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## **THE SPECIFICS OF THE FUNCTIONING OF CIVIL LAW IN COMPENSATION FOR NON-PROPERTY DAMAGE IN EUROPEAN COUNTRIES**

Among the rights enshrined in the fundamental Chapter II of the Constitution, there is a right to compensation damage. It is noted that everyone has the right to material compensation at the expense of the state or local self-government bodies and moral damage caused by illegal actions or inaction of state bodies, authorities, local self-government bodies, their officials and officials during the exercise of their powers. Such provisions are enshrined in European constitutional acts. Declaration of the right to moral compensation damage is a common vector of the development of democratic and legal countries, and, despite this, some countries, in particular in the countries of the European Union, have such an institute effective, thorough on a consistent judicial basis practice, but unstable and ambiguous in the Ukrainian legal space.

Currently, the main development trends institution of compensation for moral damage there is a movement in the direction of overcoming conceptual contradictions regarding the foundations of such an institution and gaps in regulation. To such problems, in particular, uncertainty can be counted circle of persons who can claim compensation for moral damage,

absence procedure, criteria for calculating such compensation, ambiguity of definition in the Civil Code of Ukraine, inconsistencies and contradictions in judicial practice, etc. The next trend is to attempt legal transformations for practical results and guarantees for plaintiffs, gradual use of the experience of EU countries and the precedents of the European Court of Human Rights.

Article 23 of the Civil Code of Ukraine defines compensation for moral damage. It is established that a person has the right to compensation for moral damage caused as a result violation of her rights. Moral damage consists of:

1) physical pain and suffering, which an individual suffered in connection with a disability or other health damage where «the characteristic features of obligations of compensation for damage caused by mutilation are that they arise when the absolute rights of the injured are violated, despite the fact that compensation for damage is of a property nature, all obligations are non-negotiable, since its subjects before causing the damage did not were related to the terms of the contract, and the most significant, in our opinion, is that the obligation to compensate for damage can be imposed not only on the person who caused the damage but also on other persons»;

2) in mental suffering, which is physical the person suffered in connection with the illegal behavior towards herself, her family members or close relatives;

3) in mental suffering, which the natural person experienced in connection with destruction or damage to her property;

4) in the humiliation of honor and physical dignity person, as well as the business reputation of a physical or legal entity.

That is, on the one hand, determining that «a person» has the right to compensation for moral damage as a result of the violation of his rights, the legislator includes compensation for the violation of the rights of legal entities as well, but in part 4 limits indemnification only to situations where associated with denigrating the business reputation of legal entities, which generally does not contradict the practice of the European Court of Human Rights.

With regard to the practice of EU countries, in Germany, compensation for moral damage is regulated by the norms of the German Civil Code (§§ 847, 823), which deal with «non-property» damage and the payment of monetary compensation for such damage . In German theory and judicial practice, the term «compensation for suffering» is used. The provisions of the German Civil Code directly provide for compensation for harm to health, unlawful restriction of the victim's freedom. Suffering is understood as physical and mental suffering (experiencing), and non-property damage is the reduction of non-property rights and benefits belonging to the individual. From the generalizations of judicial practice, taking into account the guarantee of individual rights and their inviolability at the level of the German Constitution, other types of violations are also determined, which are the basis for the emergence of obligations to

compensate for moral damage: violation of the secrecy of correspondence and records of a confidential nature, interference in a person's private life due to unauthorized photography, disclosure of information about private life, etc.

The French Civil Code contains Article 9 which directly provides protection of personal non-property rights. However even before its introduction, judicial practice used such a method of protection as compensation moral damage based on general norms regarding tortious obligations (art. art. 1382,1383). This is explained by what is in the law the term "harm" itself is mentioned as a general one category and its division into property or non-property damage should not be used as a basis for liability; compensation should be subject to any damage. In addition, to the characteristics of the concept of moral damage both national and foreign legislator, for optimal definition problematic issues must be taken into account the advanced practice of the European Court of Human Rights, which is the legal "template" and factor of trends transformations of the researched institute. Except of this, Ukraine has taken certain obligations regarding the protection of human rights. According to Article 9 of the Constitution of Ukraine provides that international treaties are valid, consent to which are binding on the Verkhovna Rada of Ukraine, is part of the national legislation of Ukraine. In particular, it belongs to them ratified by the Verkhovna Rada of Ukraine Convention on the Protection of Human Rights and Fundamental Freedoms and other international treaties .

Article 41 of the European Convention on protection of human rights and fundamental freedoms (hereinafter -European Convention) establishes that, if the Court recognizes the fact that there has been a violation of the European Convention or the Protocols to it, and the domestic law of the High Contracting Party allows the possibility only partial compensation, the Court, if necessary, provides the injured party with a fair one satisfaction It should be noted that at the same time The European Convention does not reveal the essence of the concept of «just satisfaction» used in it, which enables the ECHR in force given to him the competence to interpret the specified concept independently.

Fairness of compensation as a category applied by the national legislator, however, is not revealed in judicial precedents, is determined by the ECHR taking into account all the circumstances, as well as peculiarities affairs. The court strictly adheres to the position that the indemnification is purely compensatory and not punitive, aggravating or deterrent in nature. It would be it is expedient to implement similar guiding aspects judicial practice in Ukraine as well, since such a definition is by no means restrictive, allowing the Court to apply a different approach to whether the applicant had caused moral damage, depending on the circumstances and specifics of each case under consideration.

According to German law, compensation for suffered suffering is also must be fair: to your attention the general principle of alignment is taken benefits; the victim must be reinstated in the state that existed before

the violation of his rights or interests, but he must not receive a benefit as a result of such compensation to him damage. When determining the amount of fair compensation, the court takes into account the following indicators: physical suffering, mental suffering, the degree of guilt of the perpetrator, damage, his property status, etc. During calculating the amount of moral compensation damages will also be taken into account compensations that were previously assigned by the courts in similar cases.

In France, where the legislation is judicial practice is not limited by personal non-property rights and benefits by some defined list and allow for moral compensation damage in an unlimited number of cases, the court satisfies claims for compensation moral damage, guided also by the requirements of justice. This means that the judge does not will refer to arithmetic calculations, and will take into account the nature of the relationship, that is, an individual approach to the definition. In the context of research, it becomes necessary to analyze how things are within the boundaries of the Ukrainian judiciary, as well as cases of the ECHR in order to identify and compare conceptual and precedent moments.

So, we can summarize that, despite the existing conceptual internal and external contradictions (non-application of the general presumption of causing moral damage; that only the fact of an offense is a consequence of such causation; conditions, compensation criteria), the institution of compensation for moral damage is generally gradual chooses positive development trends that, in particular, it is reflected in the introduction of progressive bills. most importantly, that the Ukrainian legal fabric is permeated obligations of international agreements in the sphere of human rights and the state in general suffers to democratic transformations. As a result, we hope for the emergence of trends regarding stable and consistent judicial practice, revision of theoretical foundations and even more activity of human rights defenders.

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