

THE PRINCIPLE OF COMPENSATION AS A GUARANTEE OF HUMAN RIGHTS AND FREEDOMS (AS EXEMPLIFIED BY THE LEGISLATION OF THE RUSSIAN FEDERATION)

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Abstract. The article aims at analyzing the principle of compensation enshrined in the Russian legislation as a guarantee of human rights and freedoms. Moreover, the authors of the article proceed from the positivist understanding of law principles. The main scientific method is formal legal analysis or interpretation of international and Russian laws on compensation. Based on different reasons, the

authors have developed six classifications of compensation. The article concludes that 1) the principle of compensation is an interdisciplinary principle of the Russian law; 2) the principle of compensation is among effective guarantees of human rights and freedoms in Russia, while the implementation of rules governing this institute contributes to the restoration of social justice in different spheres of social life; 3)

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compensation covers material and non-material damage caused to individuals and legal entities, as well as costs or expenses that arise in cases specified in the relevant regulatory acts; 4) the actual grounds for compensation payments can only be lawful and unlawful action or inaction, as well as events and conditions enshrined in the corresponding law. As a result, the following definition of compensation has been proposed: compensation is reimbursement to individuals and legal entities of material and non-material damage or expenses caused by lawful and unlawful action (inaction), events and conditions, which aims at restoring social justice in cases established by regulatory legal acts.

Keywords: compensation, human rights and freedoms, law principles, the classification of principles, social justice.

Introduction.

One of the trends in the development of human civilization between the second half of the 20th and early 21st century is the recognition of human rights and freedoms as the supreme value (Steiner, H.J., Alston, P. 2000. *International Human Rights in Context: Law, Politics, Morals*. The 2nd ed. Oxford University Press, 1536 pp.; Orend, B. 2002. *Human rights: Concept and Context*. Peterborough, Ont.: Broadview Press, 272 pp.; Azarov, A., Reuter, W., Hüfner, K. 2003. *Human rights. International and Russian mechanisms of legal protection*. Moskovskaya shkola prav cheloveka, 560 pp.; Forsythe, D.P. 2006. *Human Rights in International Relations*. Cambridge University Press, 285 pp.; Joseph, P. 2017. *The New Human Rights Movement: Reinventing the Economy to End*

Oppression. BenBella Books, 269 pp.). According to Article 1 "Obligation to respect Human Rights" of the Convention for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on November 4, 1950, the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in this Convention. Although the Russian Federation became a party to the above-mentioned Convention only in 1998, Article 2 of the Constitution of the Russian Federation adopted at a nationwide referendum on December 12, 1993 enshrines the same norm: "Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State". According to Clause 2, Article 80 of the Constitution of the Russian Federation, the

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President of the Russian Federation shall be the guarantor of the Constitution of the Russian Federation and the rights and freedoms of man and citizen.

The existence of a social and democratic legal state presupposes not only the creation of conditions for the normal functioning of society and individuals and the full realization of their rights and legitimate interests, but also, if necessary, the restoration of social justice, whose violation can be caused by natural disasters, man-made emergencies and other lawful and unlawful actions of different subjects. At the same time, the principle of compensation is both an effective tool and a guarantee of restored justice. This principle is enshrined in international regulatory acts and the Russian legislation.

The article aims at analyzing the principle of compensation enshrined in the

Russian legislation as a guarantee of human rights and freedoms.

Methods.

Within the context of this article, the main scientific method is formal legal analysis or interpretation of the existing legislation on compensation. At the same time, we proceed from the positivist understanding of law principles. In this regard, only the initial and basic legal provisions that underlie the legal regulation of any branch of law or general legal regulation are considered as law principles (Demichev A.A. 2014. The positivist classification of principles typical of the modern Russian law. *Gosudarstvo i pravo*, 5: P. 5-13).

Results

The Latin term "compensatio" means "to balance" or "to reimburse". In general, the concept of compensation with due

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regard to its etymology has two meanings: 1) refund, 2) remuneration. In both cases, the word stands for "balancing or creating balance". It is not without reason that the compensational function of law (including the principle of compensation) is to restore social justice (Kuzmina, M.V. 2014. The compensational function in the system of law functions: theoretical-legal aspects. *Aktualnye problemy rossiiskogo prava*, 2, P. 179; Vlasenko, I.A. 1995. The compensational function of law (theoretical and practical issue): an extended abstract of thesis for a Candidate Degree in Law Sciences. Nizhny Novgorod: Nizhegorodskaya vysshaya shkola MVD Rossii, P. 10; Tarakanov, A.P. 2013. The concept and specifics of compensational functions of law. *Biznes v zakone*, 1, P. 38).

Currently, the concept of compensation is utilized by several international acts and Russian laws.

Article 52 of the Constitution of the Russian Federation also uses the "compensation" term. This article grants each victim access to justice and provides compensation for the damage some crime caused.

There are many examples in international law when losses incurred are compensated. According to Clause, Article 8 of the International Convention for the Suppression of the Financing of Terrorism (concluded in New York on December 9, 1999), "each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1,

subparagraph (a) or (b), or their families".

Article 31 of the United Nations Convention against Corruption (adopted in New York on October 31, 2003 by Resolution 58/4 at the 51st plenary meeting of the 58th session of the UN General Assembly) states as follows: "Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation".

According to Article 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms (concluded in Rome on November 4, 1950): "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of

the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party".

Within the framework of the Russian legislation, the legal definition of compensation is provided only by the Labor Code of the Russian Federation adopted by Federal Law of December 30, 2001 No. 197-FZ. According to Clause 2, Article 164 of the Labor Code of the Russian Federation, compensations are monetary payments, established to compensate employee's expenditures in connection with his fulfilling labor and other duties defined by the federal law. Therefore, most commentators of various legal acts consider the concept of compensation with due regard to the definition provided for by the Labor Code (Lermontov, Yu.M. 2017. Commentary to Chapter 34 of the Tax Code of the

Russian Federation "Insurance payments" (clause-by-clause). Moscow: Statut, P. 81; Beloglazova, V.G., Belyakin, V.G., Velmyaikin, S.F. 2012. Commentary to the legislation on insurance payments and retirement benefits (clause-by-clause). Norma, Infra-M, P. 627; Shnitenkov, A.V., Velikii, D.P. 2007. Commentary to the Federal Law "On jury members of federal courts of general jurisdiction of the Russian Federation" (clause-by-clause). Moscow: Yustitsinform, P. 65).

Besides the Labor Code of the Russian Federation, there are no other Russian laws that define compensation but this term is still used in various regulatory acts.

The "compensation" term is common to civil law. Thus, Part One, Article 12 of the Civil Code of the Russian Federation adopted by Federal Law of November 30, 1994 No. 51-FZ indicates

compensation for moral damages along with other ways of protecting civil rights. Article 16.1 provides for the possibility of compensating damage caused by lawful actions of state bodies and local self-government. Article 65.2 states that members of some corporation should be paid fair compensation. Article 247 and Article 252 are concerned with compensation to a joint interest owner. Part Two of the Civil Code of the Russian Federation adopted by Federal Law of January 26, 1996 No. 14-FZ uses the "compensation" term in relation to a labor contract (Article 709 and Article 729) and moral damage (Articles 1099-1101). Part Three of the Civil Code of the Russian Federation adopted by Federal Law of November 26, 2001 No. 146-FZ applies this term to mismatch between received assets of an estate and the share in the estate (Article 1170) and

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succession of property of a member of a peasant (individual) farm (Article 1179). Part Four of the Civil Code of the Russian Federation adopted by Federal Law of December 18, 2006 No. 230-FZ mentions compensation in relation to protecting exclusive rights (Articles 1252, 1300, 1301, 1311).

The Civil Procedure Code of the Russian Federation adopted by Federal Law of November 14, 2002 No. 138-FZ uses the concept of compensation with respect to moral damage and actual loss of time (Articles 29, 94, 95, 99).

The Code of Administrative Offenses of the Russian Federation adopted by Federal Law of March 8, 2015 No. 21-FZ contains a full-fledged chapter on the specific administrative proceedings concerned with compensation for violating the right to legal proceedings within a reasonable time or the right to enforce a

judicial act within a reasonable time (Chapter 26). In addition, this document enshrines the procedure for paying compensation in connection with the loss of time (Article 52), as well as remuneration to experts, specialists and translators if the work they perform is not included in their duties (Article 108).

The Criminal Procedure Code of the Russian Federation adopted by Federal Law of December 18, 2001 No. 174-FZ mentions the "compensation" term six times, namely: in relation to the compensation for attorney's fees (Article 45 and Article 50), compensation for moral damage (Article 44, Article 136, Article 389.26) and compensation for the violation of a reasonable time when applying procedural coercion in the form of property seizure (Article 115.1). In the latter case, the legislator needs to resolve the issue of compensation and

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refers to the norms established in a special regulatory act, i.e. Federal Law of April 30, 2010 No. 68-FZ "On compensation for violation of the right to legal proceedings in reasonable time or the rights to execution of the court ruling in reasonable time".

The issue of compensation to persons released from criminal prosecution due to mitigating circumstances is relevant to the Russian Federation and other countries. If there are grounds for rehabilitation, the property damage of such a person is compensated in the form of: 1) wages, retirement benefits, social securities and other funds that were lost as a result of criminal prosecution; 2) the property confiscated or turned into state property based on a sentence or judicial decision; 3) fines and court costs paid in pursuance of a sentence; 4) the amounts paid for the provision of legal assistance; 5) other expenses.

While the first four forms make it easy to determine the amount of compensation for property damage, the fifth form mentioned by the Criminal Procedure Code of the Russian Federation does not contain any specific rules. This legal gap is filled by Clause 15 of Resolution of the Plenum of the Supreme Court of the Russian Federation of November 29, 2011 No. 17. Accordingly, "other expenses" subject to compensation are "the expenses incurred by the rehabilitated person directly during criminal prosecution, as well as the expenses aimed at eliminating the consequences of illegal or unjustified criminal prosecution, including the replacement costs related to the consideration of rehabilitation, restoration of health, etc.". The procedure for compensating the property damage of a rehabilitated person is determined by the Decree of the

Presidium of the Supreme Soviet of the USSR of May 18, 1981 "On the compensation for damage resulting from unlawful actions by state organizations and public organizations, or by officials in the performance of their duties" (adopted by the USSR Law of June 24, 1981).

To compensate the moral damage of a rehabilitated person, the state does not strive to make up for the harm as soon as possible but rather suggests using the procedure provided for in civil proceedings. However, we believe that this approach does not correspond to the interests of the rehabilitated person and the principle of justice. This issue can be resolved in the framework of criminal proceedings by analogy with the compensation for the victim's moral damage.

The principle of compensation as a guarantee of individual rights and freedoms

plays an important role in the sphere of penal preparation. According to the official statistics of March 1, 2020, 518,391 people were held in penitentiary institutions (Federal Penitentiary Service of the Russian Federation. URL:

<http://фсин.рф/structure/inspector/iao/statistika/Kratkaya%20harka%20UIS/> (Accessed date: March 24, 2020).

In conformity with the Criminal Executive Code of the Russian Federation adopted by Federal Law of August 8, 1997 No. 1-FZ, persons serving their criminal sentences can be subject to the following types of compensation:

– The compensation for harm in case of the injury caused by the performance of compulsory work carried out in accordance with labor legislation (Article 28). In this case, the legislator refers to

the harm caused to the health of the convicted;

– The compensation for the damage caused to persons sentenced to compulsory labor in accordance with the Russian law (Article 60.21). This article also mentions harm to health but the legislator uses the "damage" term that usually describes material damage. In our opinion, this approach is incorrect. In addition, the manner and cases of compensation are provided not only by the labor legislation but also by Federal Law of July 24, 1998 No. 125-FZ "On compulsory social insurance against accidents at work and occupational diseases". Similar compensation is guaranteed to persons serving their sentences in prison facilities (Article 98 of the Criminal Executive Code of the Russian Federation).

However, not only persons serving their sentences in prisons

are entitled to compensation in the cases prescribed by the relevant law. Convicts are also obliged to compensate the costs incurred by penal institutions:

– The compensation for the expenses of correctional centers for the payment of utility bills and the maintenance of property within their actual expenses by persons convicted to compulsory labor (Article 60.5 of the Criminal Executive Code of the Russian Federation). The procedure for calculating the amount of these costs is not legally determined;

– The compensation for the direct damage caused to some correctional center by persons convicted to compulsory labor (Article 60.20). The recovery procedure, in this case, is determined by labor law. In addition, the administration of some correctional center can either reduce the amount of damages claimed or waive their claim with

due regard to specific circumstances. Neither legislation nor judicial practice dwells on these specific circumstances;

– The compensation for the cost of food, clothing, utilities and personal hygiene products which is made monthly within the actual costs incurred in a given month by convicts serving their sentences in prison facilities (except for certain categories of convicts) (Article 99);

– The compensation for the damage caused to some correctional institution either through the performance of labor duties or other actions by convicts serving their sentences in prison facilities. This type of compensation also includes the recovery of costs for preventing the convict's escape and the costs for treating such a person in case of intentional harm to their health (Article 102);

– The compensation for the costs for keeping convicted servicemen in a disciplinary military unit (Article 164). Regarding this type of compensation, the legislator does not determine the structure of these expenses, indicating that 50% of the salary convicted servicemen receive can be collected from them;

– The compensation for the expenses for renewing passport if the convicted has some funds on their personal account (Article 173).

According to Article 41 of Federal Law of July 15, 1995 No. 103-FZ "On the custody of suspects and accused of committing crimes", the state can receive compensation in case of the material damage caused by suspects and accused during their detention in the amount determined by labor legislation for labor activities and other actions.

Like any other complex phenomenon, compensation can be classified on various grounds.

1. First of all, it is possible to propose the criterion of compensation based on the sector-specific division of law typical of the continental legal family. Therefore, we can distinguish between compensation in 1) constitutional law; 2) labor law; 3) civil law; 4) civil procedural law; 5) criminal procedural law; 6) administrative procedural law; 6) criminal executive law and other industries.

2. The second classification is built over such a ground as a legal fact. A legal fact is a specific life circumstance associated with the formation, alteration or termination of legal relations in conformity with the rule of law. In this regard, the classification of compensation is based on a legal fact that grants individuals or legal entities the opportunity to apply for

compensation in accordance with law.

According to the volitional criterion, legal facts are divided into acts (action or inaction) and events. The former depend on the will of subjects and the latter arise or occur independently. Examples of the compensation paid as a result of some acts (lawful or unlawful actions and inaction) are as follows: compensation for using the personal property of an employee; compensation upon the expiration and termination of an employment contract; compensation for the material damage caused by the unlawful deprivation of work; compensation for the damage caused by lawful actions of state bodies and local self-government bodies; compensation for the damage caused by unlawful actions (inaction) of state bodies, local self-government bodies or their officials; compensation for the

losses caused by the dissemination of information discrediting honor, dignity or business reputation; compensation for the losses incurred by a victim as a result of the agreement recognized as invalid and concluded under the influence of fraud, violence, threat or adverse circumstances; compensation for moral damage, etc.

Compensation might be conditioned by various natural (floods, earthquakes, fires, etc.) and social events (emergencies, wars, conflicts, etc.). Examples of such compensation in the Russian law are as follows: compensation for work accidents and occupational diseases; compensation for the harm caused to the life or health of citizens as a result of an accident or incident at a hazardous production facility; compensation for the lost housing and/or property as a result of hostilities or counter-terrorism

operations; compensation for the damage caused to the life and/or baggage, hand baggage of a passenger during their transportation; compensation for the damage caused to the health of a passenger during air transportation, etc.

There is one more type of a legal fact known as a state, i.e. long-term circumstances having legal consequences. If events and actions are the basis for a one-time compensation, states stipulate long-term compensations. Examples of such compensation types are as follows: compensation in connection with the costs of housing, utilities and other types of services; compensation to persons working in the Far North and equivalent areas; compensation for the harm caused to the health of citizens who received or suffered radiation sickness and other diseases as a result of the Chernobyl disaster, as well people

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with disabilities and family members of citizens who died as a result of the Chernobyl disaster; compensation for non-working wives of rank and file and command staff of internal affairs bodies of the Russian Federation, the State Fire Service of the Ministry of the Russian Federation for Civil Defense, Emergency Situations and the Rectification of the Consequences of Natural Disasters in remote garrisons and areas where these women cannot find jobs, etc.

3. Depending on the object of influence, all types of compensation can be divided into compensation within the framework of property relations and compensation within the framework of non-property relations. In the first case, compensation is associated with the loss or destruction of property belonging to an individual or legal entity. In the second case, it is

connected with any damage to life, health, honor, dignity, reputation and other non-material benefits.

4. Depending on the regularity of compensation, it can be regular and one-time. The first type of compensation is enshrined in legal acts having a permanent effect and is implemented until these documents are amended or terminated. The second type of compensation is associated with certain events based on which authorized bodies decide on compensation.

5. Depending on the territory where people can receive a certain type of compensation, it can be international, federal, regional, local and vicinal. International compensation is established by international law. For instance, the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) concluded in Warsaw on May 16, 2005 provides for compensation for victims of

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terrorism. The Maritime Labor Convention of 2006 concluded at Geneva on February 23, 2006 provides for compensation for seafarers.

Compensation at the federal level (the Russian Federation is a federal state that has both federal and regional laws) is provided for by federal legal acts, including the Constitution of the Russian Federation, the Labor Code of the Russian Federation, the Civil Code of the Russian Federation, etc.

Compensation at the regional level is established by laws of the constituent entities of the Russian Federation. For example, Resolution of the Government of the Republic of Bashkortostan of March 23, 2012 No. 79 "On approving the procedure for granting budgetary subsidies from the Republic of Bashkortostan to compensates some costs related to the acquisition of agricultural

machinery" partially reimburse the money of Bashkir agricultural producers spent on agricultural machinery. At the same time, Government Decree of the City of Moscow of March 9, 2011 No. 63-PP "On approving the procedure for making monetary compensation to owners of demolished stand-alone garages upon clearing the territory of Moscow" provides for compensation to the garage owners whose property was demolished to ensure the interests of Moscow.

According to Article 12 of the Constitution of the Russian Federation, local self-governments are not included in the system of public authorities. Therefore, they can adopt their own legal acts and establish compensation payments to residents of their municipalities at their sole discretion (for example, the demolition of residential houses for municipal purposes).

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The administration of certain organizations, institutions and enterprises has the right to establish their own ways and amounts compensation based on local acts. Typically, such compensations cover overtime work on weekends and holidays, work in difficult conditions, etc.

We should note that compensation for damages, expenses and costs that might arise due to lawful or unlawful action and inaction, as well as certain events can be enshrined at the international, federal, regional, municipal and local levels.

6. Depending on the subject providing compensation, we can distinguish between compensations received from state, employers, individuals and legal entities. For example, the state represented by the relevant bodies compensates the damage caused by a natural disaster. The employer compensates the employee's

expenses in connection with the performance of their labor duties. Individuals and legal entities compensate the material damage caused by their actions, the moral damage caused by their actions and decisions, as well as the expenses incurred due to the non-fulfillment of obligations or violation of copyrights.

Conclusion.

Having studied the principle of compensation, we drew the following conclusions:

1) The principle of compensation is an interdisciplinary principle of the Russian law. Compensation standards are enshrined both in the Constitution of the Russian Federation and in sector-specific legislation (criminal procedure, civil procedure, administrative procedure, labor, civil, criminal executive laws).

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2) The principle of compensation is among effective guarantees of human rights and freedoms in Russia. The implementation of rules governing this institute contributes to the restoration of social justice in different spheres of social life.

3) Compensation covers material and non-material damage caused to individuals and legal entities, as well as costs or expenses that arise in cases specified in the relevant regulatory acts.

4) The actual grounds for compensation payments can only be lawful and unlawful action or inaction, as well as events and conditions enshrined in the corresponding law.

5) Based on the analysis of international and Russian laws, we developed our definition of compensation. Compensation is reimbursement to individuals and legal entities of material and non-

material damage or expenses caused by lawful and unlawful action (inaction), events and conditions, which aims at restoring social justice in cases established by regulatory legal acts.

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