



Research on the Conditions of “Right Protection Fee” in State Compensation

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Abstract: according to the State Compensation Law of the people’s Republic of China implemented in 1995, state compensation includes administrative compensation and criminal compensation. State compensation mainly refers to that when the state organ or staffs of the state organ bring personal rights or property rights damage to citizens, legal persons and other organizations due to the exercise of their functions and powers, they should perform the obligation of compensation and give corresponding compensation to the victims. At the same time, in the process of the victims’ application for compensation, the determination of the “right protection fee” such as “the loss of work fee” has not been clearly defined in the state compensation law. Therefore, in the actual legal cases, the conditions for the determination of the right protection fee in the state compensation causes widespread social disputes. Thus, it is of practical significance to carry out the following analysis on the determination of rights protection fees in state compensation.

Keywords: state compensation; rights protection fee; recognition conditions

Based on the analysis of the cases of state compensation, this paper puts forward the content of the cognizance conditions of the rights protection fee in the state compensation, and points out that in the actual cases, there are mainly three forms of compensation: no compensation, possible compensation and compensation, as well as the different identification conditions of the three forms. Therefore, it expands and redraws the identification standard of rights protection fee in state compensation, so as to reduce the legal disputes caused by the determination of rights protection fee.

1. The standard of state compensation

In the provisions of the State Compensation Law revised in 2010, adheres to the basic principle of compensation by the direct loss party. The indirect loss caused by the property right or personal safety of the victim is not recognized as compensation. In the actual cases of state compensation, there are some special cases. If the principle of direct compensation is adopted, the economic loss of the victim will be affected. For example, interest, rent, profit and so on belong to the category of indirect loss. In practice, if compensation is made, it will affect the rights and interests of the victims, and will also damage the legitimate interests of national financial institutions. Therefore, when these “forms of compensation” appear, they will be included in the category of direct losses and compensated. It can be said that the identification standard of direct loss in state compensation is one of the conditions for the determination of rights protection fee. When the protection fee exists as a direct loss, it will be compensated, but if the protection fee is identified as indirect loss, it can not be recognized.

Semantically speaking, direct loss refers to the objective and real loss that has occurred without the intermediate things or the third party. The right protection fee in state compensation refers to the money or rights paid by the parties in seeking relief in order to safeguard their legitimate rights and interests. For example, “transportation fee”, “delay fee”, “petition fee” and “lawyer fee” etc. are all within the scope of rights protection fee. Whether the right protection

fee can be compensated by the state needs to be determining if it is direct property loss or indirect property loss.

2. The forms of compensation for rights protection fee in state compensation

In practical cases, there are three forms of compensation: non compensation, possible compensation and compensation.

2.1 Non compensation

In the case of non compensation, the state compensation “protection fee” is identified as indirect loss, and the state will not compensate. There is no direct causal relationship between the damage results proposed by the parties and the illegal acts. Therefore, the various “rights protection expenses” generated in the process are not based on the fact or legal basis, so the determination of no compensation is made.

2.2 Possible compensation

The possible compensation mainly refers to that the “right protection fee” proposed by the victim is partially recognized. In the recognized right protection fee of state compensation is mainly for the right protection fee within the scope of legal compensation, while the right protection fee that is not within the scope of state compensation is not compensated. In actual cases, whether it is in line with the scope of state compensation is determined by the loss proof such as “whether to submit relevant bills and evidence”. For example, in the state compensation, the court will verify the objective evidence that the applicant can provide, such as “petition fee and litigation fee” or “consultation fee, petition writing fee” and so on. The court will verify these costs and sum them up into the direct loss category of the parties and compensate them.

2.3 Compensation

In the state compensation, the compensation condition of the right protection fee is that the right protection fee is recognized as a direct loss. According to the types of compensation, the compensation for rights protection fee can be divided into agreement compensation and court judgment compensation. From the scope of compensation, it can be divided into full compensation and partial compensation. Full compensation and partial compensation mainly refers to that in the case of state compensation, under the circumstance that the party concerned provides the corresponding legal evidence for the claim for rights protection fees, it shall make a detailed identification of the different rights protection expenses proposed by the party concerned, and shall make compensation for the travel expenses incurred. While the petition fee and the loss of work fee under the legal evidence cannot be considered as direct loss, so they will not be compensated. In addition, the compensation fee proposed by the victim includes “fare” and “loss of work fee”, among which the “fare” can provide relevant ticket proof, so it is determined as compensation. While for the determination of the cost of “lost work fee”, the party concerned can not provide corresponding evidence to prove that it is the premise of causing physical injury, so it is not compensated. From the loss identification situation, it can be divided into presumption of compensation and direct determination of compensation

In a word, in the determination of the right protection fee of the state compensation, whether it is a direct loss or an indirect loss is one of the criteria and conditions to determine. However, in fact, the scope of “direct loss” in the current state compensation law is not clear, leading to serious disputes over the determination of many rights protection fees. Therefore, to explore the conditions for the determination of rights protection fees in state compensation, we must start with the formulation of new standards for direct losses of state compensation.

3. Reflection on the conditions for the determination of rights protection fees in state compensation

With the further development of China’s social and economic level and the continuous increase of government’s financial revenue, the government’s economic basis for the determination of rights protection fees in state compensation has been greatly improved. At present, in order to realize the standardization development of the identification of rights protection fees in state compensation, it is necessary to expand the scope of direct losses and clarify the identification standards of various rights protection fees.

3.1 The principle of determining the standard of rights protection fee in state compensation

To realize the redefinition of the standard of the right protection fee and expand the scope of the direct loss is not random expansion, but based on the following legal principles, only in this way can we ensure that the compensation of the right protection fee can be effectively identified.

First, the principle of loss objectivity. The objectivity of loss mainly refers to the direct loss in the state compensation and the events that have occurred which do not depend on human will. In this way, we can unify the judgment standard of the direct loss of property, and avoid the different standards of the right protection fee in the national compensation of the same nature produced in different regions and different periods.

Second, the principle of fairness of compensation. There are various forms of compensation for rights protection fees, but the fundamental core of them is to require fairness and not to be vague. The calculation standard of compensation for all kinds of rights protection fees needs to be in strict accordance with the various legal basis provided by the parties concerned, and determine the rationality and legality of these compensation, so as to determine whether it is full compensation or partial compensation. Only in this way can we ensure the relatively fair and reasonable determination compensation of rights protection fees.

3.2 On the determination of the standard of rights protection fee in state compensation

In order to establish a new category of direct loss in state compensation, it is not possible to set the scope of right protection fee blindly. It must be able to comply with the legal provisions and include the unclear or not fixed items into the scope of compensation, which can be said to guarantee the determination and compensation of some special direct losses.

First, the property depreciation loss in the process of returning property. In the determination of the right protection fee of state compensation, the “lost work fee” proposed by the parties is the compensation for the damage caused by the confiscated, sealed up and withheld property. In this regard, the claim for compensation for the devaluation of this property is required.

Second, interest relief costs and cost of avoiding loss and expanding expenditure. The interest relief costs belong to the important category of rights protection fee. For example, in order to avoid expanding the impact of loss on fresh goods under seizure measures, rescue protection measures must be taken, and the expenses incurred in the next process belong to the category of direct loss. By providing legal basis, the parties seek compensation for the determination of rights protection fees.

4. Conclusion

To sum up, in the existing legal system of state compensation, the state compensation adopts the principle of direct loss compensation, and the indirect loss is not compensated. The right protection fee has always been regarded as indirect loss, so it is not directly included in the scope of state compensation. This has a direct impact on China’s state compensation in the determination of rights protection fees, there are also some disputes. For example, the compensation for some “indirect” rights protection fees will directly affect the legitimate rights and interests of the victims. Therefore, in order to realize the identification of “rights protection fee” in state compensation, we can integrate the “right protection fee” with the direct loss to ensure that all kinds of reasonable losses in the process of state compensation and safeguarding rights can be included in the scope of compensation, so as to maximize the protection of the legitimate rights and interests of the claimant, and promote the construction and development of a society ruled by law.

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