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GWARANCJE PROCESOWE ODSZKODOWANIA ZA SZKODĘ MORALNĄ PRACOWNIKOWI

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Adnotacja. Celem artykułu jest zbadanie proceduralnych gwarancji odszkodowania za krzywdę moralną pracownikowi. Metodologia. W procesie badawczym zastosowano następujące metody poznania naukowego: monograficzną, systemowo-strukturalną, normatywno-dogmatyczną, logiczną, metodę uogólnienia. Wyniki badań. Zdefiniowano pojęcie gwarancji prawnych ochrony praw, wolności i obowiązków osoby i obywatela w ogóle, a w szczególności gwarancji procesowych. Ustalono, że proceduralne gwarancje odszkodowania za krzywdę moralną pracownikowi są ustalone w szeregu aktów prawnych Ukrainy i odpowiednich uchwał Plenum Sądu Najwyższego. Udowodniono, że spory pracownicze są rozpatrywane przez sądy w postępowaniu cywilnym, w związku z czym podlegają przepisom Kodeksu Cywilnego Ukrainy. Wnioski. Pozew należy złożyć zgodnie z przepisami Kodeksu Postępowania Cywilnego Ukrainy. Wnieść pozew pracownik ma prawo do przedawnienia; jeśli ten termin został pominięty, sąd może go wznowić, ale tylko wtedy, gdy istnieją uzasadnione powody, które sąd ocenia według własnego uznania w każdym indywidualnym przypadku. Przy podejmowaniu decyzji w sprawie odszkodowania za szkodę moralną pracownikowi wyjaśnieniu podlegają obecność takiej szkody, bezprawności czynu pracodawcy, obecności związku przyczynowego i winy pracodawcy.

Słowa kluczowe: gwarancje prawne, odszkodowanie, pozew, przedawnienie, pracodawca, sąd.

PROCEDURAL GUARANTEES OF COMPENSATION FOR MORAL DAMAGE TO THE EMPLOYEE

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Abstract. The purpose of the article is to study procedural guarantees of compensation for moral damage to the employee. Methodology. The following methods of scientific knowledge were applied in the study: monographic, system and structural, normal and dogmatic method, logical, method of summarization. Results of the research. The concept of legal guarantees for the protection of human and civil rights in general and procedural guarantees in particular are defined. It is established that the procedural guarantees of compensation for moral damage to the employee are enshrined in a number of legal acts of Ukraine and the relevant resolutions of the Plenums of the Supreme Court. It is proved that labor disputes are considered by courts in civil proceedings, respectively, they are subject to the norms of the Civil Procedure Code (CPC) of Ukraine. Conclusions. The statement of claim must be made in accordance with the provisions of the CPC. The employee has the right to file a lawsuit within the statute of limitations; if this term has been missed, the court may renew it, but only if there are justified reasons, which the court considers at its discretion in each case. In resolving the issue of compensation for moral damage to the employee, the existence of such damage, the illegality of the employer's action, the existence of a causal link and the fault of the employer shall be clarified.

Key words: legal guarantees, compensation, statement of claim, statute of limitations, employer, court.

ПРОЦЕСУАЛЬНІ ГАРАНТІЇ ВІДШКОДУВАННЯ МОРАЛЬНОЇ ШКОДИ ПРАЦІВНИКУ

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Анотація. Метою статті є дослідження процесуальних гарантій відшкодування моральної шкоди працівнику. **Методологія.** У процесі дослідження були використані такі методи наукового пізнання, як: монографічний, системно-структурний, нормативно-догматичний, логічний, метод узагальнення. **Результати дослідження.** Визначено поняття юридичних гарантій захисту прав, свобод та обов'язків людини та громадянина загалом та процесуальних гарантій зокрема. Встановлено, що процесуальні гарантії відшкодування моральної шкоди працівнику закріплені у низці нормативно-правових актів України та відповідних постановах пленумів Верховного

Суду. Доведено, що трудові спори суди розглядають у порядку цивільного судочинства, відповідно, на них поширюються норми ЦПК України. **Висновки.** Позовна заява має бути складена відповідно до норм ЦПК України. Подати позов працівник має право у межах позовної давності; якщо цей строк був пропущений, суд може його поновити, але лише за наявності поважних причин, які суд оцінює на власний розсуд у кожному окремому випадку. У разі вирішення питання відшкодування моральної шкоди працівнику з'ясуванню підлягають наявність такої шкоди, протиправність діяння працедавця, наявність причинного зв'язку та вини роботодавця.

Ключові слова: юридичні гарантії, відшкодування, позовна заява, позовна давність, роботодавець, суд.

Introduction. The guarantees of human rights, freedoms and responsibilities are one of the integral elements of the legal status of a person and a citizen; system of conditions, means, principles and norms that ensure the exercise, protection and defense of human and civil rights and freedoms; the necessary precondition for the fulfillment of the duties by the actors of legal relations assigned to them for the realization of these rights and freedoms. The effectiveness of guarantees depends on the level of development of democratic institutions, the state of the economy, legal culture and general legal development of the society, the existence of social harmony, the proper functioning of State power, etc. They express not only the factual and legal status of the individual in the society, but also the essence of democracy and social opportunities inherent in the social order, and could be regarded as an important indicator of the reality of the rule of law. The guarantees reflect the achieved level of the development of all spheres of life of both an individual and society as a whole. They are characterized by: normativity, expediency, formal certainty, reflection of the principles of justice, systemacity, fundamentality, continuity and individuality of action, relevance, security, universality, priority. At the same time, the system of guarantees reflects the multiplicity of rights and freedoms themselves.

There are many approaches to the division of guarantees in scientific circles, but most often they are divided into two main groups – general and social and legal ones. According to the criterion of their content, the latter are divided into material; procedural; organizational ones.

The basic labor rights of employees and guarantees of their protection are enshrined in the Constitution of Ukraine and the Labor Code of Ukraine, as well as in a number of other national and international regulations. Unfortunately, there are many cases of violation of the rights and freedoms of workers in Ukraine, which is often due to the reluctance of the latter to protect them or a basic ignorance of the procedure for their protection.

Purpose and tasks. Therefore, in the framework of this article we will consider the procedural guarantees of protection of workers' rights, and in particular – the compensation of moral damage caused to the employee by the illegal actions of the employer or his (her) authorized body, which is the aim of the research.

To achieve this aim we should solve the following tasks:

– to identify the concept of legal guarantees;
– to provide the classification of legal guarantees;
– to offer the definition of procedural guarantees;
– to determine the set of legal acts, which enshrine procedural guarantees of compensation for moral damage to the employee;
– to identify the bodies, which are enabled to consider labor disputes;
– to examine, which types of labor disputes are considered by labor disputes commissions and which ones – directly by courts;
– to determine the features of the procedure for claiming, in particular, the characteristics of the statement of claim, the statute of limitations, the circumstances to be clarified.

Methodology. In the course of the research we used a number of general and specific scientific methods. In particular, monographic method was applied to study the works of the scholars, who have studied legal guarantees for the protection of human rights and fundamental freedoms. System and structural method was useful in highlighting the types of legal guarantees. Normal and dogmatic method helped to examine the rules of the legal acts enshrining legal guarantees for the protection of human and civil rights in general and labor rights of the person in particular. Logical method made it possible to formulate the main concepts of the research. The method of summarization is used for presenting the relevant conclusions and propositions.

Results and Discussion. Legal guarantees are the set of conditions and special legal means, through which they are freely exercised, ensured and protected. There are many different approaches to the classification of legal guarantees in jurisprudence, but conditionally they are divided into three groups: implementation, security, protection.

P. Rabinovych and P. Khavroniuk (Rabinovych, Khavroniuk, 2004: 249–253) point out that legal guarantees for the realization of the rights and freedoms of an individual and a citizen are formal (legal) binding principles and norms established by the State that ensure the exercise of these rights and freedoms through proper regulation of the order of their implementation, as well as their protection and defense. According to the criterion of their content, they distinguish: a) material; b) procedural; c) organizational legal guarantees. Material guarantees are the provisions of legal norms that directly contain certain regulations and prohibitions. Procedural guarantees are the provisions that determine the procedure for the implementation of material guarantees.

V. Sirenko also refers to legal guarantees as norms of substantive and procedural law, as well as norms that establish organizational forms of activity and the relationship between state bodies and citizens (Korelskyi & Perevalova, 2000: 58).

Based on the above, we can conclude that the system of legal guarantees includes legal acts (laws, by-laws and other regulations), enshrining the provisions governing the rights and freedoms of man and citizen;

processes aimed at implementing these provisions; activities of legal entities aimed at implementing the established norms.

Thus, we note that procedural guarantees are the means established by law to ensure the rights and freedoms of an individual and citizen in the process of protecting these rights and freedoms during the administration of justice in case of their illegal violation.

Procedural guarantees of compensation for moral damage to an employee are enshrined in a number of legal acts of Ukraine, which we will consider below.

According to Art. 221 of the Labor Code of Ukraine (Law of Ukraine No. 322- VIII, 1971) labor disputes are considered by: 1) labor disputes commissions; 2) district courts. This procedure for resolving labor disputes arising between the employee and the employer or his (her) authorized body is applied regardless of the form of an employment contract.

The Labor Disputes Commission is a mandatory primary body for the consideration of labor disputes arising at enterprises, institutions, organizations, with the exception of disputes referred to in Articles 222 and 232 of the Labor Code.

Labor dispute is subject to consideration in the commission on labor disputes, if the employee independently or with the trade union organization representing his (her) interests, did not resolve differences in direct negotiations with the owner or his (her) authorized body.

Features of consideration of labor disputes by judges, procuratorial investigators, as well as teaching staff, academics and other members of the Office of the Public Prosecutor are established by law (Article 222 of the Labor Code of Ukraine).

District courts consider labor disputes at the request of the employee or employer or his (her) authorized body, when they do not agree with the decision of the commission on labor disputes of the enterprise, institution, organization (department).

According to the rules of Art. 232 Labor Code of Ukraine district courts directly consider labor disputes on the applications by:

1) employees of enterprises, institutions, organizations, where commissions on labor disputes are not elected;

2) employees to resume employment regardless of the grounds for termination of the employment contract, change the date and wording of the reason for dismissal, payment for forced absence or performance of lower paid work, except for the disputes of employees specified in Part 3, Art. 221 and Art. 222 of this Code;

3) the head of the enterprise, institution, organization (department, representative office, units and other separate subdivision), his (her) deputies, chief accountant of the enterprise, institution, organization, his (her) deputies, as well as officials of tax and customs authorities who have been awarded special ranks and officials persons of central executive bodies that implement State policy in the areas of State financial and price control; executives elected, approved or appointed by State bodies, local governments, as well as public organizations and other associations of citizens on dismissal, amendment of date and reasons for dismissal, transfer to other work, payment for forced absenteeism and the imposition of disciplinary sanctions, except for the disputes of employees specified in Part 3, Art. 221 and Art. 222 of this Code;

4) the owner or the body authorized by him (her) to compensate employees for material damage caused to the enterprise, institution, organization;

5) employees in the application of labor legislation, which in accordance with applicable law was previously decided by the owner or his (her) authorized body and the elected body of the primary trade union organization (trade union representative) of the enterprise, institution, organization (department) within their rights;

6) employees on formalization of labor relations if they perform work without an employment contract and establishing the period of such work.

District courts also directly consider the disputes over refusal of employment by:

1) employees invited to work in the order of transfer from another enterprise, institution, organization;

2) young specialists who graduated from a higher educational institution and were sent to work to the enterprise, institution, organization in the prescribed manner;

3) pregnant women, women with children under the age of three or a child with a disability, and single mothers if they have a child under the age of fourteen;

4) elected employees after the expiration of their term of office;

5) employees who have been granted the right to return to work;

6) other persons with whom the owner or the body authorized by him in accordance with applicable law is obliged to enter into an employment contract.

As one can see from the provisions of the Labor Code of Ukraine, a dispute over compensation for moral damage does not apply directly to those directly considered in court, which means that the Labor Disputes Commission is a mandatory primary body for labor disputes in this category of cases. However, Par. 6 of the Resolution of the Plenum of the Supreme Court of Ukraine No. 4. (1995) (hereinafter – the Resolution No. 4) states in this regard that when applying the rules of the Labor Code on the procedure for litigation in cases of compensation for moral damage caused to the employee in connection with the performance of the duties, the courts must consider that according to the content of Art. 124 of the Constitution the victim has the right to apply to the court directly with such requirements. A judge may not refuse a person to accept an application with such requirements only on the grounds that it was not considered by the commission on labor disputes.

This is also noted in the Resolution of the Plenum of the Supreme Court of Ukraine "On the Application of the Constitution of Ukraine in the Administration of Justice" No. 9 (1996) (hereinafter – Resolution No. 9), which states that the court may not refuse a person to accept his claim only on the grounds that the claim may be considered in the pre-trial procedure established by law.

In our opinion, the dispute over compensation for moral damage to the employee must be considered only by court, because only this body is able to adequately assess the severity of moral suffering of the victim, the loss of his (her) normal life ties, the need to make extra efforts to organize his (her) life, and, consequently, to assign the appropriate amount of compensation on the basis of comprehensive and objective consideration of all circumstances and examination of the evidence.

According to Art. 19 of the Civil Procedure Code of Ukraine (Law of Ukraine No. 1618-IV, 2004) courts consider in civil proceedings the cases arising from civil, land, labor, family, housing and other legal relations, except for the cases which are considered in other proceedings.

Civil proceedings are conducted in the following order:

1) writ proceedings;

2) claim proceedings (general or summary);

3) separate proceedings.

A summary proceeding is aimed to deal, inter alia, with cases arising out of an employment relationship. The general claim procedure is intended for consideration of cases, which, owing to complexity or other circumstances, are not suitable for summary proceedings. Conditions under which a court may consider claims for recovery of sums of money in writ proceedings, and the cases – in general or summary proceedings, are determined by this Code.

As a general rule, all cases to be decided in civil proceedings are considered by local general courts as courts of first instance (Article 23 of the Civil Procedure Code of Ukraine). The appellate courts review on appeal the decisions of the local courts, located within the relevant appellate district (the territory to which the powers of the relevant appellate court extend) (Article 24). The Supreme Court reviews judicial decisions of courts of first instance and appellate courts (Article 25).

Claims against an individual are filed in court at the place of residence registered in accordance with the procedure established by law, unless otherwise provided by law. Lawsuits against legal entities are filed in court at their location in accordance with the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (Article 27 of the Civil Procedure Code of Ukraine). Claims against several defendants who live or are in different places are filed at the place of residence or location of one of the defendants at the choice of the plaintiff (Par. 15, Article 28 of the Civil Procedure Code of Ukraine).

An employee has the right to sue within the limits of the statute of limitations – the period within which a person may apply to the court to protect his (her) civil rights or interests.

The general statute of limitations is set at three years; however, for certain types of claims, the law may establish a special statute of limitations: reduced or longer compared to the general statute of limitations (Article 258 of the Civil Procedure Code of Ukraine).

Thus, Art. 233 of the Labor Code of Ukraine provides that an employee may apply for a dispute directly to the district court within three months from the date when he learned or should have learned about the violation of his (her) right, and in cases of dismissal – within one month from the date of delivery of a copy of the order on release. Employees' claims for payment of their salary can be filed in court without time limit.

If the above deadlines were missed for justifiable reasons court may renew them (Article 234 of the Labor Code of Ukraine). The concept of justifiable reasons in this case is assessed and its decision is left to the discretion of the court. Circumstances that do not depend on the will of the interested person and prevented him (her) from performing procedural actions within the time limit established by law are recognized as justifiable reasons for missing the procedural term.

The reason for missing the period of appeal to the court may be considered valid, if it meets all the following conditions: 1) it is a circumstance or several circumstances that directly prevents or complicates the possibility of procedural actions within the statutory period; 2) it is a circumstance that arose objectively, regardless of the will of the person who missed the deadline; 3) this reason arose during the missed period; 4) this circumstance is confirmed by appropriate and admissible means of proof.

When deciding on the justifiability of the reasons for missing the period of appeal to the court, the court must pay attention to all the arguments of the plaintiff; to the duration of the missed period; to the conduct of the applicant during that period; to the actions he (she) committed, and whether they are related to the preparation for recourse to the court and evaluate them together. Courts must guarantee access to justice for those who consider that their right has been violated and acted in good faith, but missed the deadline to go to court for justifiable reasons.

The examples of justifiable reasons for missing procedural deadlines are:

1) the impact of force majeure (extraordinary or inevitable event, which under specific circumstances, objectively makes it impossible to timely file a lawsuit). In accordance with Par. 2, Art. 14-1 of the Law of Ukraine "On Chambers of Commerce and Industry in Ukraine" (Law of Ukraine No. 671/97-VR, 1997) force majeure circumstances are extraordinary and unavoidable circumstances that objectively prevent the fulfillment of obligations under the terms of the contract (agreement, etc.), obligations under legislative and other legal acts, namely: threat of war, armed conflict or serious threat of such conflict, including but not limited to enemy attacks, blockades, military embargoes, foreign enemy actions, general military mobilization, military action, declared and undeclared war, public enemy

actions, riots, acts of terrorism, sabotage, piracy, riots, invasion, blockade, revolution, revolt, uprising, mass riots, curfew, quarantine imposed by the Cabinet of Ministers of Ukraine, expropriation, forcible seizure, seizure of enterprises, requisition, public demonstration, blockade, strike, accident persons, fire, explosion, long breaks in transport, regulated by the conditions of relevant decisions and acts of public authorities, closure of sea channels, embargoes, bans (restrictions) on exports/imports, etc., as well as caused by exceptional weather conditions and natural disasters, namely: epidemic, strong storm, cyclone, hurricane, tornado, storm, flood, accumulation snow, ice, hail, frost, freezing of the sea, straits, ports, passes, earthquakes, lightning, fire, drought, subsidence and landslides, other natural disasters, etc.;

2) service in the Armed Forces of Ukraine or in other military formations established in accordance with the law, transferred to martial law (for example, service in the Anti-terrorist operation / Joint Forces Operation is a justifiable reason to miss claims in labor disputes);

3) suspension of a law or other normative legal act that regulates the relevant relations (Par. 3, Part 1, Article 263 of the Civil Code of Ukraine) (Law of Ukraine No. 435-IV, 2003);

4) as one of the grounds for suspending the statute of limitations, the legislator identified the introduction of a moratorium, i.e. postponement of obligations on the grounds established by law.

In this case, it should be taken into account that the introduction of a moratorium should be carried out by the relevant State body or local government on the basis of the relevant law. Assessing the legality of the imposed moratorium must be guided by the general rule governing these relations, namely the rule of Part 2, Art. 19 of the Constitution of Ukraine (Law of Ukraine No. 254k/96-VR, 1996). According to the rule of the Constitution of Ukraine, the bodies of State power and local government and their officials are obliged to act on the basis of powers and in the manner prescribed by the Constitution and laws of Ukraine (Dzera 2019: 293).

Besides, a justified reason for missing the procedural term may be a documented illness of the employee; the employer's promise to eliminate the violation of the employee's subjective labor law, which was not observed (if it is possible to provide relevant evidence, such as testimony of employees or third parties who were present at the conversation); and even an error of an employee of the post office (for example, obtaining procedural documents in the case of another person due to an error of an employee of the post office, or a technical error of the latter regarding the settlement of the addressee).

Note that all the circumstances to which the employee refers to justify his inability to appeal to the court in time, must be confirmed by submitting the relevant documents or their copies; at the same time, the plaintiff must perform all possible and dependent actions, use in full the available means and opportunities provided by law for the timely submission of procedural documents.

The statute of limitations begins from the day when the person learned or could have learned about the violation of his right or about the person who violated it (Article 261 of the Civil Procedure Code of Ukraine).

As for the rules of filing a claim, then, according to the rules of Art. 175 of the Civil Procedure Code of Ukraine, it is submitted to the court in writing and signed by the plaintiff or his (her) representative, or another person who is entitled by law to appeal to court in the interests of another person.

The statement of claim must contain:

1) the name of the court of first instance to which the application is submitted;

2) full name (for legal entities) or name (surname, name and patronymic – for individuals) of the parties and other participants in the case, their location (for legal entities) or place of residence (for individuals), postal code, identification code of the legal entity in the Unified State Register of Enterprises and Organizations of Ukraine (for legal entities registered under the legislation of Ukraine), as well as the registration number of the taxpayer's account card (for individuals) if available or passport number and series for individuals – citizens of Ukraine (if such information is known to the plaintiff), numbers of means of communication, official e-mail address and e-mail address;

3) indication of the price of the claim, if the claim is subject to monetary evaluation; reasonable calculation of amounts collected or disputed;

4) content of claims: the method (methods) of protection of rights or interests provided by law or contract, or other method (methods) of protection of rights and interests, which does not contradict the law and which the plaintiff asks the court to determine in the decision; if the claim is filed against several defendants – the content of the claims against each of them;

5) statement of the circumstances in which the plaintiff substantiates his (her) claims; indication of evidence confirming these circumstances;

6) information on the measures taken for pre-trial settlement of the dispute, if any, including if the law determines the mandatory pre-trial procedure for dispute resolution;

7) information on taking measures to secure evidence or a claim before filing a claim, if any;

8) list of documents and other evidence attached to the application; indication of evidence that cannot be submitted along with the claim (if any); an indication that the plaintiff or other person has original written documents or electronic evidence, copies of which are attached to the application;

9) preliminary (indicative) calculation of the amount of legal costs, which the plaintiff has suffered and expects to suffer in connection with the case;

10) confirmation of the plaintiff that he has not filed another claim (claims) against the same defendant (defendants) with the same subject matter and on the same grounds.

The plaintiff must attach the copies of all the documents to the statement of claim according to the number of defendants and third parties. The statement of claim shall be accompanied by documents confirming the payment of the court fee in the prescribed manner and amount or documents supporting the grounds for exemption from payment of the court fee in accordance with the law. She is also joined by all available evidence confirming the circumstances, on which the claim is based (if written or electronic evidence is submitted, the plaintiff may attach to the statement of claim the copies of relevant evidence). A power of attorney or other document confirming the authority of the plaintiff's representative shall be attached to the statement of claim signed by the plaintiff's representative (Article 177 of the Civil Procedure Code of Ukraine).

In accordance with Par. 4 of the Resolution No. 4 the statement of claim for compensation for moral (non-pecuniary) damage must specify, what is this damage, what wrongful acts or omissions caused it to the plaintiff, on what grounds he based his determination of the amount of damage and what evidence for what reasons he proceeded, determining the amount of damage, and how the evidence supports this.

According to the provisions of the Civil Procedure Code of Ukraine, a person who files a lawsuit is obliged to pay a court fee – a sum of money collected throughout Ukraine for filing applications, complaints to the court, for the issuance of documents by courts, as well as in case of individual court decisions provided by this Law. Court fees are included in court costs (Article 1 of the Law of Ukraine "On Court Fee").

In accordance with Par. 5, Part 2, Art. 4 of the above Law the plaintiff must pay 0.4 of the subsistence minimum for able-bodied persons for filing a non-proprietary action; 1.5% of the price of the claim, but not less than 1 subsistence minimum for able-bodied persons for filing a claim for moral damages.

The statement of claim of the employee on the issue of compensation for moral damage is considered by the court according to the rules of Section 3 of the Civil Procedure Code of Ukraine. In accordance with the general grounds of civil liability, the following must be clarified when resolving a dispute over compensation for moral damage: the presence of such damage, the illegality of the perpetrator's actions, the causal link between the damage and the perpetrator's wrongdoing and the perpetrator's guilt. The court, in particular, must find out what confirms the fact of causing moral or physical suffering or non-material losses to the plaintiff, under what circumstances or by what acts (omission) are they caused, in what amount or in what material form the plaintiff assesses the damage and from which facts he (she) proceeds, as well as other circumstances relevant to the resolution of the dispute (Part 2, Par. 5 of the Resolution No. 4).

The courts must take into account that in accordance with Art. 237-1 of the Labor Code of Ukraine, in the case of violation of the rights of the employee in the area of labor relations (illegal dismissal or transfer, failure to pay, work in life-threatening conditions, etc.), which led to his (her) moral suffering, loss of normal life connections or requires additional efforts to organize his (her) life, the obligation to compensate for moral damage rests with the owner or his (her) authorized body, regardless of ownership, type of activity or industry affiliation. The conditions for compensation for moral damage provided by the parties to the contract, which worsen the position of the employee compared to the provisions of this article or other legislation are invalid in accordance with Art. 9 of the Labor Code (Par. 13 of the Resolution No. 4).

Conclusions. Thus, we have determined that labor disputes are considered by labor dispute commissions or by district courts. According to Ukrainian law, a dispute over compensation for moral damage to an employee does not belong to those directly considered in court; however, according to the rules of the Constitution of Ukraine, the court has no right to refuse a person to accept his (her) claim only on the grounds that the claims may be considered in the pre-trial procedure established by law.

In our opinion, the dispute over compensation for moral damage to the employee has to be considered only by court, as only it is able to adequately assess the severity of damage to the victim's connections, the need to make extra efforts to organize his (her) life on the basis of comprehensive and objective consideration of all circumstances and examination of the evidence, and, consequently, to assign the appropriate amount of compensation.

Labor disputes are considered by courts in civil proceedings, respectively, they are subject to the rules of the Civil Procedure Code of Ukraine. The statement of claim is submitted to the court in writing and signed by the plaintiff or his (her) representative, or another person who is entitled by law to go to court in the interests of another person, and must contain all the details provided for in Art. 175 of the Civil Procedure Code of Ukraine. The statement of claim shall be accompanied by copies of all the documents attached to it, in accordance with the number of defendants and third parties; documents confirming the payment of court fee in the prescribed manner and amount, or documents confirming the grounds for exemption from court fee in accordance with the law; all available evidence confirming the circumstances, on which the claim is based.

Employee has the right to file a lawsuit within the statute of limitations, which starts from the day the person learned or could learn about the violation of his (her) right or the person who violated it. If this deadline has been missed, the court may renew it, but only if there are justifiable reasons. This criterion is evaluative one; in resolving this issue the court must pay attention to all the arguments of the plaintiff; to the duration of the term missed; to the behavior of the plaintiff during this period; to the actions he (she) committed, and whether they are related to the preparation for recourse to the court. All the circumstances referred to by the employee to justify his (her) inability to appeal court in time must be confirmed by submitting the relevant documents or their copies.

In resolving the issue of compensation for moral damage to the employee, the following shall be clarified: the existence of such damage, the illegality of the act or omission of the employer, the causal link between the damage and the action of the employer and the fault of the latter. The obligation to compensate for moral damage rests with the owner or the authorized body regardless of the form of ownership, type of activity or industry affiliation.

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