

A Common Source of Danger – The Owner as a Subject of Compensation for Damage

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Abstract:

The problem of identifying the person responsible for the damage occurs in a situation where the CSD is shared or shared common property. Will all co-owners be held accountable or only the person who exploited the source of high risk during the damage? the question arises that in these situations it is proposed to use two criteria to correctly identify the responsible for the damage: legal and material. The legal criterion indicates to the CSD the existence of a legal title, and the material criterion indicates the person who owns and exploits this source.

Keywords: CSD, Article, Civil Code, person.

Article 999 of the CC States the persons responsible for the compensation of damages caused by CSD, specifically:

- a) a person who has a high risk source on property rights or other legal basis or
- b) a person who has taken on the protection of a source of high risk. If in the first case it is clear who is responsible (owner on a property right or other legal basis), in the second case we cannot say the same. The ambiguity is that the legislator does not determine who is responsible: has he assumed legal or material protection? However, these are two different concepts.

The criterion by which the existence of a legal representative is analyzed is that it allows the legal representative to use and exercise authority independently and in his own interests, while ensuring control over his actions. Therefore, responsibility for the damage caused by the source of increased risk is placed not on material protection, but only on legal protection, since material protection is limited to direct, material and direct contact with the material. .To clarify the identity of the owner

of the legal protection, the following explanations are useful: until the opposite is proven, the owner is the owner of the legal protection at the time of damage. Use or not in this regard is not seen as evidence of the opposite.

The presumption of legal protection also applies to owners of certain elements of property rights: usufruct, possession, use of accommodation.

Legal protection can also be the result of a contract that a person submits to the management, control and control of the performance of work. We will consider, for example, a lease or a loan agreement, where the legal representative becomes the keeper of the item.

However, legal guardianship can also apply to a conscientious or unscrupulous owner. The same person may be shown legal and material provision, since such powers may apply to different individuals, for example, occur when the owner of the car entrusts the driver to exploit it. From the above, it can be concluded that if the legislator appealed to legal protection in Article 999 of the CC, he would only repeat that such protection was provided, since the concept of legal protection actually applies to owners, regardless of on what basis they acquired this authority. However, if we talk about material protection, it should be noted that the person who bears it, if he is not guilty of causing damage, does not take responsibility and, even if he is innocent, must be responsible for the legal representative.

As you can see, it will be easier to rely on the concept of "owner of CSD" in determining the subject of damages. The owner of the CSD is the person who caused the damage and the debtor, and the obligation to compensate for the damage caused by the source of the increased risk must be assigned to him.

The legal expression of the concept of the owner of CSD is not defined by legislation, therefore, in the special literature this concept has been interpreted in different ways. For example, according to some authors, the owner can be not only the person who owns the source of increased risk, but also the person who owns it during the production activities. Another view is that the owner is a person who has carried out activities to use a source of high risk on his behalf during damage, and therefore has the opportunity and is forced to control it.

The person who is the owner of the CSD and owns it, i.e.: the right to property; the right to operational management; the right to conduct business; a lease agreement; a power of attorney; persons who own it on the basis of decisions of the competent authorities on the temporary commissioning of a dangerous resource, etc.

Of course, this list can be expressed more broadly: on the basis of civil-legal contracts and other documents related to the transfer of property, persons who own and use a source of high risk are responsible for the damage caused by the activities of this source. From the moment the subject of the contract is transferred, responsibility for the damage caused by the source of high risk passes to the new owner of this source.

The owner of the CSD, if he is being exploited, can be a natural and legal person who owns this resource on the basis of property rights or on the basis of other property rights. In this sense, it is conspicuous that the courts apply unevenly the rules related to the definition of the subject of responsibility for damage caused by CSD.

Citizen A., on the basis of the power of attorney went to control the Ural motorcycle owned by his father, and on September 9, 2022, he was hit by a pedestrian D, causing him to suffer a minor body injury.

D. the culprit for the compensation of the material and moral damage caused is A. ning sued his father. The court of first instance decided to fully satisfy the claim. A who disagreed with the decision. appealed this decision. By decision of the appeal court, the appeal appeal was admitted to

the proceedings and a new decision was made. In the reasoning part of the decision, the court of first instance argued that the compensation of the damage from the owner of the motorcycle, and not from the person who owned and used the excess source of danger, incorrectly determined the subject of the disputed material and legal action. By accepting the claim into proceedings, the court of First Instance was based on the fact that the father of the guilty party admitted his guilt at the hearing. However, the court did not take into account that under Section 999 (1) of the CC, persons whose activities are associated with a source of danger to the outside world (who have exploited the vehicle) are obliged to compensate for the damage caused by the CSD. Similarly, the court did not take into account the person who owns the source of high risk by power of attorney at the time of damage.

As you can see, the concept of "owner" is broader than the concept of "owner".

A person who exploits him due to a labor relationship with the owner is not considered the owner of a source of danger.

The rights holder of the CSD will change only after the transfer of the source is legally completed. If the transfer of the CSD is legally completed, but in fact this source is not transferred to the rightsholder, the owner is the owner of the corresponding source. This situation corresponds to the norms of legislation, according to which responsibility for the damage caused by the CSD during its activities is accepted. A person who has not really taken possession of CSD cannot use it and is not obliged to compensate for the damage caused by it.

According to some authors, in a situation where an CSD is transferred without the legal registration of such a transfer, both individuals must be responsible: the legal owner and the factual occupier. Both individuals respond together. However, we do not consider the idea of solidar liability of these individuals to be justified and acceptable. According to Article 999 of the CC, if the damage was caused jointly by several individuals, solidar liability occurs. We do not consider that damage in this case is an integral result of the actions of the legitimate and factual owner.

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