

**THE ISSUE OF COMPENSATION  
FOR DAMAGE CAUSED IN A STATE OF EMERGENCY:  
PRACTICAL AND THEORETICAL ASPECTS**

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Since Ukraine gained independence, the state has faced a number of challenges on its way to forming a civil society and building a state governed by the rule of law. In particular, ensuring human rights and freedoms as the highest social value and shifting the emphasis to improving the protection of the rights and legitimate interests of citizens has become the main task of the state. Relevant provisions for the realization of these rights and freedoms and their legislative support are reflected in the current civil legislation.

One of the most important types of protection of the proper realization of the rights and legitimate interests of individuals is the obligation to compensate for damage. Determination of the legal basis and legislative justification of this obligation is an important aspect of the approach that characterizes the degree of development of democracy in society. Therefore, the institute of obligations to compensate for damage caused to individuals and legal entities occupies a special place in civil law.

The obligation to compensate for unlawfully inflicted damage consists of compensation in kind or equivalent coverage of losses in full and is of a property nature. The property recovered from the person who caused the damage is transferred to the victim. In this case, the violated property sphere of the person is restored, and the negative property consequences of the offense are eliminated.

However, compensation for damage caused by lawful actions of a person, in particular in a state of emergency, is of particular importance in the system of obligations, as in this case there is a conflict of legitimate interests. First of all, causing damage in a state of emergency is not considered an offense and is recognized as legitimate on legal grounds. However, the very fact of harming the interests of other persons causes a response not only from the victim but also

from the state. As an example, there is a decision to compensate or dismiss such a claim for the victim.

However, in case of successful resolution of the issue of compensation for damage caused in a state of emergency, the aspect of determining the entities that are responsible for the harmful consequences of certain actions, establishing the grounds and conditions for compensation for damage, taking into account the specifics of the legal basis for such actions, is not included. The study of the issues of compensation for damage caused in a state of emergency remains relevant from the practical and theoretical aspects, and is a natural basis for studying the relevant topic within the framework of scientific activity.

The study of scientific sources describing the issues of the institute of compensation for damage caused in a state of emergency gives rise to the conclusion that there is an insufficient level of study of issues related to special obligations arising, in particular, from damage caused by active actions of a person who was in a state of emergency at the time of the offense.

The basis for the emergence of such an obligation, which is defined as a legal relationship caused by damage to the rights and interests of another person, is the very infliction of damage in a state of emergency. These legal relations are bilateral in nature, in which one party, i.e. the victim, has the right to demand compensation from the person who caused the damage; the debtor, or another person specified in the law, is then obliged to fulfil this request of the victim or creditor. This feature of the above legal relations is a means of protecting civil rights and legitimate interests.

A special type of obligation that is part of the general tort system, but at the same time is an exception to it, is compensation for damage caused in a state of emergency. Causing harm in a state of emergency is the result of lawful behaviour, while, as a general rule, causing harm is considered unlawful. Therefore, this offense has the characteristics of a tort, but is not one. At the same time, the infliction of damage in a state of emergency is the basis for the emergence of a certain system of obligations.

Emergency is a general legal category, but it is characterized by certain peculiarities depending on the relations in question. In the broad civil law sense, an emergency is a condition of a person within a certain period of time, the presence of which entitles the person to use actions and means not prohibited by law in order to prevent harm that threatens him or her directly or other subjects of law. In a narrow sense, it is the need to take actions aimed at eliminating the danger to oneself or other subjects, which consists in causing harm to other participants in civil law relations. When defining the concept of emergency, it is necessary to distinguish between these aspects.

In the civil law sense, the characteristic features of emergency are the immediate purpose of causing damage to avert a danger that threatens the legal interests of individuals or legal entities, as well as the impossibility of eliminating

the danger by other means under the circumstances, except for causing damage. An important condition for legitimacy is the existence of a real danger that arose through no fault of the person in a particular period of time.

The subjects of obligations to compensate for damage caused in a state of emergency may be divided into certain groups. In particular, the first subject is the person who directly caused the damage, i.e. the inflictor. The next possible subject may be the person who is the victim (the harmed party). It may also be a person in whose interests the actions were taken in a state of emergency, which actually caused the victim harm.

However, an exception is the case when the person obliged to compensate for the damage may be both the person who caused the damage and a third party in whose interests certain actions were taken. In such a situation, the obligation arises directly between them, namely, the former will be the creditor and the latter will be the debtor. In addition, pursuant to Article 1171(2) of the Civil Code of Ukraine, a person who acted in a state of emergency and a person whose interests were protected may be co-debtors under a partial obligation.

Based on these grounds, it can be concluded that Ukraine has a well-developed civil law, which covers a wide range of articles on compensation for damage to the injured person. At the same time, it also takes into account the peculiarities of causing damage by the offender, one of which is the commission of damage in a state of emergency. Therefore, it can be argued that all issues of dispute resolution are taken into account, and all rights of participants in civil proceedings are ensured.

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