

Пасічник Я.,

здобувач ступеня вищої освіти
бакалавра Національної академії
внутрішніх справ

Консультант з мови: Скринник М.

PECULIARITIES OF NON-CONTRACTUAL OBLIGATIONS OF MINORS IN UKRAINE AND THE EXPERIENCE OF FOREIGN COUNTRIES

Today, in the context of ongoing reforms of the integral elements of the economic sphere of Ukrainian society, there is a need for the state to introduce and protect new legal mechanisms that will be able to properly implement human and civil rights, and in case of their unlawful restriction or violation, to ensure the availability of appropriate means and measures aimed at fulfilling the non-contractual obligations of minors in Ukraine.

Taking into account the current legal realities, and given that the institute of civil law of Ukraine on fulfilment of non-contractual obligations of minors is widely covered in the relevant provisions of the Civil Code of Ukraine, certain legal problems in this regard continue to exist. For example, the current civil legislation of Ukraine in the form of relevant legislative acts does not provide for proper legal regulation of issues related to compensation for moral damages in case of a criminal offence committed by a minor.

In Ukraine, minors, namely persons under the age of 18 have some peculiarities with regard to non-contractual obligations. Some of them include:

– Invalidity of contracts: According to the Civil Code of Ukraine, a contract concluded by a minor is invalid if it is concluded without the consent of a legal representative (parent or guardian). However, there are certain exceptions, for example, if a minor can enter into a contract independently with the permission of a legal representative or if there is a special contribution from the child.

– Termination of contracts: A minor has the right to terminate a contract for a reasoned historical circumstance or by obtaining a court order. A child can also terminate a contract if he or she believes that he or she unknowingly entered into it or that it was written to his or her own detriment.

– Obligation to return what was received: If a minor receives certain benefits or funds as a result of an invalid transaction, he or she has an obligation to return them by court order or in accordance with the agreement of the parties.

– Court approval: In some cases, if a minor has an important interest in the transaction (example, selling his or her own property), the court may determine that the contract is valid [1].

Fulfillment of obligations: A minor may be obliged to fulfill his or her obligations under a contract if he or she has reached the age of majority, which allows him or her to assume such obligations. In this case, the minor may be held liable for non-performance or improper performance of his or her obligations.

Particularly acute is the problem arises of a clearly defined procedure for compensation for non-pecuniary damage to minors in the event of a criminal offence in relation to them in connection with the broad European integration processes that can be observed in Ukraine today.

In addressing the issue of the liability of minors Continental and Anglo-American law differ in by opposite approaches. According to the law of the Federal Republic of Germany – children under the age of 7 are not legally capable, and between the ages of 7 and 18 are liable for damage if they are capable of realising the harmfulness of their actions. If the court finds that the minor was aware of the results of his or her harmful behaviour, it may hold him or her liable.

As a general rule, their parents or other legal representatives are liable for damage caused by minors. According to continental law, their guardians and other persons entrusted with their care are responsible for damage caused by mentally disabled and mentally ill citizens; and according to Anglo-American law, such patients are responsible for their actions on their own [2].

Liability can be based on both property damage and moral (non-pecuniary) damage. Property damage is expressed in the loss or damage to property, expenses incurred by the victim (positive damage) and lost income (lost profits). Non-pecuniary damage is mental or physical suffering and distress.

Indeed, in the context of full-scale legislative implementation of the relevant legal norms, drawn up taking into account the legal experience of Western partners in the legal system of Ukraine, such uncertainty of the legislative body does not contribute to positive results in these areas of development of our country.

It should be added that in the current circumstances, the exact amount of the material amount to be determined in the process of compensating a person for non-pecuniary damage is also not entirely unambiguously determined by the courts, and taking into account the

factors that, as practice shows, have been recopied by the legislator into the civil law of Ukraine, it is not always quite successful.

Although in each case the courts rightly determine the criteria for the depth of mental and physical suffering of a person, as well as other circumstances that are taken into account in resolving such disputes, there are still often situations when court decisions in almost similar circumstances contain conclusions on determining the amount of compensation for non-pecuniary damage that differ significantly from each other.

At the same time, the civil legislation of Ukraine contains legal provisions that, in one way or another, entitle a person to compensation for non-pecuniary damage, which is a certain element of the general mechanism for ensuring and exercising fundamental human and civil rights [3].

The non-pecuniary nature of the damage caused to a person is characterised by the objective reality that cannot be perceived in material terms, which further justifies the complicated nature of legal regulation of issues, as well as the practical implementation of the rules related to compensation for non-pecuniary damage in connection with the infliction of physical suffering, for example. The fact that minors enter into such legal relations somewhat complicates the situation in practical legal relations.

Список використаних джерел

1. Civil Code of Ukraine 16.01.2003 № 435-IV URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
2. Liability for damages in the law of Germany, France, England and the United States. URL: <https://buklib.net/books/25649/>.
3. Drishlyuk A.I. Importance of judicial practice in resolving disputes on compensation for damages. Compensation for moral damage: commentary, legislation, judicial practice. K.: YurinkomInter, 2013. С. 8–11.