


OLHA IVANIVNA PANCHENKO,

*Candidate of Law, Senior Researcher,
National Academy of Internal Affairs (Kyiv),
Department of Doctorate and Post-Graduate Studies;*

 <https://orcid.org/0000-0003-4365-0495>,

e-mail: olia.pan4encko@ukr.net

CONDITIONS FOR COMPENSATION FOR MORAL DAMAGE CAUSED TO THE EMPLOYEE

As cases of violation of employees' rights are becoming more and more frequent today, the issue of bringing the employer or its authorised body to justice is becoming increasingly relevant. One of the most effective ways to counteract this phenomenon is to compensate for moral damages. That is why the purpose of the article is to determine the conditions and grounds for bringing an employer to liability in the form of compensation for damage to an employee, since this issue is the most pressing one. The following scientific methods were used in the course of the study: monographic, formal and logical, legal and dogmatic, systemic and structural, and the method of summarization.

It is established that compensation for non-pecuniary damage to an employee is possible subject to certain statutory conditions which are common to liability in all cases of non-pecuniary damage. Each of these conditions is examined in detail, namely: the fact of causing (presence of) non-pecuniary damage; unlawfulness of the employer's actions; existence of a causal link between the employer's unlawful act and the non-pecuniary damage caused to the employee; and the employer's guilt. The author proves that non-pecuniary damage occurs if the following grounds exist: the person and the perpetrator of the damage are in an employment relationship; it arose as a result of a violation of labour rights by the employer; the employee suffers moral losses in the form of emotional distress, and these negative changes have led to the loss of normal life ties and require additional efforts from the employee to organise his or her life.

It is proved that the most appropriate theory for resolving the issue of the presence or absence of causation in the legal relations under consideration is the theory of direct and indirect causation.

It is argued that since moral suffering always "accompanies" a violation of an employee's legal labour rights, the presumption of moral damages should be enshrined in law. Based on the study of relevant sources and regulations, the author provides her own definition of the concept of "employer's guilt".

Key words: *causal link, employer, guilt, illegal act, causing, loss of life ties, suffering.*

Original article

INTRODUCTION. Today, violations of workers' rights are becoming more frequent. It should be noted that 75 % of respondents in the labor market in Ukraine state that employers violate their legal rights in various ways. Often the employer violates the right to leave (43 % of respondents), to decent pay (42 %) and compensation in case of dismissal (37 %). A quarter of respondents complain about problems with providing additional benefits for employees (food, mobile communications), financial compensation in case of illness or partial disability (24 %), about 25 % – about violations of the right to training and vocational training. Besides, employees are outraged by the attitude towards them and the illegal behavior of the employer. For example, the chief often curses, violates the culture of commu-

nication, treats disgracefully, sets unrealistic deadlines for tasks, changes working conditions, tries to force to work on weekends, etc. Another typical indicator of the violation of working conditions is that the workplace is not equipped in accordance with safety regulations. Some respondents also note that the employer does not formalize them or dismisses them illegally¹.

¹ 75 % працівників в Україні терплять порушення трудових прав – дослідження // Об'єднання організацій роботодавців в Україні. 27.05.2013. URL: <http://www.ooru.org.ua/news/56.75-pracivnikiv-v-ukraini-terplyat-porushennya-trudovikh-prav---doslidzhennya.htm> (accessed 3 April 2023).

This trend is, clearly, a factor in negative social and legislative regression. That is why one of the effective ways to counteract this phenomenon, as well as a way to protect workers' rights is to compensate for moral damage.

PURPOSE AND OBJECTIVES OF THE RESEARCH. Particularly relevant in terms of the above stated issue, both from theoretical and practical standpoint, is the problem of determining the conditions and grounds for bringing the employer to justice in the form of compensation for moral damage to the employee, which stipulated the purpose of our study.

The goals of the Article are: 1) to identify the conditions for compensation for moral damage to the employee in general terms; 2) to justify the fact of infliction of moral damage to the employee; 3) to characterize the features of illegal conduct of the employer; 4) to consider scientific approaches to the concept of causal link; 5) to offer the definition of the employer's fault in the investigated relations.

LITERATURE REVIEW. Unfortunately, this topic has not been thoroughly studied in modern Ukraine; currently, there are only two monographs on the issue of compensation for moral damage caused in labor relations: by Chernadchuk (2001) "Compensation for moral damage in case of violation of labor rights and Soroka "Compensation for moral damage resulting from accidents and occupational diseases".

The first one investigated the essence and the concept of moral damage caused by the violation of labor rights, conducted the classification of moral damage, considered the standard for identifying the amount for its reimbursement. By moral damage caused by the violation of labor rights, the author understands losses of a non-property nature that arose as a result of emotional, mental or physical suffering caused by the violation of legal labor rights by illegal acts or omission on the part of the owner or the authorized body, which lead to humiliation of professional honor, dignity, labor reputation; damage to health; disruption of normal life ties due to the impossibility of extending active public life; violation of communication with surrounding people; forced changes or restrictions in the choice of employment, usual circle of communication and other negative consequences.

The second one revealed theoretical and applied approaches to calculating the monetary equivalent of moral damage caused by an employee as a result of an accident at work or an occupational disease; found out the essence of moral damage caused under such circumstances; developed the methodology for determining the amount

of monetary compensation for moral damage; revealed the peculiarities of the conditions for compensation of moral damage caused to the employee as a consequence of an industrial accident or an occupational disease; established the procedure for collecting compensation for moral damage.

At the international level, this issue was considered by Behr (2003), who dedicated the research, among other things, to sex discrimination in employment. The author came to the conclusion that this instrument meant to penalize discrimination, must guarantee real and effective judicial protection, have a real deterrent effect on the employer, and must be adequate in relation to the damage sustained. Consequently, a ceiling on the amount of damages is not permitted.

Ron Carucci and Ludmila N. Praslova (2022) state that moral injury can occur in many contexts, including the workplace. It can often be the consequence of a discrepancy between the person's values and one's actions, which result in lasting psychological, physical, spiritual, behavioral, and social harm. Psychological reactions include feelings of grief, anger, anxiety, guilt, shame, or disgust. Some individuals may experience a spiritual or existential crisis or even become physically ill. Thus, the authors developed some recommendations for the employers to avoid infliction moral harm on their employees.

As one can see, just few works are devoted to the issue of compensation for moral damage in labor relations, especially in terms of identifying the conditions for the onset of employer's liability, which led to the urgency of our research.

METHODOLOGY. A number of general scientific and special methods have been applied for the comprehensive disclosure of the objectives, the achievement of the purpose of the Article and the formulation of relevant conclusions. The basis for the scientific research is the dialectical approach, which facilitated the in-depth study of the phenomenon of compensation for moral damage caused to the employee, to reveal the current state of the problem under consideration.

The following scientific methods are also used in the course of the research: Monographic method is applied to examine the works by domestic and foreign scholars, who considered various aspects of moral damage.

Formal and logical approach was selected in the process of critical examination of the current labor legislation in matters related to the legal regulation of proving and compensating for moral damage caused to the employee.

Legal and dogmatic method makes it possible to investigate the concepts of "moral suffering", "experience", "loss of life ties".

System and structural method helps to determine the conditions and grounds for holding the employer liable in the form of compensation for moral damage to the employee.

The method of summarization is used for the formulation of the relevant conclusions.

RESULTS AND DISCUSSION. As Lahutina (2014, c. 379) correctly points out, the methods of protection of personal non-property labor rights and interests of employees are the set of actions applied by jurisdictional bodies, the authorized person himself (herself) or his (her) representatives (trade union, other representatives of employees) to cease and prevent violations of labor legislation, restore of violated or disputed personal non-property labor rights and claim for moral damage compensation.

Onishchenko and Gorash (2016, c. 100) add that specific method of protection is chosen depending on which labor right of the person has been violated, the nature and scope of the offense, the will of the authorized person, and other circumstances. Compensation for moral damage is among the main tools for protecting the labor rights of employees.

The issue of compensation for moral damage to the employee in the labor law of Ukraine is regulated by Art. 237-1 of the Labor Code of Ukraine¹, according to which compensation by the owner or his (her) authorized body for moral damage to the employee is made if the violation of the legal rights of the latter led to moral suffering, loss of normal life and require additional efforts to organize his (her) life.

As we see from the provisions of this article, compensation for moral damage to the employee is possible in the presence of certain conditions provided by law, which are common to liability in all cases of moral damage: 1) the fact of causing moral damage; 2) unlawful activities by the employer; 3) causation between the illegal practices by the employer and the moral damage caused; 4) fault of the employer.

Thus, the first condition for compensation for moral damage to the employee is the fact of its infliction. In this regard, V. Chernadchuk (2001, c. 8) notes that the infliction (presence) of moral damage is the presence of negative changes in the mental sphere of the employee due to awareness of the violation of his (her) labor rights, which causes him (her) mental, psychological or physi-

cal suffering. Criteria to be followed in determining the occurrence of moral damage are human values. On the one hand, these are the criteria that determine the subjective feelings of the victim, namely: honor, dignity, authority, his (her) reputation. On the other hand, these are the criteria that characterize the external manifestation of the consequences of violation of labor rights, and it is here that moral damage is manifested in violation of the usual lifestyle of the employee, the real loss of the employee's ability to communicate properly with others caused by violation of his (her) labor rights.

Moral damage shall be deemed to have been caused if the person and the perpetrator of such damage are in an employment relationship or subject to labor law;

it arose as a result of violation of labor rights by the employer;

the employee suffers moral losses in the form of moral suffering, i.e. negative changes that occur in his (her) mind due to awareness of the violation of his (her) labor rights, and these negative changes have led to loss of normal life relationships, and require additional efforts to organize his (her) life. Let's consider each of these points in more detail.

The grounds for labor relations are legal, concerted, conscious actions (legal acts) of the employer and the person being hired (and sometimes its representative), which include their free will and are aimed at establishing labor relations.

In most cases, the will of each of the parties to the employment relationship is expressed in the employment agreement. According to Art. 21 of the Labor Code of Ukraine employment agreement is the agreement between the employee and the owner of the enterprise, institution, organization or his (her) authorized body or individual, under which the employee undertakes to perform the work specified in this agreement, and the owner of the enterprise, institution, organization or authorized body or individual commits to pay the employee wages and provide working conditions necessary for the performance of work provided by labor law, collective agreement and agreement of the parties.

Legislation recognizes an employment agreement as a universal basis for the establishment of labor relations, which includes bilateral expression of the will: on the one hand – the person hired, and on the other one – the employer: the owner of the enterprise (company), institution, organization, or the body authorized by him (her), or an individual. An employment agreement is also concluded when no employment documents were issued, but the person was actually allowed to

¹ Кодекс законів про працю України : Закон України від 10.12.1971 № 322-VIII // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL: <https://zakon.rada.gov.ua/laws/show/322-08> (accessed 3 April 2023).

work (Part 4, Article 24 of the Labor Code of Ukraine).

A special form of employment agreement is a contract, in which its term, rights, obligations and responsibilities of the parties (including material ones), conditions of material support and organization of work of the employee, conditions of termination, including early termination, may be established by the contract. According to Part 2, Art. 23 of the Labor Code, the contract is concluded in cases where the employment relationship cannot be established indefinitely, taking into account the nature of future work, or the conditions of its implementation, or the interests of the employee and in other cases provided by law. Contract may be entered into either upon recruitment or upon commencement. It shall enter into force on the date of signature or on the date specified by the parties to the contract and may be amended by written agreement of the parties.

In addition, the basis for labor relations may be a civil contract. According to Art. 626 of the Civil Code of Ukraine¹, a contract is an agreement of two or more parties aimed at establishing, changing or terminating civil rights and obligations. It may be concluded in the form of a refit contract (Chapter 61 of the Civil Code of Ukraine) or service provision contract (Chapter 63 of the Civil Code of Ukraine).

Thus, individuals can perform work on the basis of both employment contract and civil law. Proper application of a contract will protect against misunderstandings, and in some cases from labor disputes, especially with citizens who perform work under refit contract or service provision contract, in particular, with regard to employment records, leave entitlements, bringing to disciplinary and material liability, payment for temporary incapacity for work (according to the relevant certificate), payment of surcharges, allowances, bonuses, etc. It is important to remember that an employment contract is concluded between an employee and an employer, and any legal or natural person can be a party to a civil contract (Йолкіна, Швець, 2020).

Consequently, both employment agreement and civil law agreement are a confirmation that the employment relationship has arisen between the parties.

Another fact that proves that moral damage was caused is the moral loss of the employee in the form of moral suffering, i.e. negative changes

that occur in his (her) mind due to awareness of the violation of his (her) labor rights, and these negative changes led to loss of normal life ties, and require the employee to make extra efforts to organize their lives.

Defining moral damage through suffering means that it must be reflected in the mind of the affected person and be the reason for negative mental consequences. They are the determinatives of moral damage.

V. Chernadchuk (2001, c. 7) claims that since moral damage is defined as physical or moral suffering, it is obvious that the word “suffering” is used as a key. The term “suffering” means that the wrongful acts of the perpetrator must be reflected in the mind of the victim in the form of feelings (physical suffering) and imagination (moral suffering) and cause certain mental reaction. The author considers the concept of “experience” the closest one to the concept of “moral suffering”. The content of the experience may be fear, shame, humiliation and other unfavorable mental state of the employee.

Loss of life ties means the impossibility of continuing an active social life, breaking relationships with other people, relatives, colleagues, loss of source of earnings (sometimes – single one), deprivation of certain life prospects, such as work, career growth, etc.

“Moral suffering” and “loss of life ties” are used in the definition as one-order elements of moral damage, rather than as subordinate and interconnected ones; the loss of normal life ties is not caused by moral suffering and, conversely, moral suffering is not caused by loss of normal vital connections, and both elements are caused by violation of the legal rights of the employee. And not all loss of normal life connections can be brought under the concept of moral damage, but only those that require additional effort from the employee to organize his (her) life (Хуторян, 2002, c. 190).

The second condition for compensation for moral damage to the employee is the illegal conduct of the employer. Thus, the employer has an active (committing certain actions provided by current labor legislation) and passive duty (not to violate the labor rights of employees). In accordance with the provisions of Art. 237-1 of the Labor Code illegality of actions of the employer lies in failure to perform the duties concerning maintenance of lawful labor rights of the worker, and in violation of lawful labor rights of the worker if this infringement leads to mental or physical sufferings of the latter.

Besides, labor law contains rules that give participants in labor relations the opportunity to

¹ Цивільний кодекс України : Закон України від 16.01.2003 № 435-IV // БД «Законодавство України» / ВР України. URL: <https://zakon.rada.gov.ua/laws/show/435-15> (accessed 3 April 2023).

settle their relations by concluding an employment agreement. Therefore, the conduct of the employer for failure to comply with legal obligations provided by labor legislation or the terms of the employment contract can be considered illegal.

According to Khutorian (2002, c. 185), such conduct is considered illegal (act or omission of the employer, in which he (she) fails or improperly performs the duties, imposed on him (her) by the Labor Code, collective and employment agreement. The illegal act is that the employer commits prohibited by labor law or contract action, as a result of which property or moral damage is caused.

Sereda (2004) argues that moral damage can be caused both by illegal actions (act or omission) and legal ones, but the right to compensation arises only in cases where it is caused by illegal actions.

The third condition for liability for moral damage to an employee is the existence of a causal link between the wrongful act and moral damage caused. A wrongful act on the part of the employer – a failure to fulfill his (her) obligations to ensure the legal labor rights of the employee or violation of the legal labor rights of the employee – has to deal with consequences of causing moral damage to the latter, i.e. lead to moral suffering, loss of normal life or extra efforts for organizing everyday life. The existence of a causal link between an illegal act and moral harm suggests that illegal act should be a necessary condition for the occurrence of negative consequences in the form of physical or moral suffering.

In our opinion, the theory of direct and indirect causation is the most acceptable from both theoretical and practical standpoints for solving the question of the presence or absence of causation. This theory is based on two main propositions derived from the philosophical doctrine of causality. Firstly, causality is an objective connection between phenomena that exists independently of our consciousness. Therefore, it is not correct to be guided by the offender's ability or degree of prediction of the harmful result when deciding on the issue of causation. The possibility of predicting damages is subjective one and is relevant only in deciding the guilt of the offender, but not the causal link. Secondly, cause and result, as such, are relevant only to each individual case. Unlawful conduct of a person is the cause of harmful consequences only when it is directly (directly) connected with them. An indirect connection between illegal behavior and consequences means that such behavior lies outside the specific case, and therefore – outside the legally significant causal relationship.

The procedure for proving the presence of moral damage and the reasonable connection is quite problematic; consequently, it may be difficult for the employee to gather proper evidentiary basis to confirm these facts.

According to court practice, the argumentation of moral damage and the formation of the evidence base rest with the employee, who must prove in court all available and relevant evidence of moral damage. Evidence may be any data that proves the relationship between the violation of legal labor rights and the confirmation of the fact of suffering and changes in lifestyle. However, the absence of an integrated method for identifying moral damage complicates this process both for workers and legal counsels and judges considering such cases (Поліщук, 2020).

Some legal practitioners argue that today most labor courts actually apply the presumption of moral damage, which is that a violation of the rule in itself entails the possibility to seek compensation for moral damage (Шевчук, 2020).

The presumption of moral damage means that the court must assume that the victim is suffering, unless the contrary is proven. Due to the fact that the commission of any offense is accompanied by the infliction of moral damage, the affected person does not have to prove the fact of its existence, but only has to justify the claimed amount of compensation (Панченко, 2019, c. 17).

This view is supported by Romovska (2005, c. 42–43), who states that moral harm should be considered a constant companion of any illegal behavior against an individual, so the fact of non-pecuniary damage does not need to be proved: it is apparent as soon as misconduct is demonstrated.

We fully agree with these views of scientists and believe that moral suffering is an indispensable companion of wrongdoing against the person. In the legal relationship under consideration, the employee may experience both physical and mental suffering. Thus, in the event of an accident at work, the victim partially or completely loses his (her) working capacity, which makes it impossible or significantly complicates the possibility to work in the future; there is a need for lifetime therapy and relevant constraints, which excludes the possibility to work properly and demands complementary efforts to arrange the lifestyle, complicates communication with family members and other people.

When there is illegal dismissal or systematic humiliation on the part of the employer, the person is in a state of constant stress and anxiety for his (her) future and for the future of his (her) relatives, especially if the work was the only source

of income in the family. He (she) is worried about her business reputation, honor, professional dignity, as well as the attitude of colleagues and comrades because of the current situation. As a result, the victim becomes depressed, tense, nervous; he (she) may lose sleep and appetite, which in turn can provoke mental disorders, depression, exacerbation of chronic or new diseases, cravings for alcohol, psychotropic or even narcotic drugs.

As we can see, moral suffering is always “accompanied” by violations of the employee’s legal labor rights, and therefore the presumption of moral damage to the latter should be enshrined in law.

At the same time, unfortunately, we are compelled to note the erroneous assertion of legal practitioners on the application of the presumption of moral damage in labor disputes by courts, because Ukrainian law does not enshrine this principle; the claim for compensation for moral damage should state what is the nature of the damage, what wrongful acts or omissions have caused it to the plaintiff, on what grounds he (she) based his (her) determination of the amount of damage and what evidence support this.

The last, the fourth condition of compensation for moral damage to the employee – the fault of the employer – is not explicitly mentioned among the legal facts within the legal structure, which is which is the basis for the relevant legal relations. However, the provisions of Art. 237-1 do not specify the opposite (i.e., that moral damage is compensated regardless of the fault of the owner or his (her) authorized body). Since Ukrainian legislation enshrines that, in resolving the dispute for compensation for moral damage, it is mandatory to clarify existence of such damage, illegality of the perpetrator’s action, existence of causal link between damage and illegal action of the perpetrator and guilt of the latter in it causing, in our opinion, the fault of the employer is to be established, because it determines the nature and severity of his (her) wrongful action.

However, as noted by some scholars (Потань, Зуб, Сонін, 2008, с. 576; Бабенко, 2019, с. 99), subject to Part 2, Art. 237-1 of the Labor Code (“the procedure for compensation for non-pecuniary damage is determined by law”) it should be concluded that the issue of fault should be resolved by special legislation, which may recognize it as a mandatory or optional element of legal basis of legal relations for compensation of moral damage. So far, this issue has not been specifically resolved, it should be concluded that the law does not prevent the recovery of moral damage from the owner in the absence of his (her) fault, if there are legal facts that justify the owner’s obligation to compensate for moral damage.

We agree with Chernadchuk’s (2001, с. 9) statement that the fault of the owner or his (her) authorized body is not only a mandatory subjective feature, but also an important social category, the content of which determines the nature and severity of illegal actions of the owner or his (her) authorized body. Consciousness and will are to some extent determined by the external environment and its objective conditions, but this dependence does not determine the antisocial behavior of the owner or his (her) authorized body. Consciousness and will play the main role, and it is they who determine the character and form of behavior in each case. Therefore, when establishing fault, we must proceed from its objective existence in reality.

Labor law does not contain a definition of guilt. Therefore, judges use the definition of guilt set out in Art. Art. 23–25 of the Criminal Code of Ukraine¹ taking into account features of labor law relations.

According to Art. 23 of the Criminal Code of Ukraine, fault is the mental attitude of the person to the act or omission and its consequences, expressed in the form of intent or negligence.

Khutorian (2002, с. 9) provides her own definition of guilt in labor law. Thus, in her opinion, the guilt of the parties to the employment relationship can be defined as a mental attitude to an illegal act or omission, which lies in failure or improper performance of their duties and its consequences, expressed in the form of intent or negligence.

According to V. Chernadchuk’s (2001, с. 9) research, the owner’s guilt is his (her) mental attitude to the violation of the employee’s labor rights, which can manifest itself in the forms of intent, negligence (simple and rude), as well as lack of education and ignorance.

It will be recalled that the law distinguishes between two types of intent: direct and indirect ones. Guilt in the form of intent is characterized by the fact that the person who caused the damage is aware of the illegality of his (her) actions, anticipates their harmful consequences, wants or is indifferent to their occurrence. Consciousness and foresight are intellectual features of an intent, and desire or conscious assumption of consequences are its volitional features.

Careless guilt in civil (and, consequently, in labor) law is traditionally divided into simple negligence and rude negligence. Simple carelessness

¹ Кримінальний кодекс України : Закон України від 05.04.2001 № 2341-III // БД «Законодавство України» / ВР України. URL: <https://zakon.rada.gov.ua/laws/show/2341-14> (accessed 3 April 2023).

is understood as the attitude of a person to his (her) behavior, when he (she) did not anticipate and did not want the consequences that actually occurred, although, based on specific circumstances, objectively could and was obliged to anticipate them. Rude negligence occurs when a person did not want the occurrence of adverse consequences, but anticipated them and was indifferent to them or tried to avoid them with confidence. That is, it is such an act, the unreasonableness of which is obvious (Заїка, 2005, с. 94).

As for ignorance, this form of guilt is not defined in Ukrainian law. Bobrova (Боброва та ін., 2001, с. 516) advocated the need to consolidate ignorance (in which the subject does not identify in his (her) actions the necessary knowledge required by him (her)) as a form of negligence in civil law and defined its psychological mechanism in that the person is aware of his (her) lack of preparation for the chosen activities and cannot predict the negative consequences due to his (her) incompetence.

Based on the above, we offer our own definition of the guilt of the employer. It is the mental attitude of the employer to the violation of the legal rights of the employee and its consequences, expressed in the form of intent (direct or indirect) or negligence (simple or rude).

CONCLUSIONS. Thus, the conditions of liability of the employer for moral damage caused to the employee should include:

the fact of causing (presence) of moral damage. Moral damage shall be deemed to have been

caused if the person and the perpetrator of such damage are in an employment relationship or subject to labor law; it arose as a result of violation of labor rights by the employer; the employee suffers moral losses in the form of moral suffering, i.e. negative changes that occur in his (her) mind due to awareness of the violation of his (her) labor rights, and these negative changes have led to loss of normal life relationships, and require additional efforts to organize his (her) life;

illegal behavior of the employer. The illegality of the employer's actions lies in his (her) failure to fulfill his (her) obligations to ensure the legal labor rights of the employee, as well as in violation of the legal labor rights of the employee, if this violation leads to mental, mental or physical suffering of the latter;

causal link between illegal act or omission of the employer and moral damage to the employee. An illegal action on the part of the employer – failure to fulfill his (her) obligations to ensure the legal labor rights of the employee or violation of the legal labor rights of the employee – shall result in moral damage to the latter, i.e. lead to moral suffering, loss of normal life or extra efforts to organize usual lifestyle;

guilt of the employer. It is the mental attitude of the employer to the violation of the legal rights of the employee and its consequences, expressed in the form of intent (direct or indirect) or negligence (simple or rude).

REFERENCES

1. Бабенко Е. В. Відшкодування моральної шкоди працівнику в разі незаконного звільнення. *Юридичний науковий електронний журнал*. 2019. № 2. С. 98–101. URL: http://www.lsej.org.ua/2_2019/27.pdf (accessed 3 April 2023).
2. Заїка Ю. О. Українське цивільне право : навч. посіб. Київ : Істина, 2005. 312 с.
3. Йолкіна Н., Швець К. Трудовий та цивільно-правовий договір: відмінності та особливості // *Юридична Газета online* : сайт. 11.12.2020. URL: <https://jur-gazeta.com/publications/practice/trudove-pravo/trudoviy-ta-civilnopravoviy-dogovir-vidminnosti-ta-osoblivosti.html> (accessed 3 April 2023).
4. Лагутіна І. В. Особисті немайнові трудові права працівників у системі трудових прав : монографія. Одеса : Фенікс, 2014. 428 с.
5. Оніщенко О. В., Гораш І. С. Проблеми компенсації моральної шкоди при порушенні трудових прав. *Юридичний вісник*. 2016. № 3 (40). С. 99–105.
6. Панченко О. І. Цивільно-правова відповідальність поліцейських в Україні : автореф. дис. ... канд. юрид. наук : 12.00.03. Київ, 2019. 22 с.
7. Поліщук В. Проблеми відшкодування моральної шкоди працівнику // *Advokat Post*. 12.08.2020. URL: <https://advokatpost.com/problemy-vidshkoduvannia-moralnoi-shkody-pratsivnyku-advokat-polishchuk/> (accessed 3 April 2023).
8. Ромовська З. В. Спірні питання відшкодування моральної шкоди. *Вісник Верховного Суду України*. 2005. № 5 (57). С. 42–43.
9. Ротань В. Г., Зуб І. В., Сонін О. Є. Науково-практичний коментар Законодавства України про працю. Київ : Атіка, 2008. 680 с.
10. Середа О. Г. Роботодавець як суб'єкт трудового права : дис. ... канд. юрид. наук : 12.00.05. Харків, 2004. 210 с.

11. Хуторян Н. М. Теоретичні проблеми матеріальної відповідальності сторін трудових правовідносин : монографія. Київ : Ін-т держави і права ім. В. М. Корецького НАН України, 2002. 264 с.
12. Цивільне право України : підручник / Д. В. Боброва, О. В. Дзера, А. С. Довгерт та ін. ; за ред. О. В. Дзери, Н. С. Кузнецової. Київ : Юрінком Інтер, 2001. 784 с.
13. Чернадчук В. Д. Відшкодування моральної шкоди при порушенні трудових прав : автореф. дис. ... канд. юрид. наук : 12.00.05. Київ, 2001. 14 с.
14. Шевчук О. Відшкодування моральної шкоди в трудовому праві // Правовий тиждень. 04.12.2020. URL: <http://legalweekly.com.ua/index.php?id=16061&show=news&newsid=121293> (accessed 3 April 2023).
15. Behr V. Punitive Damages in American and German Law – Tendencies towards Approximation of Apparently Irreconcilable Concepts. *Chicago-Kent Law Review*. 2003. Vol. 78. No. 105. URL: <https://scholarship.kentlaw.iit.edu/cklawreview/vol78/iss1/6> (accessed 3 April 2023).
16. Carucci R., Praslova N. L. (2021). Employees Are Sick of Being Asked to Make Moral Compromises // *Harvard Business Review*. 21.02.2022. URL: <https://hbr.org/2022/02/employees-are-sick-of-being-asked-to-make-moral-compromises> (accessed 3 April 2023).

Надійшла до редакції: 04.04.2023

Прийнята до опублікування: 15.05.2023

REFERENCES (APA)

1. Babenko, E. V. (2019). Compensation for the moral damages to employee as a result of wrongful dismissal. *Juridical Scientific and Electronic Journal*, 2, 98-101. http://www.lsej.org.ua/2_2019/27.pdf.
2. Behr, V. (2003). Punitive Damages in American and German Law – Tendencies towards Approximation of Apparently Irreconcilable Concepts. *Chicago-Kent Law Review*, 78(105). <https://scholarship.kentlaw.iit.edu/cklawreview/vol78/iss1/6>.
3. Bobrova, D. V., Dzera, O. V., Dohert, A. S. et al. (2001). *Civil Law of Ukraine* (O. V. Dzera, N. S. Kuzhietsova, Eds.). Yurinkom Inter.
4. Carucci, R., & Praslova, N. L. (2022, February 21). Employees Are Sick of Being Asked to Make Moral Compromises. *Harvard Business Review*. <https://hbr.org/2022/02/employees-are-sick-of-being-asked-to-make-moral-compromises>.
5. Chernadchuk, V. D. (2001). *Compensation for moral damage in violation of labor rights* [Candidate thesis, Taras Shevchenko National University of Kyiv].
6. Khutorian, N. M. (2002). *Theoretical problems of material responsibility of the parties to labor relations*. V. M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine.
7. Lahutina, I. V. (2014). *Personal non-property labor rights of employees in the system of labor rights*. Phoenix.
8. Onishchenko, O. V., & Gorash, I. S. (2016). Problems of compensation for moral damages for violation of labor rights. *Law Herald*, 3(40), 99-105.
9. Panchenko, O. I. (2019). *Civil liability of police officers in Ukraine* [Candidate thesis, National Academy of Internal Affairs].
10. Polishchuk, V. (2020, August 12). *Problems of compensation for moral damage to the employee*. *Advokat Post*. <https://advokatpost.com/problemy-vidshkoduvannia-moralnoi-shkody-pratsivnyku-advokat-polishchuk/>.
11. Romovska, Z. V. (2005). Controversial issues of compensation for moral damage. *Bulletin of the Supreme Court of Ukraine*, 5(57), 42-43.
12. Rotan, V. H., Zub, I. V., & Sonin, O. Ye. (2008). *Scientific and practical commentary on Ukrainian labor legislation*. Atika.
13. Sereda, O. H. (2004). *Employer as an actor of labor law* [Candidate dissertation, Yaroslav Mudryi National Law Academy of Ukraine].
14. Shevchuk, O. (2020, December 4). *Compensation for moral damage in labor law*. *Legal Week*. <http://legalweekly.com.ua/index.php?id=16061&show=news&newsid=121293>.
15. Yolkina, N., & Shvets, K. (2020, December 11). *Labor and civil law contract: differences and features*. *Legal Newspaper online*. from <https://yur-gazeta.com/publications/practice/trudove-pravo/trudoviy-ta-civilnopravoviy-dogovor-vidminnosti-ta-osoblivosti.html>.
16. Zaika, Yu. O. (2005). *Ukrainian civil law*. Truth.

Received the editorial office: 4 April 2023

Accepted for publication: 15 May 2023

ОЛЬГА ІВАНІВНА ПАНЧЕНКО,

кандидат юридичних наук, старший дослідник,
Національна академія внутрішніх справ (м. Київ),
відділ докторантури та ад'юнктури;
ORCID: <https://orcid.org/0000-0003-4365-0495>,
e-mail: olia.pan4encko@ukr.net

УМОВИ ВІДШКОДУВАННЯ МОРАЛЬНОЇ ШКОДИ, ЗАПОДІЯНОЇ ПРАЦІВНИКОВІ

Оскільки сьогодні дедалі частіше трапляються випадки порушення прав працівників, питання притягнення роботодавця або уповноваженого ним органу до відповідальності стає все більш актуальним. Одним із дієвих шляхів протидії цьому явищу є відшкодування моральної шкоди. Саме тому метою статті є визначення умов і підстав притягнення роботодавця до відповідальності у вигляді відшкодування шкоди працівникові, оскільки ця проблема є найбільш нагальною. У ході дослідження використано такі наукові методи: монографічний, діалектичний, догматично-правовий, системно-структурний, метод узагальнення.

Встановлено, що відшкодування моральної шкоди працівникові можливе за наявності певних передбачених законодавством умов, які є загальними для настання відповідальності в усіх випадках заподіяння моральної шкоди. Детально розглянуто кожну із цих умов, а саме: факт заподіяння (наявність) моральної шкоди; протиправність дій роботодавця; наявність причинного зв'язку між протиправним діянням роботодавця і заподіяною працівнику моральною шкодою; вина роботодавця. Доведено, що моральна шкода має місце за наявності таких підстав: особа і заподіювач шкоди перебувають у трудових правовідносинах; вона виникла внаслідок порушення трудових прав із боку роботодавця; працівник зазнає моральних втрат у вигляді моральних страждань, і ці негативні зміни призвели до втрати нормальних життєвих зв'язків, а також вимагають від працівника додаткових зусиль для організації свого життя.

Обґрунтовано, що найбільш прийнятною для вирішення питання про наявність чи відсутність причинного зв'язку у правовідносинах, що розглядаються, є теорія прямого і непрямого причинного зв'язку. Аргументовано, що, оскільки моральні страждання завжди «супроводжують» порушення законних трудових прав працівника, презумпцію завдання моральної шкоди останньому слід закріпити на законодавчому рівні. На основі вивчення відповідних джерел та нормативно-правових актів сформульовано авторське визначення поняття «вина роботодавця».

Ключові слова: *причинно-наслідковий зв'язок, роботодавець, вина, протиправне діяння, заподіяння, втрата життєвих зв'язків, страждання.*

Цитування (ДСТУ 8302:2015): Panchenko O. I. Conditions for compensation for moral damage caused to the employee. *Law and Safety*. 2023. No. 2 (89). Pp. 178–186. DOI: <https://doi.org/10.32631/pb.2023.2.16>.

Citation (APA): Panchenko, O. I. (2023). Conditions for compensation for moral damage caused to the employee. *Law and Safety*, 2(89), 178–186. <https://doi.org/10.32631/pb.2023.2.16>.