

Artículo de investigación

Compensation for damage caused to the life and health of participants in the armed conflict in UkraineВІДШКОДУВАННЯ ШКОДИ, ЗАПОДІЯНОЇ ЖИТТЮ ТА ЗДОРОВ'Ю УЧАСНИКІВ
ЗБРОЙНОГО КОНФЛІКТУ В УКРАЇНІIndemnización por daños causados a la vida y la salud de los participantes en el conflicto
armado en Ucrania

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Reznichenko H.S.³³⁶<https://orcid.org/0000-0001-6386-4154>**Yanitska I.A.**³³⁷<https://orcid.org/0000-0001-8806-7274>**Apalkova I.S.**³³⁸<https://orcid.org/0000-0003-1478-4208>**Abstract**

The article is dedicated to the study of the specifics of compensation for damage caused to the life and health of participants in the armed conflict in Ukraine. It is mentioned in the article, that damage caused to the health consists of the earnings (income) lost by the victim as a result of loss or decrease in professional or general working capacity (lost profit), as well as additional losses incurred due to damage to health (real damage). The conclusion is made, that the term “lost earnings” can be applied only to military personnel serving on the military draft, since for them the earnings that a citizen had before being drafted for military service will be taken as the basis. Property losses caused to military personnel under the contract are calculated on the basis of his or her cash benefits and other income (not related to the performance of military duties). Therefore, when compensating for damage caused to the health of military personnel under a contract, the term “lost cash benefits” should be used. The lost cash benefits shall include allowances for long service, for knowledge of a foreign language, for an academic degree or academic title, pension, for work with information constituting a state secret, since they have permanent nature. In addition, when determining the amount of damage caused to military personnel, payments made during the

Анотація

Стаття присвячена вивченню специфіки відшкодування шкоди, заподіяної життю та здоров'ю учасників збройного конфлікту в Україні. У статті зазначається, що шкода, заподіяна здоров'ю, складається із заробітку (доходу), втраченого потерпілим внаслідок втрати чи зниження професійної чи загальної працездатності (втрачений прибуток), а також додаткових збитків, завданих внаслідок шкоди здоров'ю (реальна шкода). Зроблено висновок, що термін «втрачений заробіток» можна застосовувати лише до військовослужбовців, які проходять службу за призовом, оскільки для них буде взятий за основу заробіток, який громадянин мав до призову на військову службу. Майнові втрати, заподіяні військовослужбовцям за контрактом, обчислюються виходячи з його грошових виплат та інших доходів (не пов'язаних з виконанням військових обов'язків). Тому при відшкодуванні шкоди, заподіяної здоров'ю військовослужбовців за контрактом, слід використовувати термін «втрачені грошові виплати». Втрачені грошові виплати включають надбавки за вислугу років, знання іноземної мови, на здобуття наукового ступеня чи вченого звання, пенсію, за роботу з інформацією, що становить державну таємницю, оскільки вони

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year are taken into account, in particular, bonuses for conscientious performance of official duties and income from teaching, scientific and creative activities.

Keywords: Compensation, right to life, right to health, property damage, moral damage, military personnel, armed conflict.

мають постійний характер. Крім того, при визначенні розміру шкоди, заподіяної військовослужбовцям, враховуються виплати, здійснені протягом року, зокрема, премії за сумлінне виконання службових обов'язків та доходи від викладацької, наукової та творчої діяльності.

Ключові слова: компенсація, право на життя, право на здоров'я, майнова шкода, моральна шкода, військовослужбовці, збройний конфлікт.

Resumen

El artículo está dedicado al estudio de los aspectos específicos de la compensación por daños causados a la vida y la salud de los participantes en el conflicto armado en Ucrania. Se menciona en el artículo que el daño causado a la salud consiste en las ganancias (ingresos) perdidas por la víctima como resultado de la pérdida o disminución de la capacidad de trabajo profesional o general (pérdida de ganancias), así como pérdidas adicionales incurridas debido a Daño a la salud (daño real). Se llega a la conclusión de que el término "ganancias perdidas" solo se puede aplicar al personal militar que sirve en el reclutamiento militar, ya que para ellos se tomarán como base las ganancias que un ciudadano tenía antes de ser reclutado para el servicio militar. Las pérdidas de propiedad causadas al personal militar en virtud del contrato se calculan sobre la base de sus beneficios en efectivo y otros ingresos (no relacionados con el desempeño de los deberes militares). Por lo tanto, al compensar el daño causado a la salud del personal militar en virtud de un contrato, se debe utilizar el término "beneficios en efectivo perdidos". Los beneficios en efectivo perdidos incluirán asignaciones por servicio prolongado, por conocimiento de un idioma extranjero, por un título académico o título académico, pensión, por trabajar con información que constituye un secreto de estado, ya que tienen naturaleza permanente. Además, al determinar la cantidad de daños causados al personal militar, se tienen en cuenta los pagos realizados durante el año, en particular, las bonificaciones por el desempeño concienzudo de los deberes oficiales y los ingresos de actividades docentes, científicas y creativas.

Palabras clave: Compensación, derecho a la vida, derecho a la salud, daños a la propiedad, daños morales, personal militar, conflicto armado.

Introduction

Today human life and health in all countries of the world are recognized as the highest social values. Human rights to life and health are proclaimed by all international legal acts on human rights as inalienable rights protected by law. In Ukraine, the right to life and health is enshrined in Art. 3 of the Constitution of Ukraine.

Constitutional provisions are detailed at the level of civil legislation. In particular, in the Civil Code of Ukraine among the personal non-property human rights the right to life and the right to health are mentioned first. The right to life is absolute, that is, it is not only inalienable, but also cannot be restricted. The right to life is the first fundamental natural right of a person. Without right to life all other rights cannot have

any content, because the dead do not need any rights (Buletsa S., 2005). The state guarantees a

person protection from any encroachment on his or her life and health.

The right to life includes, on the one hand, the person's ability to dispose of his life at his discretion, to carry out any actions that are provided and not prohibited by the rule of law (ensuring a person's existence). On the other hand, the right to life includes the right to demand from the state, public organizations, and individual citizens to refrain from any actions that could cause harm to human life and health (Kharytonov E., 2008). Thus, the citizen's right to life is correlated with the obligation of the state to prevent encroachments on life, not to take actions that pose a direct or indirect threat to life,

to contribute to the creation of favorable conditions for the realization of the right to life (Kalchenko N., 1995).

It is especially important for the state to provide proper protection of life and health of certain categories of citizens engaged in socially useful activities, which is accompanied by the risk of harm to their life and health, in particular, military personnel.

Military personnel are a special category of citizens who fulfill their constitutional duty to protect the country, which implies the need for the state to ensure their rights to life and health when carrying out dangerous activities. Of course, due to the specifics of military service, military personnel cannot be fully protected from the negative consequences of their profession. Some scholars note that military personnel are not entitled to compensation for damage caused in the context of hostilities or in conditions specific to military service. Damage caused to them during the war cannot be compensated according to the norms of civil law, since they provide for exemption from compensation for damage arising from the action of force majeure (Malein N., 1965).

However, if damage is caused to a soldier in connection with the performance of military service duties, and there are no specific conditions, he or she must be compensated. In such cases, a soldier has the right to demand compensation for harm caused to him according to the provisions of civil law, since the circumstances of the accident are not related to the specifics of military service (Kuleshov G., 2003).

Methodology

General and special scientific methods were used in the process of research. As material for study were used social relations arose in the sphere of compensation for damage caused to the life and health of participants in an armed conflict. Methodological basis for study was a dialectical method that allowed to review the issues in their development and interconnection.

Methods of analysis and synthesis were used to determine the specifics of compensation for damage caused to the life and health of participants in an armed conflict. A comparative method was used for revealing differences between compensation of property damage and moral damage.

Results and discussion the concept of military personnel in ukrainian legislation

Before turning to the features of compensation for damage caused to participants in an armed conflict, it is necessary to determine who belongs to such participants. The definition of military personnel is given in the Law of Ukraine dated March 25, 1992, "On Military Duty and Military Service". According to this law, members of the armed forces are military personnel. The concept of "military personnel" can be determined by the following features:

- 1) A serviceman is an individual who meets medical and other requirements established by the state, speaks the state language and has undergone pre-prescription training or training in military-technical specialties;
- 2) A person who has entered military service complies with the requirements of the legislation on military service, as well as the requirements that he faces during the period of military service;
- 3) Such a person holds a military post in the manner prescribed by law and performs the tasks stipulated by this post;
- 4) Each person, in accordance with the position held, is assigned a military rank;
- 5) The outward signs of a serviceman is the military uniform and insignia developed by the Ministry of Defense of Ukraine, other military units, which are approved by the Cabinet of Ministers of Ukraine;
- 6) Each person who enters military service personally takes the Military Oath of allegiance to the Ukrainian people and affixes it with his signature. A military oath rests with the soldier the entire responsibility for the performance of his military duty. Before taking the Military Oath, a soldier may not be involved in combat missions (to participate in hostilities, to carry out combat duty, guard duty) and tasks when a martial law and state of emergency are introduced; weapons and military equipment cannot be assigned to him;

- 7) A soldier performs the state functions and powers of a military formation in which he is serving in the military, and also performs actions in many cases in accordance with his authority (takes managerial decisions, imposes penalties, etc.);
- 8) The activity of military personnel is an activity that is usually associated with the implementation of state defense;
- 9) A serviceman is a person who has a weapon assigned to him and, under applicable law, has the right to use it.

Thus, military personnel are individuals who carry out certain socially necessary functions, serve the state and are representatives of state power. These are specially trained persons holding military posts in military bodies, having military ranks corresponding to these posts, and engaged in special socially useful activities on behalf of the state (Korzh I., 2004).

The determination of the amount of compensation for damage caused to life and health of participants in the armed conflict

The determination of the amount of compensation for damage caused to life or health is of great practical importance, since it provides adequate protection for the rights of the victim. As a rule, we are talking about full compensation for damage. According to Art. 1166 of the Civil Code of Ukraine, property damage caused by an unlawful decision, action or inaction by the personal non-property rights of an individual or legal entity, as well as damage caused to property of an individual or legal entity is fully compensated by the injurer. However, in some cases, an increase or decrease in the amount of compensation is allowed, for example, in cases of causing damage when it was inevitable or in case the victim is guilty of causing harm to himself or herself. Therefore, the determination of the amount of compensation for damage must be studied thoroughly.

As it was already mentioned, usually the damage is compensated in full. Moreover, under full compensation for damage should be understood the restoration of the state that a person had or could have had if the damage had not been caused (Yaroshenko K., 1990).

Property damage caused to the health of a soldier consists of the earnings (income) lost by the victim as a result of loss or decrease in

professional or general working capacity (lost profit), as well as from additional expenses caused by damage to health (real damage).

The amount of lost profit is determined taking into account two factors: 1) the degree of disability (in accordance with Art. 1197 of the Civil Code of Ukraine, the amount of lost earnings (income) is determined taking into account the degree of loss of professional ability to work, and in its absence - total disability); 2) the average monthly earnings (income) of the victim before the damage to health was caused. At the same time, the term "lost earnings" can be applied to military personnel who are in military service on conscription, since for them the earnings that a citizen had before conscription would be taken as the basis. Property losses caused by damage to a soldier under the contract are calculated on the basis of his cash benefits and other income (not related to the performance of military duties). Therefore, when compensating for harm caused to the health of a military personnel under a contract, the term "lost cash benefits" should be used (Kalinin V., 2001).

According to Part 1 of Art. 9 of the Law of Ukraine "On the social and legal protection of military personnel and members of their families" dated December 20, 1991, the state guarantees military personnel sufficient material, monetary and other types of security in an amount that meets the conditions of military service. According to Part 3 of Art. 9 of the Law of Ukraine "On the social and legal protection of military personnel and members of their families", monetary security is determined depending on the position, military rank, duration, intensity and conditions of military service, qualifications, academic degree and academic rank of a military personnel.

Military cash benefits under Part 2 of Art. 9 of the Law of Ukraine "On the social and legal protection of military personnel and members of their families" includes:

- Official salary, salary for military rank;
- Monthly additional types of cash security (increase of official salary, allowances, surcharges, remuneration of a permanent nature, bonus);
- One-time additional types of cash benefits.

To determine the amount of damage to be compensated, the requirements of Art. 1197 of

the Civil Code of Ukraine should be taken into account, in particular, it should be determined:

- 1) Whether payments were permanent;
- 2) Whether they were paid to the military personnel or whether he or she had the right to receive them;
- 3) What other types of remuneration, including those under civil law contracts, have occurred.

That is, the composition of the lost cash benefits should include allowances and payments that are permanent, not related to the temporary performance of any duties or the quality of their performance. At the same time, the lost cash benefits should include allowances for special conditions of service associated with an increased risk to life, and in highlands, although they are paid to the military personnel only for the period of service in a certain area. This approach corresponds to the rule enshrined in Part 3 of Art. 1197 of the Civil Code of Ukraine, according to which, when determining lost earnings, "the usual wage of an employee of his qualification in a given area" is taken into account.

When determining the amount of damage caused to the health of a military personnel, along with the amounts of monetary support for a military serviceman, other types of income are also taken into account that are not related to the performance of military service duties (Part 3 of Article 1197 of the Civil Code of Ukraine). Following Art. 7 of the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014, military personnel are prohibited from engaging in any other paid or entrepreneurial activities. However, they are not forbidden to carry out teaching, scientific and creative activities. Payment for pedagogical, scientific or creative activities should also be taken into account when determining the amount of damage caused to a military man.

Thus, the total amount of cash benefits and other income of a soldier consists of received by him or her during the year:

- 1) Cash benefits, including allowances for long period of work, for knowledge of a foreign language, for an academic degree or academic rank, for service in areas with severe climatic conditions so on;

- 2) Payments made during the year, in particular, bonuses for the conscientious performance of official duties;
- 3) Income from teaching, scientific and creative activities.

When determining the size of the lost cash benefits of a serviceman, one should be guided by Part 1 of Article 1197 of the Civil Code of Ukraine, according to which the average monthly income of the victim is calculated at the request of the victim for the twelve or three last calendar months of work preceding damage to health or disability due to injury or other damage to health. The amount of lost earnings of a soldier who is in military service on conscription is determined on the basis of the income that he had before being drafted for military service or under Part 3 of Art. 1197 of the Civil Code of Ukraine, based on the usual amount of remuneration for an employee of his qualification in the area from which a soldier was called up (Kalinin V., 2001). As for the additional costs caused by damage to the health of a soldier, they can be considered as real damage, real losses. They consist of expenses for treatment, nutrition, purchase of medicines, prosthetics, additional care, rehabilitation of the victim, etc. (Part 1 of Article 1195 of the Civil Code of Ukraine). Additional expenses can be reimbursed both in kind and in cash.

Compensation for damaged in case of death of a participant in an armed conflict

Property damage caused as a result of death of military personnel is caused to persons listed in Part 1 of Article 1200 of the Civil Code of Ukraine, as well as persons who incurred expenses in connection with the burial of a serviceman (Article 1201 of the Civil Code of Ukraine). In this case, the damage caused also consists of real damage and loss of profit.

When determining the amount of damage caused by the death of a breadwinner, one should be guided by the already considered approach to determining the amount of damage caused to a soldier (which consists of cash benefits and other income of a soldier). But at the same time, it should be determined a part of the lost cash benefits for the military personnel, to which the dependents of the deceased had the right during life (Part 2 of Article 1200 of the Civil Code of Ukraine). The amount of damage is determined on the basis of the amount of monetary support for the victim, minus the share of the deceased and employable people who were dependent on

him, but who did not have the right to compensation for the damage. Moreover, the income of the deceased serviceman includes a pension, the amounts to which he or she was entitled under a life maintenance contract and other payments that he or she received (Part 2 of Article 1200 of the Civil Code of Ukraine).

The right to compensation for damage caused by the death of a military serviceman shall have disabled persons who were dependent on him or her or who had the right to receive support from him or her by the day of his or her death, as well as the child of the deceased serviceman born after his death. The damage is compensated:

- 1) To the child - until he reaches the age of eighteen (to the student - until the end of education, but not more than until he reaches twenty-three years);
- 2) To the husband, wife, parents (adoptive parents) who have reached the retirement age established by law, - for life;
- 3) For persons with disabilities - for the period of their disability;
- 4) To one of the parents (adoptive parents) or a spouse or other family member, regardless of age and working capacity, if they do not work and take care of the children, brothers, sisters, grandchildren of the deceased, until they reach the age of fourteen;
- 5) To other disabled persons who were dependent on the victim - within five years after his or her death.

Thus, in order to correctly determine the circle of persons entitled to compensation for damage caused by the death of a breadwinner, it is necessary to establish their compliance with the following criteria:

- 1) Disability due to age or state of health;
- 2) Dependence on the deceased soldier (Kalinin V., 2001).

Calculated according to the rules of Art. 1200 of the Civil Code of Ukraine, the amount of compensation for damage caused by the death of a breadwinner is not subject to recalculation, with the exception of certain cases, for example: the birth of a child after the death of the breadwinner or the appointment or termination of

payment of compensation to persons caring for the children, grandchildren, brothers and sisters of the deceased (Part 4 Article 1200 of the Civil Code of Ukraine). In case of birth of a child, the amount of compensation for damage determined earlier is subject to recalculation to determine the share, which should belong to the newborn child. Accordingly, the size of payments to other parties will decrease. Upon termination of payments to persons caring for the children of a deceased soldier, on the contrary, the size of payments to persons who retained the right to receive them should increase accordingly (Kalinin V., 2001).

As for the real losses caused by the death of a serviceman, the burial costs and the construction of a tombstone can be considered as such. But only the necessary expenses, that is, those that ensure compliance with the minimum requirements for proper disposal, are subject to reimbursement. When determining the amount of expenses for the burial of military personnel should also take into account that, according to Art. 15 of the Law of Ukraine "On burial and funeral affairs", the Armed Forces of Ukraine and other state bodies provide assistance in carrying out the burial of deceased families, parents or other persons who have committed to bury the deceased servicemen. They compensate material expenses for funeral services and for the construction of tombstones in the manner and amount, which are determined by the Cabinet of Ministers of Ukraine.

The procedure for payment of compensation for damage caused to life and health of participants in an armed conflict

As a rule, the compensation for damage caused to the life or health of military personnel is carried out in monthly installments. This is because such payments are intended to replace the lost income of the victim. In case there are some significant circumstances, and taking into account the financial situation of the individual who caused the damage, the amount of compensation can be paid once, but no more than three years in advance (Part 1 of Article 1201 of the Civil Code of Ukraine).

As for the additional costs, the procedure for their payment depends on their type. For example, the additional costs of providing care are reimbursed in monthly installments, the cost of food and treatment - as they arise, the cost of travel, tickets to the sanatorium - once after their purchase, and in some cases before their purchase. For example, according to Part 2 of Article 1202 of

the Civil Code of Ukraine, the recovery of additional costs can be made in advance within the time limits established on the basis of the conclusion of the relevant medical examination, as well as in case of need for advance payment of services and property (purchase of a ticket, payment of travel, payment of special vehicles, etc.). Thus, if we are talking about reimbursement of expenses for extraneous care, additional food, and the purchase of medicines, the period for future payments is limited by the period determined based on medical examination. If it comes to prepayment of vouchers, travel, prosthetics, special vehicles, etc., payments for the future are made upon confirmation of the need for advance payment.

The law provides for the possibility of recalculating the amount of compensation in connection with a change in the working capacity of the victim or at the request of the person who caused the damage. This follows from Art. 1203, 1204 of the Civil Code of Ukraine, which provide for the right of the victim to increase the amount of compensation in case of a decrease in working capacity, as well as the right of the injurer to demand a decrease in the amount of compensation in case of an increase in the working capacity of the victim (Galyantych M., 2011).

Compensation for moral damage caused to the life and health of participants in an armed conflict

When it comes to moral damage, it is unacceptable to use the concept of “amount of moral damage”, since it is impossible to determine the amount of moral damage in monetary terms. It should be said precisely about the “amount of monetary compensation for moral damage” (Romovska Z., 2005). In this case, compensation for non-pecuniary damage should be considered through the relationship of the victim with the social conditions. Deformation or termination of these relations due to injury or other damage to health lead to deep emotional feelings that cannot be directly expressed in monetary form. But with the help of money, to some extent, it is possible to provide the victim with the preservation of the existing social status, lifestyle, and cultural ties (Protopopova Ya., 2004).

A special case of causation of moral damage is the situation when some inappropriate information concerning a participant of an armed conflict is posted on a web site. Such information can cause damage because of insulting these persons or

there relatives. A specific order of compensation for damage in such cases comes into force. (Nekit K., Ulianova H., Kolodin D., 2019).

Because of difficulties in assessment of the loss of such important values as life and health, in the civil legislation of Ukraine there is no minimum or maximum amount of compensation for moral damage. When answering the question of compensation for damage caused to health, the decision is made with a certain degree of conditionality, since the criteria for determining even with compensation for moral damage do not have their own scientific methodology. In determining the amount of compensation for non-pecuniary damage, the courts should be guided by a public assessment of the factual circumstances that caused discomfort, and not by the subjective perception of this fact by the victims themselves. This is explained by the fact that moral damage caused to health has objective criteria (Protopopova Ya., 2004).

Difficulties in determining the amount of monetary compensation for moral damage sometimes lead scholars to say that it is impossible to develop a unified methodology for determining the moral damage in monetary equivalent. For example, S. Sirotenko notes that moral damage cannot be evaluated in monetary equivalent at all. That is why in the triad “harm - money equivalent - the result of compensation” it is very difficult to determine the second element, which should organically combine the first with the last. Hence, the amount claimed in the lawsuit and recovered by the court is only a probable, rough estimate of the consequences of the offense (Sirotenko S., 2002).

The determination of the amount of monetary compensation for moral damage is also affected by the fact that the provisions on compensation for moral damage include not only compensation, but also some penalty elements. Therefore, it is not so easy to figure out in which cases compensation for non-pecuniary damage will be a compensation for the victim, and in which cases - a punishment for the offender. If there are both factors, it is not always easy to establish what is the part of compensation in this payment, and what is a part of a fine (Sirotenko S., 2002).

Most researchers believe that the problem of determining the amount of moral damage can be solved only by judicial practice, which over time and the increase in the number of cases examined becomes more stable (Agafonov S., 2007). For example, S. Agafonov, having analyzed the

practice of determining the amount of monetary compensation for property damage, offers to highlight several options for determining the amount of compensation.

The first option comes down to the fact that the amount the plaintiff claims in his or her statement of claim is taken as the basis, and the judge makes the final decision, guided by the principles of reasonableness and justice. The court may change this amount or leave it as requested by the plaintiff. Moreover, the court can not only reduce the amount of compensation, but also increase it in comparison with what the plaintiff asks, because Art. 23 of the Civil Code of Ukraine does not establish the rule that the court determines the amount of compensation, taking into account the claims. That is, we can conclude that the court is not obliged to take into account claims in determining the amount of compensation. However, such a position would be contrary to Art. 11 of the Code of Civil Procedure of Ukraine, which provides that "the court shall consider cases only upon the appeal of individuals or legal entities ... within the limits of the claims declared by them ...". Given the above, the judge should not change (increase or decrease) the claimed amount of compensation, but determine it independently, guided by the principles of justice and reasonableness, as well as other circumstances outlined in Part 3 of Art. 23 of the Civil Code of Ukraine. In this case, of course, the court may take into account the stated claims. Particular attention should be paid to the motivation for calculating the amount of compensation. If the amount determined by the judge differs from the amount declared by the plaintiff, he or she must be provided with his own motivation, since clause 9 of the Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of compensation for moral (non-property) damage" provides that when determining the amount of compensation non-pecuniary damage, the court must indicate in the decision appropriate motives.

The second option involves the appointment of a forensic psychological examination. In this case, the expert can ask the following questions:

- 1) Is the situation investigated in a case is traumatic for the victim?
- 2) If it is, is the victim suffering?
- 3) What is the possible amount of monetary compensation for the suffering (moral damage)?

In this case, the expert must evaluate the amount of non-pecuniary damage in an amount equal to a certain number of minimum wages, depending on various factors specified in Part 3 of Article 23 of the Civil Code of Ukraine. However, the court, guided by the principles of humanity and justice, may change the amount of compensation proposed by the expert (specialist).

The third option provides the opportunity to determine the amount of compensation for moral damages independently. When determining the amount of moral damage, it is necessary to consider a large number of factors. Some of them are provided for in Art. 23 of the Civil Code of Ukraine (Agafonov S., 2007).

In particular, according to Art. 23 of the Civil Code of Ukraine, the amount of non-pecuniary damage is determined by the court taking into account the following criteria:

- The nature of the offense;
- The depth of physical and mental suffering;
- Deterioration of the abilities of the victim or deprivation of his ability to realize them;
- The degree of guilt of the person who caused moral damage, if the fault is the basis for compensation;
- Other circumstances of significant importance.

The nature of the offense affects the determination of the amount of monetary compensation for non-pecuniary damage because, for example, in case of severe bodily injury, which is dangerous to the life of the victim, it is clear that the suffering caused is more significant than in case of slight damage to health (Bezruk N., 1954).

The depth of physical and mental suffering depends to a greater extent on the non-property good that is being harmed, as well as on the degree of diminution of this good. The necessary criterion for determining the amount of compensation will be the average depth of suffering, or the alleged moral damage for a certain type of offense. Presumptive harm is understood as the suffering experienced by an "average" person who "normally" reacts to the implementation of a wrongful act (Kuleshov G., 2003).

An important criterion is the degree of guilt of the person who caused moral damage, if the fault is the basis for compensation. In some cases,

compensation for non-pecuniary damage is carried out regardless of the fault of the injurer, in particular if the damage was caused by a source of increased danger or unlawful conviction, etc. (Article 1167 of the Civil Code of Ukraine). Some scholars note that the degree of damage should be classified according to the fault of the injurer. At the same time, four degrees can be distinguished: inflicting grievous bodily damage that caused the death of the victim, inflicting grievous bodily damage, inflicting moderate damage, inflicting light bodily damage. With this in mind, the amount of monetary compensation for moral damage should be determined (Shishkin S., 2001).

In determining the amount of monetary compensation for moral damage, the requirement of reasonableness and justice is of great importance (Anisimov A., Kayushnikova Yu., Ryzhenkov A., 2018). When enshrining this claim for compensation for non-pecuniary damage, the legislator took into account that there are no tools to accurately determine the depth of human suffering, as well as grounds for expressing the depth of suffering in monetary equivalent. Only compensation for the suffering can be expressed in monetary equivalent. In other words, this is a kind of fine that is levied on the injurer in favor of the victim and is designed to reduce the negative impact on the psyche of the victim. Since the depth of suffering cannot be accurately measured, and money cannot be measured at all, it is impossible to talk of any equivalence of the depth of suffering to the size of compensation. However, it would be reasonable and fair to assume that a greater degree of suffering should correspond to a larger amount of compensation, and vice versa, that is, that the amount of compensation should be adequate to the suffering.

As for theoretical approaches to determining the amount of monetary compensation for moral damage, the formula proposed by A. Erdelevsky is often used. At its core, the scientist tried to put criteria expressed in absolute terms. Using 720 minimum wages as the base level of compensation, A. Erdelevsky, by multiplying the relative units of sanctions by the base level of compensation, as well as by some other factors that take into account the degree of fault of the injurer, receives a certain sum of money for each type of crime. At the same time, the scientist offers its corrections depending on the individual characteristics of the victim. The main result of this approach is the possibility, through numerous comparisons, to express the lost non-

material goods in a fixed monetary amount (Sirotenko S., 2002).

This approach can be applied in determining the amount of monetary compensation for non-pecuniary damage caused to the life or health of military personnel. The right of servicemen to compensation for non-pecuniary damage inflicted by them is enshrined in Art. 17 of the Law of Ukraine "On the social and legal protection of military personnel and members of their families" dated December 20, 1991, under which the military personnel shall be compensated for the moral damage caused in the manner prescribed by law.

As for the methods of compensation for moral damage, we can mention that, according to Part 3 of Article 23 of the Civil Code of Ukraine, non-pecuniary damage can be compensated not only by money or other property, but also by other, intangible means. Besides, compensation for material damage should be considered at the same time as a way of compensation for moral damage. It depends on the speed of material compensation, on the sincerity of repentance. Forgiveness can also be considered a way of compensation for moral damage (Romovska Z., 2005).

Conclusions

Summing up, we may note that the amount of compensation caused to the life or health of participants in an armed conflict is a quantitative characteristic for the damage caused, which includes loss of wages, additional expenses, moral damage etc. The damage caused to a serviceman can be divided into property and moral. Besides, there can be distinguished the damage caused to the health of a serviceman and the damage caused by the death of a serviceman. The right to compensation of the latter belongs to the relatives and dependents of the serviceman, as well as to persons who incurred expenses in connection with the burial of the serviceman.

When determining the amount of damage caused to the health of a serviceman, it should be considered that such damage consists of the earnings (income) lost by the victim as a result of loss or decrease in professional or general working capacity (lost profit), as well as additional losses incurred due to damage to health (real damage). At the same time, the term "lost earnings" can be applied only to military personnel serving on the military draft, since for them the earnings that a citizen had before being drafted for military service will be taken as the

basis. Property losses caused to a soldier under the contract are calculated on the basis of his cash benefits and other income (not related to the performance of military duties by the military man). Therefore, when compensating for damage caused to the health of a soldier under a contract, the term “lost cash benefits” should be used. The lost cash benefits shall include allowances for long service, for knowledge of a foreign language, for an academic degree or academic title, pension, for work with information constituting a state secret, since they have permanent nature. In addition, when determining the amount of damage caused to a serviceman, payments made during the year are taken into account, in particular, bonuses for conscientious performance of official duties and income from teaching, scientific and creative activities.

As for compensation for moral damage, it was concluded that moral damage cannot be unambiguously assessed in monetary equivalent. Therefore, compensation for moral damage is aimed at the maximum possible elimination of the negative consequences for the victim, taking into account, first of all, the principles of reasonableness and justice.

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