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# Improvement of the legal regulation system of tort relations with the participation of internal affairs organs

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## ABSTRACT

This article emphasizes the formation of norms for compensation of damage caused by internal affairs organs (hereafter - the IAO in context), the participation and importance of the IAO in tort relations as a “state organ” and “legal entity”. Moreover, the difference between the liability of the IAO for damage caused by its activities as a state organ and legal entity is explained. The obligation to compensate for damage as a result of the activity as a state organ should be paid from the state budget and the obligation to compensate for damage as a result of the activity as a legal entity from extra-budgetary funds of the internal affairs organs are grounded.

Civilian scholars` views on the issue of compensation for damage caused by illegal decisions, illegal actions (inaction) of internal affairs organs and officials are analyzed. The legislation system of foreign countries, including Germany, England, Turkey, Ukraine, the Russian Federation and a number of CIS countries is considered.

Proposals and recommendations have been developed to improve the mechanism of compensation for damage caused by the illegal application of administrative and criminal law by the internal affairs organs in our national legislation. Establishing special state fund to ensure timely and full compensation for damage caused to citizens and legal entities in the exercise of internal affairs organs and their officials have been scientifically substantiated



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# Ички ишлар органлари иштирокидаги деликт муносабатларни ҳуқуқий тартибга солиш тизимини такомиллаштириш

***Калит сўзлар:***
зарар етказишдан келиб чиқадиган мажбуриятлар
деликт жавобгарлик
зарар
зарарни қоплаш
деликвент
жабрланувчи

## АННОТАЦИЯ

Мақолада ички ишлар органлари (бундан кейин матнда - ИИО) томонидан етказилган зарарни қоплашга оид нормаларнинг шаклланиши, деликт муносабатларда ИИОнинг“давлат органи” ҳамда “юридик шахс” сифатида иштироки вабунинг аҳамияти ёритиб берилди. Шунингдек, ИИОнинг давлат органи ва юридик шахс сифатида фаолиятиоқибатида етказилган зарар учун жавобгарликнинг фарқланиши тушунтириб берилди.Давлат органи сифатидаги фаолияти оқибатида етказилган зарарни қоплаш мажбуриятидавлатбюджетидан, юридик шахс сифатидаги фаолияти натижасида етказилган зарарни қоплашмажбурияти эса, ИИОнинг бюджетдан ташқари маблағлари ҳисобидан тўланиши кераклиги асослантирилди.

Цивилист олимларнинг ИИО ва мансабдор шахсларининг қонунга хилоф қарорлари, ғайриқонуний ҳаракатлари (ҳаракатсизлиги) оқибатида етказилган зарарни қоплаш масаласида билдирган фикрлари таҳлил қилинди.Хорижий давлатлардан, масалан Германия, Англия, Туркия, Украина, Россия Федерацияси ва МДҲнинг бир қатор мамлакатлари қонунчилиги ўрганилди.

Миллий қонунчилигимизда ИИОнинг маъмурий ва жиноий-ҳуқуқий нормаларни қонунга хилоф тарзда қўллаш натижасида етказилган зарарни қоплаш механизмини такомиллаштириш бўйича таклиф ва тавсиялар ишлаб чиқилди.ИИО ва уларнинг мансабдор шахслари томонидан ҳокимият ваколатларини амалга ошириш жараёнида фуқарога ва юридик шахсга етказилган зарарни ўз вақтида ва тўлиқ қоплашни таъминлаш мақсадида давлатнинг махсус жамғармасини ташкил этиш кераклиги илмий асослаб берилди.

# Совершенствование системы правового регулирования деликтных отношений с участием органов внутренних дел

***Ключевые слова:***
обязательства вследствие причинения вреда
деликтная ответственность
вред

## АННОТАЦИЯ

В статье описывается формирование правовых норм возмещения вреда причиненного органов внутренних дел (далее – ОВД), участие ОВД в деликтных отношениях как государственного и юридического лица, и его отдельные аспекты деятельности. А также, следует иметь в ввиду что

возмещения (компенсация) вреда деликвент потерпевший.

ОВД должны осуществлять свою деятельность, как государственный орган и как юридическое лицо. Из чего следует, что государство должно нести ответственность за ущерб, причиненный деятельностью его уполномоченных органов целом, а ОВД должны непосредственно нести ответственность за ущерб, причиненный за результаты их деятельности.

Существуют различные мнения ученых-цивилистов на предмет ответственности субъектов ОВД и его должностных лиц, за ущерб, причиненный их незаконными решениями и противоправными действиями (бездействием). Ив этом плане было изучены ряд законодательных актов зарубежных стран, в том числе, Германии, Великобритании, Турции, Украины, Российской Федерации и ряда стран СНГ.

При анализе норм национального законодательства прослеживается, что отсоветует механизм компенсации ущерба, причиненного вследствие незаконного применения в своей деятельности норм административного и уголовного законодательства ОВД. В связи с чем, возникают проблемы с компенсацией потерпевшим, и исходя из этого, разработаны соответствующие предложения и рекомендации по их устранению.

Предлагается, научно-практическое обоснование, создания специального государственного фонда, целью которой является обеспечение своевременной и полной компенсации потерпевшим за ущерб, причиненный деятельностью ОВД и его должностными лицами..

## INTRODUCTION

There is general consensus in international civilian sphere that the damage caused by the internal affairs organs and their officials is a separate type of tort. However, there are controversial views in the national and foreign literature on the financial source of compensation for damages caused by the internal affairs organs and their officials (the state budget - extra-budgetary funds of the internal affairs organs - the funds of the guilty officials).

The aspect of the research topic has been studied in scientific research of some scientists of foreign countries, for example, Leyland Peter, Anthony Gordon (Oxford University) [1, p. 458-480], Galiya I. Chanysheva, Oleksandr S. Yunin, Nadiia V. Milovska, Roman V. Pozhodzhuk, Viktoria V. Mazur [2], Şölen Külahçı (Cyprus International University) [3, p. 245-261], Ahmet Bozdağ (Marmara University) [4, p. 33-48] and so forth.

We concluded in our research that while each state delegates authority to its own organs, it must always ensure that these powers are exercised correctly and precisely in the prescribed manner. In case the state cannot guarantee the exercise of the powers vested in the internal affairs organs and their officials without absolute mistakes, as a result, it must also assume the obligation to compensate for the damage caused to individuals and legal entities have been scientifically substantiated.

It should be noted that there is no universally recognized procedure for compensation of damage caused to individuals and legal entities by the IAO and their officials at the

international level. The legislation of some foreign countries on this issue was profoundly studied in our research. The scientific approaches of national and foreign scientists on the subject were also analyzed. As a consequence, the opportunity to study and collect the advanced achievements of foreign countries, to develop proposals and recommendations on enforcement of optimal mechanisms for compensation of material and spiritual damage in our national legislation are produced.

## MATERIALS AND METHODS

The general and specific methods of scientific knowledge are used in this research. The methods of analysis and synthesis, as well as the method of logic were used to determine the involvement of internal affairs organs in the status of the state organ and legal entity in tort relations. The dialectical method, on the other hand, made it possible to consider the state of scientific research on the subject. The comparative-legal method was used in the analysis of the legislation of the Republic of Uzbekistan on tort relations with the participation of internal affairs organs. The method of statistical analysis has determined the amount of damage caused by government agencies, including internal affairs organs and their officials in our country, and the extent of the condition of recovery to the victim. The logical-semantic method was used to clarify the content and significance of the "tort responsibility of the internal affairs organs as a state body and a legal entity". Using the normative-dogmatic method, the content of normative legal acts regulating tort relations with the participation of internal affairs organs was analyzed. By using the method of legal modeling enabled to develop proposals for the optimization of national civil legislation in matters of responsibility of internal affairs organs and their officials. The revised materials include the legislation of the Republic of Uzbekistan and foreign countries, as such Turkey, Ukraine, the Russian Federation, Belarus, Kazakhstan and a number of other CIS countries, as well as the scientific works of national and foreign scientists.

## RESULTS AND ITS DISCUSSION

The liability for damages caused by internal affairs organs and their officials is a special type of obligatory relationship stems from the damage. Obligations stem from damage or liability for damage are also referred to as the "tort" institution in the scientific field. This institution is commonly used in the legislation system of many countries of the world (England, France, Germany, Turkey, Ukraine, the Russian Federation and other CIS countries) as universal rules protecting the violated rights and interests of humans. The formation of the institution of compensation for damages caused by state bodies, as well as the internal affairs organs and their officials in our national legislation dates back to the period when the country was part of the former Soviet Union.

Particularly, the constitutional norm, stating: "citizens of Uzbekistan SSR have the right to compensation for damage caused by illegal actions of state and public organizations, as well as officials in the performance of their duties" [5, P.18] in the Article 56 of the Constitution of the former Uzbekistan SSR, adopted on April 19, 1978.

Academician H. Rakhmonkulov mentions that the norm on compensation for damage caused to citizens as a result of illegal actions of the state administration organs, public organizations and their officials in the performance of their duties is not used in practice, because the procedure (mechanism – author`s statement) for damages is not clearly defined by law in the Article 481 of the Civil Code of the Uzbek SSR, adopted in 1963 [6, p. 100].

Remarkably, it is implied just in official form that recovering compensation for proprietary or material damage caused by the state organs and officials, but no legislation of that period provided for compensation of spiritual damage in the Constitution of the former USSR, the Constitution of the former Uzbek SSR and the Civil Code.

B. Hamrokulov expressed his attitude on this issue as the following: "in case the citizens of European countries consider themselves to be spiritually-damaged in the territory of the former USSR, they couldn`t apply to the court for compensation due to the legislation system of the former USSR does not imply spiritual damages as a type of liability, while this legal institution initiated at the beginning of the twentieth century in the European countries. The reason is that compensation for spiritual damage had not been regulated in the former USSR legislation system [7, p. 29].

Leyland Peter and Anthony Gordon point out that until "the Crown Proceedings Act" was adopted in 1947 in England, the Kinship and administrative authorities had a different position on tort liability, but today their tort liability is exactly the same as that of other private law subjects which means that they may also be sued for damages caused by their actions" [1, p. 458].

As a matter of fact, "the Crown Proceedings Act" of 1947 [8] made a drastic change on the issue of tort liability of the Kinship, administrative organs and officials in the history of England. The second Article of this Law is entitled "Tort liability of the Kinship", which describes the liability of the Kinship and the administrative organs for damage caused by their illegal actions (inaction), the procedure and bases of compensation.

Turkish researcher Şölen Külahçi rightly emphasizes that "one of the inalienable principles of the rule of law is that the state is responsible for the result of its illegal actions and compensations for the damage caused to humans" [4, p. 34].

In this regard, it should be noted that the Civil Code of the Republic of Uzbekistan, adopted in 1997, is thoroughly different from the Civil Code of the former Uzbekistan SSR, which sets out some optimal mechanisms of compensation for damage caused by state organs and officials. For example, chapter 57 of the Code, entitled "Obligations arising from the damage", deals with the institution of tort, which depicts: the liability for recovering damage caused by their actions, the procedure of compensation for damage to life and health of a citizen, as well as spiritual damage caused by the IAO and its officials as state organs, pre-trial investigation organs of the internal affairs system, interrogation and preliminary investigation organs are determined [9, pp. 446-466].

However, the life is rapidly evolving and social relations are expanding. These processes, in turn, demand the improvement of institutions for the effective protection of the rights and interests of the human in the civil law, the rejection of unjustified rules and the development of creating directly applicable legal norms that meet the requirements of advanced international standards.

It should be highlighted that the "Improvement conception of the civil legislation of the Republic of Uzbekistan" [10], approved by the Resolution of the President of the Republic of Uzbekistan dated on April 5, 2019, R-5464, marked a new stage in the development of tort in our national legislation. The concept identifies the topical tasks such as improving the right of obligations, improving the institution of civil-legal liability, ensuring fair procedure for compensation and so forth. Today, an interagency commission consisting of representatives of the related areas, practitioners, specialists, the scientific community and lawmakers is

working to implement these tasks. The tort liability is not directly specified the damage caused by the internal affairs organs and their officials in the Civil Code of the Republic of Uzbekistan.

Nevertheless, it can be comprehended that in the Articles 15, 990 of the Civil Code as a state body and in the Article 991 as a law enforcement body (organs conducting pre-investigation, interrogation and preliminary investigation –the embodiment of the internal affairs organs) is a responsible subject (delinquent). In addition to, the organs of internal affairs may also be responsible subject in the tort relationship as a legal entity (establishment) (for example, as the subject of excessive risk sources, as an employer, etc.).

However, our research is devoted to the issues of the involvement of internal affairs organs in the tort relationship, not as a "legal entity" (establishment) but as a "state organ". It should be noted that in some countries, such as the civil law of the Republic of Turkey, "damage caused by public authorities, as well as IAO and officials" is not defined as a separate type of tort, conversely it is regarded as the "employer`s liability". For instance, the second section of the Article 66 entitled "Obligation attitudes arising from the torts" of the Law of the Republic of Turkey "On obligations" adopted in 2011, normalizes the "responsibility of the employer" [11].

It is essential to mention that the civil law of the most CIS countries states "damage caused by state organs, as well as internal affairs organs and their officials" as a special type of tort. Analyzing the laws of these countries, it is apparent that there are some uncertainties and problems related to the research topic. In particular, these problems are:

- the lack of accurate mechanisms of compensation for damage as a result of these torts;
- financial sources of compensation is not specified in the legislation;
- there are some ambiguities on the issue of compensation, in what case by the state organ and in what circumstance by the officials.

Furthermore, it is also debatable that, the obligation to compensate for damage caused by illicit decisions, illegal actions (inaction) of internal affairs organs and officials whether to assign to the IAO or a particular government agency, and no special fund has been established to compensate for such damage in accordance with the civil laws.

For example, in the relevant articles of the Civil Code of the Russian Federation (Article 16) [12]; Civil Code of the Republic of Kazakhstan (Articles 267, 922) [13]; Civil Code of the Republic of Belarus (Article 15) [14]; Civil Code of the Republic of Azerbaijan (Article 1100) [15] and the Civil Code of the Republic of Uzbekistan (Article 15) [9] are indicated.

In our opinion, it is expedient to form special financial sources in order to cover the damage caused by illegal decisions and illegal actions (inaction) of the state organs and officials. This, in turn, increases the chances of compensating the victims in a timely and full manner. In addition, it is not uncommon for the state organ to not always have sufficient funds to cover damages.

It is also important to determine the damage caused by the activities of the IAO as a "state organ" and a "legal entity" (establishment). In this regard, I. S. Kokorin says that "Assigning the responsibility of the IAO depends on the nature of the damage. For example, liability arises if the damage was caused as a result of implementation of economic activity, according to Article 1064 of the Criminal Code of the Russian Federation on general grounds (responsible subject is internal affairs organs - the author`s statement), if the damage was caused in the course of criminal proceedings under the Article 1070 of the Criminal Code (responsible subject is the state - the author`s statement)" [16, p. 53].

V. Vlasov states that it is right to impose legal responsibility on the state in case of damage caused by the actions of a particular law enforcement establishment or official, as well as responsible as a legal entity when participating in civil-legal relations as a subject of civil law ("establishment" - the author`s statement). [17, p. 24]. Summarizing these viewpoints, as I. S. Kokorin noted, the obligation to compensate not only the damage caused by criminal proceedings, but also the damage caused by its activities as a state organ in general, and the damage caused by its activities as a legal entity, in accordance with the general principles of civil law.

Studying the system of legal regulation of tort relations with the participation of the internal affairs organs, we realize that it is truly underlined by Professor O. Okyulov that "currently the civil regulation has a two-rungs system (Civil Code - special laws) and sometimes a three-rung system" [18, p. 14]. Because, it can be seen that the participation of the IAO as a delinquent in tort relations is legally regulated by the Civil Code - separate laws and by-laws.

Scholars who have studied the civil-legal liability of police officers according to the legislation of Germany note "the issue of civil liability of police officers is regulated by the Law "On Federal Police" (Section 3, entitled "Compensation") and the relevant rules of the German Civil Code (Civil Code, 2002)". [2, p. 4].

Namely, it can be said that, this relationship is mainly regulated in two stages in German law. In our country, this tort attitudes is regulated by three levels of legislation: the Civil Code, the Law "On internal affairs organs" [19] and the Resolutions of the Cabinet of Ministers (for example, Resolution No. 235 of 24.04.2017) [20].

Undoubtedly, regulating these relations by different law normscomplicates the process of proper dispute resolution, on the one hand, complicates the possibility of similar legal regulation of these relations on the other hand.

As a matter of fact, Part 3 of the Article 15 of the Civil Code of the Republic of Uzbekistan states that: "if the damage was caused by the fault of state organs and the officials of citizens` self-government bodies, the court may decide to compensate the damage to the officials of these bodies. Part 2 of the Article 46 of the Law "On Internal affairs organs" states: "Damage caused to individuals and legal entities due to illegal actions or omissions of the staff of internal affairs organs is reimbursed by the internal affairs organs at the expense of extra-budgetary funds, the amount of money are recovered from the guilty then".

The inappropriateness of the above norms is that the code imposes obligation to compensate the damage in case of guilt of the official, and the law stipulates that compensation is recovered by the internal affairs organs regardless of the guilt of the official.

In addition, according to the code it is possible to make obligation to the official only with the decision of court, but the law doesn`t imply this rule. Also, the fact that the law does not provide an explanation of the procedure for resolving the issue of whether the staff has a fault or not for damage can in practice lead to cases of unreasonable imposition of tort or unjustified regression on the staff of internal affairs organs. According to the rule set out in the part 2, Article 46 of the Law of the Republic of Uzbekistan "On Internal affairs organs", the damage caused by illegal actions or inactions of the staff is reimbursed from the extra-budgetary funds of the internal affairs organs and then recovered from the guilty person. Part 3 of the Article 1001 of the Civil Code of the Republic of Uzbekistan stipulates that "... the state, that paid the damage caused by officials, has the right of recourse against such persons in cases where the guilt of such persons is determined by the court decision that come to effect". That

is, only if the staff's guilt is determined by the court, the internal affairs organs may require regression on the staff. Accordingly, it is appropriate to include in the content of this norm the statement *"this amount will be later recovered from* ***the person found guilty by the court****".*

Based on the above, it can be said that it is necessary to unify the norms of public and civil law regulating tort relations with the participation of the internal affairs organs. At the same time, it is necessary to clearly delineate the norms of public and civil law, to exclude from the legislation the norms that require different interpretations or clarification of their application in practice.

Another problem connected to the research topic is the increasing number of disputes over the damage caused to citizens and legal entities by the state organs, including the internal affairs organs and their officials, and the unsatisfactory state of timely and full recovery of damages to victims. In fact, within 12 months of 2019, 537 officials, and within 6 months of 2020, 459 officials caused damage to citizens and legal entities. In addition, within 6 months of 2020, 172 billion and 260 million soums were transferred by the above entities. 114 billion 267 million soums of material damage was collected. Explicitly, 44% of the total damage was not reimbursed to the victims for various reasons [21]. This means that our work in this area is still far from perfect and not without shortcomings. An important guarantee of the protection of the rights and interests of persons is the obligation of the state to compensate for the damage caused to a citizen or legal entity as a result of the activities of state organs, including internal affairs organs and officials in a state governed by the rule of law. In this regard, Ukraine should be recognized as one of the leading developing countries in this field and has introduced into national legislation the optimal options for timely and full compensation of damage. Chapter 82 of the Civil Code of Ukraine is entitled "Compensation for damages" and the Articles 1170, 1174-1177 contain a slightly longer list of damages caused by the exercise of state powers. The Civil Code of Ukraine, in contrast to other countries, also establishes the procedure for compensation (compensate) of an individual victim of the criminal offense (Article 1177). Most importantly, the damage caused by the exercise of state powers is covered by the state budget of Ukraine [22]. By all means, it is rather significant to create appropriate mechanisms for timely and full compensation of the damage to citizens in the civil legislation of each state, although to ensure its implementation in practice is a separate issue.

All things considered, it can be concluded that every country should have the system of full guarantee of the rights and interests of humans, their personal and proprietary rights. The establishment of the special budget fund for the timely and full compensation of damage caused by the state organs, as well as internal affairs organs and officials in the exercise of authority, also serves as the full guarantee of human rights.

## CONCLUSIONS

The relationship connected with the damage caused by internal affairs organs and their officials is complex civil-legal relationship in the civil law, regulated by the norms of public and private law. In this relationship, the internal affairs organs participate as the status of the state organ and legal entity (establishment).

The following conclusions are made as a result of research:

— The participation of internal affairs organs in a tort relationship as a status of the state organ should be penetrated as a relationship connected with the damage caused to

citizens and legal entities in the implementation of the functions and responsibilities assigned by law;

— The obligation to compensate for the damage caused by such activities should also be directed to the state budget, not to the extra-budgetary funds of the internal affairs organs;

— Internal affairs organs may also cause damage to citizens or legal entities in the process of performing its functions and tasks on the basis of the use of property attached to the right of operative management.

— The damage caused as a result of activities of exercising their authority is irrelevant.

— Therefore, the obligation to compensate for the damage caused by such relationship should be covered by the extra-budgetary funds of the internal affairs organs;

— It is necessary to unify the law norms regulating tort relations with the participation of the internal affairs organs.

— There should be a norm in the system of internal affairs organs that clearly defines the procedure of the state compensation for damages caused by illegal actions of pre-trial investigation organs, interrogation and preliminary investigation organs, as well as clearly defines the mechanism of state compensation for damages;

— All in all, we conclude that the establishment of the special state fund for compensation of damages caused by state organs, including internal affairs organs and officials, serves as a guarantee of timely and full compensation for damages.

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