

CIVIL LIABILITY OF POLICE OFFICERS IN FRANCE

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ABSTRACT

Description: The article deals with the investigation of the peculiarities of civil liability of police officers in France. Methodology: The study used general scientific and special methods. Thus, the analysis and synthesis method as well as the logical method were used to develop a holistic view on the institution of civil liability of police officers in France. The dialectical method made it possible to consider the state of scientific researches concerning this issue. The logical-semantic method was used to establish the meaning of the term of “civil liability of police officers”. With the help of the normative-dogmatic method, the content of the normative-legal acts of French legislation governing the issue under consideration was analyzed. The materials studied are the legislation of France as well as the scientific works of Ukrainian and foreign scientists on this subject. The results of the study made it possible to study the peculiarities of the civil liability of police officers in France, to examine the legislation of the country under study that regulates this issue. Practical implications: According to the results of the research, the features of civil liability of police officers in France were identified and the proposals to amend the legislation that regulates this issue in Ukraine under foreign experience were made. Value/originality: The features of civil liability of police officers in France were studied with a view to introduce the positive foreign experience in the legislation of Ukraine.

Keywords: Civil Liability, Police Officers, France, Ukraine.

INTRODUCTION

Civil liability is an effective means of deterring police officers from unlawful behavior, as it has been proven by many studies of both domestic and foreign scientists. If disciplinary responsibility is a form of internal control, since internal investigations into the facts of misconduct by police officers is carried out by disciplinary committees, which include employees of the same police department where the offender is held, then civil liability is a form of external control, as everyone, whose rights or interests are violated as a result of misconduct by police officers, have the right to sue and to prosecute the perpetrators.

Since the National Police of Ukraine began its work on November 7, many issues related to its functioning, including the issue of civil liability, require clarification and legal regulation. Instead, the history of the organization of this body in European countries has a long history, so

it is logical to refer to the practice of those countries, in which law enforcement agencies have been reformed more than a decade ago and now meet all the requirements of a democratic rule of law. Besides, our country is a candidate for EU membership, and therefore must ensure the stable and reliable functioning of those state institutions that care about the protection of the person's rights and freedoms (Panchenko, 2019).

MATERIALS AND METHODS

The study used general scientific and special methods. Thus, the analysis and synthesis method as well as the logical method were used to develop a holistic view on the institution of civil liability of police in France. The dialectical method made it possible to consider the state of scientific researches concerning this issue. The logical-semantic method was used to establish the meaning of the term of "*civil liability of police officers*". With the help of the normative-dogmatic method, the content of the normative-legal acts of French legislation governing the issue under consideration was analyzed.

The materials studied on the issue under consideration are the legislation of France, namely: The Constitution of French Republic, Declaration of Human and Civil Rights, The Civil Code of French Republic 1804, further amended, as well as the works of Ukrainian and foreign scientists, who have studied the investigated issue.

RESULTS

According to the results of the study, the statements were made to enshrine directly in the Law of Ukraine "*On the Procedure of Compensation for Damage Caused to a Citizen by the Illegal Actions of the Bodies Performing Operative Investigation Activities, Pre-trial Investigation Bodies, Prosecution and Judicial Authorities*" that the injured party has the right to loss of profit compensation and to prescribe the mechanism of its compensation in a separate clause, as it is done in the relevant legal acts of France, because, notwithstanding the principle of full compensation for damage, the loss of profit issue is not included in the above mentioned Law.

Besides, in our opinion, it is good practice to assign the annuity to the injured party not only in the case of causing him (her) injury or other damage to health, as it is stipulated in the legislation of Ukraine, but also in the case of increasing his (her) needs or diminishing the prospects for the future, as it is provided for in the country under the study. This gives the person the opportunity to compensate for the losses that would not have been if the offense had not been committed.

Positive is also the fact that the French legislator has created a special table that helps in calculating the amount of non-pecuniary damage. We believe that Ukrainian specialists should also develop an appropriate methodology for calculating non-pecuniary damage, which will greatly facilitate the work of courts in Ukraine and will result in the uniformity in judicial practice.

DISCUSSION

The French police system is one of the oldest systems in Europe. It is part of the system of the Ministry of Internal Affairs and consists of several structures, the main of which are the National Police and Gendarmerie. The municipal police are also the part of the French police force.

The National Police is a civilian unit under the authority of the Ministry of Internal Affairs and operates in cities. The role of the National Police is to ensure law enforcement and crime prevention.

The French Gendarmerie is a police force under the authority of the Ministry of Defense. The Gendarmerie is a militarized body created to maintain public safety and designed to guarantee the protection of the population and property. It also serves as information, warning and rescue agency.

There is also a municipal police in the French police system, whose main task is daily police activity in cities. The competence of the municipal police includes all issues relating to the fight against crime and maintaining public order (OSCEPOLIS, 2017).

The National Police, the National Gendarmerie, as well as the municipal police are guided in its work by the Declaration of Human and National Rights of 1789 (European Union Agency for Fundamental Rights, 1789), the Constitution of the French Republic of October 04, 1958 (Romaniuk, 2015), Government Decree no. 2012-351 of March 12, by which the Internal Security Code was approved, the National Police and National Gendarmerie Deontology Code of January 1, and other regulations.

The Constitution of France of October 4 is the fundamental act of the Fifth Republic, adopted by the Referendum, held on September 28 which is still valid. The Preamble to the Basic Law states that the French people solemnly declare their commitment to human rights and the principles of national sovereignty as defined in the Declaration of 1789, confirmed and supplemented by the Preamble to the Constitution of 1946, as well as the rights and obligations enshrined in the Charter on the Environment of 2004 (Romaniuk, 2015).

According to Article 1 of the Declaration of Human and the Civic Rights of August 26, 1789, people are born free and equal in their rights. No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed. Those who solicit, expedite, carry out, or cause to be carried out arbitrary orders must be punished; but any citizen summoned or apprehended by virtue of the Law, must give instant obedience; resistance makes him guilty (Article 7). As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law (Article 9) (European Union Agency for Fundamental Rights, 1789).

The Preamble to the Constitution of 1946 proclaims that any human being, regardless of race, religion or faith, has inalienable and sacred rights (Hafurova & Zuboka, 1961).

According to Article 8 of the Civil Code of France of March 21 (Civil Code, 2018), which is in force to this day with corresponding amendments, every French person enjoys civil rights. One of these rights is the right to respect of the presumption of innocence under Article 9-1 of the Civil Code of France. In accordance with the provisions of this Article, in cases where, before any sentence, a person is publicly shown as being guilty of facts under inquiries or

preliminary investigation, the court, even by interim order and without prejudice to compensation for injury suffered, may prescribe any measures, such as the insertion of a rectification or the circulation of a communiqué, in order to put an end to the infringement of the presumption of innocence, at the expenses of the natural or juridical person liable for that infringement.

Civil liability for violation of the rights of an individual is provided in Articles 1240–1241 of the Civil Code of France. Thus, the norms contained in this legal act stipulate that any human action whatsoever which causes harm to another creates an obligation in the person by whose fault it occurred to make reparation for it. Everyone is liable for harm which he has caused not only by his (her) action, but also by his failure to act or his lack of care. One is liable not only for the harm which one causes by one's own action, but also for that which is caused by the action of persons for whom one is responsible, or of things which one has in one's keeping (Cartwright et al., 2016).

The formulation of Article 1240 the Civil Code of France clearly defines that in order to bring a person to civil liability, there must be three elements:

1. Fault;
2. Damage;
3. The causal link between the fault and the damage caused.

The burden of proof of all these components of the offense fell on the applicant.

The foregoing articles prescribe the obligation to compensate for damage caused by wrongful acts. At the same time, there is any difference in compensation for property and non-property damage neither in the abovementioned nor in the other norms of the Civil Code of France. Damage is mentioned as a general category in the Civil Code of France, and its further distinction between property and non-property is not carried out, although in the theory of French civil law and jurisprudence such separation exists, while the damage caused to personal non-property rights and benefits, is called non-pecuniary damage (*dommage moral*) (Erdelevskiy, 2004).

Civil liability in France is traditionally divided into liability arising from torts and liability for breach of contractual obligations. This rule comes from the principle of “*non-cumul des responsabilites*” (discrepancy of actions), which states that contractual and tort liability are different, even if they are complementary. Under contractual liability, the offender is subject to sanctions for non-compliance with contractual obligations, while tort law applies sanctions to the person, who ignores the rules, which are established by law, regulation or case law, as well as the general principle of *neminem laedere* (no harm to anyone).

The Civil Code of France contains no legal provisions that directly regulate the issue of civil liability of police officers in this country. The rules relating to compensation for damage caused by unlawful detention are contained in Section III of the Code of Criminal Procedure of France (hereinafter referred to as the CPC of France).

According to Article 149 of the CPC of France, a person who has been remanded in custody during the course of proceedings ended by a decision to drop the case or a discharge or acquittal decision that has become final has, at his (her) request, the right to full compensation for any material or moral harm that this detention has caused him (her). However, no compensation is due where this decision is based solely on the recognition of his irresponsibility

under article 122-1 of the Criminal Code, an amnesty passed after the person has been remanded in custody, or the limitation period for prosecution expired after the person had been released, when the person was also being held on other charges, or where the person was remanded in custody for freely and voluntarily accusing himself (herself) or letting himself (herself) be wrongly accused in order to let the perpetrator of the acts escape prosecution. At the request of the person concerned, the harm is evaluated by means of adversarial expert reports commissioned under the conditions of articles 156 and onwards.

The compensation is granted by a decision made by the first president of the court of appeal in the jurisdiction within which the decision to drop the case, the discharge, or acquittal has been pronounced. The first president of the court of appeal, seized by an application made within the six months of when the decision to drop the case, the discharge or acquittal became final, rules in a reasoned decision. The debates take place in open court, unless the applicant opposes this. At his (her) request, the applicant is heard in person, or through his counsel.

The decisions taken by the first president of the court of appeal may be appealed to the National Commission for the Compensation of Detention within ten days of being communicated. This Commission, situated in the Court of Cassation, has full power to decide the case, and its decisions are not subject to any form of appeal.

The office of the Court of Cassation may decide that the National Commission will be made up of several divisions. The National Commission, or if necessary, each of the divisions which make it up, is composed of the first president of the Court of Cassation, or his representative, who presides, and two court judges holding the rank of president of a chamber, conseiller or conseiller référendaire, appointed annually by the office of the court. In addition to these two judges, this office also appoints three supplementary judges under the same conditions. The public prosecutor's duties are carried out by the prosecutor general's office at the Court of Cassation-Criminal Procedural Code of France.

There are two main factors to consider when assessing damage. Firstly, it is the presence of personal injury or moral injury: loss of a limb or other part of the body, deprivation of the ability to lead an accustomed lifestyle, etc. (*préjudices non-économiques* or *préjudices personnels*) and, secondly, the fact of the existence of financial loss (*préjudices économiques*). This may be the deprivation of the amount of earnings that the victim received prior to committing a wrongful act against him (her), additional expenses for treatment and care. Pain and additional expenses should be gauged in monetary terms only during the period of injury, while loss of earnings and accustomed lifestyle should be measured during the period, within which the victim was not able to enjoy these benefits not due to injury.

Compensation is paid for the damage caused to the plaintiff, as well as for any indirect costs and expenses arising from the offense. Material damage can be classified into two categories: the first one relates to the loss of earnings and other benefits that the victim might receive (*lucrum cessans*); the second one concerns the additional costs incurred as a result of misconduct of police officers. The amount of the damage is the amount of money that the victim lost or was forced to spend because of the harm caused (as a result of awarding compensation, the victim should be restored to the financial situation that he or she had before the damage occurred (*damnum emergens*)).

All those circumstances that disrupt the accustomed lifestyle of the victim may be the subject of a claim for compensation for non-pecuniary damage caused by police officers. The

victim has the right to compensation of not only monetary but also non-pecuniary losses. Therefore, both material and non-pecuniary damages are liable to compensation when they are the direct and immediate consequence of a destructive act.

Non-pecuniary damage in France is not considered to be a separate type of damage; accordingly, the composition of the grounds for its compensation will be identical to the general ones:

1. Firstly, violation of personal non-property rights;
2. Secondly, the guilty unlawful action of the injurer;
3. Thirdly, a causal link between non-pecuniary damage and unlawful action.

The very concept of non-pecuniary damage is, first and foremost, a product of French jurisprudence, that's why the judges determine the amount of compensation for non-pecuniary damage based on the decisions already made.

Courts in France usually award a substantial amount of compensation for non-pecuniary damage, but divide it into categories according to the type of damage caused. There are quite a few subtypes of non-pecuniary damage in French civil law. They are: suffering from physical pain, inability to lead an accustomed lifestyle, temporary and permanent mental disorder, aesthetic damage, loss of job function, deprivation of a suitable job (service) or ability to run a household, loss of life expectancy, recoverable and irreversible damage to mental health, coma, vegetative disorders, brain lesions, sexual dysfunctions, etc.

In France, the principle of full compensation for damage (integral repair) is applied. The idea is to compensate for the damage as much as possible. However, difficulties may arise, especially in matters related to compensation of non-pecuniary damage. Thus, full compensation covers all material damage caused to an individual, his (her) real estate and movable property, financial losses (such as wages or benefits), as well as non-material damage such as pain and suffering of the victim, as well as the pain and suffering of those close to him (her).

To calculate the amount of non-pecuniary damage in France, a special compensation table is used—“*Nomenclature Dintilhac*”, created in 2005 by a task force led by the President of the Second Civil Division of the Court of Cassation. This Nomenclature draws up a list of all recoverable damages and establishes a strict method of valuation (Lousson, 2007).

However, the compensation table is not compulsory for the French courts. Since it is impossible to determine the extent of non-pecuniary damage, it is for the judge to decide for himself (herself) what amount is adequate to compensate the victim (satisfactory compensation). However, this amount of compensation may be modified by the decision of the Court of Appeal. The judge may not follow the statutory rules when assessing the damage. The judge should not award compensation for damages, for which the victim did not bring a claim, and is not obliged to justify in detail the assessment of damages when awarding a lump sum.

The first step to awarding compensation for damage caused by police officers is to obtain a report from a medical expert. Since the judge has the right to determine the amount of compensation at his (her) discretion, he (she) may not order expert examination. However, when assessing damage, such information is almost always necessary; besides, these experts can be summoned to court to testify. The views of medical experts, which are held in reports or presented as evidence in court, are used to determine the complexity of the injuries and their causes (but in the vast majority of cases, the report is proof of injury). With regard to the

assessment of the extent of the damage, medical conclusions are admissible in court, if they are agreed between the plaintiff and the defendant.

The victim can file a claim for compensation for damage caused by police officers only if there are three components: the fault of the defendant, material and/or non-pecuniary damage, and the causal link between the fault and the damage. Damage can be caused both due to the commission of an action, or as a result of omission. In French law, when committing illegal acts, it is not necessary to recognize the unlawfulness of one's behavior. Responsibility arises only if there is a causal link between fault and damage. Neither substantive nor case law provides an exact indication of which elements constitute a direct causal link. Therefore, the courts have broad powers in determining its existence. However, it should be noted that causality should be based on two principles: directness and certainty. As soon as all three conditions for filing a claim are satisfied, a person has the right to demand compensation for damage caused in full, which includes: material and financial losses, bodily harm, emotional distress, etc.

There are several reasons for exempting police officers from liability or for limiting it. The first one is force majeure. Traditionally, force majeure is defined as an unforeseen, inevitable and extraneous circumstance in relation to the defendant. The second reason is the fault of the victim or his negligence, the result of which may be mutual responsibility of the victim and the defendant, or the complete release of police officers from liability. And the third reason is the lack of a causal link between the act (omission) of police officers and the damage caused, which entails their complete exempting from liability.

CONCLUSION

Civil liability of police officers is not only a legal but also a significant social phenomenon. It is fair to say that there are some features and peculiarities that make it possible to distinguish civil liability of police officers into a separate category within the framework of civil proceedings, which requires careful study and consideration.

As part of this study, we found that police officers in France are responsible for damages in accordance with the rules of the Code of Criminal Procedure of France. In this country, the principle of full compensation for damage caused by misconduct by police officers is in force. Property damage (both direct losses and loss of profit) are compensated in any case.

Besides, in our opinion, it is good practice to assign the annuity to the injured party not only in the case of causing him (her) injury or other damage to health, as it is stipulated in the legislation of Ukraine, but also in the case of increasing his (her) needs or diminishing the prospects for the future, as it is provided for in the country under the study.

Regarding compensation for non-pecuniary damage, it should be noted that any misconduct by police officers may be the basis for a claim for non-pecuniary damage.

To calculate the amount of non-pecuniary damage in France, a special compensation table is used, which, however, is not compulsory for the judge who has the right to determine the amount of the compensation on his (her) own. This amount of compensation may be modified by the decision of the Court of Appeal.

The victim is entitled to file a claim for compensation of the damage caused by police officers only if there are three components: the fault of the defendant, material and/or non-pecuniary damage and the causal link between the fault and the damage caused. However, there

are several reasons for exempting police officers from liability or its limitation: force majeure, the guilt of the victim, or his (her) negligence.

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