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International experience of compensation for moral damage in labour relations

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Abstract. The mechanism of compensation for moral damage to employees has existed in most developed states for many decades, which determines the relevance of its research in view of the insufficient regulation of this institution in Ukraine. Therefore, the purpose of the study was to analyse the features of compensation for moral damage in labour disputes in some countries of the world (France, Spain, Canada, Australia) with the aim of borrowing positive experience with the possibility of its further implementation into Ukrainian legislation. It has been established that there are no restrictions on the grounds for compensation for non-pecuniary damage in France – any material and moral damage is compensable if it is a direct and immediate consequence of the tortious act. French labour law strictly prohibits psychological pressure within the company; employers are obliged to take all necessary measures to prevent such situations. In addition, employers in this country also have a general duty to ensure the health and safety of their workers. It has been determined that compensation for moral damage is also provided for in Spanish labour law, but not for all offences in this area. To determine the amount of moral damage that is subject to compensation, the Law on Labour Infringements and Penalties (LISOS) is applied, which sets its minimum and maximum amount. Workers in Canada can claim compensation for moral damage if it has been caused as a result of wrongful dismissal, harassment, and discrimination. Simultaneously, the court

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considers the deceitful conduct of the previous employer following termination when assessing the level of compensation. It has been substantiated that the Workers Rehabilitation and Compensation Act is the main legal instrument regulating the procedure for compensation for moral damage to an employee in Australia. According to this Law, psychological injury is subject to compensation only if it occurred as a result of work or during work; the latter must be a significant, essential, or main factor that caused the injury. The results presented in the paper can be used by researchers and legal practitioners in conducting further research on this topic, and by the legislator in the process of improving the mechanism of compensation for moral damage to employees in Ukraine

Keywords: employer; harm; labour dispute; moral suffering; positive experience; reimbursement

Introduction

Reparation for moral harm is among the entitlements assured by Ukraine's Fundamental Law. In this regard, Article 56 of the document stipulates that every individual is entitled to compensation for both material and moral damages resulted from illegal acts, omission, or decisions by state authorities, local self-government or their representatives while performing their duties (Constitution of Ukraine, 1996). Reparation for this category of harm is also a method of safeguarding labour rights. Article 237-1 of the Labour Code of Ukraine (1971) stipulates that the employer's compensation for moral damage inflicted on the employee is provided in instances where the infringement of their legal rights, including those resulting from discrimination, mobbing (harassment), as established by a legally binding court ruling, caused emotional distress, disrupted usual life connections, and necessitated extra efforts to reorganise their life. Simultaneously, the issue of compensation for moral harm remains highly pressing due to its insufficient regulation within labour laws. Given the large number of lawsuits connected to this matter in labour relations and the sharp rise in such cases, spurred initially by the mass layoffs during the COVID-19 pandemic and subsequently by the all-out war on the territory of Ukraine, this subject continues to grow in importance.

Conversely, the framework for compensating moral damages in labour conflicts has existed in several countries for decades, which renders its examination highly significant, particularly during the phase of reforming labour laws. This is especially pertinent given Ukraine's aspirations for European integration, particularly following the acquisition of candidate status for EU membership.

The analysis of the academic publications highlights various aspects of moral damage compensation in labour relations. O. Panchenko (2022a) explored the methodology for determining the amount of moral damage compensation in European countries, emphasising the need to adapt these practices in Ukraine. She came to the conclusion that the judges of the considered countries use the framework established by the courts in similar cases in determining the amount of compensation for moral damage, in particular in labour relations. These decisions are based on relevant tables or other acts that help judges or representatives of other bodies in considering similar applications. A. Tabunshikov *et al.* (2020) conducted a comparative study of the current legislation governing compensation for moral damage in some foreign countries. They defined the basic terms used in foreign law that are analogous to the institution of "compensation for moral damage" existing in Ukrainian legal system. R. Basenko *et al.* (2022) revealed and examined the conceptual review of the provisions of international legal experience in dealing with compensation for moral (non-property) damage in the context of priorities for the protection of democratic rights and freedoms of citizens. M. Hryhorchuk *et al.* (2023) analysed the protection of property rights during the Russian-Ukrainian war, focusing on international and Ukrainian mechanisms for holding war criminals accountable. M. Cuadros Garrido (2022) analysed the deterrent effect of moral damage compensation during the pandemic, suggesting that the pandemic accelerated the development of legal mechanisms and raised the question of punitive damages. F. Gonzalez Cazorla (2022) investigated moral damage in Spanish consumer law, focusing on its concept and limitations, identifying weaknesses in current legislation, and offering improvements. Having conducted her own research, Y.M. Porytska (2023) stated that Canadian labour legislation allows workers to sue for wrongful termination, but only for economic damages. That is, the legislation and judicial practice of Canada refer cases of illegal dismissal to the category of cases related to the violation of the terms of the contract. The compensation for moral damage in this case is not provided, but it is reimbursed in the event of discrimination at the workplace, as well as illegal dismissal.

Consequently, as a component of the study, the specific features of compensating moral damages to employees in various countries worldwide will be examined to adopt beneficial practices with the potential for further incorporation into Ukrainian legislation.

Literature review

Scientific sources considered in the study primarily focus on the legal aspects of moral damage and compensation across various contexts. N.J. Mullany and P.R. Handford (1993) dedicated their work to tort liability for psychiatric damage. The researchers presented the detailed discussion of the symptoms of the psychiatric disorders which most often form the subject of litigation, the ways to establish a causal link between mental injury and external event and the instruments for assessment of damages, based on Australian and UK court practice. J.L. Navarro-Espigares and J. Segura (2011) addressed the issues relating to workers' compensation to cover damages derived from work accidents and occupational diseases. The researchers presented their own method for assessing moral damage and to illustrate the differences between the proposed method and the method has been used regularly in Spain, they investigated three real cases, in which the differences exceed EUR 200,000. B. Tapia Cornejo (2022) examined procedural doctrine approaches to moral damage, emphasising the importance of integrating private law and procedural norms to enhance evidence handling. The researcher stressed the relevance of Peruvian jurisprudence in addressing moral damage. B. Verdera Izquierdo (2024) explored family law, particularly the responsibility for concealing true paternity, and discussed whether tort law should be applied to family

matters. S. Morillo Carrillo (2022) investigated state liability in terms of subjective rights, proposing a reinterpretation of damage and unlawful damage in light of modern legal theory. O. Hnativ *et al.* (2024) explored compensation for damages caused by Russia's armed aggression, highlighting the complexity of documenting damages and the need for improved legal frameworks. V. Ivanova (2024) addressed Ukraine's strategy for compensating property damage via digital services, emphasising the development of national court practices and the potential for international cooperation in securing reparations.

As for the authors, who examined the institution of moral damage within labour relations, the following should be mentioned. V. Chernadchuk (2001) dealt with the problem of moral damages caused by violation of labour rights and developed his own methodology of determining the amount of compensation for moral damage caused to the employee by the owner of the enterprise, institution or organisation, or the authorised body. T. Kirichenko (2020) examined the essence and features of moral damage, its role in the legal regulation of labour law relations, paying considerable attention to the ECHR decisions on this issue. The researcher concluded that there is no uniform practice of the Court on the compensation for moral damage, which is explained by the fact that it is grounded on the European Convention rules, which may change or appear during the case. Ya. Protopopova (2011) established the role and significance of the institution of compensation for moral damages in the labour law of Ukraine, summarised foreign experience of legal regulation of compensation for moral damage caused to the employee by the employer, and outlined the development trends of the institution of moral damage compensation in the labour law of Ukraine. O. Soroka (2020) highlighted certain legal problems of compensation for spiritual injury caused by work accidents and occupational diseases, resulting in author's method of calculation of the monetary equivalent of non-pecuniary damage caused to an employee, and detailed analysis of the order for compensation for moral injury caused by these negative factors.

Despite considerable number of studies dedicated to the issue under consideration, there is any comprehensive research on the institution of compensation for moral damage to the employees of other states, which may be considered exemplary in this matter. This is a considerable drawback under current conditions, when Ukraine committed to bring its legislation in line with the European one.

Materials and methods

Common and special methods of scientific inquiry were employed in the preparation of this paper. Specifically, the systematic approach was utilised to examine the components of the issue of moral damage reimbursement in their interconnectedness and unity. Through the application of the monographic approach, the studies by scholars who investigated the topic of compensation for non-pecuniary harm in other countries within the framework of labour relations was analysed. The system and structural approach was used to systematise the features of moral damage compensation in each of the states under consideration. The logical method helped in formulating the concepts of "moral damage" and "psychological trauma". The normative and dogmatic method made it possible to analyse national legislature of some countries of the world, which regulates the subject matter of this research. The choice of the presented states was conditioned by the high level of development of the studied institution in the selected countries, and the detailed regulation of the mechanism of its implementation at the legislative level. The contrastive method helped in the comparison of the approaches, conditions, and procedures of compensation for moral damage caused to an employee under the laws of the countries surveyed. The method of legal modelling was used to formulate relevant conclusions and proposals.

In the course of preparing the paper, the following legal instruments of the indicated states were analysed: Labour Code of France (1973); Law of Spain No. 36/2011 "Regulating social jurisdiction" (2011); Royal Legislative Decree of Spain No. 2/2015 "Approving the revised text of the Workers' Statute Law" (2015); Royal Legislative Decree of Spain No. 5/2000 "Approving the revised text of the Law on Infringements and Sanctions in the Social Order" (2000); Tasmania Workers Rehabilitation and Compensation Act (1988); Labour Code of Ukraine (1971). Concerning court practice, the following decisions were investigated: Decision of the Constitutional Court of Spain No. 61/2021 (2021); "Honda Canada Inc. v. Keays" (2008); "Wallace v. United Grain Growers Ltd." (1997); Decision of Social Chamber of the French Court of Cassation No. 13-17.729 (2014). These legal acts and court decisions were investigated in detail, which contributed to understanding the concept of moral damage; the cases where compensation was granted; the conditions, under which the identified actors were entitled to reimbursement; the mechanism of moral sufferings compensations; the procedure of determining the amount of indemnity subject to reimbursement.

Results and discussion

For example, in France there are no restrictions on the grounds for compensation for moral damage – any material and non-pecuniary harm is compensable if it is a direct and immediate consequence of the tortious act. Courts usually award a total amount of moral damages, but divide it into separate categories. Thus, as stated by O. Panchenko (2022a), when determining the amount of compensation, such factors are considered: the degree of physical suffering; inability to lead a normal lifestyle; permanent or temporary loss of working capacity; aesthetic damage; sexual dysfunction; loss of suitable work and the ability to manage a household; reduction of the average life expectancy; compensation for a spoiled vacation; coma, "vegetative state", and brain damage.

French labour law strictly prohibits psychological pressure within the company; owners are obliged to take all possible steps to prevent such situations. Art. L 1152-1 of the Labour Code of France (1973) defines moral oppression as "repeated actions that are intended or result from the deterioration of the worker's working conditions, which may violate his/her rights or dignity; affect his/her physical or mental health, or endanger his/her future career". The measures applied in case of the failure to comply with this prohibition are quite severe: fines may be imposed on the employer, and any action taken in violation of this Article may be declared invalid. The victim of such actions may also demand the employer to be brought to civil liability and receive reimbursement for harm caused as a result of moral pressure. Besides, employers in France also have a general duty to ensure the health and safety of their employees (duty of care). Thus, the employer must take actions to protect physical and mental

health of his/her subordinates – Article L. 4121-1 of the Labour Code of France (1973). Violation of this obligation entails the responsibility of the employer, even if there is no fault on his/her part. In this case, the employer may be jointly liable for both the breach of the duty of care and the consequences of moral duress.

Court practice indicates that this is also the case. This can be supported by the Decision of the Social Chamber of the Court of Cassation of France No. 13-17.729 (2014). According to the case file, the employee was on sick leave for two months due to a conflict with the manager, who behaved aggressively towards his subordinate: shouted at him, insulted him in the presence of his colleagues, etc. In this regard, the employer noted that he took appropriate measures immediately after the incident, which consisted of organising a meeting to resolve the conflict, during which the manager apologised to his subordinate. In addition, a special department was created to deal with psychosocial risks in the company, and the employee who was the victim of harassment was transferred to avoid any contact with his former manager. However, despite the best efforts of the employer, the employee resigned from the company, and then filed a lawsuit in the labour dispute court with a demand to compensate for damage caused by moral harassment. The Court of Appeal ruled in favour of the affected and awarded him EUR 8,000 in compensation for the employer's breach of legal obligation to avoid causing harm and EUR 12,000 in compensation for moral harm resulted from psychological damage. Despite the employer's arguments that the same injury cannot be recovered twice, the Court of Cassation upheld the Court of Appeal's decision and noted that an employer is in fact violating his legal obligation to avoid causing harm when one employee is harassed by another in the workplace, regardless of what actions have been taken to stop such a violation.

This Decision of the Social Chamber of the Court of Cassation of France No. 13-17.729 (2014) is in line with case law, which allows an employee to receive 2 compensations for the psychological pressure he/she experienced on the job. It should serve as a reminder to employers that moral harassment of their employees in the workplace can be grounds for prosecution; at the same time, it is emphasised that the damage to the victim should be compensated even if the employer immediately took measures to resolve the conflict. However, the court will take into account their adequacy, timeliness, and efficiency when calculating the amount of reimbursement for the moral sufferings (as it was done when making a decision in the case under consideration).

It is worth noting that the burden of proving the fault of the owner is borne by the employee; this means that the latter must provide facts confirming cases of moral harassment against him/her. In turn, the accused must prove that the contested violations have nothing to deal with this negative phenomenon. The court listens to both sides and may decide on additional evidence to be provided for the investigation of the situation to make the most objective decision. It should be emphasised that employees cannot be punished, fired or subjected to discriminatory measures because they have experienced moral harassment, witnessed it, or reported such actions.

Spanish labour law is comprehensive and provides through protection for workers. It regulates individual and collective legal relations between employees and employers, the scope of which extends to other related areas, such as social security, labour protection, special labour relations and procedural law. Thus, the Statute of Workers (Royal Legislative Decree of Spain No. 2/2015, 2015) regulates a number of aspects of personal and collective labour relations and is an important component of Spanish labour law. In addition, it is responsible for the conclusion of collective agreements, which establish the minimum wage for employees of certain professions, the specific features of the trade unions' functioning, the provision of incentives, etc.

Spain places great emphasis on protection against discrimination in the workplace. Thus, all companies with more than 50 employees were obliged to elaborate and incorporate an equality plan by the end of 2021. They had to include a pay audit and provide public access as well. This was necessary to demonstrate that a difference in pay between workers of different sexes is not the consequence of discrimination. In addition, discrimination based on sex, marital status, ethnicity, colour, nationality, ethnic origin, disability, religion or religious belief, and age is prohibited. Direct and indirect discrimination, harassment and victimisation are illegal. Those Spanish workers who believe they have been discriminated against by management can file a claim to the Labour Court.

Reimbursement for moral harm is also provided for by Royal Legislative Decree of Spain No. 2/2015 (2015); however, not for all offences in this area. For example, such compensation is not defined for illegal dismissal. In case of proving the fault of the employer, the employee has the right to: 1) return to work with compensation for lost remuneration or 2) payment of 33 days' salary during the year of service, provided that the salary does not exceed 24 months' salary.

However, if the dismissal involved discrimination or other violation of human rights, the court will declare it invalid and reinstate the employee with payment of financial compensation for lost wages. In this case, the employee is entitled for the moral harm indemnity as well. According to the Decision of the Constitutional Court of Spain No. 61/2021 (2021), the employee was fired from the company due to the fact that she spent about 70% of her working time on personal issues and only the remaining 30% – on professional ones (according to the results of checking her computer data). It should be noted that the employees of this company perform most part of their activity through corporate PCs, mobile phones, etc., which leaves relevant traces or is directly visible, as all gadgets are usually connected to the public network. This enables monitoring of the work and identifying possible inconsistencies.

The claimant filed a lawsuit against her termination, essentially contesting the owner's access to her PC. At each of the stages of the proceedings, the judges agreed that it was illegal. The company's internal rules allow only least necessary intervention, but in this case, there was invasive digital surveillance, capturing everything on the PC's screen (and private content as well). When considering these facts, the judges gave them different legal assessments. Madrid Labour Court No. 19 assumed that the unlawfulness (and therefore impermissibility) of such proof (received as a result of a violation of the fundamental right) entailed its complete inadmissibility. Therefore, since this was the only basis for dismissal, the dismissal itself should also be invalidated. Besides, since the dismissal violated the claimant's basic rights, the company was forced to redeem EUR 6,251

as compensation for moral damage (the applicant claimed EUR 51,439.40) (Decision of the Constitutional Court of Spain No. 61/2021, 2021). The High Court of Madrid, however, went the other way. In its opinion, the illegal surveillance performed by the company just required the court to ignore this proof for the dismissal qualification, but had any effect of its invalidity. For this, the layoff should have directly breached the claimant's fundamental rights, but it was not the case. Considering that the rest of the proof did not confirm the assertable violations, the Court qualified the layoff as unjust. And since (as it was already stated), the dismissal did not violate any fundamental rights, the employee is not entitled to compensation for moral damage (Decision of the Constitutional Court of Spain No. 61/2021, 2021).

Having exhausted these remedies, the employee applied to the Constitutional Court (CC) for constitutional protection grounded on an indirect allegation that her fundamental right to effective judicial protection had been violated: (I) in respect of the right to privacy and secrecy of communication; (II) in respect to the right to a reasoned decision, which was breached by the High Court of Madrid. The Constitutional Court came to the conclusion that the position of the latter regarding the fact that the proof obtained unlawfully does not reflexively entail the invalidness of the layoff and does not breach the right to effective judicial protection. Nevertheless, the CC does not decide whether this understanding is proper; it is an issue of common legitimacy, and it is for the High Court to lay down the appropriate standards. The Constitutional Court recognises the existing division between the courts and indicates that the position of the High Court of Madrid is "positively rooted in our legal system and cannot be characterised as arbitrary or manifestly unfounded" (Decision of the Constitutional Court of Spain No. 61/2021, 2021).

The judge María Luisa Balaguer Callejón dissented, stating that "in the absence of grounds justifying the dismissal, violation of fundamental rights to collect evidence of a single alleged violation should also result in the reversal of the dismissal decision". Conversely, the CC recognised that the right to effective judicial protection had been breached in relation to the moral harm reimbursement claimed by the employee by way of annulment; it is on this point of the High Court of Madrid decision that the case was sent back for redetermination. The Constitutional Court expressly found that evidence obtained during computer monitoring breached the claimant's fundamental rights to privacy and secrecy of communication, and therefore, the High Court of Madrid had to award refund for moral damage (Decision of the Constitutional Court of Spain No. 61/2021, 2021).

The legal basis for assigning indemnity for moral harm for breaching worker's labour rights in Spain is Art. 183 of the Law of Spain No. 36/2011 (2011), which specifies that, if the case concludes that any fundamental right has been violated, the judge will issue a decision to award an amount of compensation to the claimant who suffered a violation of the fundamental right, depending on the extent of moral injury caused by such violation, as well as other, as well as on others additional losses. In other words, in any case, when such violation is proven, the victim has the right to demand compensation.

The most important factor in classifying an offence as violating an employee's fundamental rights is the character of the owner's conduct. The latter is legally responsible "whether the behaviour is described as psychological claim in a literal sense or not, there is a duty to make good the damage caused". Any long-term labour conflict that can cause psychosocial harm, in the absence of preventive intervention on the part of the employer, is violation not only under common law – the duty to effectively protect the right to health, but also under constitutional law – the duty to protect personal immunity. This position is equivalent to the French doctrine of labour law.

In addition, there is a need to distinguish between psychological pressure from a broad spectrum of normal and abnormal conflicts that can be resolved according to the rules of common law:

- disputes connected to working conditions (time, place, service conditions, etc.) that are "ordinary violations of labour relations". Conflict can be an indicator of pressure, but it will never be the determining factor;
- long-term professional pressure that causes stress;
- forms of exercising the employer's powers that are illegal or random. This includes any improper, inappropriate, or abnormal exercise of the company's authority aimed at promoting the company's economic interests, which, however, does not involve any intention or desire to harm the emotional stability of the employee or create a humiliating environment;
- oppressing and degrading forms of implementation of the owner's management responsibilities, which cause mental harm to employees personally, although directed at all employees who are subordinate to the employer.

The compensation provided for in Art. 183 of the Law of Spain No. 36/2011 (2011) includes not only moral damage, but also any other harm caused by the breach of the fundamental right, although the existence of the latter must be proven. Sufficient supporting or objective evidence must be provided for its assessment. As regards the determination of the amount of moral injury, the criteria for its quantification, according to the High Court, should be "made more flexible", since the violation of the fundamental right necessarily leads to the assignment of moral damage, and it is difficult to establish its exact amount. Determining the amount of moral harm is a hard and costly process; therefore, the High Court uses the Law on Labour Irregularities and Penalties (LISOS) (Royal Legislative Decree of Spain No. 5/2000, 2000) as a guide to determine the amount of the foreseeable compensation.

In Royal Legislative Decree No. 5/2000 (2000), labour offences, which are the acts or omission of employers that contradict the legal and regulatory provisions of collective and individual labour agreements on employment, professional training, temporary work, social and labour integration and other types of labour relations, classified and sanctioned in accordance with this Law, are united into groups depending on the rules that are violated. They include: breaches of conditions in personal and group labour agreements; infringements in the area of occupational hazard prevention; breaches in employment regulations; failure to comply with temporary employment rules; violations in the area of social protection; breaches of the right to entitlements; infractions related to workplace accident and occupational illness insurance; violations concerning labour migration, among others.

Each of these groups is divided, in turn, into subgroups with further classification of offences into light, medium, serious, and especially serious. For each of them, the Law

provides a sanction in the form of a fine with a minimum, average, and maximum value, considering the criteria established in it. They are: negligence and intentionality on the part of the perpetrator, fraud or conspiracy; ignoring previous remarks and demands of inspectors; the company's revenue; the number of employees affected; the damage caused; the extent of the fraud, etc. In case of violation of the rules of professional risks prevention, such criteria as the level of hazard, severity of harm or damage that may have been caused by the absence or lack of necessary measures, the number of injured persons, etc. are applied.

According to Royal Legislative Decree No. 5/2000 (2000), a report on violations issued by the Employment and Social Security Inspectorate must not only describe the facts that led to the breach, but also state its classification (as minor, serious, or very serious), its severity and the penalty provided. The assessment of fines is within the competence of the inspection bodies, which must perform it in accordance with the criteria established by law. After qualifying each offence and carrying out its assessment, the inspection bodies propose the amount of the fine to be collected, considering the criteria laid down in this act. The amount of compensation must be substantiated by the judge of the first instance, and such an assessment can only be changed by appeal or review by the court of cassation when it is excessive, unjust, inappropriate, or unreasonable.

In 2008, the decision known as "Honda Canada Inc. v. Keays" (2008), provided for a definition of moral damage, which is used by all courts in Canada when dealing with such cases. According to it, moral damage is harm caused by dismissal; if the employer's behaviour is found to be unfair or unconscionable resulting in the employee's mental disorder, the latter may be awarded appropriate compensation. Non-pecuniary damages are the exception, not the rule: ordinary suffering and injury resulting from dismissal are usually not compensable. Damages for moral damage are compensated in the form of a one-time monetary payment, not related to loss of income.

This decision provided a basis for employees to sue for wrongful dismissal, but only for economic losses. That is, Canadian legislation and case law refer cases of wrongful dismissal to the category of ones related to the breach of contract terms. In this case, moral damage is usually not compensated. The award that the employee may expect will be limited to the damage caused by the late notice of the future dismissal. If the circumstances of the case were unacceptable, compensation may be awarded depending on the manner and conditions of such dismissal. As a rule, this concerns awards for aggravating circumstances (discrimination). The purpose of such reimbursement is not to compensate for damages, but to punish the employer. According to Y.M. Porytska (2023), when deciding on such compensation, the courts are guided by the following: whether the dismissal procedure was clearly and grossly violated; were there serious grounds for dismissal (an investigation was conducted, etc.); whether all necessary salary payments have been made; whether the employer took such actions that could further prevent the employee from finding a new job, etc.

Compensation is awarded in cases where the employee is able to demonstrate the presence of moral harm done by the employer. This means that if the owner behaved unjustly or unconscionable during the dismissal process, for example, has cheated, lied, or demonstrated clear disrespect and indifference, and the former employee provides evidence that this behaviour caused him/her moral distress, he/she may be entitled to compensation for this suffering.

In the case "Wallace v. United Grain Growers Ltd." (1997), the court cited the following examples of the employer's dishonest behaviour: 1) the employer illegally accused the employee of theft and reported this fact to future potential employers, which significantly complicated the job search process for the dismissed; 2) the employer unjustifiably accused the employee of failing to fulfil his professional duties and refused to provide a letter of recommendation; 3) after the elimination of the employee's position, the employer promised the latter a new one, which was never provided. The former employee waited for an appointment for a long time (more than a month), and during this period he did not look for a job, which negatively affected his financial condition; 4) the employer dismissed the employee immediately after the latter left sick leave; 5) the employer sold his business and fired the employee, promising that he would be hired by new management. After three months, he was indeed offered to return to his duties, but the salary for their performance was already half as much. The given examples, clearly, do not cover the entire list of cases of dishonest behaviour by the employer; however, they help to orientate in which cases the dismissed employee can count on compensation for moral damage. Generally, Canadian courts award for moral damage in the range of $20,000 to $40,000. However, there are isolated cases of awarding larger sums if the judge believes that the employee experienced particularly severe moral suffering due to the employer's unscrupulous behaviour (Panchenko, 2022b).

There are 11 main workers' compensation schemes in Australia. Each of Australia's 8 states and territories has developed its own compensation system, and there are 3 programmes at the Commonwealth level: for Australian Government employees and Australian Armed Forces personnel who served before 01 July 2004; the second – for some categories of sailors; the third one – for Australian Armed Forces personnel serving on or after 01 July 2004 (Carey & Triffitt, 2018). The Workers Rehabilitation and Compensation Act (1988) is the main regulation governing the procedure for compensating moral harm. According to its rules, an employee in Australia has the right to compensation for psychological injuries or disorders received during the performance of his/her work duties. Psychological trauma is a set of cognitive, emotional, and behavioural symptoms interfering with the normal life of an employee and can greatly influence his/her feelings, thoughts and interactions with other people. Psychological trauma can compromise such illnesses as depression, anxiety, or PTSD.

Psychological injury is compensable only if it occurred as a result of work or during work; the latter must be a significant, essential, or main factor that caused the injury. Claims for psychological injury compensation are generally not accepted if they are related to the employer's reasonable dismissal, layoff, transfer, job evaluation, disciplinary action or placement. An employee who has suffered a psychological injury must report it to (optionally): his/her employer(s); immediate supervisor; the person designated by the employer for this purpose; the person authorised to receive such applications. The document must be submitted no later than six months from the day of the injury, or six months from the day of the death of the employee, if it was the cause of his

death. If this period is missed, the employee loses the right to compensation, unless it was missed for valid reasons.

The application should contain the following details: name of the victim; his/her home address and telephone number; the nature of the injury, the date and reason for receiving it. Along with the application, the employee should submit a medical certificate in the prescribed form, signed by a practicing physician or an appropriate accredited institution. Such a certificate may be provided after the application, but the latter will be considered submitted only after a medical report is attached. The employer or other authorised person who received such a statement should notify the employee within 14 days whether or not the latter is entitled to compensation. In case of missing this period, the perpetrator will have to pay a fine.

After receiving the application, the employer or other authorised person should complete a report in the prescribed form and send it along with a copy of the application, within five days to their insurer, who, in turn, within five days should forward them to the WorkCover Tasmania Board – a special body that considers this kind of claims. The employer has to inform the employee about the results of the examination of the application within 28 days from the day of its receipt (in writing). In the case of refusal to pay compensation, the employer should indicate the reasons for it, and the arguments he/she was guided by when accepting it. An employer's decision (both positive and negative) can be appealed to the Tasmanian Civil and Administrative Tribunal. The Law of 1988 regulates in detail the procedure for consideration of each of these issues, which must be conducted within the appropriate time frame and supported by the necessary documents.

Conclusions

As a result of research conducted, the following conclusions were obtained. French labour law strictly prohibits psychological pressure within the company; employers are obliged to take all actions for preventing such situations. In addition, employers have a general duty to ensure health and safety of their employees. For the breach of this obligation, the employer assumes collective responsibility (both for the infringement of the duty of care and for the moral harm inflicted) even in the absence of culpability. Simultaneously, the harm to the victim must be reimbursed even if the employer promptly implemented actions to address the conflict.

Reimbursement for moral damage is also provided for by Spanish labour law; however, not for all offences in this area. Thus, for example, such compensation is not envisaged for illegal dismissal. However, if the dismissal involved discrimination or other violation of human rights provided for by the Constitution or other laws of Spain, the court declares it invalid and reinstates the employee with payment of financial compensation for lost wages. In this case, the employee is entitled to compensation for moral damage.

Employees in Canada can seek reimbursement for non-pecuniary harm if it has been inflicted due to wrongful termination, harassment, or discrimination. Simultaneously, the deceitful actions of the former employer following termination are considered by the court when assessing the award for moral injury, as the conduct of the employer or the entity authorised by them must align with the principles of good faith and fairness both during the employee's dismissal process and afterward. There are 11 main workers' compensation schemes in Australia: each of Australia's 8 states and territories has developed its own compensation system, and there are 3 programmes at the Commonwealth level. The Workers Rehabilitation and Compensation Act (1988) is the main regulation governing the procedure for compensating damage to the employee. According to this Law, psychological injury is subject to compensation only if it occurred as a result of work or during work; the latter must be significant, essential, or main factor that caused the injury. Claims for psychological injury compensation are generally not accepted if they are related to the employer's reasonable dismissal, layoff, transfer, job evaluation, disciplinary action or placement.

Therefore, compensation for moral damage to the employee is provided for in all the countries considered in the case of discrimination and harassment at the workplace, as well as wrongful dismissal. Notably, discrimination in labour relations is considered a serious offence, the responsibility for which sometimes arises even regardless of fault on the part of the employer, who, in turn, must take all necessary measures to prevent this phenomenon. The criteria used in assessing the amount of compensation are established at the legislative level, including certain, legally defined frameworks within which compensation is assigned depending on the severity of the offence in the labour area that caused harm, the fault of the employer and the employee, the company's income, the presence of previous violations on the owner's part, etc. The procedure for an employee's request for compensation is clearly prescribed, specifying all the terms by which it must be considered by each authorised body. Such a detailed regulation helps to ensure the stability of legal practice on this issue and provide adequate amount of compensation to the victims.

Given the fact that there are no uniform mechanisms for compensation for moral damage or methods for calculating its amount in Ukraine, this finding may be useful in the process of improving the procedures of its compensation in general and within labour relations in particular. Prospects for further research lie in the possibility of developing ways to incorporate positive experience into relevant regulations.

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Conflict of interest

None.

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Анотація. Механізм компенсації моральної шкоди працівникам у більшості розвинутих держав існує вже багато десятиліть, що обумовлює актуальність його дослідження з огляду недостатньої врегульованості цього інституту в Україні. Тож метою статті був аналіз особливостей відшкодування моральної шкоди у трудових спорах деяких країн світу (Франції, Іспанії, Канади, Австралії) із метою запозичення позитивного досвіду та можливості його подальшої імплементації до українського законодавства. З'ясовано, що у Франції відсутні будь-які обмеження стосовно підстав для компенсації моральної шкоди – усі матеріальні та моральні втрати можуть бути компенсовані, якщо вони є безпосереднім і прямим результатом деліктного правопорушення. Французьке трудове законодавство суворо забороняє психологічний тиск всередині компанії; роботодавці зобов'язані вживати всіх необхідних заходів, аби запобігти подібним ситуаціям. Крім того, на роботодавців цієї країни також покладається загальний обов'язок щодо забезпечення охорони здоров'я та безпеки своїх працівників. Визначено, що відшкодування моральної шкоди іспанським трудовим законодавством також передбачено, втім не за всі правопорушення у цій сфері. Для визначення розміру моральної шкоди, яка підлягає компенсації, застосовується Закон про трудові порушення та покарання, де встановлений її мінімальний і максимальний розмір. Працівники в Канаді мають право вимагати компенсацію за моральну шкоду, якщо вона була заподіяна внаслідок неправомірного звільнення, переслідувань або дискримінації. При цьому недобросовісні дії колишнього роботодавця після звільнення враховуються судом при визначенні розміру відшкодування за моральну шкоду. Доведено, що Закон про безпеку, реабілітацію та компенсацію є основним нормативним документом, який визначає процедуру компенсації моральної шкоди працівнику в Австралії. За законодавством країни, психологічна травма підлягає відшкодуванню лише в тому випадку, якщо вона виникла в результаті роботи або під час роботи; остання має бути значним, суттєвим, істотним або основним фактором, що завдав травму. Результати, представлені у статті, можуть бути використані науковцями та юристами-практиками при проведенні подальших досліджень на цю тематику, а також законодавцем у процесі удосконалення механізму відшкодування моральної шкоди працівникам в Україні

Ключові слова: компенсація; моральні страждання; роботодавець; позитивний досвід; трудовий спір; шкода