

LIABILITY FOR VIOLATION OF FAMILY RIGHTS AND OBLIGATIONS UNDER UKRAINIAN AND THE EU LEGISLATION

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Abstract: The issue of liability for violation of family rights and obligations under the laws of Ukraine and the EU has always been of interest to domestic and foreign scholars. The main objective of our state in the field of family law is to harmonize the legislation with the norms of the European Union. The observance of human rights is a fundamental provision in international law and in Ukraine. After all, the rights of children, women, and parents in the family should be the highest legal and social value and they should be protected by the state in every state governed by the rule of law. The norms of international legislation enshrined in the fundamental documents must be observed in the states that have ratified them. The purpose of the research is to theoretically analyze the liability for violation of family rights and obligations under the legislation of Ukraine and the EU, to study the legal sources and to search for ways to solve the main current issues by studying domestic and international legislation and analyzing the scholars' works. The regulatory framework governing the consequences of violating family rights and obligations is the subject of discussion.

Keywords: Liability, Family rights, Family responsibilities, Legislation, EU states, Industry, Family Code (FC), Family legal relations, The rights of the child, Human rights, International legislation, Alternative dispute resolution (ADR).

1 Introduction

The rights of the child and the responsibilities of each family member are enshrined both at the national and international levels. They are legally regulated and apply to everyone.

The state should provide all the conditions, regardless of risks and circumstances, to ensure that every member of society feels safe and knows that in case of violation of family norms, the liability is incurred. After all, the primacy of legal norms is an extremely important step in the development of the law-governed state. In family law, relations should be based on the principles of democracy and equality, regardless of age.

A theoretical study of the regulatory framework and the works of scholars will provide an opportunity to analyze liability for violations of family rights and obligations under the laws of Ukraine and the EU.

2 Analysis of recent studies and publications

The research sources are the national and international legal framework that examines liability for violation of family rights and obligations. The Constitution of Ukraine is the primary law of our country that guarantees the observance of family rights (1996). The Law of Ukraine "On Protection of Childhood" (2001) has been also analyzed and studied. By the way, the Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1989) have been considered.

The Family Code (2002) is the primary source of family law in Ukraine and it was used in the course of the present research. In addition, the scientific works of scholars in the civil and family law field have been theoretically analyzed, namely: I. V. Apopii (2006), O. M. Hryshko (2020), I. S. Kanzafarova (2007), M. V. Mendzhul (2021), M. V. Lohvinova (2006), M. V. Mendzhul (2022), V. P. Myronenko (2001), A. O. Solovei (2022).

The scientific works of M. V. Hrushko (2019), V. V. Ilkov (2020), T. V. Lysenko (2020), S. P. Myrnyi (2020), S. S. Tuchkov (2020), Yu. O. Shekhovtsova (2020) have also been

considered and studied. They are theoretical and criminal researchers and scientists who discuss the rule-of-law state, human rights, legality and positive foreign experience.

N.A. Bondar (2023), M.S. Mishchenko (2023), V.V. Gutnik. (2021), and O. Dufeniuk (2021) analyze human rights in their publications. It should be emphasized that their observance is crucial both in the family and in society.

In the process of studying the subject of the research, the methods of cognition that exist in the theory of each country have been used, including synthesis, analysis, and the systemic method. Besides, formal legal methods of studying liability in family law have also been applied. The subsequent regulatory and dogmatic analysis has been conducted.

The historical method is used, for instance, when analyzing national and international documents. The method of comparison is observed in comparing the liability for violation of family rights and obligations under the laws of Ukraine and the EU states.

3 Research results

Urgent issues in the field of family law must be addressed at the global level, taking into account all the risks and unfavorable circumstances of modern times. These may include military hostilities, lack of communication, electricity, etc., the person to be held liable is out of the area of access due to unforeseen and independent circumstances, for instance, a parent who must pay the child support payment is physically in the combat zone and cannot fulfill the obligation due to a situation beyond his control. In such cases, all unforeseen circumstances must be taken into account when resolving the case and it is unreasonable to bring a person to legal liability. However, it should also be borne in mind that, according to the legislation, parents are obliged to take care of their children, who have needs for food, clothing, education, etc. Therefore, we believe that the legislation should be flexible and loyal, and that a person should be held liable in cases where he or she deliberately evades his or her duties. It is proposed for lawmakers to take into account all risk factors; for instance, in the situation outlined, it is necessary to calculate alimony under a simplified procedure in order to avoid the suffering of children and meet and support their interests. We also propose to revise the rulemaking process and implement simplified state procedures to meet the interests of society. Consequently, after the above-mentioned norms are implemented at the legislative level, and rule-making in the area of family responsibility is improved, the state bodies that are supposed to satisfy and protect the interests of society will develop more effectively.

After conducting the research, it is suggested to improve public awareness about alternative ways of resolving disputes. This will develop the legal culture and consciousness of people and open up the possibility of resolving conflict situations peacefully.

It is suggested to develop mediation since it works effectively in Europe. The mentioned provision of the legislation has not been widely recognized in Ukrainian society. It is believed that it is necessary to review the EU practice and elaborate on it, to borrow positive experience, because mediation in many cases contributes to the peaceful resolution of a dispute, outside the judiciary, which is positively beneficial for every family member, including women and children, who manage to avoid stressful situations. Mediation is crucial in many areas, and we believe that mediation rules should be introduced into the FC. Mediation is mandatory in many countries. We believe that we should improve the legislation in Ukraine and make this procedure compulsory since it is very relevant now and will solve a number of problems.

The issue of bullying in Ukraine has been theoretically analyzed. It is proposed to take into account the conditions when children study remotely and the educational activities of law enforcement authorities on the issue of bullying should be mandatory, even in online mode.

European regulations on the protection of family rights are the fundamental standards to which our state should aspire. The proposal of their theoretical study and exploration in the future and the implementation of positive experience in practice can avoid gaps in national legislation and improve the work of many government bodies.

We have distinguished family law into a separate branch of law and proposed amendments to the Family Code of Ukraine to bring it in line with the EU. This will improve the work of national government authorities and help avoid violations of children's and women's rights, and generally regulate family ties.

A proposal has been made to regulate the legislation in our country in accordance with international standards in order to avoid gaps in the field of legal liability in family law. It is crucial to explore ways to solve urgent issues; consequently, this topic is important for analysis and should be studied in the future.

A theoretical study of liability for violation of family rights and obligations under the laws of Ukraine and the EU states makes it possible to clarify the problems and identify gaps in the rulemaking activities of our state and find ways to solve them. The Family Code (2002) must be amended in order to facilitate European integration, in particular, to notify the parent from whom the child lives separately of the new place of residence. Furthermore, the Family Code of Ukraine should be amended to address the issue of the child's place of residence since it is necessary to take into account the child's views, relationship with his or her father or mother, physical condition, the conditions in which the parents live, etc.

It is very important to introduce mediation to resolve family disputes. In her research, M. V. Mendzhul has noted that an institution of a special representative who would support the child should be established in Ukraine, and that the legislation should contain guarantees for renting housing for a husband and a wife (Mendzhul, 2022). These are the gaps that exist in our legislation nowadays and require addressing.

T. I. Shinkar considers the main alternative ways of resolving disputes, such as: mediation, arbitration, negotiations. When we talk about negotiations, it is appropriate to note that, in this case, in a bilateral format, the parties independently complete and resolve the conflict (Shinkar T.I., 2017).

It is important to note that disputes can be resolved not by a state court, but by a private court, namely by arbitration. In this case, an arbitrator is needed, that is, an outsider who helps to resolve differences and reach a consensus (Shinkar T.I., 2017).

I. Yu. Levandovska also argues in her scientific works that in European countries, as well as in the United States and Japan, there is mediation before resolving family disputes in the court (Levandovska, 2022).

In Ukraine, this practice is enshrined in the legislation, but in contrast to foreign countries and European states, it has not been widely and actively applied. Its active dissemination and implementation make it possible to solve the issue of avoiding litigation and provide an opportunity to resolve conflicts peacefully. No legal liability is imposed on individuals.

It is proposed to develop mediation at the legislative level since it functions effectively in Europe. The mentioned provision of the legislation has not been widely spread in Ukrainian society. Mediation is significant in many areas, and we believe that mediation norms should be introduced into the FC of each country.

We believe it is relevant to review the EU practice and elaborate on it, to borrow positive experience because mediation in many cases contributes to the peaceful resolution of court disputes outside the court system, which is necessary for every family member, including women and children, who can avoid stressful situations. Mediation is a mandatory procedure in many countries. We consider that it is necessary to improve the legislation in Ukraine and make this procedure compulsory since it is very relevant now and will solve a number of problems in the future. The experience under discussion requires further study and application in practice.

In international practice, there is another type of dispute resolution, namely with the help of an ombudsman. We believe that in the resolution of disputes, reconciliation takes the main place and contributes to the resolution of conflict situations in family law and deserves special attention and research in the future.

We draw your attention to the fact that it is necessary and important to provide people with more information about the consideration of issues of dispute resolution by alternative means, because the population must have legal awareness and it is possible that cases will not be opened in courts, and family conflicts will be resolved peacefully, or disappear altogether.

According to the Constitution of Ukraine, parents are obliged to support and care for their children (1996). By the way, the Law of Ukraine "On Protection of Childhood" (2001) is also in force in our country.

The Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1989) are in force at the international level. Ukraine has ratified these fundamental legal acts; consequently, the main objective is always to bring national legislation in line with the international criteria. This, of course, also applies to family rights.

For instance, the European Convention for the Protection of Human Rights and Fundamental Freedoms includes provisions on non-property rights (1950). These norms are also applied in the Family Code, for example, the non-property rights of the wife and the husband, for the violation of which liability is incurred. It should be noted that liability in some cases, such as domestic violence, can also constitute criminal liability under Ukrainian law (2001). It may also be regulated by the Civil Code (2003) and the Code of Civil Procedure (2004).

It is important to emphasize that as a result of Ukraine's ratification of international European agreements any prosecution for a family relationship infringement must be legal and adhere to EU standards, which are accepted by all civilized states.

A.O. Solovei, conducting his study, argues that there is civil, administrative and criminal liability for non-payment of funds (alimony). However, we are currently under martial law in Ukraine, and many men have been defending our country. The scholar has analyzed the feasibility and relevance of bringing individuals to liability since there are particular factors, such as military hostilities, possible lack of communication, etc. (Solovei, 2022). These issues should be regulated at the legislative level, taking into account all the risks, in order not to violate children's rights and human rights.

4 Discussion

Family responsibility, as an independent concept and its theoretical use in science and in practice, is still controversial in Ukraine since the state requires improvement of rulemaking in the field of family law. A theoretical study of foreign experience and the adoption of positive aspects may resolve this urgent issue in the future.

We strongly believe that the concept of family responsibility is extremely important for regulating family relations and avoiding

offenses, such as bullying in the family, non-payment of alimony, moral and material damage, etc.

I. O. Yefremova argues that “liability in family law is a particular legal status of a participant in family relations, which consists in the endurance of negative consequences of a personal non-property or property nature by the person who committed a family offense based on the decision of jurisdictional bodies” (Yefremova, 2007, p. 122-123).

Liability for violation of family rights and obligations under the laws of Ukraine and the EU is an essential component for regulating relations in society, and, thus, EU legislation is an example for our country. M. V. Mendzhul argues that the Family Code (hereinafter referred to as the FC) is an innovation in Ukraine. The provisions must comply with European legislation, and our lawmakers took this into account when drafting it. While some scholars claim that family law is a sub-branch of civil law, the scholar M. V. Mendzhul, on the contrary, states that the Family Code and the Civil Code should exist separately. It is necessary to take into account the family traditions of our people (Mendzhul, 2021) and to separately distinguish family liability.

I. O. Yefremova reasonably notes that the Family Code (2002) does not contain provisions on liability for violation of family norms. There is no consensus among scholars in Ukraine since some consider family law to be an independent branch while others consider it a sub-branch of civil law (Yefremova, 2007). It is necessary to allocate family law into a separate branch; this is the only way to ensure Ukraine’s European integration into EU legislation. O. I. Apopii rightfully emphasizes the differences between civil and family relations. Having analyzed the scientific works of researchers, the scientist agrees with the opinion that moral values are the most important factor in family relations, and certain property and economic relations with particular freedom are crucial in civil relations. There are different cases in family relations: for example, marriage has freedom for the parties, and there is no choice and freedom in the relationship between children and parents (Apopii, 2006).

The opinion of O. Hryshko and V. Ryndiuk, who have conducted a scientific study on the concepts of state coercion and legal responsibility, is reasonable. As a result of the analysis, the authors have concluded that these concepts are different since the purpose of applying liability in family law is to punish a person, and the purpose of coercion is usually to prevent punishment. The concept of state coercion is believed to be broader (Hryshko, 2020).

The issue of bullying is gaining more and more publicity in our country nowadays. Such violations are, unfortunately, very common in family law. It’s awful when children and women suffer from bullying because they believe they cannot defend themselves. However, law enforcement authorities are actively engaged in educational activities on this issue at the state level in order to ensure that women and children understand that they can be protected by the state and that the offender can be brought to justice or sent for correctional education.

Currently, there are departments and public organizations in Ukraine that in addition to government authorities are engaged in supervising offenders and providing correctional education. Psychologists also work with such individuals. Positive foreign experience, in our opinion, is effectively being applied in this regard in our country and aids in the prevention of crimes for which people are held legally accountable. The state has set up its activities in such a way that law enforcement bodies, namely public relations departments, attend schools, educational institutions and work with children to raise awareness about bullying, to avoid offenses in the family, in educational institutions.

I. V. Apopii emphasizes that Z. V. Romovska (2009) supports the idea in her studies that sanctions of a personal nature are, for instance, divorce, deprivation of the right to paternity, etc., and sanctions of a property nature are forced payment of alimony or

finances, etc. (Apopii, 2006). This means that there should be liability for any violations of family law, and this is how it differs from coercion, that is, warning. In her scientific articles, Z. V. Romovska highlights the existence of both material and moral responsibility in family law relationships (Romovska, 2009). This makes it possible to distinguish family law as a separate branch rather than a sub-branch of civil law.

Mendzhul M. V. reasonably points out that despite all the dangers and internal and external influences, family law in Ukraine is presently attempting to establish and regulate family relationships (Mendzhul, 2021). The scholar’s standpoints are relevant and valuable.

Military hostilities have a negative impact on the prosecution of violations of family rights and obligations under Ukrainian legislation; however, the positive experience of EU states will help solve urgent issues, taking into account all the risks.

Lawmakers must take into account all the issues of liability for violation of family relations in Ukraine. After all, the main objective in the country nowadays is to introduce effective legislation and rulemaking at the state level, despite the circumstances outlined.

5 Conclusions

Having analyzed the scholars’ scientific works, the theoretical analysis of the concept and role of liability in family law is conducted and proposals are made to address the current issues of modernity.

It is proposed to support the scientific and theoretical statements that family law is a separate branch of law. Family responsibility as an independent concept still remains controversial in Ukraine since the state must improve its rulemaking in the field of family law.

An analysis and proposal of the need to amend national legislation is made, namely, the FC requires additional provisions in accordance with the EU’s international rule-making activities. It has also been established that mediation is significant in many areas. Consequently, we believe that mediation rules should be introduced into the Code of Criminal Procedure of each country, which will allow for the peaceful resolution of court cases in most cases. We propose to revise the rule-making activity on mediation in Ukraine and develop this sector, because the demand for mediation is currently very low among the population, and society should be more aware of this procedure. We are convinced that by using and enshrining mediation as a mandatory procedure, borrowing from the experience of foreign countries, many urgent issues will be resolved in the country.

Informing the population about alternative dispute resolution issues will improve legal awareness and culture in all countries of the world and in Ukraine and will make it possible to resolve conflicts peacefully.

Urgent problems in the field of family law should be addressed at the global level, taking into account all the risks and unfavorable circumstances of contemporary times. This will improve the activities of national government bodies and help avoid violations of children’s and women’s rights and generally regulate family relations.

A theoretical study of liability for violation of family rights and obligations under the laws of Ukraine and the EU states makes it possible to clarify the challenges and identify gaps in the rulemaking activities of our state and find ways to address them. The positive foreign experience of implementing anti-bullying measures in Ukraine, including in the family, has been studied. We believe that the state has been taking all possible measures to resolve this issue. It is proposed to take into account the conditions when children study remotely and the educational

activities of law enforcement bodies on this issue should be mandatory, even in online mode.

The public should be aware of their rights and be legally responsible in case of their violation. It has been theoretically analyzed that state bodies and public organizations are engaged in the correctional education of offenders. There are also shelters where people can find protection for themselves and asylum from difficult life circumstances. We believe that it is necessary to further develop the educational activities of law enforcement bodies of the state, because the victim also needs help, including psychologists.

This topic is very important for analysis and should be studied in the future by scholars, researchers and practitioners. The theoretical analysis of the issue of liability for violation of family rights and obligations under the laws of Ukraine and the EU is relevant and requires further elaboration and research.

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