



## Force-Major Status in Tort Liabilities

Kholmurod Isanov

Doctoral Student, Supreme School of Judges Under the Supreme Judicial Council of the Republic of Uzbekistan,  
Uzbekistan

<http://dx.doi.org/10.47814/ijssrr.v5i4.266>

---

### **Abstract**

Any force majeure situation is manifested as a separate event or incident with its own characteristics, signs, and affects different legal relations to varying degrees. The essence of this effect is that a force majeure situation leads to a breach of obligations because of unforeseen and unpredictable, urgent and sudden, unforeseen external circumstances that do not depend on the will of the parties to the legal relationship and innocent damage to the debtor. This article analyzes the civil-legal features of the force majeure situation in tort obligations. The role of force majeure as a basis for excluding tort liability has been studied and a scientific conclusion drawn.

**Keywords:** *Force Majeure Situation; Tort Responsibility; Tort Liability; Exclusion of Liability Basis; Source of Excess Risk; Damage Caused*

### **Introduction**

Any force majeure situation is manifested as a separate event or incident with its own characteristics, signs, and affects different legal relations to varying degrees. The essence of this effect is that a force majeure situation leads to a breach of obligations because of unforeseen and unpredictable, urgent and sudden, unforeseen external circumstances that do not depend on the will of the parties to the legal relationship and innocent damage to the debtor. For this reason, in the whole system of legal relations, force majeure serves as a complex construction as a basis for exemption from legal liability or exclusion of the illegality of the act.

There is no clear and complete list of cases that must be recognized as force majeure in the civil law of foreign countries, such as Germany, France, Russia, China, including the civil law of the Republic of Uzbekistan, where modern legal systems are developed. In fact, it is not even possible to compile such a complete list. Because the circumstances of force majeure are diverse, it is necessary to gather sufficient evidence and give them the necessary legal assessment to prove that the event or event that gave rise to each case is a force majeure. Article 333 of the Civil Code of the Republic of Uzbekistan, defines force majeure as a rule and it states that “unless otherwise provided by law or contract, a person who fails to perform or improperly performs an obligation in the course of doing business shall have an

insurmountable force to perform the obligation properly, that is, he/she will be responsible if he/she fails to prove that he/she was not possible due to force majeure in an emergency and under certain circumstances" [1]. It is known that in laws and contracts, cases are referred as a rule to force majeure, such as floods, fires, earthquakes, epidemics, hostilities, revolutions, riots, strikes, terrorist acts, man-made disasters, nationalization, requisition, international sanctions, impossibility of fulfillment of contractual obligations as a result of adoption of normative legal acts by state bodies. At the same time, the parties to the contract may, by mutual agreement and independently determine the terms of which cases are force majeure, as well as specify in the contract cases that do not apply to force majeure. In particular, it is important that the contract specifies the timing and method of notifying the parties of the occurrence of force majeure. That is, failure to notify the parties in a timely manner of the situation may deprive them of the right to use force majeure as a basis for exemption from liability for non-performance or inadequate performance of contractual obligations.

### **Main Part**

It should be noted that individuals and legal entities that are participants in a legal relationship may not always be in a contractual relationship. Especially in the constant interaction of people with each other in society, sometimes the consequences of harming their material or intangible interests arise. These damages can often occur as a result of various accidental events, carelessness, deliberate actions, natural disasters. Damage to the person or property of a citizen, as well as to a legal entity resulting from non-contractual obligations is a legal fact. Liabilities arising out of damages are based on the "principle of basic tort" and state that "harm to a person constitutes an obligation to compensate for the damage inflicted, and the victim does not have to prove the wrongful act (omission) or guilt of the infringer" [2]. The essence of this "basic tort principle" is that if it is not established by the legislation, any damage is against the law. Therefore, the force majeure situation is a situation that does not depend on the will and physical capabilities of the parties to the legal relationship, unpredictable, sudden and emergency, inevitable and unavoidable in certain circumstances, resulting in innocent damage to the debtor as a result of unexpected external influences when determining the role of force majeure in tort liabilities is important in determining legal liability. In particular, in case of force majeure, there may be a question of who will pay for the damage, ie the person who caused the damage or the victim or third parties, and the legal solution of this is important in judicial practice. Therefore, it is necessary to pay attention to the civil-legal features of the force majeure as a basis for the exclusion of legal liability in tort obligations.

According to the general grounds of liability for damage, established by Article 985 of the Civil Code of the Republic of Uzbekistan,

"Damage to the person or property of a citizen as a result of an illegal act (omission), as well as damage to a legal entity, including lost profits, should be fully covered by person who caused the damage. By law, the obligation to pay damages may be imposed on a person who is not the perpetrator. Legislation or a contract may provide for an obligation to compensate victims in addition to damages. The injured party shall be 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. Damage caused by legal actions must be compensated in cases provided by law. If the damage was caused at the request or consent of the victim, and the actions of the person who caused the damage do not violate the moral principles of society, compensation for damages may be refused [3]. It is known that according to the general principles of liability arising from damage in civil law, the definition of tort liability requires a number of conditions, ***including the presence of property damage, the unlawful conduct of the offender, the causal link between the unlawful act and the damage and the fault of the person who caused the damage.*** "Property liability arising from damages may arise only when there is a causal link between the unlawful act and the damage. The question of the existence or

non-existence of such a causal link shall be decided in the same manner as the liability for breach of contractual obligations is determined in the same manner” [4]. That is, the presence or absence of a causal link between the damage caused and the unlawful act is determined by examining each case separately and giving it an adequate legal assessment. Only the existence of an internal, organic link between the wrongful act of the person being held liable and the damage caused is the basis for the determination of property liability. A person is harmed in a force majeure situation because he is not dependent on his own will and has no physical ability to act differently in certain circumstances. Otherwise, the force majeure situation cannot be used as a ground for exclusion of liability if the damage was caused because of lawful or intentional illegal actions of the person at his own will. In our view, if the property damage inflicted in the tort obligations is the result of force majeure only and there is no causal link between the infringer's actions and the property damage, the wrongfulness of the participant in the tort obligations and his guilt can be ruled out. For example, Article 999 of the Criminal Code of the Republic of Uzbekistan stipulates that “legal entities and citizens (transport organizations, industrial enterprises, constructions, vehicle owners, etc.) whose activities pose an excessive risk to others must pay for the damage caused by the source of the excess risk if they cannot prove that the damage was caused by irreparable force or intentional actions of the victim.

The obligation to compensate for the damage is imposed on the legal entity or individual who owns the source of excess risk, the right of ownership, the right of economic management or the right of operational management, or any other legal basis (property lease agreement, power of attorney for the right to drive a vehicle, according to the order of the relevant authority to transfer the source of excess risk to him, etc.) [5].

It should be noted that a person who is a participant in a civil legal relationship usually manages techniques and technologies of varying complexity with his mind, but his control over such technological equipment cannot be considered complete and absolute. As a result of the influence of some objective factors, their ability to fully ensure their safety for those around them may be limited, i.e. they are a source of excessive danger to those around them. For this reason, legal entities and citizens whose activities pose an excessive risk to others must pay for the damage caused by the source of the excess risk if they cannot prove that the damage was caused by force majeure or intentional actions of the victim under certain circumstances. It is clear that the presence of the fault of the infringer is not required to impose liability. A person who engages in an activity that poses an excessive risk to others shall be liable, including through no fault of his own, for damage caused by accident. The limit of such liability extends to the limit of the scope of force created by the force majeure situation, and therefore the liability for damage from a source of excess risk is an increased liability.

Legislation today does not have a complete list of activities that pose an excessive risk to those around them, and it is not possible to compile such a complete list. Because humanity in the 21st century has created a wide variety of complex technologies using scientific advances, they are less likely to be harmed in the course of normal activities, and this can only happen if the perpetrator is to blame. Therefore, in such cases, liability is determined by the terms of the "general grounds for liability for damage." Any type of activity where there is an excessive risk of harm due to the inability of a person to exercise full control is considered a source of excess risk. For example, high-voltage power sources, nuclear power systems, explosives, etc. can be included in such excessive sources of danger. Damage to such resources may occur when they are used for their intended purpose or when their hazardous properties are self-evident, and it is important to note that this is not important in determining property liability. That is, there must always be a causal link between the damage caused by the activity of the excess risk source or, in other words, the occurrence of the damage and the corresponding specific hazard manifested in the exploitation of the excess risk source. An object that is inactive or has completely lost its hazardous properties cannot be a source of excessive danger. Therefore, it is important to study the characteristics of force majeure as a basis for excluding the liability of the owner of the source of excess risk. It should be noted that to date, no specific research has been conducted on the characteristics of force

majeure as a basis for excluding the liability of the owner of the source of excess risk. According to B.S. Antimonov, a lawyer, the concept of "invincible force" is no different in contractual relations and non-contractual obligations" [6]. It is impossible to agree with this opinion. This is because a person who engages in activities that pose an excessive risk to those around him must have taken all precautions to ensure safety and will be liable for any damage, including accidental damage, through no fault of his own. For this reason, the legislature has defined liability for damage from a source of excessive risk as an increased liability. On the nature of such responsibility, M.P. Redin comments: "Liability for damage caused by an excessive source of risk is the payment of legal entities and citizens for the negative consequences arising from the use of scientific and technological advances" [7]. In addition to the author's opinion, it should be noted that there must be a natural link between the impact caused by the hazardous properties of the excess risk source and the damage caused, otherwise the damage is considered to be caused by another source rather than the excess risk. For example, in the event that a high-voltage power supply collapses during a severe flood, causing death, the force majeure situation should be considered by the court in the manner prescribed by law as a basis for the exclusion of liability in this case, as the damage to human life is caused by a high-voltage power supply, which is a source of excessive danger. Similarly, when third parties are harmed because of the interaction of several sources of excess risk, a legal assessment should be made of the legality of the actions of the sources of harm, whether there is a causal link between these actions and the harm, the guilt or innocence of the owners of the harm. In particular, the collision of two or more vehicles can cause serious damage to the health of third parties because of physical exposure.

### **Conclusion**

Based on the above, it can be concluded that in determining the liability for damage caused in tort obligations, the force majeure situation or intentional actions of the victim should be taken into account as a basis for exclusion of liability by the court. This indicates the role of force majeure as a civil law category in the system of tort obligations.

### **References**

1. Civil Code of the Republic of Uzbekistan. <https://lex.uz/ru/docs/111189>.
2. Russian Civil Law: In 2 vols. Vol. II: Law of Obligations / Ed. E.A. Sukhanov. -M.: Statute, 2011. P.1080.
3. Civil Code of the Republic of Uzbekistan. <https://lex.uz/ru/docs/180552>.
4. Civil law of the Republic of Uzbekistan. / Team of authors: Part II. T. : "Adolat", 1999.p 341.
5. Civil Code of the Republic of Uzbekistan. <https://lex.uz/ru/docs/180552>.
6. Antimonov B.S. Civil liability for damage caused by a source of increased danger. -M.: Yurid.lit, 1952. P.130.
7. Redin M.P. The concept of a source of increased danger and the legal nature (essence) of an obligation from causing harm by its action // Russian Justice. 2008. No. 2. P.26.

### **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).