the Constituent Territories of the Russian Federation and of the Municipal Districts in the Relationships, Regulated by the Civil Legislation

3. The Russian Federation, the territories of the Russian Federation, and the municipal districts can acquire and exercise property rights and personal rights as well as appear in court.

The structures created by these entities (ministries, departments, committees, offices, etc.) do not have civil capacity though they may participate in civil-law relations on behalf of one of these entities."

4. To amend Article 173 of the Russian Civil Code with Part Two. Under the amendment, if a transaction made by a person or body representing the state in civil matters contradicts the objectives of the activities of the person or body, is specifically limited by the law or other Act, which regulates the activities of the person or body, the transaction may be declared invalid by a court on the claim of the state or other person whose interests the restriction is supposed to protect.

5. To amend Articles 1069 and 1081 of the Civil Code, Chapter 4 of the Civil Procedure Code, and Chapters 4–5 of the Arbitration Procedure Code with provisions obliging the court to identify and bring up for trial those officials whose actions or omissions to act caused harm. Obviously, such officials have to compensate for the damage.

6. It is also imperative to draft a law "On State Responsibility". The law would consolidate the approaches to the liability of officials for the harm caused by the state. Today, it is possible to optimize the administration of justice through digitalization. To use and implement innovative technologies in the judicial process, it is needed to coordinate efforts and improve cooperation at the federal level. Nothing would work if we fail to ensure semantic and organizational interoperability, regular exchange of best practices, the use of innovative technologies, and the support of lawyers' professional organizations.

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