



Illegal Actions of Bodies of Inquiry, Preliminary Investigation, Prosecutors and the Court as a Force Majeure Circumstance

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<http://dx.doi.org/10.18415/ijmmu.v9i9.4063>

Abstract

This article analyzes the illegal actions of the bodies of inquiry, preliminary investigation, the prosecutor's office and the court, which create tort obligations. A scientific idea is proposed to interpret these illegal actions as force-majeure circumstances that resulted in a breach of obligation and innocent damage as a result of a negative impact on the execution of the contract between business entities and counterparties (third parties).

Keywords: *Tort Obligations; Preliminary Investigation; Illegal Actions; Business Entities and Counterparties (Third Parties); Innocent Damage; Force-Majeure Circumstances*

Introduction

Permanent relationships between people sometimes have consequences of harming their material or immaterial interests. These damages can occur as a result of various accidental events, carelessness, intentionality, and natural disasters. In this case, the issue of payment of the damage, that is, payment by the person who caused the damage or the injured person or third parties, is of great importance. According to the theory of civil law [1, p. 339], any damage caused should be considered as an element of the structure of the civil offense and should be fully compensated by the person causing the damage. According to the general principles of responsibility for causing damage (Article 985 of the Civil Code of the Republic of Uzbekistan), "damage caused to the person or property of a citizen due to an illegal act (inaction), as well as damage caused to a legal entity, including lost profits, is caused by the person who caused the damage must be covered in full. In law, the obligation to pay damages can be imposed on a non-injurer. Laws or contracts may stipulate an obligation to compensate victims in addition to damages. The person who caused the damage is exempted from paying the damage if he proves that the damage was not caused by his fault. The law may provide for the payment of damages even if the person who caused the damage was not at fault. Damage caused by legal actions must be paid in cases provided by law. If the damage was caused with the request or consent of the victim, and the actions of the person who caused the damage did not violate the moral principles of the society, payment of the damage can be refused." [2]

The Main Findings and Results

New approaches to solving the payment of damages or exemption from payment in a fair and honest manner are being formed in modern law enforcement and judicial practice. After all, damage caused to the person or property of a citizen, as well as to a legal entity, can arise not only from contractual obligations, but also from non-contractual obligations. Such obligations are based on the principle of tort, according to which any harm is wrongful, unless it is prescribed by law. Accordingly, the damage caused to the citizen as a result of the illegal actions of the investigation, preliminary investigation, prosecutor's office and the court, regardless of the fault of the officials, will be paid in full by the state in accordance with the law (Article 991 of the Civil Code of the Republic of Uzbekistan). However, despite the fact that the damage caused to the citizen as a result of the illegal actions of the investigation, preliminary investigation, prosecutor's office and the court is paid in full by the state based on the court's decision, due to the inability of the citizen affected by this illegal action to fulfill the contractual obligations as a business entity, the counterparties (third parties) are innocently the issue of damage is not taken into account. Of course, the issue of liability for damage caused as a result of breach of contractual obligations can be considered separately by the court at the request of the interested party.

According to the information of the Supreme Court of the Republic of Uzbekistan, in 2020-2021, 576 cases related to the violation of the rights of business entities as a result of legal or illegal actions of state bodies and their officials were considered by the economic courts, and claims were satisfied in 319 cases, while 1247 cases were considered by the administrative courts, 465 claims were satisfied [3]. Among these, there are no cases where business entities cannot fulfill their contractual obligations due to the lack of opportunities to oppose the illegal actions of the inquiry, preliminary investigation, prosecutor's office and the court, and show that they are innocent for the damage caused to the counterparty, and satisfy the demands of the court to declare this situation as a force majeure situation. In our opinion, taking into account that the situation of force majeure is accepted in the legal systems of all countries as a basis for exemption from legal liability or exclusion of illegality of non-fulfilment of obligations, scientific and theoretical research of illegal actions of inquiry, preliminary investigation, prosecution authorities and courts as a situation of force majeure and shows the need to study their civil-legal characteristics.

It should be noted that the illegal actions of the inquiry, preliminary investigation, prosecutor's office and the court may cause innocent damage not only to the citizen, but also to his counterparties due to his failure to fulfill contractual obligations as a business entity. For example, on January 12, 2001, between the private enterprise "Fenix" operating in the city of Navoi and "Kyzilkumtsement" JSC, a trade-brokerage agreement was concluded on the delivery of spare parts to "Kyzilkumtsement" JSC until February 12, 2001, according to which the account number of the private enterprise "Fenix" was signed. 1 billion 750 million soums of funds have been transferred. Sh. Ismailov, the director of the private enterprise "Feniks", converted these funds into foreign currency through a bank, transferred them to the account number of the factory producing spare parts in the city of Novosibirsk of the Russian Federation on the basis of the contract, and left for the Russian Federation on January 16, 2001 in order to fulfill the contractual obligations. Two days later, on January 18, 2020, Sh. Ismailov was suspected of the murder of citizen Tatyana Ivanova in the hotel "Slavutich" where he lived in Novosibirsk, and was kept in prison for two months as a precautionary measure by the court's decision. On March 18, 2001, he was found not guilty and rehabilitated according to the court's decision, as he was not involved in the crime committed.

It can be seen that as a result of the illegal actions of the preliminary investigation bodies and the court against Sh. Ismailov, he was unable to fulfill his contractual obligations within 2 months, and as a result of the violation of the obligation, the interests of "Kyzilkumtsement" JSC were damaged. In our opinion, the occurrence of such a situation does not depend on Sh. Ismailov's will and physical ability, it is unforeseeable, sudden and extraordinary, inevitable and the consequences cannot be prevented in certain circumstances, as a result of the illegal actions of the preliminary investigation body and the court

without the fault of Sh. Ismailov. Due to the fact that “Kyzilkumtsement” JSC was damaged, this situation can be accepted by the court as a force majeure situation.

In addition to the fact that there are no cases in which illegal acts of inquiry, preliminary investigation, prosecution bodies and courts are accepted as force majeure in the current judicial practice, there are no separate scientific studies dedicated to studying their illegal acts as force majeure. Also, research in the scientific works of O.S.Ioffe, S.N.Bratus, E.A.Pavlodsky and others, well-known legal scholars who comprehensively studied the civil-legal features of force majeure cases in foreign countries and carried out several important fundamental studies, there are no opinions regarding considering illegal actions of the preliminary investigation, prosecutor's office and the court as a force majeure situation. However, in recent years, while large-scale reforms aimed at ensuring the unhindered implementation of entrepreneurial activities and creating favorable conditions for doing business are being implemented in our country, there are still some systemic problems in the field of entrepreneurial activities, and some of these problems require direct inquiry, preliminary investigation. , it is known that it is connected with the illegal actions of the prosecutor's office and the court. Here, it should be noted that the solution of the existing problems creates ample opportunities to remove obstacles to business development, attract foreign investments to our country, and ensure guaranteed protection of the rights and legal interests of business entities. In this case, it is necessary to establish fair, honest and fair relations between all state power and management bodies, inquiry, preliminary investigation, prosecutor's office, courts and their officials, and business entities. After all, it is possible to ensure the reliable protection of the rights and legal interests of business entities through the strict adherence of the officials of these bodies to the principles of justice, honesty, honesty, and rationality in the application of law and judicial practice. As the well-known legal scientist O. Okyulov rightly stated, "the application of law and judicial practice is a very complex and extensive process, and the characteristic of both processes is expressed in the fact that they are related to the interpretation and application of certain legal norms." Hundreds of laws and tens of thousands of legal documents apply in the national legal system of our country. However, despite this, all of them cannot clearly, clearly, and perfectly define a person with all possible actions, rules of behavior... The practice of law enforcement in state authorities, self-government bodies, notary offices, mediation and arbitration agreements includes the process of applying the principles of honesty, reasonableness and justice of civil law. The most important thing is that the participants of the process, especially the persons applying the law, i.e. the authorized employees of the state authorities, notary, mediator, arbitrator, judge, should fully understand the essence and content of the principles [4, pp. 56-57].

At the same time, the current level of legal consciousness and culture of our society requires inquiry, preliminary investigation, prosecution bodies, courts and their officials to approach based on the principles of fairness, honesty and justice in the exercise of their powers. In particular, the activities of the officials of these bodies based on these principles, when damage is caused to business entities as a result of their illegal actions, they will be compensated, and these actions will cause innocent damage due to the difficulty or violation of contractual obligations between business entities and third parties (contractors). also requires recognition as a force majeure situation. Because entrepreneurship is a risk-based activity and the entrepreneur is obliged to take risks in the implementation of his activity, therefore, the successful implementation of his activity depends not only on the entrepreneur, but also on factors such as direct inquiry, preliminary investigation, prosecution authorities, courts and legal actions of their officials. In this sense, it is reasonable to accept illegal actions of inquiry, preliminary investigation, prosecutor's office, courts and their officials as a basis for excluding responsibility for non-fulfillment or improper fulfillment of contractual obligations of business entities. In this case, the presence of force majeure should be determined by determining the circumstances of each specific case, and the terms of performance of obligations, the nature of the unfulfilled obligation, the reasonableness and honesty of the debtor's actions should be determined. The party indicating that the illegal actions of the investigation, preliminary investigation, prosecutor's office and the court prevented the implementation of the obligation as a force majeure situation must prove that it took all reasonable measures to fulfill its obligations and

reduce the consequences of force majeure. At the same time, in the framework of the criminal-procedural and administrative legislation, the measures of legal influence applied to the business entity (debtor) limited his rights and freedoms in a certain way, including illegal convictions, illegal prosecutions, imprisonment as a preventive measure. It is necessary to provide evidence that the criminal case has been canceled, i.e. rehabilitated, due to the fact that it is illegal and that an acquittal has been issued against him, that there is no criminal element or criminal event, or that he is not involved in the commission of a crime. At this point, it should be noted that even if the violation of the right of the business entity (debtor) has been proven, but no punishment has been imposed on him according to the grounds established by law, the right to claim the existence of force majeure does not arise. Existence and duration of the force majeure situation of the party benefiting from the use of unlawful actions as a basis for exemption from liability for non-fulfillment of contractual obligations as a force majeure situation; the existence of a direct causal connection between the force majeure situation and the impossibility or delayed performance of the obligation, as well as the fact that the relevant party was not involved in the occurrence of the force majeure situation and that the carelessness of this party did not cause the occurrence of the force majeure situation, honestly by the relevant party must also prove that measures to prevent possible risks or minimize their consequences have been implemented.

It should be noted that when the activity of a business entity is forcibly suspended as a result of illegal actions of the investigation, preliminary investigation, prosecutor's office and the court, this period may be the basis for changing the term of performance of the contractual obligation.

According to the third part of Article 333 of the Civil Code of the Republic of Uzbekistan, "unless otherwise provided by law or contract, a person who has not fulfilled or improperly fulfilled an obligation in the implementation of entrepreneurial activity is unable to overcome a force that cannot be overcome to fulfill the obligation properly, i.e. emergency and circumstances that cannot be avoided under certain conditions (shall be liable if he cannot prove that it was due to force majeure." Therefore, the essence of considering the illegal actions of the investigation, preliminary investigation, prosecutor's office and the court as a force majeure situation is that the situation arising as a result of such actions appears unexpectedly and suddenly, even if the business entity opposes it on an honest basis, its obligation to a third party (contractor) can't do it. Therefore, when the inquiry, preliminary investigation, prosecutor's office and the court accept illegal actions as force majeure, they must consider that these actions are of a legal nature, that the debtor has no opportunity to oppose these actions on an honest basis, and as a result, he cannot fulfill his contractual obligations to a third party (contractor) should be taken into account. At this point, it should be noted that actions contrary to this law can be based not only on force majeure, but also on serious changes in the situation. According to Article 383 of the Civil Code of the Republic of Uzbekistan, a serious change in the situation that is the basis for the parties when concluding a contract, unless otherwise provided for in the contract or understood from its essence, is the basis for changing or canceling the contract. That is, if the situation changes to such an extent that the parties could not conclude the contract at all or conclude it with very different conditions when they could foresee it, it is considered a serious change. If the debtor and his counterparty, affected by the illegal actions of the investigation, preliminary investigation, prosecutor's office and the court, cannot agree on the adaptation of the contract to the seriously changed situation or its cancellation, the contract will be canceled by the court at the request of the interested party, as well as the fifth article of Article 383 of the Civil Code. according to the grounds provided for in the section, if at the same time the following conditions exist: 1) at the time of concluding the contract, the parties believed that such a change would not occur in the situation; 2) if the interested party was unable to overcome the reasons that caused the change of the situation, after they appeared, despite the fact that the interested party exercised conscientiousness and care to the extent required of him according to the nature of the contract and the terms of the transaction; 3) performance of the contract without changing its terms violates the ratio of property interests of the parties in accordance with the contract and damages the interested party, as a result of which they are deprived to a large extent of what they had the right to hope for when concluding

the contract; 4) can be changed if it is not understood that the interested party has to face the risk of a change of the situation due to business practices or the nature of the contract. When the contract is canceled due to a serious change in the situation, the court, upon the request of one or the other party, is based on the need to fairly divide the costs of the parties related to the performance of this contract between them. Also, in connection with a serious change in the situation, the change of the contract is allowed by a court decision in emergency cases where the cancellation of the contract is against social interests or causes damage to the parties much more than the costs required to perform the contract on the basis of the changed conditions by the court.

The principle of strict observance of every deal and contract (*pacta sunt servanda*) has been established in the civil legislation of the Republic of Uzbekistan and foreign countries. However, there is also another determining principle, according to which the contract must not change (*rebus sic stantibus*) at the time of its conclusion [5, p. 238]. The occurrence of a situation that complicates the performance of the contract gives the parties the right to refuse to perform it. Therefore, in the civil law of all countries, if the parties could not foresee the occurrence of a situation that aggravates its performance when concluding the contract, and there is no possibility of foreseeing it, the situation is caused by obstacles beyond the control of the parties, and its consequences cannot be avoided under certain conditions, it is a breach of duty. and if it has caused damage without the fault of the parties, it is established as a rule that such a situation is considered as a force majeure situation.

A more extensive and detailed explanation of force majeure is the force majeure and difficult situations (*hardship*) document issued by the International Chamber of Commerce in 2020 [6]. In modern law practice, these documents are used by the parties to the contract by directly referring to them, or by specifying them in contracts. In particular, in the case of force majeure of the International Chamber of Commerce, as a basis for exemption from the performance of the obligation, failure to perform it is the result of obstacles beyond the control of the parties, the fact that the parties could not foresee such obstacles and their consequences when concluding the contract is determined based on the requirement of reasonableness, provided that the debtor acted in good faith these obstacles and the impossibility of preventing or eliminating their consequences are defined, and an open list of circumstances that cause obstacles is also given. At the same time, in the contract, the debtor's failure to bear the risk of the circumstances that create obstacles is considered as one of the important grounds for the application of *pisanda*. That is, if the debtor in the contract has assumed the risk situation in certain cases in order to convince the creditor, the investor, he cannot demand the use of the force majeure clause, because the use of this clause is determined on the basis of a dispositive norm rather than an imperative one. In Article 333 of the Civil Code of the Republic of Uzbekistan, the norm defining force majeure has a dispositive nature. Another reason for the use of force majeure is the requirement that the party affected by obstacles in the performance of the contractual obligation immediately informs the other party upon encountering such a situation. If notification is delayed, in this case force majeure can be applied from the moment of notification, and failure to notify entitles the non-notified party to the obligation to compensate for damages that could have been prevented due to notification.

Conclusion

In conclusion, the content of the International Chamber of Commerce on force majeure cases is the situation of inability to fulfill obligations as a result of illegal actions of the investigation, preliminary investigation, prosecutor's office and the court negatively affecting the performance of contractual obligations between business entities and counterparties (third parties). gives grounds for recognition as a major status. The fact that such a situation is a force majeure situation, that it arose as a result of obstacles beyond the control of the parties to the contract, that the parties could not foresee such obstacles and their consequences when concluding the contract, that the debtor (business entity) acted in good faith to prevent or eliminate these obstacles and their consequences it is confirmed by the lack of opportunity.

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