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OBLIGATIONS DUE TO CAUSING HARM

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Abstract:
The article discusses the legal basis of obligations arising as a result of causing harm. The key principles of civil liability are analyzed, including the conditions for the occurrence of obligations, grounds for exemption from liability, and types of compensation for damage. Particular attention is paid to current trends in the regulation of tort obligations, including the impact of judicial practice.

Keywords: Obligations as a result of causing harm, tort liability, civil law, compensation for harm, causing harm, compensation for damage, judicial practice, legal regulation.

Introduction

Obligations resulting from harm are an important area of civil law governing liability for damage caused to third parties. Research shows that this topic addresses both theoretical and practical aspects of legal liability, including concepts such as tort liability, fault and damage. However, some nuances remain unclear, such as differences in approaches to damage assessment and compensation in different jurisdictions.

Based on this, we want to say that this analytical work will be aimed at studying the problem of determining the amount of harm in practice and possible solutions to these nuances.

To carry out this research, a literature review was conducted, including the works of scientists and practitioners who study such a section of civil law as obligations due to causing harm (tort). The main areas of research included:

Analysis of normative acts: Study of the Civil Code of the Republic of Uzbekistan, as well as specialized laws regulating, for example, the calculation of compensation and damage by courts, determining the circle of dependent persons of the victim, etc. these normative legal acts include: Civil Code of the Republic of Uzbekistan, PP of the Supreme Court of the Republic of Uzbekistan No. 7 "" On some issues of the application of laws on compensation for

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moraldamage PCM No. 60 of the Republic of Uzbekistan "On approval of the rules of compensation for damage caused to employees by injury, occupational disease or other health damage related to the performance of their labor duties", which allows us to identify the main legal norms and their shortcomings. In the course of the research, we also drew our attention to the theoretical part of the topic, since at the beginning of the XX century, scientists debated the possibility of assessing in monetary terms the moral harm caused by the violation of someone else's right[1]. For example, P. N. Gussakovsky noted that the desire to provide possible satisfaction to persons who have suffered moral harm by means of monetary remuneration inevitably leads to a clearly incongruous situation, by virtue of which the said remuneration should be measured not with the importance of the harm or even with the degree of participation of ill will in the commission of the act that caused the harm, but less affluence of the victim[2].

Liability in civil law implies the application of coercive measures-sanctions that are of a property nature. This applies to both contractual and non-contractual liability. Contractual liability is of a secondary nature, since it arises only in the event of a breach of an obligation. If the obligation is fulfilled properly, there is no liability.

Liability for obligations arising from causing harm is of a different nature. Here, the obligation arises from the fact of the offense, and from the moment of its occurrence, its content is responsibility, i.e. the possibility of applying a sanction to the offender. It seems that in this case the liability does not "accompany" any other obligation (as in the case of contractual liability)-it is the content of the offender's obligation in the obligation that arose as a result of causing harm. The offender in this case is responsible for the damage caused in the form of compensation[3].

In the system of sources of legal regulation of obligations as a result of causing harm, the norms of the Civil Code of the Republic of Uzbekistan, Chapter 57 "Obligations as a result of causing harm", occupy a central place. The first paragraph sets out the provisions of Section 1 General provisions, general

[1]Репьев Г.А. К вопросу о понятии и составу деликтных обязательств / Г.А. Репьев // Бизнес в законе. Экономико–юридический журнал. – 2006. – № 1 – 2. – С. 78 – 80.
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grounds for liability for causing harm (Articles985-1004). The second paragraph sets out the norms on compensation for damage caused to the life and healthьof a citizen (Articles1105-1016). The third paragraph contains provisions on compensation for damage caused as a result of defects in goods, works, and services (Articles1017-1020). The fourth paragraph sets out the norms on compensation for non-pecuniary damage (Articles1020-1022). According to Article 8 of the Civil Code of the Republic of Uzbekistan, the grounds for the occurrence of civil rights and obligations, along with others, are: due to theчcause of harm to another person; due to unjustified enrichment; due to other actions of citizens and legal entities; due to events with which the legislation relates the occurrence of civil consequences. Article14 of theCivil Code of the Republic of Uzbekistan provides for чthe right of the aggrieved party, inчthe event of a violation of its right, to demand compensation from theviolatorfor damages incurred, and also establishes the types and general principle of full compensation. On the basis of this provision, the Civil Code of the Republic of Uzbekistan included norms regulating relations arising in the course of compensation for losses (for example, Articles 15, 324, 325, 456 of the Civil Code of the Republic of Uzbekistan). Losses are negative property consequences that arise from the violation of a person's personal non-property or property right. Compensation for damages is a universal way to protect violated civil rights and can be applied both in contractual (for example, as a result of non-performance or improper performance by the debtor of obligations arising from the concluded contract) and in non-contractual relations (for example, in the case of damage caused to property or healthь, as a result of an accident), regardless of whether, whether the law provides for such a possibility in relation to a specific situation or not. Article 14 of the Civil Code of the Republic of Uzbekistan distinguishes two types of losses: real damage and lost profit. Real damage is made up of expenses "that the person whose right is violated has made or will have to make for the restoration of the violated right, loss or damage to his property" One of the provisions of Article 14 of the Civil Code of the Republic of Uzbekistanis the requirement for full compensation for theчlosses incurred, fixed in the form of a general rule. This requirement does not apply onlyьif it is expressly established by law or contract. For example, the norms of the Civil Code of the Republic of Uzbekistan provide for the possibility of compensation for losses onlyьin the form of real damage in the event of entering intoча transaction with an

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incompetent person (Article 119 of the Civil Code of the Republic of Uzbekistan). When limiting the amount of losses to be reimbursed under the contract, it is necessary to specify a part of the amount of damages to be reimbursed. the second article 332 of the Civil Code of the Republic of Uzbekistan, according to which an agreement on limiting the amount of liability of the debtor under a merger agreement or other agreement in which the creditor is a citizen acting as ачconsumer, is invalid if the amount of liability for this type of obligation or for this violation is determined by law and if the agreement before the occurrence of circumstances leading to liability for non-performance or improper performance of the obligation. First of all, it should be noted that the trend in the history of legal regulation of development in the area of liability due to injury is caused by the following factors: first, in modern conditions, the scope of legal regulation of liability due to injury is expandingч; second, the legal regulation of this institution of civil law is increasing;ьthird, the scope of legal regulation of Third, there is a tendency to strengthen guarantees of the rights and interests of individuals and legal entities that have suffered property or other damage as a result of harm. These trends are clearly manifested in cases ofчdamage to the life and health of victims or their death; in the interests of victims, contractual or other obligations to regulate the consequences of harm increaseч, especially when it comes to compensation for harm caused byчdamage to health or death; in the case of victims, it is necessary to ensure that the consequences of harm are Fourth, along with traditional means, используютсяcompensatory and educational-preventive measures of influence are used.

Determining the amount of non-pecuniary damage is one of the most controversial issues encountered in judicial practice, since the application of existing norms in determining it varies. ой The main nuance, that was emphasized by S. S. Alekseev, a well-known Russian scholar in the field of civil law, who emphasizes the need for a balanced approach to compensation for damages, emphasizing that it is important to take into account both the interests of victims and the interests of defendants in order to avoid excessive burden for the latter.[4]

In 2021 alonерассмотрено, 4028 cases were considered by civil courts, and in the first quarter of 2022, 823 cases for compensation for non-pecuniary damage

[4] 1. Гражданское право: учеб. / С. С. Алексеев, Б. М. Гонгало, Д. В. Мурзин [и др.]; под общ. ред. чл.-корр. РАН С. С. Алексеева. — 2-е изд., перераб. и доп. — М.: Проспект; Екатеринбург; Институт частного права, 2009. - 528 с. С 365-387

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were considered and resolved. However, it should be noted that today there is no unified judicial practice in this regard. The study of legislation and judicial practice in this area shows that the imperfection of norms aimed at regulating the recovery of non-pecuniary damage, as well as a result of different interpretation of the norms of existing legislative acts, creates a number of problematic issues in practice.[5]

At the moment, among the traditional problems that exist in this institute, which have been discussed for many years and on a large scale, we can distinguish such issues as the validity of using the very concept of "moral harm" to refer to "moral and physical suffering", the lack of uniform criteria for determining the amount of compensation for non-pecuniary damage, etc. Consider the concept of "moral damage". This concept, according to some scientists, does not reflect the essence of the phenomenon under consideration and it should be considered unsuccessful. Therefore, some scientists suggest replacing it with the term "psychological or mental harm", which is used in the United States and Great Britain, while other scientists insist on using the term "non-material or non-material harm". There are also those authors who recognize the validity of using the concept of "moral damage".[6]

The Civil Code of the Republic of Uzbekistan and other relevant legislative acts do not contain a definition of the concept of non-pecuniary damage, even the definition given in the resolution of the Plenum of the Supreme Court "On certain issues of application of laws on compensation for non-pecuniary damage" No. 7 of April 28, 2000 is incomplete (imperfect). According to the decision of the Plenum, moral harm is defined as moral and physical (discrimination, physical pain, harm, inconvenience, etc.) suffering caused (suffered) as a result of an offense (omission) committed against the victim. This concept does not fully disclose the nature of non-pecuniary damage. It implies two elements of "moral harm", the first of which is expressed as "moral" and the second as "physical" suffering. In our view, the concept of "non-pecuniary damage" expressed in the definition should not cover the re-inclusion of "non-pecuniary damage". For this reason, the word “moral “in the definition of the term should be expressed by the

[5] https://advokatnews.uz/xabar/1917.html
[6] Научная статья УДК/UDC 347.426.42 DOI: 10.21779/2224-0241-2022-43-3-98-103
Компенсация морального вреда: актуальные проблемы теории и практики Р. Ю. Закиров1, Р. Р. Азмуханов2

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word ”mental". In our opinion, articles 1021 and 1022 of the Civil Code on non-pecuniary damage do not allow this. This is due to the fact that the Civil Code itself does not provide for compensation for moral damage for mental suffering. The reason for this is that in article 1022 of the Russian-language version of the Code, the word “moral "should be written as “mental”, and in the Uzbek version the word “manaviy” should be written as "ruhiy". Failure to introduce appropriate amendments to the Civil Code, which has been in force for almost 30 years, has not allowed for a long time to compensate moral damage for mental suffering. Although the Plenum of the Supreme Court provides that moral harm can also manifest itself in other illnesses experienced as a result of causing moral harm, including " the loss of a close relative (moral grief in connection with death, inability to continue active social life, loss of work, disclosure of family and medical secrets, false information that undermines the honor of the family). dignity and business reputation of citizens), distribution, temporary restriction or deprivation of other rights...", but does not provide that the above cases can be expressed in” mental " suffering of a person. Because our laws do not provide that moral harm can also be caused as a result of “mental” suffering. The legislation of foreign countries, especially the CIS countries, stipulates that moral harm is caused precisely by mental and physical suffering. Moreover, in reality, disputes on compensation for non-pecuniary damage are also considered simultaneously when considering disputes on the protection of personal honor and dignity, on the protection of consumer rights, in the field of labor relations, and in a number of other cases. In other words, today disputes on compensation for non-pecuniary damage are among the most widespread in judicial practice, so it is necessary to pay close attention to the existing problems in this area.

Further, we draw our attention to the fact that the laws of some foreign countries provide for compensation for moral damage only in cases of violation of personal non-property rights, only in cases where it concerns property rights provided for by law, and in our case, it is possible to demand compensation for moral damage in cases of violation of both personal and property rights. However, paragraph 13 of the resolution of the Plenum of the Supreme Court states that " the obligation arising from the loan agreement is a monetary obligation, given that liability for non-performance of obligations is defined in Article 327 of the Civil Code of the Republic of Uzbekistan, the creditor's right to compensation for moral damage is excluded." The question arises: is it possible to claim compensation for moral

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damage for non-performance or improper performance of other types of contracts? According to the decision of the plenum, yes, it is possible. An "attempt" was made to create a new norm by resolution of the Plenum. But even this did not have its effect. In our opinion, the approach should be such that the recovery of non-pecuniary damage is made only in the case of violation of personal rights, and in the case of violation of property rights-only in cases provided for by law.

It is also worth mentioning another dilemma: according to article 100 of the Civil Code, if a person has defamatory information distributed, he has the right to demand compensation for losses and moral damage, as well as to refute this information. It is established that the rules for protecting a citizen's business reputation also apply to protecting the business reputation of a legal entity. In accordance with article 1022 of the Civil Code, it is determined that the court determines the amount of compensation for non-pecuniary damage, taking into account the physical and moral suffering of the victim, as well as the degree of guilt of the causer in cases where his guilt is the basis for compensation. Determining the degree of physical and moral suffering depends on the court's assessment, taking into account the circumstances of causing moral harm and the characteristics of the victim. However, legal organizations do not take into account physical and spiritual suffering, so it is necessary to exclude from the legislation provisions related to compensation for moral damage for legal entities. The next problem, in our opinion, is that article 9 states that under the Code of Criminal Procedure, the victim can claim compensation for moral damage in criminal proceedings. From our point of view, the problem has remained unresolved. Due to the fact that this norm is incompatible with the provisions of the Criminal Procedure Code. According to article 56 of this Code, if there are grounds to believe that a crime or actions of an insane person pose a threat to society and have caused material damage to an individual or legal entity, they are considered as a civil plaintiff. Article 277 of the Code also states that when a civil claim is filed, an inquirer or investigator may decide that a person has suffered property damage, and issue a decision, and the court makes a ruling on his recognition as a civil plaintiff. This means that in order тороto be recognized as a civil plaintiff, you only need to be a citizen who has suffered property damage. Non-pecuniary damage cannot be recovered through a court proceeding.

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This means that people have to conduct a separate case for compensation for non-pecuniary damage, which causes inconvenience, additional costs and time.

Article 302 of the Code of Criminal Procedure states that a person who has been rehabilitated has the right to compensation for damage and elimination of the consequences of moral damage caused to him by illegal arrest, illegal detention, illegal dismissal in connection with participation in the case as an accused. Article 309 of the Code of Criminal Procedure specifies how it is necessary to compensate for moral damage caused to a restored citizen. In such situations, the moral damage caused to a citizen is compensated in accordance with general civil laws.

According to experience, the Criminal Procedure Code should be amended (articles 57, 277, 290) to provide for the possibility of compensation for moral damage, along with property damage, caused to victims.

It is important to note that the courts do not take a general approach to dealing with cases of non-pecuniary damage. In our opinion, in order to fill in these gaps, it is necessary to eliminate legislative gaps, including a clear definition of "moral damage", to exclude the rules on payment of moral damage to legal entities. It is also necessary to correct the legislation on methods of compensation, provide for compensation in a material or non-material way, and establish a mechanism for out-of-court compensation by agreement of the parties. Amend the Code of Criminal Procedure on the possibility of individuals to be plaintiffs in the event of non-pecuniary damage. Develop recommendations for courts to determine the amount of compensation for non-pecuniary damage.

In the course of the study, it was possible to achieve the goals set: it was proved that a variety of approaches to obligations due to harm creates difficulties in judicial practice and needs to be more clearly regulated, moreover, recommendations were proposed for solving them.

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9. Scientific article UDC / UDC 347.426.42 DOI: 10.21779 / 2224-0241-2022-43-3-98-103 Compensation for moral damage: actual problems of theory and practice R. Yu. Zakirov1, R. R. Azmukhanov2.