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PECULIARITIES OF NON-CONTRACTUAL DAMAGE DURING MARTIAL LAW

In civil law system the definition of non-contractual obligations are obligations that arise without the conclusion of a contract based on legal facts, such as wrongful acts, i.e. causing damage or legitimate promises of remuneration. Modern Ukrainian researches as Volodymyr Ihnatenko proposed an interesting system of classification of non-contractual obligations based on the division of civil legal relations into regulatory and protective ones. This approach is divided non-contractual obligations into two main groups: regulatory and protective, taking into account the main functions of civil law [1].

One of the types of non-contractual obligations is compensation for damage, this type arises as a result of unlawful violation of personal and property rights of an individual or legal entity and aims at full restoration of violated rights by compensating for the damage caused or liability of other persons who are legally obliged to compensate for damages in accordance with Article 1166 of the Civil Code of Ukraine. The subject matter of this obligation is compensation for damage arising from the debtor's actions aimed at full restoration of the creditor's property and personal benefits that have been damaged. The elements of this obligation are:

- 1) parties (creditor and debtor)
- 2) content (rights and obligations of the parties);
- 3) subject matter.

Parties to the obligation to compensate for damage may be individuals, legal entities, the state of Ukraine, the Autonomous Republic of Crimea, and local governments.

The main grounds for the emergence of liabilities for damages are the existence of losses incurred by the victim, the wrongful act of the tortfeasor, the causal link between the wrongful conduct and the losses, and the fault of the person who caused the damage. Pokrovsky noted that all commitments

have the purpose of creating some kind of binding the will of the debtor to force himself to certain behaviour in the interests of the creditor.

Articles 1166 and 1167 of the Civil Code of Ukraine provide for compensation for both pecuniary and non-pecuniary damage if it arose as a result of unlawful decisions, actions or omissions of an individual or legal entity, and moral damages are associated with moral and emotional suffering caused to an individual by unlawful decisions, actions or omissions. Non-contractual liability arises from the breach of an absolute legal obligation related to a subjective right or personal benefit. This breach generates a new obligation - compensation for the damage caused, thus creating a new legal obligation for the offender [2].

Under the conditions of martial law, the state undertook to create a mechanism for compensation and the obligation to compensate for damage, M. Skrynyk, is emphasized on ratification the European Convention on Compensation for Damages to Victims of Violent Crimes for the definition of violent crimes, according to which there should be a fund for compensation of damage on the basis of reparations [3]. During the martial law, the term "force majeure" or "force majeure" was coined, meaning extraordinary and irreducible circumstances that resulted in an objective inability to fulfil an obligation. It is important to note that the force majeure construction does not provide for release from the obligation as such, but only for release from liability for its non-fulfilment. The obligation itself will have to be fulfilled after the force majeure event has ceased (unless it is terminated on other grounds, for example, due to impossibility of fulfilment).

The term for fulfilment of such an obligation must either have already occurred or be due in the near future"[4].

The military aggression of the Russian Federation against Ukraine has significantly affected all aspects of citizens' lives, including the ability to comply with civil law obligations. The Civil Code does not contain provisions that would apply in the case of damage caused during the armed conflict. The application of analogy of law requires identification of similar relations regulated by the Civil Code or another legislative act. As it seems, such provisions are those that determine the liability of the state as a party to civil relations for damage caused to an individual or legal entity by unlawful actions of a public authority in the exercise of its powers, which is compensated regardless of fault (Article 1173 of the Civil Code); provisions defining liability for damage caused by a source of increased danger, which include, in particular, activities related to the use, storage or maintenance of explosives (Article 1187). The law's analogy establishes that parties to hostilities are liable for damage to private individuals. By analogy with

Articles 1173 and 1187 of the Civil Code, this the liability is tort liability, i.e. it does not require proof of guilt, and is a no-fault liability".

Liability for Russia's aggression against Ukraine results in the aggressor's obligation to compensate for direct damage, including environmental impact, caused to our state, citizens, foreigners, stateless persons and foreign states. This responsibility is absolute and does not require proof of guilt.

In conclusion, non-contractual obligations are obligations arising without the conclusion of a contract based on legal facts, such as wrongful acts, i.e. causing damage or legitimate promises of remuneration, etc. One of the types of non-contractual obligations is indemnity; this type arises as a result of unlawful violation of personal and property rights of an individual or legal entity and is aimed at full restoration of the violated rights by compensating for the damage caused or the liability of other persons who are obliged to compensate for the damage. According to the Civil Code, there is material and moral damage arising from unlawful decisions.

References:

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