

Theoretical Issues of Property Liability for Damage Caused to Natural Objects of Ownership

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Abstract: This article analyzes the theoretical issues of property liability for damage caused to natural objects of ownership. Particular attention is paid to the definition of such terms as: “property liability”, “environmental harm”, “economic harm”, “classification of property liability for environmental harm”. The general and specific features of legislative acts of the Republic of Uzbekistan in the field of compensation for damage caused to natural objects of property rights are analyzed. The main shortcomings of the legislation in this area are identified, as well as conclusions and recommendations for improving land legislation in the field of property liability for environmental damage are formulated.

Keywords: property liability, environmental harm, economic harm, classification of property liability for environmental harm, improvement of civil and land legislation.

Property liability is expressed in the imposition of obligations on legal entities and individuals to compensate for damage caused to the natural environment as a result of violation of environmental legal norms. The main difference between property liability and other types of legal liability is full or partial compensation for damage to the environment and public health.

Harm inherently has two manifestations: as a result of non-compliance with environmental regulations and standards in the process of production and economic activity, environmental and economic harm is caused to the natural environment. Economic harm arises from the economic valuation of natural resources. It encroaches on the economic interests of the natural resource user (owner, possessor, user, tenant). Such harm is expressed in the loss of natural resources (commercial wood, fish stocks, minerals, etc.), material assets (harvest, farm animals, perennial plants, etc.), non-receipt of income that should be received under normal production conditions¹.

Compensation for economic damage caused by irrational use of natural resources is carried out in accordance with the norms and principles of civil law.

Economic harm is interconnected with environmental harm. Environmental harm is expressed in the deterioration of the state of the natural environment, public health, ecological systems, etc.

Environmental harm is understood as any deterioration of the state of the environment that occurred as a result of violation of legal environmental requirements, and associated with it any

¹ Петров В.В. Указ. раб. С.335.

derogation of material and intangible benefits protected by law, including human life and health, property of individuals and legal entities².

Civil and environmental legislation provides for the following components of environmental damage: actual damage to natural objects and resources, costs associated with the elimination of harmful environmental consequences, lost profits and moral damage, etc. It should be noted that these components of environmental damage are interrelated with each other and in certain cases are of great importance in the process of compensation for damage caused.

Environmental damage caused in the process of production, economic and other activities as a result of violation of environmental legislation is compensated in accordance with the norms and basic principles of civil legislation. However, it must be emphasized that compensation for harm caused to the environment and public health is significantly different from the process of compensation for harm caused to property or other material objects, which is due to the presence of specific features of natural environmental objects and environmental-legal relations.

Therefore, taking into account these circumstances, compensation for environmental damage is called not civil liability, but property liability. In environmental law, different opinions are expressed regarding the nature of liability for causing harm to environmental objects.

In the legal literature, various opinions and approaches have been expressed regarding the nature of compensation for damage to natural environment objects.

According to some scientists, damage caused to the natural environment as a result of violation of environmental legislation is compensated in accordance with civil law³.

Others believe that in the process of compensation for environmental damage, along with the general principles of civil legislation, special regulations are also applied that regulate these relations, taking into account the specific characteristics of natural resources⁴.

According to O.S. Kolbasov, the general provisions of civil law on obligations arising from causing harm are applicable to the regulation of relations for compensation for harm caused by violation of legislation on natural resources. However, the specifics of the obligations resulting from causing such harm, as well as the specifics of its compensation and content, determine the need for additional, special regulation of the procedure for its compensation. Therefore, in development of the general provisions of civil law on compensation for harm, special rules are issued on compensation for harm caused by the unlawful use of natural objects⁵.

Another group of scientists is of the opinion that compensation for environmental damage is carried out in the form of tax liability, different from civil and administrative liability.

Analyzing the procedure for compensation for damage caused to natural resources, V.V. Petrov argues that tax liability is an independent type of liability under natural resource legislation, which, unlike civil liability, is regulated by special regulations; has as its object of protection not the material products of human labor, but natural elements; carried out by collecting damages at special rates. The combination of compensatory and punitive functions performed by the institution of liability in the field of environmental protection gives it the meaning of an independent type of environmental liability, different from both civil and administrative types of liability⁶.

² Бринчук М.М. Указ. раб. С.495.

³ Усмонов М.Б., Кан И.Ю. Гражданско-правовая ответственность за нарушения экологического законодательства // Хозяйство и право. 2002. № 6. С.88-90; Холмунинов Ж. Экологик конун талабларини бузганлик учун фукаровий-хукукий жавобгарлик муаммоларпи.// Хужалик ва ҳуқуқ. 2001, № 2. С.12-20 и другие.

⁴ Аюбов У.Т. Экология ҳуқуқи. Дарслик. ТДҶОИ. 2001. С.114; Бринчук М.М. Указ. раб. С. 494-498 и др.

⁵ Колбасов О.С. Правовые вопросы охраны природы. М., 1963. С. 99-100.

⁶ Петров В.В. Экология и право. М., 1981. С. 154.

S.N. Kravchenko, also considering tax liability as an independent type, defines it as a property-legal impact on the offender based on the norms of environmental legislation, which consists in imposing on him the obligation to compensate for damage in the amount determined by special taxes⁷.

In our opinion, the legal nature of compensation for environmental damage follows from the very essence of environmental law as a complex branch of law that regulates a complex system of environmental-legal relations. To summarize the above, it should be noted that, firstly, civil legislation establishes general grounds and principles, the main forms of compensation for harm, which play an important role in compensation for environmental damage. However, this factor is not enough for comprehensive compensation for damage caused to the natural environment. In addition, it does not take into account the environmental parameters of the damage caused, and therefore special norms are also needed that provide for the environmental aspects of the damage caused to environmental objects. Secondly, one should agree with the opinion that, along with the general principles and principles of civil legislation when compensating for environmental damage, special regulations are additionally applied that take into account the specifics of natural environmental objects. But at the same time, when calculating damage caused to individual objects of natural resources, for example, flora and fauna, special taxes are applied aimed at compensating for real damage to this type of resource and punishing those responsible for causing environmental harm. Thirdly, tax liability is important when calculating actual damage and compensation for the restoration of a natural resource. However, it cannot be considered as an independent type of responsibility, because it applies only to objects of flora and fauna, and to other objects of the natural environment the norms and principles of civil legislation are applied, taking into account environmental features. Tax liability can be considered as a separate type of liability in the system of property liability on the basis of general rules and principles of civil law and special rules governing the tax method of calculating damage.

Thus, the above interpretations of scientists allow us to give a definition of property liability with the following content: "Property liability for violation of environmental legislation is a set of civil and environmental legal norms that provide general grounds and specific features of compensation for damage caused to environmental objects and natural resources, public health." In our opinion, this interpretation determines the general and special aspects of the process of compensation for damage to the natural environment.

The Civil Code of the Republic of Uzbekistan in Article 985 establishes the following grounds for liability for causing harm, which are important when compensating for environmental damage:

- 1) harm caused by unlawful actions (inaction) to the person or property of a citizen, as well as harm caused to a legal entity, is subject to compensation by the person who caused the harm in full, including lost profits;
- 2) the contract may establish an obligation to pay compensation to victims in excess of compensation for harm;
- 3) the person who caused the harm is released from compensation for damage if he proves that the harm was not caused through his fault. The law may provide for compensation for harm even in the absence of the perpetrator's fault;
- 4) damage caused by lawful actions is subject to compensation in cases provided for by law⁸.

Based on the above general principles of compensation for harm, environmental legislation regulates norms aimed at compensation for environmental harm. Thus, the Law of the Republic

⁷ Имущественная ответственность за нарушение природоохранительного законодательства. Львов, 1979. С.168.

⁸ Гражданский Кодекс Республики Узбекистан. Т.: Адолат, 2000.

of Uzbekistan “On Nature Protection” in Article 49 states: “Enterprises, institutions, organizations and individuals that have caused harm to the natural environment are obliged to compensate it, including lost profits, in accordance with the law.

Bringing those guilty of violating environmental requirements to administrative or criminal liability does not relieve them of the obligation to compensate for damage caused to the environment.” The specifics of property liability for violations of environmental standards and requirements are also enshrined in natural resource legislation, taking into account the specifics of each object.

The subjects of liability in this area, as a rule, are legal entities and individuals. The object is the surrounding natural environment, i.e. land, water, subsoil, forest, flora and fauna, health status of the population.

It should be noted that the process of compensation for damage caused to the environment is diverse and forms a complex system of legal relations of an environmental and economic nature.

In order to understand in detail the process of compensation for harm in this area, it is necessary, in our opinion, to classify compensation for harm by objects of the natural environment. Taking into account the general and special environmental and legal aspects of the process of compensation for harm in this area, we propose the following classification:

- 1) compensation for damage to indivisible objects - land, water, subsoil and atmospheric air;
- 2) compensation for damage to divisible objects, i.e. flora and fauna - based on special rates;
- 3) compensation for damage to public health and property of citizens;
- 4) compensation for harm caused by a source of increased danger.

This classification of compensation for damage to the natural environment allows us to more comprehensively cover all aspects of property liability in this area.

The first direction of compensation for harm covers such important natural objects as land and water resources, subsoil and atmospheric air - as indivisible objects of nature, because tax responsibility is aimed at divisible objects of nature - flora and fauna.

Compensation for damage caused to land resources is carried out in accordance with land legislation, which provides for specific features of such compensation. The Land Code of the Republic of Uzbekistan establishes legal requirements for compensation for losses to landowners, land users, tenants and owners of land plots, as well as for compensation for losses in agricultural production - Art. 87⁹.

In accordance with Art. 86 of the Land Code, losses caused to landowners, land users, tenants and owners of land plots are subject to compensation in full (including lost profits) in cases of: seizure, redemption or temporary occupation of land, restriction of their rights in connection with the establishment of security, sanitary and protective zones, deterioration of land quality as a result of the impact caused by the construction and operation of reservoirs, canals, collectors and other objects that emit substances harmful to agricultural crops and plantings, and other actions of legal entities and individuals leading to a decrease in yield and deterioration in the quality of agricultural products.

Compensation for losses is made by enterprises, institutions and organizations to which the confiscated plots are allocated, as well as enterprises, institutions, organizations whose activities entail restrictions on the rights of landowners, land users, tenants and owners of land plots.

Art. 87 of the same Code defines the requirements for compensation for losses in agricultural and forestry production. Losses in this area of activity caused by the seizure of land, including

⁹ Земельный Кодекс Республики Узбекистан. Т.: Адолат, 1999.

farmland owned and used by individuals, seizure of non-agricultural land, as well as restriction of the rights of landowners, land users and tenants or deterioration in the quality of land as a result of the influence caused by the activities of enterprises, institutions and organizations, are subject to compensation in addition to compensation for losses provided for in Article 86 of the Code. Losses are compensated by legal entities and individuals who are allocated seized land for needs not related to agriculture, as well as around whose objects security and protective zones are established with the exclusion of agricultural and forest land from circulation or their transfer to less valuable land.

Losses are not reimbursed when land plots are withdrawn for individual housing construction and maintenance of a residential building; when withdrawing land plots for the construction of schools, kindergartens, etc., when allocating land plots for water management.

The legal regime for compensation for damage caused to water resources is enshrined in the Civil Code of the Republic of Uzbekistan, the Laws of the Republic of Uzbekistan "On Nature Protection", "On Water and Water Use", as well as by-laws.

The Law of the Republic of Uzbekistan "On Water and Water Use" in Articles 117 and 118 regulates the legal requirements for compensation for damage caused as a result of violation of water legislation¹⁰. However, these provisions of the Law are blanket, i.e. the procedure for compensation for harm is referred to other departmental acts, which indicate the principles and specific forms of compensation for harm. Damage caused by water pollution is compensated in accordance with special "Methods for calculating damage." In our opinion, in the new Water Code of the Republic of Uzbekistan, in the future it is necessary to establish a separate chapter "Compensation for damage caused to water resources", where the basic principles, forms, and procedure for compensation for damage should be clearly regulated.

Legal forms of compensation for damage caused to subsoil are carried out in accordance with the general principles of compensation for damage and the Law of the Republic of Uzbekistan "On Subsoil" (new edition), adopted on December 13, 2002. Article 48 of this Law states: "Damage caused to the subsoil user by other persons is subject to compensation in accordance with the law. Damage caused to the state as a result of the activities of a subsoil user guilty of selective mining of rich areas of a mineral deposit, as well as other actions (inactions) that led to damage to the deposit or the creation of conditions that partially or completely exclude the possibility of further use of subsoil areas, is subject to compensation at the expense of the subsoil user in accordance with the law"¹¹.

Damage caused to atmospheric air is carried out on the basis of the principles and norms enshrined in the Law of the Republic of Uzbekistan "On the Protection of Atmospheric Air". However, this Law does not provide for the principles, forms and procedure for compensation for damage caused to atmospheric air. The actual damage in this area is determined by methods for calculating damage in accordance with environmental regulations and standards.

The second direction of the compensation system is compensation for damage caused to divisible objects, based on special rates for calculating damage. In environmental and legal literature, as mentioned above, this area is called "tax liability".

Taxes are conventional units for assessing damage, taking into account the costs incurred to maintain the economy (forestry, fishing, hunting). The fee seems to consist of two parts: one is intended to reimburse costs, the other is to punish the perpetrator. It represents the amount of damage caused in advance and fixed in a fixed amount. Compensation for damage based on special rates applies only to divisible natural objects, i.e. forest, flora and fauna. This is due to the natural and economic characteristics of these objects, which makes it possible to determine

¹⁰ Закон Республики Узбекистан «О воде и водопользовании». Т.: Адолат, 1994.

¹¹ Закон Республики Узбекистан «О недрах» (новая редакция). Собрание законодательства Республики Узбекистан. 2003. № 1-2.

the possibility of establishing how many trees, animals and plants were damaged. A fee is established for each type and instance of illegally damaged, destroyed tree and animal, and the amount collected in accordance with the current fees is determined by the number of damaged or destroyed natural objects.

An analysis of environmental legislation in developed countries shows that there are various approaches and forms of compensation for harm. In the United States, the institution of property liability is developing in three directions: compensation for harm in case of damage to the health and property of citizens, state property (state-owned natural resources), as well as compensation for harm through restoration measures. Compensation for damages is governed by civil and common law. Environmental legislation contains only reference norms. For offenses resulting in property damage, civil liability measures are applied, including the imposition of a fine and compensation for damage. Civil fines collected by court decisions in American practice acquire the same importance as administrative ones. Fines are set at fixed amounts for each day of the offense and can be cumulatively high. Thus, under the Clean Water Act, unauthorized discharge of wastewater carries a civil penalty of \$25,000 for each day of violation¹².

Analysis of the process of compensation for harm resulting from violation of environmental legislation gives us grounds to draw the following conclusions:

- This process combines a complex system of civil and environmental legal norms and requirements;
- Despite the existence of a legislative framework, regulations still remain blanket, i.e. do not contain specific rules related to the procedure for compensation for harm and refer to other sources of a narrow departmental nature;
- The environmental, legal, economic and legal mechanism of this important instrument of legal responsibility leaves much to be desired;
- A very low level of legal culture among the parties to compensation for harm, as a result of which a high level of latency of offenses and property and legal liability in this area remains high.

Taking into account these objective and subjective circumstances, in order to improve environmental legislation and the environmental-legal mechanism of the institution of compensation for harm caused to the natural environment, we propose to develop and adopt the Law of the Republic of Uzbekistan “On Compensation for Environmental Damage”.

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¹² EPA, Policy on Civil Penalty, February 16. 1984.

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