CIVIL AND LEGAL PROBLEMS OF THE INSTITUTION OF CONDITIONALIZATION

Abdulkhaeva Anisa Abdumalikovna
3-year student of Private Law Faculty
at Tashkent State University of Law

Abstract: The article is dedicated to the research of the institution of obligations under unjust enrichment (condiction) in the civil law, particularly, the Republic of Uzbekistan. Historical origins of this institution, its formation in the context of the Roman law and current legal systems, such as Russian and German one is discussed. The author examines the prerequisites of the occurrence of obligations under condiction, the primary types of unfair enrichment, and the issues that emerge in the field of judicial practice to decide the fact of getting an enrichment, the extent of its compensation, and the restoration of the property. The emphasis is made on the gaps in the legislation and challenges in the implementation of the law due to the vague wording and a wide range of the court verdicts. Finally, the suggestions regarding better regulation of law and judicial proceedings to be applied to guarantee justice and safeguard the property rights of the parties are provided.

Key words: unjust enrichment, institute of condition, conditional claim, civil law, obligations, judicial practice, legal regulation, compensation for damages.

The existence of unjust enrichment obligations (condiction) is one of the most important points of civil legal practice of law application. An unjust enrichment occurs when one individual profit materially, at the cost of another party without any legal grounds. This legal institution is created in order to bring justice to the situation when the property rights of participants are violated in the case of the illegal acquisition or storage of property at the cost of the other party.

The complexity and versatility of the term and their importance in the current economic and legal conditions make the topic of interest to science. Experiences of inaccurate enrichment were discussed in the framework of Roman law and legal science in different countries such as Germany, France, Russia etc. At the present moment, the problem of the definition and legislative regulation of this institution is actively discussed both in the national and foreign literature, and this allows getting a deeper idea about its legal nature.

Even though scientific research is incredibly extensive, not everything is clear-cut and without gaps. As the practice stands however, the literature itself lacks specificity in what can be called the fundamental in seeing enrichment as unfair. It is also asked what is the most effective sort of legal measures to protect the interests.

Condiction is an important civil law institution aimed at restoring the violated property interests of the parties in the event of unjust enrichment. The use of condiction allows protecting the rights of persons whose interests have been violated as a result of the unjustified receipt or retention of property by other persons. In the Civil Code of the Republic of Uzbekistan, this concept is regulated for the purpose of protecting property rights and restoring justice. The institution of unjust enrichment has received legal recognition in the legal system of the Republic of Uzbekistan and is a special type of obligation aimed at returning property or compensating for it if the benefit was received without a legal basis.

Such a theme of condiction is topical nowadays because the emergence of the market relations in Uzbekistan intensifies the necessity of effective regulation of the property interests, the assessment of justice and justice in the course of enrichment, which is made at the expense of other people. In the present paper, we are going to discuss the key points of the institution of condiction with references to the structures of the Civil Code of the Republic of Uzbekistan and consider the regulation framework and the problems of the law enforcement as well as provide the recommendations on how these issues can be addressed.

In this paper we aimed not only at simplifying current approaches, but also at introducing our proposals to resolve certain issues connected to the legal regulation of obligations having arise because of unjust enrichment.

Methodological foundations of the analysis are associated with review of the regulatory legal act of the Republic of Uzbekistan, namely the Civil Code, works by scientists in the country and abroad, judicial practice in the case concerning unjust enrichment. To understand the institution of condiction in a better way, a comparative legal study with the law system of other nations, such as Russia and Germany, is employed. Moreover, the study implements analytical/synthetic methods of investigation, which provides us with the opportunity to extrapolate the theoretically and practically significant details of the considered problem.

The discussion of the subject of obligations on the basis of unjust enrichment is carried out on the basis of the consideration of different scientific resources that contain the history and contemporary peculiarities of this legal category. Roman law as ground had become essential part of their methodology in terms of which the institution of unjust enrichment was developed. Modern legal norms are based on the principle of nemo «condictio indebiti» that belongs to the Roman law. A discussion of the normative legal acts governing obligations of unjust enrichments in different legal frameworks was also stated. The similarities and differences of civil codes and laws of Russia, Germany and France were demonstrated by a comparison.

To their own view, the works of R.-J. Potien inspired German scholars K. Zweigert and H. Ketzlarn. Because the writings of R.-J. Potien had carried very much

weight in a particular section of the French Civil Code, the present case, that of the scholar was to accept the reception of condictio indebiti (where the resumption of a debt non-existent must be made) in Roman law, presented in the cluster of condictios which are considered as indispensable.[1]

The works of the contemporary scholars, namely Braginsky M.I., Vitryansky V.V., Lobanov A.G., who contributed significantly to the work on obligations that occurred as a result of unjust enrichment and offered some strategies of the law enforcement, were not an exception. The analysis of these works assists one to have a clearer realization of the dominant issues as well as develop possible solutions to these issues.

G. F. Shershenevich at one time defined the characteristics of obligations from unjust enrichment as follows: "a) it is assumed, first of all, that enrichment consists in increasing the value of property by adding a new one to it or in preserving the one that should leave the property...

b) it is necessary that the enrichment of one person occurs at the expense of another, so that the property of the other person suffers a decrease...

c) the main condition for establishing an obligatory relationship is enrichment without a legal basis when value is transferred from one person to another."[2]

Separating the receipt and saving of property which are unjust, O. S. Ioffe wrote: “Two types of unjust receipt of property benefits resemble two types of losses: positive damage to property and lost income. But just as the property benefits themselves are opposite to losses, their individual varieties are also opposite. Receiving something undue unjustifiably increases property, and lost income means that the property has not increased, although it could have increased if not for the offense. Unjust saving preserves property at its previous size without due grounds, and positive damage reflects property losses caused by the offense. But whatever the unjust property benefits may consist of, they are subject to return in full. In this regard, obligations of this kind are subject to the principle of full compensation to the same extent as tort obligations or claims for damages arising from contracts.”[3]

The paper has established the fact that unjust enrichment obligations are noteworthy because of their significance in safeguarding property interests and restoring justice. The formulations of the most important findings of the study can be made in the following way:

[1] Zweigert K., Ketz H. Introduction to Comparative Law in the Sphere of Private Law: in 2 volumes. Vol. 2 / Translated from German. – Moscow: International Relations. 2000.–pp. 294-295.

[2] Shershenevich G. F. Textbook of Russian civil law. - 10th ed. - M.: 1912. -P. 672.

[3] Ioffe O. S. Law of Obligations. - M., 1975. - P. 860.

Unjust enrichment is an unjust profit that an individual or a party obtains without legal justification in the expense of another party by either stealing somebody property or by hoarding of own funds.

The fact of unjust enrichment of one person at the expense of another is the basis of emergence of the obligation of condiction. Nevertheless, the right to condiction should be attained with the following conditions:

The enrichment - the individual must be benefited by acquiring property or good which would not otherwise have been received but due to the involvement of the other individual.

There is no basis in law - enrichment should be made without any basis established either in the law or by contract.

There needs to be the presence property damage: the entity out of whose pocket enrichment came about must experience property losses.

The relation of enrichment and damage - the enrichment of one individual should come along with the direct material losses of another individual.

These conditions are mandatory for recognizing the enrichment as unjust and for the emergence of the right to file a claim for the return of property.

The main categories of the concept under study are the following: a) condictio indebiti (claim for the return of an unfulfilled payment), b) condictio causa data causa non secuta (claim for the return of a given but not realized intention), c) condictio ex causa furtiva (claim for the return of what was received as a result of fraud) and others.[4]

As in any other legal framework, the Uzbekistan civil law identifies the primary types of the condition:

In cases of acquisition of property without legal grounds there is condition where such acquired property is acquired without any obligations (e.g. in error).

Saving condition is where an individual saves his money out of the other person. As an example, when one party reimburse utilities that have been utilized by the other party.

Invalid condition: under this case, a transaction is considered invalid. The two parties in this case would be expected to restitute to each other the full amount paid by the transaction.

It has been found that the use of the concept of unjust enrichment often causes problems in judicial practice, especially in situations where it is impossible to clearly determine the presence of unjust benefit. Courts also have difficulties in determining the connection between damage and enrichment, especially when the defendant does not agree with the fact of enrichment. Sometimes difficulties arise when using Article

[4] Novitsky I.B. Fundamentals of Roman civil law. Textbook for universities. Lectures. - M.: ZERTSALO Publishing House, 2000. - P.215-216.

1030 of the Civil Code of the Republic of Uzbekistan,[5] which states that there is no obligation to return unjustly acquired property if its acquisition was the result of the actions of the victim (for example, due to a mistake).

In our legal system, there are laws regulating obligations for unjust enrichment, but there are difficulties in determining the grounds for satisfying claims for the return of unjust enrichment in practice. A disadvantage is the imperfect application of laws regarding the amount and content of compensation for damage.

In the judicial sphere of Uzbekistan (as in other countries), difficulties often arise when considering court cases on unjust enrichment. These difficulties are caused by several factors: from unclear legislation and a variety of court decisions to difficulties in confirming the facts. Let us consider the key issues that courts and participants in the trial face.

First, defining the concept of unjust enrichment is problematic in practice. One of the first and most important issues in legal practice is determining the presence of unjust enrichment. According to civil law, in order to consider enrichment unjust, the plaintiff must prove:

the receipt or retention of property by the defendant.

there is no legal basis for such enrichment.

Where the defendant alleges that he took the property fairly (say under a contract or by mistake), in practice the plaintiff would not find it easy to disprove that allegation. This issue is particularly relevant when there is an agreement between the sides, whereas one of them states that the actions of the other side cannot be observed in accordance with the conditions of the contract.

Secondly, Amount and type of compensation compose one of the most important aspects of unjust enrichment cases. In the real world, judges can be affected due to the challenges whereby they can decide on the nature of compensation of property to be given back to the complainant. We will have difficulties in the following cases:

Assets value calculation. The parties can make their various estimates of the value of a property when a claim about the recovery of its possession is discussed in court. In case, the property cannot be returned (perhaps, it was used or brought off), the court should determine the sum of compensation in the form of money, and this task involves the participation of specialists.

Taking into account the plaintiff's expenses. In some cases, the defendant claims that he spent money on maintaining or improving the illegally acquired property. The court must determine whether and to what extent these expenses can be taken into account when calculating compensation.

[5] Civil Code of the Republic of Uzbekistan (part two) dated March 1, 1997 No. 256-I. https://lex.uz/docs/180550.

Thirdly, problems arise when returning property transferred under invalid transactions.

When a transaction becomes invalid, both parties must return to each other the property received under this transaction. However, in practice, this leads to the following difficulties:

Virtual impossibility of return. If something has been spent, changed or destroyed, it cannot be returned as it was at the beginning. In such situations, the court must determine the monetary value, which often leads to disagreements between the parties.

Lost profits and losses computation. In case one of the parties has incurred damages because of the ineffectiveness of a transaction or has lost gains, the court is to assess such damages. There is however no consistency in assessing the level of damages and lost profits in practice hence making decision making difficult.

We would point out a real case of the law practice of Republic of Uzbekistan, when on 16.08 2024 the Mirzo Ulugbek interdistrict Court of Civil Cases of Tashkent examined case No. 2-1001-2404/ 24484 of the claim of JSCB Kapitalbank against Bulatov Amal Arturovich on reimbursement of the sum of unjust enrichment and interest to use the money of other people.

Justification of the claim was the two-fold transaction on July 6, 2022, when, as a result of a technological failure in the Zolotaya Korona system, 8,600 US dollars were written off to the card of the defendant against the expected level of 4,300. Respectively, using the phrase of the official confirmation of the transfer system, the bank requested a refund of the overpayment, as the sender (Nikita Khanilov) did not repeat the payment. The defendant, transferring received money to another person (Roman Azamatov), stated that he had no intent, as it did not notice the mistake, and his lawyers noticed that in 2022, Bulatov was a minor and did not have prior experience in using payment systems.

With the help of Article 1023 of the Civil Code of the Republic of Uzbekistan, the court proved the fact of unjust enrichment: a technical error caused an unlawful doubling of the amount, which corresponds to the conditions of the absence of a legal cause and imposes losses on the bank. In spite of the arguments expressed by the defendant, the court partly fulfilled the claim, liable to pay $4,300 and legal charges, but decreasing the sum of interest. The ruling is in consonance with the principle of condictio indebiti (return of what is undue) as well as confirmation that even an inadvertent enrichment will have to answer to restore justice.

The case demonstrates common complications of the proof in the cases of condictio: the necessity to prove the relation between enrichment and the harm (Article 1023 of the Civil Code of the Republic of Uzbekistan), and the presence of technical errors which serve as the motifs of the repayment of the money. The fact that the court

was not inclined to consider the minority of the defendant speaks of the objectivity of obligations of unjust enrichment, which form regardless of such factions as the fault of the beneficiary (Article 1030 of the Civil Code of the Republic of Uzbekistan). The question of reimbursement of the bank profits lost is not resolved thus making it clear that there are loopholes with regard to the regulation of the value of compensation.[6]

The case is a good example of the application of the laws of condictio that was originally established under the Roman appurtenance of the statutes of proprietary law, "nemo debet locupletari aliena jactura", in the recent circumstances of online payments when technical breakdowns appear before law courts as a novel issue.

This paper has identified some of the key points regarding unjust enrichment obligations. First, it should be mentioned that formal rules are established to regulate such obligations, but, in reality, their concretization can lead to a number of problems. It is so because a lot of cases of unjust enrichment are ambiguous in their nature and one cannot always clearly define their qualification.

The comparison with practice of other countries demonstrated the existence of different approaches to the concept of unjust enrichment. As an example, it is possible to note the fact that in German legal system, a great attention is paid to such a concept as fairness, whereas in British law, the enrichment institution takes into consideration the accepted norms in general and peculiarities of the concrete case.

Therefore, liability arising from unjust enrichment is subject to further improvement in both the legislative and judicial spheres. In real practice, it is necessary to fine-tune those aspects that create the greatest difficulties for law enforcement officers. It is necessary to continue improving judicial practice and develop recommendations for its standardization.

The conclusion that can be drawn from the conducted study is that the institution of obligations arising from unjust enrichment is of great importance in the modern legal system. It protects the rights and interests of those affected by the illegal enrichment of others at their expense. This institution promotes compliance with the principles of justice and equality, correcting violations in the property status of the injured party.

The importance of this institution for science and everyday practice is obvious, since it promotes the development of civil law and the improvement of mechanisms for the protection of property. The topic requires further study, especially in the field of law enforcement and the definition of unjust enrichment. It is also important to increase international cooperation and exchange experiences with other countries in order to improve national practices.

[6] Case from the judicial practice of the Republic of Uzbekistan, On August 16, 2024, the Mirzo Ulugbek Interdistrict Court for Civil Cases of Tashkent considered case No. 2-1001-2404/24484.

The necessity to refine the process of illegal enrichment is also evident since it could become a valuable instrument of safeguarding the rights of the members of civil relations. Study of this domain will be able to help in future to reinforce civil law and to build a law fairer in the future.

Literature review

1. Civil Code of the Republic of Uzbekistan (part two) dated March 1, 1997 No. 256-I. https://lex.uz/docs/180550.
2. Braginsky M.I., Vitryansky V.V. "Contract Law: General Provisions". - M.: Statut, 2013.
3. Lobanov A.G. "Unjust Enrichment in Russian Civil Law". - St. Petersburg: Legal Center Press, 2018.
4. Bettingen H. "Unjust Enrichment in the Continental and Anglo-Saxon Legal Systems" // Modern Law, 2021, No. 5.
5. Ioffe O.S. "Law of Obligations". - M.: Statut, 2014.
6. Sukhanov E.A. "Civil Law". — M.: Wolters Kluwer, 2016.
7. Zweigert K., Ketz H. Introduction to comparative law in the field of private law: in 2 volumes. Vol. 2 / Translated from German. – Moscow: International Relations. 2000.–pp. 294-295.
8. Novitsky I.B. Fundamentals of Roman civil law. Textbook for universities. Lectures. –M.: ZERTSALO Publishing House, 2000. –P.215-216.
9. https://inscience.uz/index.php/socinov/index Analysis of approaches to liability arising from unfair enrichment actions.
10. Shershenevich G. F. Textbook of Russian civil law. - 10th ed. - M.: 1912. -P. 672.
11. Ioffe O. S. Law of Obligations. - M., 1975. - P. 860.
12. Case from the judicial practice of the Republic of Uzbekistan, On August 16, 2024, the Mirzo Ulugbek Interdistrict Court for Civil Cases of Tashkent considered case No. 2-1001-2404/24484.