



The Legal Nature of Force-Majeure

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ABSTRACT

This article analyzes the legal nature of the force majeure in the system of legal relations. The will of the parties to a force majeure legal relationship, as a sudden or unavoidable event or situation involving their will, affects the rights and obligations between them and has certain legal consequences, the whole system of legal relations has also been examined as the basis for exemption from liability or exclusion of liability. Approaches have also been explored in distinguishing a situation that led to harm as a risk (risk) or force majeure situation in determining liability for breach of obligation.

The conditions for the use of force majeure in the continental and general legal systems are analyzed, and scientific conclusions are drawn on its legal nature and its role in the national legal system.

KEYWORDS: Force majeure, force majeure, emergency, sudden, unexpected, unavoidable, liability for breach of obligation, grounds for exemption from liability, grounds for exclusion of liability, system of legal relations, general legal category, civil law category, risk-danger).

INTRODUCTION

The consequences of various natural disasters, socio-political, military-economic situations and pandemics that occur frequently around the world today pose a serious threat to human life, health and lifestyle. New approaches are being formed to reduce the negative consequences of the risks that arise in such conditions, to ensure the rights and freedoms of the individual, to protect the rights and legally protected interests of citizens. In particular, the study of scientific-theoretical and practical aspects of the system of legal relations and the application of force majeure in judicial practice has become an objective necessity. In particular, the development of conceptual ideas on the application of force majeure is relevant in protecting the legitimate interests of the parties to the legal relationship and ensuring the stability of relations between them.

It is known that “force majeure” means “force majeure” in English or “force majeure” in French. Typically, catastrophic natural phenomena (floods, fires, earthquakes, etc.) are manifested as an “insurmountable force”. Force majeure, as a category with a much broader meaning, covers not only catastrophic natural phenomena, but also various socio-economic, military-political and other situations (pandemics, state of war, mass strikes and demonstrations, banning imports and exports in the interests of the state, etc.).

THE MAIN FINDINGS AND RESULTS

It should be noted that the legislation of foreign countries with modern legal systems, including the legislation of the Republic of Uzbekistan, does not provide a clear list of force majeure. In fact, it is impossible to do this completely. This is because each force-major situation arises as a separate event or phenomenon and manifests itself with its own characteristics and signs. At present, a number of (public and private) legislative acts of the Republic of Uzbekistan contain concepts related to the force majeure and its characteristics.

In particular, the Regulation “On the procedure for approving cases of force majeure” approved by the Cabinet of Ministers of the Republic of Uzbekistan on February 15, 2005 No. 63 states that emergency, unavoidable, which does not allow the parties to fulfill their obligations in the event of natural disasters (earthquakes, landslides, storms, droughts, etc.) or socio-economic conditions (state of war, siege, ban on imports and exports in the interests of the state, etc.) and contingencies”, article 215 of the Tax Code of the Republic of Uzbekistan stipulates that “the commission of an act with signs of a tax offense as a result of a natural disaster or other emergency and irreversible circumstances excludes the guilt of a person for committing a tax offense”; article 14 of the Customs Code stipulates that “an emergency caused by natural disasters (earthquakes, landslides, hurricanes, droughts, etc.) or other circumstances not related to the will and actions of legal entities and individuals, resulting in the

failure of these persons to fulfill their obligations and that unforeseen, unforeseen circumstances are the effect of an insurmountable force”, article 199 of the Labor Code states that “if the damage is caused by force majeure, the employee shall be excluded from liability”, Article 333, Part 3, “unless the law or the contract provides otherwise, the person who has not fulfilled or has not properly fulfilled the obligation in the course of entrepreneurial activity is an insurmountable force for the proper performance of the obligation; that is, he is liable if he cannot prove that it was not possible due to emergency and force majeure circumstances. Such situations do not include breach of obligations by the debtor's contracting partners, the absence of the goods required in the market for the performance of the obligation, the absence of the necessary funds in the debtor” and Article 156, “the expiration of the limitation period shall be terminated if an unavoidable emergency (force majeure) prevented the initiation of the claim under certain conditions” of the Civil Code [1].

It is clear from the above that although the legislation of the Republic of Uzbekistan regulating public and private legal relations defines the legal norms of force majeure as the basis for exemption from liability or exclusion of liability, but there is no single concept of their application. Many legal literatures state that force majeure should be considered as a basis for the release of the debtor from liability due to a sudden and unavoidable event or situation involving human will in the performance of the debtor's obligation to the creditor. For example, “force majeure is a situation of accidental and force majeure, which, as a rule, exempts the debtor from civil liability, and randomness is a state of innocence of any of the parties to the obligation, and force majeure means an emergency and force majeure. These include catastrophic natural disasters (floods, earthquakes, etc.), as well as some social events (military actions, strikes, etc.)” is marked [2].

Other civilizational scholars also recognize invincible power as circumstances that prevent a person from performing certain actions or, conversely, force a person to perform certain actions, and in this sense see invincible power as the basis for exemption from civil liability [3, p. 152]. It is impossible to fully agree with these views. In our opinion, any force majeure situation that arises affects not only civil-legal relations between legal entities related to mutual rights and obligations, but also public legal relations and has certain legal consequences. It is known that the emergence, change and termination of legal relations are associated with certain events called legal facts, and these legal facts (events and actions) are a necessary condition of legal relations. From this point of view, the force majeure situation is a legal fact as a phenomenon that does not depend on the will and needs of the participants in the legal relationship. For example, a legal relationship arises between a person whose home has been damaged by an earthquake and the relevant government agencies, including insurance agencies. Most importantly, in

the whole system of legal relations, the fact that force majeure is accepted as a basis for exemption from liability or exclusion of liability, confirms that it is a general legal category. Indeed, “public and private rights develop in interaction, actively influence each other and act together in the regulation of socio-economic relations” [3, p. 10].

Part 3 of Article 333 of the Civil Code of the Republic of Kazakhstan “unless otherwise provided by law or contract, a person who fails to perform or improperly performs an obligation in the course of doing business cannot prove that it is impossible to perform the obligation due to force majeure, i.e. emergency and force majeure; will be responsible. Such situations do not include breach of obligations by the debtor's contracting partners, the absence of the goods required in the market for the performance of the obligation, the absence of the necessary funds in the debtor” [5]. However, according to this legislation, certain conditions must be met for the situation to be recognized as a force majeure situation, namely: a) the situation is emergency, sudden and unusual under certain conditions; b) the parties are unaware of such a situation that may arise at the time of concluding the contract; c) the situation does not depend on the will of the parties; d) the consequences of the situation are unavoidable, i.e. irreversible for any participants in the civil proceedings; d) there must be a causal link between the failure to perform the obligation and the situation that has arisen. When these conditions are met, evidence must be collected to prove that the situation that arose on the basis of business practices or the terms of the contract is a force majeure situation and a certificate must be issued in the prescribed manner by the competent authority.

In the law of common law countries (England, USA, India, etc.), force majeure is not always the norm, as this law developed under the influence of case law (case law) and often did not have codified civil law. Instead, it is customary to specify in the contract the notion of force majeure, its specific conditions, that is, exactly what circumstances the parties may accept as force majeure. For this reason, if the contract is based on the law of the general legal system, of course, the terms of force majeure are clearly stated in the contract, and such a situation allows the parties to default or be held liable. The processes of rapprochement, sampling, and these processes are clearly reflected in the norms governing civil law relations in the trade-economic, scientific-technical and innovative spheres.

It should be noted that the Civil Code of the Republic of Uzbekistan (Article 333, Part 3) strengthens the concept of force majeure. It has also been shown that situations do not enter a state of force majeure. Thus, the legislator has taken into account that such situations may arise due to the risk (risk) in the activities of the parties to the legal relationship and may be harmed as a result of non-performance or improper performance of direct obligations. Such cases include fluctuations in foreign exchange rates, devaluation of the national currency, rising prices for goods and products in

the market, dishonest actions of third parties against the borrower, loss of demand for goods in the market, financial losses, bankruptcy and many other situations. Under the General Principles of Liability for Damage (Article 985 CC), the person who caused the damage is exempted from paying damages if he proves that the damage was not caused by his own fault. The law may provide for compensation for damages even if the person who caused the damage is not at fault. In our view, in determining liability for breach of obligation, it is important to determine whether the situation that led to the damage was a risk (risk) or force majeure situation and to clearly distinguish between them, in determining whether the person is at fault. This requires a study of the relationship between the categories of risk and major in terms of civil law.

In modern civilization, there are three concepts of risk (objective), objective, subjective and dualistic, of which the objective concept is that “risk is the existence and emergence of negative effects of a property and personal nature” [6, p. 399]. While the subjective concept states that “risk (risk) is the mental attitude of a person's actions to the accidental consequences or the available possibilities of behavior in certain situations” [7, p. 224], the dualistic concept combines objective and subjective concepts to “risk” (risk) is associated with an alternative (alternative) choice, and the results of this choice are reflected in the perception of social risk” [8, p. 208]. Along with these views, the scientific literature argues that “risk is a situation in which the debtor may be harmed due to failure and negligence in the performance of the obligation” [9, p. 250], as well as “the risk of insolvency of the debtor”, “risk of loss”, there are many terms such as “risk of loss of profit”, “risk of bankruptcy” [10, p. 119].

Based on the views of the proponents of the objective, subjective and dualistic concept of the concept of risk (risk), it can be said that risk (risk) is property damage caused by the debtor's fault or inaction in the performance of the obligation. The consequences of the risk are due to the fault of the debtor and therefore the creditor is harmed. At the same time, the risk also worsens the debtor's own property situation and there is no possibility to transfer the liability to another person or release from liability through the liability mechanism. In our opinion, the category of risk should be understood as both a subjective and an objective category of civil law. Force majeure, on the other hand, is a situation that, in its essence and scope, leads to a breach of obligations as a result of unavoidable, unpredictable, sudden and unavoidable external influences (innocence) that do not depend on the will of the parties to the legal relationship. That is, in the case of force majeure, the parties to the legal relationship, despite taking all necessary measures to fulfill their obligations, will not be able to fulfill their obligations due to force majeure - force majeure, and therefore they will be found not guilty. The above shows that force majeure is an objective category

in the system of civil legal relations, which excludes legal liability or excludes the illegality of the act.

It should be noted that the development of legal relations in the field of exemption from liability for violation of obligations or exclusion of wrongdoing has been the basis for constant research by scholars on the formation of relevant areas, institutions and categories of law. According to the doctrine of civil law [11, pp. 31-32], a violation of a civil law cannot be a ground for recognizing the offender's actions as illegal unless the actions violate the subjective private rights and (or) the legally protected interests of a particular private entity. Therefore, in the analysis of the institution of civil law, the exclusion of liability for violation of obligations or the exclusion of the illegality of the act as a case of *mental incapacity* (a state in which a person is not accountable for his actions), *the necessary defense* (protection of the interests of the individual, society, state), resistance or damage to the victim within the necessary defense, *last resort* (in cases where the person poses a threat to the interests of society, the state, actions within the framework of measures to prevent this threat) and *case* (coincidence). In our opinion, since the force majeure situation is also a sudden accidental situation, it can be concluded that it falls into the category of civil law as a case (coincidence), which is one of the most important grounds for exclusion from liability or illegality of the act. In this regard, it is also important to determine which legal institution is included in the legal norms of force majeure. Indeed, in the theory of law [12, pp. 181-182], the term “legal institution” is understood as a sufficiently developed essence, and such criteria as the legal unity of legal norms, the completeness of the regulation of a particular set of social relations, the separation of norms constituting the legal institution in legislation serve as criteria. From this point of view, force majeure belongs to the institute of the law of obligation of civil law as a category of civil law, which excludes from liability for violation of obligations or excludes the illegality of the act. At the same time, it should be noted that force majeure plays an important role in the national legal system as a complex structure, which is the basis for exemption from liability or exclusion of liability. Indeed, the new draft Civil Code also cites force majeure as the basis for excluding guilt.

CONCLUSION

Based on the above, the following conclusions can be drawn about the legal nature of force majeure:

First, in the system of legal relations, as a general legal category, the basis for exemption from legal liability or exclusion of the illegality of non-performance of an obligation;

Second, the basis for the exclusion of legal liability for non-performance or inadequate performance of an obligation as a category of civil law in civil proceedings;

Third, a significant change in the situation that was the basis for the parties in concluding the contract, unless

otherwise provided in the contract or its essence is not understood, is the basis for amending or terminating the contract;

Fourth, the grounds for termination due to impossibility of performance of the obligation;

Fifth, the basis for the termination of the obligation on the basis of a document of a state body;

Sixth, the basis for the confiscation (requisition) of property in the interests of society, in accordance with the decision of public authorities, in the manner and on the terms established by law, paying the owner the value of the property;

Seventh, the termination of property rights as a result of the loss (disappearance) of property;

Eighth, the basis for the emergence of a legal relationship between the person whose property was damaged and the relevant insurance authorities.

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