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On The Issue on Legal Nature of the Obligation of the State on Payment of Compensation for Violation of the Right to Legal Proceedings Within a Reasonable Time and to Execution of the Judicial Act Within a Reasonable Time

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The article is devoted to the problem of determining the legal nature of compensation for violation of the rights of citizens and legal persons to be tried within a reasonable time and to the execution of a judicial act within a reasonable time. The author concluded that the need to recognize the State's obligation to pay compensation for this special kind of tort not previously provided by civil legislation.

Keywords: responsibility of courts, redress, implementation of justice, the infliction of harm by a breach of procedural law, the right to trial within a reasonable time, the right to execute a judicial act within a reasonable time, the compensation.

Point. According to item 2 of article 1070 of the Russian Federation Civil Code harm caused at administration of justice, is subject to compensation if guilt of the judge is established by the court judgement which has come into effect. The given position of the law has been subject to severe criticism for a long time because comparison of this norm and art. 53 of the Russian Federation Constitution providing an unconditional right to compensation for damage, caused by unlawful actions of courts, testified that the legislator of Russian Federation opposite to sense of art. 53 of the Russian Federation Constitution introduced an additional condition

of acquiring responsibility for causing similar harm by the state in item 2 of article 1070 of the Civil Code.

The given collision has been partially resolved by the decision of the Russian Federation Constitutional Court №1-P on 25.01.2001 (CL RF, 2001). According to judges of the Russian Federation Constitutional Court implementation of justice should be understood according to item 2 of art.1070 of the Russian Federation Civil Code not as legal proceedings as a whole but only as that part which consists of passage of judicial acts resolving a case in essence. At the same time, if harm is caused within legal proceedings in other

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cases (namely, when a dispute is not resolved in essence) as a result of illegal actions of court, harm compensation can take place, if guilt of the judge is established not by a court sentence, but by another corresponding judgement. According to the Russian Federation Constitutional Court judges' opinion, the legislator is obliged to make up a special complex legal toolkit which would define the bases and order of compensation of damages by the state caused by wrong action or omission of court in similar cases.

To execute the Decision of the RF Civil Code №1-P on 25.01.2001 the Federal law «On redress for violation of the right to legal proceedings within a reasonable time or the right to execution of the judicial act within a reasonable time» №68-FL on 30.04.2010 (further – law №68-FL on 30.04.2010) (CL RF, 2010) was passed and come into effect on 04.05.2010, providing conditions and the order of compensation payment to citizens and legal persons caused by violation of their right to legal proceedings within a reasonable time. At the same time, the analysis of provisions of the given statutory act allows to assert, that the state obligation on compensation payment provided by the specified law is not a variation of obligations due to infliction of harm, settled by item 2 of art. 1070 of the Russian Federation Civil Code, and is a special tort not known to the Russian legislation before, the following arguments can be given in its favour.

Example: The general rule on infliction of harm responsibility is fixed by art. 1064 of the Russian Federation Civil Code according to which for tort obligations to arise presence of four obligatory conditions is necessary, they are: harm, unlawful action, causation between them and guilt a person's inflicted harm. Absence of at least one of the named conditions releases a person inflicting harm from an obligation to pay compensation for damages, if other is not prescribed by the law.

Article 1070 of Civil Code RF is directly devoted to peculiarities of compensation of damages caused by unlawful actions of inquiry bodies, preliminary investigation bodies, office of Public Prosecutor and courts. The first point of the named norm defines cases where an injured physical or legal person has a right to compensation of damages irrespective of a person's inflicted harm guilt.

Thus, in claim 1 st.1070 Civil Code established that the harm caused to a citizen by the unlawful conviction, unlawful prosecution, unlawful use as a measure of preventive detention or house arrest, unlawful bringing to administrative responsibility in the form administrative detention, as well as damage caused by a legal person as a result of illegal involvement in administrative responsibility in an administrative suspension of activities shall be reimbursed from the treasury of the Russian Federation, and in cases stipulated by law, at the expense of the treasury of the subject of the Russian Federation or the treasury of the municipal education in full, regardless from the guilt of the officials of inquiry, preliminary investigation, prosecution and trial in the manner prescribed by law.

Distinctive features of claim 1 st.1070 Civil Code are as follows:

1) a special subject composition – the actual tortfeasor (public authorities and their officials), subject, liable to reparation (public and legal education), and the person authorized to compensation (citizens and legal persons);

2) a specific list of actions that give the right to reparation: unlawful conviction, unlawful criminal prosecution, unlawful use as a measure of preventive detention or house arrest, unlawful bringing to administrative responsibility in the form of administrative detention, unlawful involvement of legal entity to administrative responsibility in an administrative suspension of activity.

Despite the «closed» nature of the reduced list of the Constitutional Court of Russia (CL RF, 2004), he has been expanded so that by the rules item 1 st.1070 Civil Code shall be reimbursed as the damage caused to a citizen by the unlawful detention of a suspect. Due to the fact that, in accordance with applicable law detention of a person can take place not only as a criminal and procedural security measure or measures of administrative punishment, but also as a measure of proceedings on administrative violations (Part 3 st.27.5 CAO Russian Federation), Russia's Constitutional Court in its Resolution of 16.06.2009 № 9-P (CL RF, 2009) came to the conclusion that the indemnity in this case also happens in accordance with claim 1 st.1070 Civil Code.

3) actions which give the right to compensation shall be unlawful;

4) damage to be compensated regardless of fault of the officials;

5) damage to be compensated at the expense of the treasury of the Russian Federation, the subject of the Russian Federation or a municipality;

6) damage to be compensated in the manner prescribed by law.

In accordance with paragraph 2 of the Civil Code st.1070 harm caused to a citizen or a legal person as a result of the illegal activities of inquiry, preliminary investigation, prosecution, not entailed consequences provided p.1 st.1070 Civil Code, shall be compensated on the grounds and in order provided st.1069 Civil Code. Special rule established by the legislator in this norm for the cases of compensation for damage caused by the administration of justice – in contrast to the actions of the investigating agencies and prosecutors harm caused in this situation is entitled to compensation if the fault of the judge has entered into force on the court sentence.

The court sentence which has thus come into effect is required to decide compensation of

damages issue in the course of implementation of justice by court, i.e. as a result of the case resolution in essence. If harm is caused by other actions of the judge (for example, on the issues defining procedural-legal status of the parties) it is subject to compensation, if guilt of the judge is established by another decision of the court. As appears from the above, in both cases the establishment of guilt of the judge and acknowledgement of the given fact by a corresponding procedural act is necessary. As a result, an obligatory condition of compensation of damages according to item 2 of article 1070 of the RF Civil Code contrary to item 1 of article 1070 of the RF Civil Code is a person's directly inflicting harm guilt.

Payment conditions analysis of compensation for the right to legal proceedings violation within a reasonable time to a citizen or legal person, provided by law №68-FL on 30.04.2010, allows to assert, that they essentially differ from conditions of compensation of damages caused to a citizen or legal person according to article 1070 of the Russian Federation Civil Code, and the legislator offers absolutely different mechanism of injured persons rights protection in essence.

First of all, contrary to article 1070 of the Russian Federation Civil Code law №68-FL on 30.04.2010 extends its application only to cases of violation of the right of the person to legal proceedings within a reasonable time or the rights to execution of the judicial act providing the resort to collecting budgets means of budgetary system of the RF within a reasonable time. Accordingly, violation of any other rights not connected with court judgement on a certain case, resolving it in essence, does not grant the injured person the right to take advantage of the mechanism provided by the specified law, and is implemented by item 2 of article 1070 of the RF Civil Code rules.

The law does not reveal the issue of the right to legal proceedings within a reasonable time

content, it is not solved in procedural acts fixing norms on a reasonable time of a corresponding kind of legal proceedings either (article 6.1of the RF Criminal Procedural Code, art. 6.1 of the RF Administrative Procedural Code, art. 6.1of the RF Civil Procedural Code). At the same time, the concept of a reasonable time of legal proceedings is not identical to the concept of time of a certain case trial which is testified by provisions of item 2 of art. 1 of the law №68-FL on 30.04.2010 to the force of which violation of terms of consideration of a case itself established by the RF legislation does not mean violation of the right to legal proceedings within a reasonable time.

To decide the issue on reasonability of legal proceedings of a certain case time, it is advisable to take into account such circumstances as legal and factual complexity of the case, behavior of the process participants, sufficiency and efficiency of court actions with a view of a timely case consideration, and the general duration of legal proceedings on the case (item 3 of art. 6.1 the RF Criminal Procedural Code, item 3 of art. 6.1 of the RF Administrative Procedural Code, item 3 of art. 6.1 the RF Civil Procedural Code). As noted by I.V. Reshetnikova, the circumstances surrounding the organization of work of the court, as well as hearing various jurisdictions may not be taken into account as justification for exceeding the reasonable time of proceedings in the case (I. Reshetnikova, 2010).

If as a result of the given circumstances investigation the court considering the claim of an injured person will come to a conclusion that the general term of legal proceedings on a certain case was not reasonable then it is entitled to award him a corresponding compensation. Thus, award of such compensation is not connected with causing property and moral harm to the injured person directly as such violation cannot entail any obvious adverse consequences either. As a result, it turns out, that for the compensation award for

violation of the right to legal proceedings within a reasonable time to the person an establishment of unlawfulness of corresponding public authorities' actions and their officials is not required as the right to compensation arises from the fact of the corresponding non-property right violation. In this sense, the mechanism of compensation fixed by the Law of 30.04.2010 № 68-FZ, corresponds to the modern practice of international courts, that in deciding whether to award compensation to the injured person based only on evaluation of the actions of the court and its relation to the harm caused to a person (T. Neshataeva, 2009).

The given circumstance excludes possibility of art. 1070 of the RF Civil Code application to cases of violation of the right to legal proceedings within a reasonable time as provisions of the given norm are focused, in the first instance, on tort obligations arising from unlawful actions of law enforcement bodies and courts, and unlawfulness of such actions is defined from the point of view of that branch of law within which frameworks the given actions were made. Besides, contrary to item 2 of art.1070 of the RF Civil Code, the person is entitled to compensation award for violation of the right to legal proceedings within a reasonable time irrespective of presence or absence of court and other public authority's guilt (item 3 of art. 1 of law №68-FL on 30.04.2010), while under item 2 of art. 1070 of the RF Civil Code presence of guilt of persons inflicted harm directly in not obligatory.

Item 2 of art.1 of law №68-FL on 30.04.2010 stipulates the additional condition of the corresponding compensation award essence of which is that it can be received by the person only if violation of the right to legal proceedings within a reasonable time took place, except for the reasons not dependent on the person applied with the claim for compensation award, except for emergency and unpreventable under the given conditions circumstances (force majeure).

Establishment of the given condition assumes the competent court analysis not only of the materials of a certain case with the applicant's participation, but also an estimation of his actions within the limits of legal proceedings on it.

At the same time, it is necessary to consider, that the decision of an issue on presence or absence of the reasons depending on the injured person and affecting violation of a reasonable time of legal proceedings, will also depend on presidential practice of the European Court on human rights as the law urges courts while deciding an issue on the compensation size to follow the ECHR practice (item 2 of art. 2 of law №68-FL on 30.04.2010). So, the ECHR repeatedly in its decisions noticed, that an applicant cannot be charged with all remedies use while defending his interests provided by national legislation. Thereupon, the ECHR specifies, that the applicant is not responsible for those periods of time when he specifies his claim statements or tries to receive additional evidence, thus the person uses his procedural rights. Thus, judicial bodies that have not provided efficiency of petitions of the parties' consideration, not taken measures to reclaim proofs, witnesses summons, carrying out expertise, and other remain responsible for the time of legal proceeding (Of the European Court: the letter of the Krasnoyarsk Regional Court of 17.06.2008).

A distinctive feature of a tort, provided by law №68-FL on 30.04.2010, is also a circumstance, that absolutely new legislative constructive is put in its basis – an idea of existence of non-material harm as a special legal category distinct from moral harm, inflicted to the person. Thus, the legislator specially emphasizes in item 4 of art. 1 of the law, that compensation award for violation of the right to legal proceedings within a reasonable time deprives the interested person of the right to moral harm compensation for the specified violation, but does not interfere with

compensation of damages according to item 1069-1070 of the RF Civil Code.

Considering, that both citizens and legal persons might be injured persons due to the right to legal proceedings within a reasonable time violation it should be to ascertained, that law №68-FL on 30.04.2010 for the first time in Russian legislation grant legal persons the right to compensation of non-material harm, reflecting, thereby, the ECHR practice on the given issue. Besides the above-stated, the special subject structure and an order of compensation award for violation of the right to legal proceedings within a reasonable time is established for a tort, provided by law №68-FL on 30.04.2010.

So, except judicial bodies, as persons inflicted harm directly, i.e. infringers of the right to legal proceedings within a reasonable time or the rights to execution of the decision of court within a reasonable time, bodies of criminal prosecution, bodies vested with duties to enforce judicial acts, other state bodies, local governments and their officials can act. At the same time the responsible subject is the corresponding public formation which interests in court are represented by bodies of state power specified in item 9 of art.3 of law №68-FL on 30.04.2010.

For consideration of statements on compensation award for violation of the right to legal proceedings within a reasonable time exclusively judicial order is established, the given category of disputes is triable by courts of general jurisdiction or arbitration courts depending on what court the long proceeding entailing violation of the right to legal proceedings within a reasonable time took place in. If the right in question was violated by court of the general jurisdiction or long pre-trial investigation on criminal case, consideration of the claim statement on compensation award will be carried out by general jurisdiction court, it is the arbitration court that is guilty then arbitration court is guilty

accordingly. Thus, on the first instance in general jurisdiction courts such statements are tried by courts of the Russian Federation subjects on cases triable by judges of the peace, regional courts and garrison military courts, the Supreme court of Russian Federation – on case triable by Federal courts, and in arbitration courts – by Federal arbitration courts of districts.

To file a statement of claim on compensation award a six-month preclusive term is established as to the force of item 5 of art. 3 of the law the statement can be submitted within six months from the date of the latest judicial act passed on the case on which violation has been admitted came into effect, or before the termination of the legal proceeding on the case on which violation was admitted, in case duration of legal proceeding of the case in question has exceeded three years and the claimant has earlier applied with the statement for acceleration of its consideration.

Contrary to item 3 of art.1081of the RF Civil Code providing the right to recourse of the Russian Federation, the Russian Federation subject or municipal body in case of compensation of damages caused by the official of bodies of

inquiry, preliminary investigation bodies, office of Public Prosecutor or court (item 1 of art. 1070 the RF Civil Code), this person only in case his guilt is established by the court sentence coming into force, item 6 of art. 1 of law №68-FL on 30.04.2010 is subject to another rule according to which bodies authorised on behalf of Russian Federation, the Russian Federation subjects or municipal body to enforce court decisions, arbitration court on compensation award for violation of the right to execution of the judicial act within a reasonable time are entitled to submit the recourse requirement to an agency or an official by whose guilt such a violation is admitted.

Resume: Thus, it is necessary to come to a conclusion that the state obligation on payment of compensation for violation of the right to legal proceedings within a reasonable time and on execution of the judicial act within a reasonable time represents a new kind of tort obligation which is not a variation of obligations due to infliction of damages by unlawful actions of bodies of inquiry, preliminary investigation bodies, Office of Public Prosecutor and court (art. 1070 of the RF Civil Code).

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**К вопросу о правовой природе обязательства
государства по выплате компенсации
за нарушение права на судопроизводство
в разумный срок и на исполнение судебного акта
в разумный срок**

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Статья посвящена проблеме определения правовой природы компенсации за нарушение права граждан и юридических лиц на судопроизводство в разумный срок и на исполнение судебного акта в разумный срок. Автор пришел к выводу о необходимости признания обязательства государства по выплате данной компенсации особым видом деликтных обязательств, ранее не предусмотренных гражданским законодательством.

Ключевые слова: ответственность судов, возмещение вреда, осуществление правосудия, причинение вреда в результате нарушений процессуальных норм законодательства, право на судопроизводство в разумный срок, право на исполнение судебного акта в разумный срок, компенсация.
