

Increasing Civil Liability for Violation of Rights to Real Estate

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Abstract

The article discusses the issues of civil liability for violation of property rights to real estate, the views of domestic and foreign scientists on this issue, strengthening of rights to real estate and responsibility for violations of property rights in recent years.

Keywords: *Real estate, guilt, liability, rights and obligations, damage, private property.*

INTRODUCTION

In recent years, a number of guarantees have been established by law to ensure the protection of property rights and civil liability for its violation. In accordance with these guarantees, article 53 of the Constitution of the Republic of Uzbekistan (“private property ... is inviolable and is under the protection of the state”), article 166 (“Property is inviolable and protected by law. Property inviolability means that all organizations opposing the owner refrain from violating property rights”) of the Civil Code of the Republic of Uzbekistan and article 35 of the Law “On Property of the Republic of Uzbekistan” established the following:

“If, as a result of the issuance of an unlawful act of a state administration body or local self-government body, the rights of the owner and other persons to possess, use and dispose of the property belonging to him are violated, such a document shall be declared invalid in court at the suit of the owner or the person whose rights have been violated”.

In addition, the President of the Republic of Uzbekistan signed the law “On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan Aimed at Ensuring Public Safety”. This document was adopted by the Legislative Chamber on September 12, 2018, approved by the Senate on September 27, 2018 due to the fact that the law strengthened liability for violation of private property rights through Article 192 (1) of the Criminal Code of the Republic of Uzbekistan called violation of private property rights, in accordance with with the Decree of the President of the Republic of Uzbekistan dated April 5, 2019 “On measures to further improve the system”, Decree of the President of the Republic of Uzbekistan dated August 20, 2019 No. F-591 “On additional measures to unconditionally ensure guarantees of property rights of citizens and business entities”, Decree of the President of the Republic Uzbekistan dated April 22, 2020 “On measures to reform the procedure for permanent registration and registration at the place of stay”, Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On measures to ensure

guarantees of property rights of individuals and legal entities and improve the procedure for seizure and compensation of land plots”, Regulation “On the procedure for the seizure of land plots and the provision of compensation to the owners of real estate objects located on the seized land plots”, Confirmation of resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On measures to improve the procedure for state registration of rights to real estate”, the adoption of provisions of the Cabinet of Ministers the procedure for state registration of rights to real estate” dated December 29, 2018 No. 1060.

It is known that there are general rules of civil liability for violation of property rights to real estate, as well as the rights and obligations of the parties.

In the legal literature, a separate basis for civil liability for violation of obligations and civil liability for damage is highlighted, as well as a wide and in-depth analysis of their specifics¹. In particular, the most basic and fundamental condition for determining civil liability for violation of obligations is unlawful behavior. Usually, this condition for establishing civil liability for violation of obligations is also interpreted as the basis for civil liability.

Kh.R.Rakhmonkulov noted that unlawful actions that violate civil rights and obligations are a prerequisite for liability under civil law. Damage caused by lawful actions of participants in civil law relations is subject to compensation, except for cases provided by law.

Illegal - an act that breaks the law. ...The actions of the debtor that do not meet the requirements for the proper performance of obligations are also illegal².

According to I.B.Zakirov, failure to fulfill obligations arising from an agreement or other unilateral agreement, resulting in the infliction of unlawful harm to another person, is in all cases unlawful. When establishing the illegality of the debtor's actions in these cases, it is necessary to determine under what conditions civil liability is established for failure to fulfill the obligation³.

S.S.Alekseev and Y.K.Tolstoy believe that the absence of an offense leads to a lack of legal responsibility, the absence of a completed offense leads to a lack of civil liability⁴.

Concerning the issue of liberalization of civil liability, Sh.N.Ruzinazarov expresses the following opinion: when liberalizing civil liability, it is especially important to pay attention to its establishment directly in contracts in order to further dispositive measures of liability arising from contractual relations between subjects of private property law. Such a requirement directly follows from part 1 of Article 8 of the Civil Code. In essence, obligations can arise from actions that give rise to civil rights and obligations, in particular from contracts of citizens and legal entities, although they are not provided for by law, but on general grounds and the content of civil legislation. Consequently, with the strengthening and liberalization of the dispositiveness of civil

¹ Zokirov I.B. Civil law of the Republic of Uzbekistan.-Tashkent: Adolat, 1996. -P.241-265.; Rakhmonkulov Kh.R. General description and comments to part one of the Civil Code of the Republic of Uzbekistan. –Tashkent: The world of economics and law, 1997. -P.436-441.; Rakhmonkulov Kh. Obligation right. - Tashkent: TSUL, 2005. -P.198-206.; Egamberdieva N.Kh. Foundations and forms of civil liability. PhD in Law, Dissertation. Abstract.–Tashkent: 2006. -P.10-20.; Oqyulov O. Basis for the application of civil liability.//Law Protection.-Tashkent, 1999. –No.9. - P.16-19.; Ioffe O.S. Responsibility under civil law. –Leningrad: LSU, 1955.

² Rakhmonkulov Kh. Law of Obligations (General). Book.- Tashkent: TSUL, 2005.- 177 p.

³ Zokirov I.B. Civil law: Book, part I.-Tashkent: TSUL, 2009.-532 p.

⁴ Алексеев С.С. О составе гражданско-правовой нарушений. //Правоведение: 1958. No.1. -47 p.; Толстой Ю.К. Договоры в социалистическом хозяйстве. -М.: Юридлит. 1964. -291 p.

liability on this basis, a further increase in the status of contractual liability creates the possibility of its rational application in accordance with the principles of social justice⁵.

Indeed, based on the terms of the contract, it is advisable to establish civil liability and to establish the misconduct of the person who is responsible. In this case, it would be more correct to understand non-fulfillment or improper fulfillment by a person of the terms of the contract as improper behavior. Failure to comply with the terms of the contract for the sale of real estate is the transfer of a land plot, building, structure, housing, enterprise or other similar real estate object described in the contract and not at the level of requirements stipulated by state cadastral documents, or non-payment by the buyer to the seller of the remuneration specified in the contract and state registration of ownership of the acquired real estate is also regarded as illegal actions.

The improper performance of obligations in civil law is always considered as the result of a guilty action by the debtor, and therefore in this case the debtor must prove the absence of his fault. This rule is understood from part 2 of article 333 of the Civil Code. Because in this norm this rule is clearly and strictly proved to those who violated the obligation, the absence of guilt.

In the manifestation of guilt in the real estate purchase and sale agreement, forms of willfulness and negligence are also traced. For example, if the seller sold existing flaws in the property without informing the buyer, the seller's fault will be in the form of retaliation if these flaws are hidden.

There are not so many special provisions under which civil liability for violation of the terms of the contract for the sale of real estate may arise in paragraph 7 of Chapter 29 of the Civil Code. Such provisions found their expression in Articles 486-487 of the Civil Code. In accordance with part 1 of article 486 of the Civil Code, the transfer of real estate by the seller and its acceptance by the buyer is carried out in accordance with the deed of transfer or other transfer document signed by the parties.

Of course, in practice, an agreement on the transfer of real estate is not always formalized by drawing up a deed of transfer. This practice can usually be observed when the parties are legal entities or citizens carrying out business activities. A contract for the sale and purchase of real estate between citizens can be drawn up by transferring documents related to this property, or by transferring the keys to housing. In this case, the parties inspect the jointly sold real estate, and the contract is recognized as fulfilled with the provision of the relevant documents and the key by the seller. However, failure to perform such actions is also considered a refusal to perform the contract or an unlawful delay in its execution, and this circumstance gives rise to civil liability.

We know that Article 985 of the Civil Code sets out general grounds for liability for damage. According to this article:

Damage caused to a person or a citizen's property by unlawful action (inaction), as well as damage caused to a legal entity, including lost profits, are subject to compensation by the person who caused the damage in full (Part as amended by the Law of the Republic of Uzbekistan dated December 15, 2000 No. 175-II). By law, the obligation to compensate for harm may be imposed on a person who is not the cause of harm.

A law or agreement may establish an obligation to pay compensation to victims in excess of compensation for losses.

⁵ Ruzinazarov Sh.N. The essence and basic foundations of the liberalization of civil liability / Development and modern problems of legal sciences.-Tashkent: 2007.-140 p.

A person who has caused harm is exempt from compensation for harm if he proves that the harm was caused through no fault of his. The law may provide for compensation for harm even in the absence of the fault of the person who caused the harm.

Damage caused by lawful actions is subject to compensation in the cases provided by law.

Compensation for harm may be denied if the harm was caused at the request or with the consent of the victim, and the actions of the person who caused the harm do not violate the moral principles of society.

The norms of this article establish general grounds for liability for harm (tort obligations). These grounds are common to all types of civil liability for harm. In addition to general grounds, there are special grounds provided for by this chapter and other civil legal acts.

To bring to civil liability for damage, the following offenses must simultaneously be present:

- a) causing harm (presence);
- b) illegality of actions (inaction) of the person who caused the harm;
- c) the causal relationship between the harm caused and the illegal act;
- g) the guilt of the person who caused the harm, or the guilt of the person who is charged with monitoring the actions of the person who caused the harm.

The content of harm caused by a tort is broader than the content of harm caused by a violation of a contractual obligation. In the commented article, damage is usually understood as material damage or damage to an intangible benefit (life or health of an individual) or its deprivation, manifested in a decrease or loss as a result of an offense of property belonging to the victim, property rights. Therefore, the damage is material or physical. The victim who caused material damage can be both an individual and a legal entity. When causing physical harm, only a citizen can be a victim.

Damage caused is recovered in full, including lost profits.

Article 14 of the Civil Code provides an interpretation of the concepts of real loss and lost profit. Actual (real) damage is considered to be the actions of a person whose rights have been violated, committed or to be committed in order to restore the violated right, lost or damaged property. Lost profit is considered to be income that the victim could have received, but could not receive under normal conditions of civil turnover in violation of his rights.

Legislation may provide for an exception to the general rule for compensation for damage in full. For example, in accordance with Article 1004 of the Civil Code, the court can reduce the amount of damages to be recovered, taking into account the fault of the victim and the property status of the person who caused the harm. In the event that the damage is caused by the person who insured his liability, if the insured amount is insufficient to compensate for the damage caused, he is obliged to compensate the difference between the insured amount and the amount of the actual damage (Article 992 of the Civil Code).

As a general rule, the nature of the compensation for damage is imposed directly on the complainant. In this case, the obligation to compensate for harm caused by law may be imposed not only on the person who caused the harm, but also on the persons responsible for his actions or obliged to control his actions. 992, 993, 994, 996, 998 and other articles of the Civil Code provide for such cases (see the commentary to these articles).

An obligation to pay compensation may also be provided for by legislation or a civil contract. To mitigate the consequences of harm to the life or health of a citizen, legislation or an agreement usually provides for compensation payments. These measures are a means of civil - legal social protection.

The existence of the fault of the inflictor of harm was indicated as the basis for the application of liability for causing harm. Guilt is the mental attitude of the harm-doer to his act and its consequences. This subjective attitude, depending on the forms of its manifestation, is differentiated into intentional and unintentional. Intention is understood as foreseeing the harmful consequences of a wrongful act (act), the desire for its occurrence or the conscious admission of its occurrence. Carelessness is manifested in the absence of attention, attentiveness, inclinations, care, norms and other circumstances necessary in certain situations. Only in cases where the form of guilt of the inflictor of harm is directly determined by law, legal consequences occur. In other cases, regardless of intent or negligence, the act is considered committed on the basis of full fault, that is, damage caused in any form of guilt is recovered in full.

A person who has caused harm is released from liability if he proves that this is not his fault, that is, force majeure has occurred, or through the fault of third parties. In accordance with article 333 of the Civil Code (liability for violation of duty), the duty of proving innocence rests with the person who caused the harm. In this case, the presumption of innocence is manifested, that is, the person who caused the harm is considered guilty until he proves his innocence in the manner prescribed by law.

It should be noted that guilt is not strict, that is, an absolutely necessary basis for establishing liability for delict. The law (not in legislation) may provide for compensation for harm even if the wrongdoer is not at fault. Articles 993, 996, 999 of the Civil Code establish that the obligation to compensate for harm can be imposed on persons to whom the category of guilt cannot be applied (due to incapacity), or on persons not guilty of causing harm (see Commentary on 993, 996, 999 Articles in the Civil Code).

The illegality of the action (inaction) of the causer of harm as a condition of liability in part 1 of this commented article means the illegality of the action of the causer of harm, that is, a violation in any way of the subjective right of another person. According to part 5 of article 9 of the Civil Code, citizens and legal entities should not commit actions aimed at causing harm to other persons. Obligations arising from causing harm are based on the principle of delict, that is, unless otherwise provided by law (for example, causing harm in the case of necessary defense), any harm is unlawful.

As mentioned above, incapacity should not be associated only with the commission of actions aimed at violating the prohibition established by law. The scope of unlawfulness is not limited only to this, but also broader, that is, it consists in causing other persons any harm that infringes on their subjective rights and legitimate interests.

Damage caused as a result of lawful (lawful) actions is subject to compensation only in cases provided by law.

Summing up the cases of civil liability for violation of obligations under the contract for the sale and purchase of real estate, we can say that in the Law of the Republic of Uzbekistan “On appraisal activities” it would be advisable to establish norms regarding the criteria, features and methods of real estate appraisal. In general, a clear expression of the price in the contract of sale of real estate and its correct determination are recognized as a necessary condition for ensuring

contractual discipline and protecting the rights and obligations of the parties to the contract and serve to ensure the consistency of legal regulation of real estate turnover in civil circulation..

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