

ISSUES OF PRIVATE LEGAL REGULATION OF SOCIAL RELATIONS



Lyudmyla Andriyevska
lecturer

Maryna Polishchuk
Ph.D.

*(the Dnipropetrovsk State University
of Internal Affairs)*

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RECENT PROBLEMS OF LIABILITY FOR DAMAGES IN LABOR LAW

Андрієвська Л., Поліщук М. СУЧАСНІ ПРОБЛЕМИ МАТЕРІАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ В ТРУДОВОМУ ПРАВІ. У статті проаналізовано особливості матеріальної відповідальності сторін трудових правовідносин. Розглянуто проблеми з даного питання, що містяться в національному законодавстві та наведено ряд пропозицій щодо його реформування.

Зроблено висновок, що відповідальність за шкоду має найважливіше значення у трудовому законодавстві. Зрештою, виконуючи свої функціональні обов'язки, жодна сторона не застрахована від настання трудового правопорушення, що, в свою чергу, є основою відповідальності за шкоду. Добре, коли як працівник, так і роботодавець широко обізнані з цього питання і здатні захищати свої права та законні інтереси. Однак для того, щоб вони могли це усвідомити, ця тема повинна бути повністю висвітлена на законодавчому рівні, який, на жаль, сьогодні відсутній.

Таким чином, національне законодавство про відповідальність за шкоду, пов'язану з трудовими відносинами сторін, зокрема, з його підстав, детальних прав та обов'язків сторін у вирішенні конкретної проблеми та в ряді інших обставин, потребує реформування шляхом усунення теоретичних суперечностей, прогалини, а також деталізацію правових норм, що регулюють це питання в нормативно-правових актах. Насамперед це допоможе прискорити процедуру доведення вини, а, по-друге, дозволить запобігти зловживанням влади та захистити праві і законні інтереси сторін трудових правовідносин. Тому це допоможе вирішити ряд проблем, які щоденно виникають у юридичній практиці.

Ключові слова: відповідальність, матеріальна відповідальність, матеріальна відповідальність працівника, матеріальна відповідальність роботодавця.

Introduction. Currently the labour law, even though it is based on constitutional provisions on human and civil rights and freedoms, requires reforms and comprehensive analysis for improving the legislative framework and law enforcement practice. In particular, it applies to liability for damages of labour relationship parties.

In recent years this problem has been investigated by V. S. Venediktov, I. V. Zub, D. O. Karpenko, V. I. Prokopenko, V. G. Rotan, M. P. Stadnik, L. I. Surovska and others. Liability for damages issues have been widely covered in the accounting literature in the Soviet period, significant attention was paid to a definition and procedures of compensation for financial damages. The above issues were a part of scientific interests of N. G. Belov, F. F. Butynets, L. M. Kramarovsky, S. I. Gerych, V. K. Radostovets, A. A. Shpig and others. Works of the above-mentioned authors constitutes a sound scientific basis for research on a

definition of liability for damages and accounting reflection of its consequences [3, p. 150].

But despite the considerable value of the scientific heritage of these specialists, the national legal science still misses a comprehensive research that would form a holistic view on the legal nature of employees' contractual liability in the market economy environment, its grounds, conditions and application. The relevance of this topic is also due to the fact that inequality of employment relationship parties causes significant differences in the legal regulation of the employer's liability for damages to an employee and the employee's one to an employer. These differences apply to determining a compensation amount, procedures and limits, the nature of legal acts regulating the relevant issues [5, p. 3].

Problem statement. The research on liability for damages of employment relationship parties is aimed at analysing the modern problems of raising the awareness of employment relationship parties of their rights and legitimate interests, possibilities for their protection, as well as preventing the abuse of powers of one party due to the ignorance of the other.

Research outcome. For a better understanding what exactly is in scope of a liability for damages, it is worth stating what a liability is. So, under the labour law a liability is a separate type of legal responsibility which consists in an employee's obligation to be liable for a committed labour law violation and to incur appropriate sanctions. The basis for such a liability is a labour law violation, which is a guilty unlawful act of failing to perform or breaching employment duties by an employee [6, p. 411].

In this case two types of liability are applied in the labour law – disciplinary liability and liability for damages.

A liability for damages shall be understood as a liability of an employment contract party, namely of an employee or of an employer, to compensate the other party for a damage caused by a guilty unlawful failure to perform or improper performance of employment duties in accordance with the procedure and in the amount established by law [6, p. 410].

In turn, V.I. Shcherbina defines a liability for damages in the labour law of Ukraine as a liability of one of the employment relationship parties to compensate for a financial damage caused to the other party due to improper performance of their employment duties [6, p. 411].

An employee and an employer (an owner of an enterprise, an institution, an organization, an authorised body or individual) with whom an employee is in the employment relationship are subjects of liability for damages in the labour law in all cases [2].

An employee's liability for damages is their liability to compensate a direct actual damage caused to the employer's property by an employee's unlawful guilty violation of their employment responsibilities in the amount and procedure established by law [6, p. 411].

It should be noted that an employee's liability for damages under the labour law has three goals.

The first (primary) goal is to protect employer's property from damage, loss, theft and guarantee the compensation for damage caused by an employee. Thus, this employee's liability is restorative, because its primary goal is to restore employer's damaged property. Therefore, holding an employee liable for damages does not exclude application of disciplinary actions to them, because simultaneously with causing a property damage (property labour violation) a guilty employee commits a labour disciplinary offense (disciplinary offense) (part 3, article 130 of the Labour Code of Ukraine) [2, art. 130].

The second goal is to assure a guarantee to an employee when holding him liable for damages, to protect an employee's salary from unnecessary, illegal and unreasonable charges. This goal of the institution of liability for damages is guaranteed. The third goal is to instil in an employee a solicitous, diligent and lean attitude with no intent to cause damage to the employer's property, which is given so that an employee can perform their employment functions [6, p. 411].

Regarding employer's liability for damages, it should be noted that according to the legal doctrine the employer's liability for damages is defined as an employer's responsibility to compensate for a damage caused to an employee as a result of non-performance or improper performance of their employment duties in accordance with the procedure and in the amount established by law [1].

According to Article 153 of the Labour Code of Ukraine, the employer's liability for damages is based on an employer's responsibility to create conditions necessary for normal work; to ensure healthy and safe working conditions and to introduce modern safety means, as well as sanitary and hygienic conditions that prevent work-place injuries and occupational diseases of employees [2, art. 153].

Articles 117, 235, 236 of the Labour Code of Ukraine state that an employer is obliged to compensate an employee for damages caused by a delay in settlement upon dismissal, an unlawful dismissal, an employee's transfer to another job, an incorrect wording of a dismissal reason in an employment record book, a delay in delivering an employment record book due to the fault of an owner or a body authorised by an owner, a delay in executing a reinstatement decision. Art. 237 of the Labour Code of Ukraine stipulates that an official who is guilty of an unlawful dismissal or transfer of an employee shall be held liable for damages. Art. 237-1 of the Labour Code of Ukraine establishes a responsibility of an owner or an authorised body to compensate an employee for moral damage [2].

Based on the above, financial damage compensated for by an employer to an employee can consist of property and non-property parts.

Modern theoretical scientists based on the analysis of current laws and judicial practice note that the financial damage caused to an employee during the performance of his employment duties includes: 1) damage caused to an employee as a result of violation of the right to work: by an unjustified refusal to employ; by violation of recruitment rules when recruiting an employee, which caused his or her subsequent dismissal for this reason; by an illegal transfer, removal or dismissal of an employee; by violation of obligations of an owner or an authorised body to issue documents on employee's job and salary (in case of improper filling, processing and delaying the issuance of the employment record book, employment and salary documents); 2) damage caused to employee's property; 3) moral damage [1].

Currently there is a gap in the labour legislation: while the second and third above-mentioned types of damage are imperfectly regulated by the labour laws, the employer's liability for illegal refusal to employ is still missing in the Labour Code of Ukraine [1].

The draft of the Labour Code of Ukraine as of April 22, 2013 developed by the working group of the Ministry of Social Policy of Ukraine determines the grounds and terms of employer's liability in sufficient detail. Namely, Chapter II of this draft provides for the following cases of the employer's liability: 1) the employer's liability for damage caused to employee's property (art. 415); 2) the employer's liability for damage caused by non-fulfilment of employer's obligations to provide the employee with material benefits and services (art. 416); 3) the employer's liability for damage in other cases established by this Code, law or an employment contract (art. 417); 4) the employer's liability for caused moral damage (Art. 418) [4].

However, despite the detailed regulation of the employer's liability for damage by the above-mentioned draft of the Labour Code of Ukraine, its Chapter II requires further elaboration.

With regard to international standards and adoption of best practices on this issue, it should be noted that the analysis of conventions, multilateral and bilateral agreements between countries allowed to conclude that, firstly, according to the international contractual regulation of liability for damages of employment contract parties, the parties are generally liable for damage under the national laws of the employment country in which an employer is located. Secondly, the legal regulation of financial damage caused to an employee by health damage in multilateral and bilateral agreements has its own peculiarities, which consist in a different compensation scope and procedure. Thirdly, employees who work in the territory of another country based a contract of work and labour concluded between economic entities of both countries are liable for damages under the laws of a sending country [7, p. 10].

The above-mentioned peculiarities of liability for damages of employment relationship parties under the national laws give grounds to state that such a type of liability is a special legal institution which is inherent only to the labour law and different from all other institutions of liability for damages of other law branches. The peculiarities are triggered by the specifics of employment relationship and the need for social protection of an employee [6, p. 413].

Taking the present into account, practically all normative acts related to the institution of employee's responsibility for damages are oriented to the economic model where employers are mainly state enterprises and organisations. And even partial changes in the labour legislation lead to a number of contradictions, which in turn create uncertainties and doubts among employers and agencies responsible for consideration of labour disputes. It becomes obvious that nowadays there is an urgent issue of improving the current legislation, in particular in terms of liability for damages of employment relationship parties.

This legislation should be reformed certainly with a consideration of an increase in the level of employees' legal guarantees, namely legal standards on liability for damages should protect employees' salaries from excessive and illegal charges [6, p. 413].

Additionally, once the current legislation on employee's liability for damages and application practices are analysed, first of all obligations of employment relationship parties to preserve property of an enterprise, an entity, an organisations should be specified.

Moreover, it is necessary to clarify in a legislative way the basis and terms of liability for damages, its types and amounts (limits), possibilities and limits of reducing the damage size, the object of compensation in relation to modern business conditions of enterprises, institutions, organisations [6, p. 413].

Conclusions. Liability for damages is of key importance in the labour law. After all, when performing their functional duties, no party is insured against the occurrence of a labour offense, which, in turn, is the basis for liability for damages. It is great when both an employee and an employer have proper awareness on this issue and are able to protect their rights and legitimate interests. However, for them to be able realise it, this topic should be perfectly illuminated at the legislative level, which unfortunately is missing today.

Thus, the national laws on liability for damages of employment relationship parties, in particular, on its grounds, detailed rights and obligations of the parties in solving a particular problem and on a number of other circumstances, needs to be reformed by eliminating theoretical contradictions and gaps, as well as detailing the legal regulations governing this issue in regulatory legal acts. After all, it will help, first of all, speed up the procedure for holding a guilty party, secondly, it will make it possible to prevent an abuse of authorities and protection of employment relationship parties' rights and legitimate interests.

Therefore, it will help solve a number of problems that are faced on a daily basis in the legal practice.

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Summary

The article analyses peculiarities of liability for damages of employment relationship parties, as well as considers national law issues in this regard and suggests a number of reforms.

Keywords: *liability, liability for damages, liability for damages of an employee, liability for damages of an employer.*