

Issues of Compensation for Damages Caused to a Citizen as a Result of Armed Aggression: Criminal and Procedural Aspects

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Current issues of reparation for damages caused to Ukraine by Russia armed aggression: a full-scale war, unprecedented (compared to the Second World War and the rest of the wars of the 21st century) in scope, cruel in essence, genocidal in purpose, devastating in means and consequences are considered. One of consequences of war and war crimes committed by Russian aggressors starting from February 24, 2022, is massive destruction and damage to housing and other property of Ukrainian citizens. Within framework of initiated criminal proceedings, damages are compensated by filing a civil lawsuit. However, specifics of the grounds of such a lawsuit cause the occurrence of certain risks for the victim, as well as problems with law enforcement and the exercise of their powers by investigators and prosecutors. In particular, difficulties may lie in the impossibility of inspecting the scene of the incident, which will ultimately negatively affect the determination of the amount of damage caused (calculation of the material equivalent of the damage). Determining the amount of damage caused as a result of the destruction or destruction of housing is also problematic, as it often requires the appointment of

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an expert opinion, while the scale of the destruction within the state makes it impossible to conduct such an expert opinion in a reasonable time. Attention is focused on the issues of establishing the person who should be responsible for the claim, or the civil defendant. Possibility of overcoming the jurisdictional immunity of Russia as a defendant in the declared civil lawsuits was also considered. Conducted research made it possible to formulate proposals on mechanism of compensation for the damage caused, as well as on improvement of current criminal procedural legislation of Ukraine.

Keywords: compensation for damage in criminal proceedings; civil claim in criminal proceedings; damage caused by criminal offense; victim; civil defendant.

Research Problem Formulation

On February 24, 2022, Russia launched a full-scale war against Ukraine, unprecedented (compared to the Second World War and other wars of the 21st century) in scale, cruel in essence, genocidal in purpose, devastating in means and consequences; they brutally and improperly tried to hide under the name “military operation”. The scale of this tragedy for Ukraine is evidenced by the data of the Office of the United Nations High Commissioner for Human Rights (hereinafter referred to as OHCHR UN): 4,634 dead civilians in the period from February 24 to 24:00 on June 21. However, OHCHR believes that the real number is much higher, as it is difficult to obtain information from places of intense hostilities, and many reports require confirmation. In addition, there is no reliable information about the dead in Mariupol (Donetsk region), Izium (Kharkiv region), Popasna (Luhansk

region), from where reports of numerous civilian casualties have been received to this day. These data are subject to further verification and do not belong to the above statistics. According to confirmed UN data, 1,780 men, 1,194 women, 148 boys and 131 girls died, while the gender of 41 children and 1,340 adults cannot yet be ascertained¹.

OHCHR UN notes that since war beginning, more than 8 million people have left Ukraine. The largest number of refugees left for Poland, more than 4 million Ukrainians. Ukrainian citizens are hiding from the war in Romania, Moldova, Slovakia, Hungary, and the rest of Europe.

Since the beginning of the Russian invasion, almost a third of Ukrainians have forcibly left their homes: more than 7.7 million people have been internally displaced due to the war. This is the biggest displacement crisis in the world today. The UN estimates that 15.7 million people are in urgent need of humanitarian assistance and protection².

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- 1 Війна в Україні забрала життя щонайменше 4634 цивільних, 5769 поранено / Інформаційне агентство Інтерфакс Україна. 22.06.2022. URL: <https://ua.interfax.com.ua/news/general/840932.html> (date accessed: 22.05.2022).
 - 2 Україна. Квітень 2022 року. UNHCR. The UN Refugee Agency : щоміс. інформ. бюл. URL: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2022/06/Ukraine-Monthly-Operational-Update-April-2022_UKR.pdf (date accessed: 02.06.2022).

The losses of the Ukrainian economy are also horrifying. According to the Kyiv Institute of Economics, as of June 8, the direct losses of the Ukrainian economy from damage and destruction of residential and non-residential buildings and infrastructure are equal to 103.9 billion dollars (3 trillion UAH). We should note that this number takes into account the complete destruction of the relevant objects.

At the beginning of June, as a result of the war of Russia against Ukraine: 44.8 million m² of residential buildings were lost (39,379 million dollars); 23.9 thousand km of roads were damaged (30,034 million dollars); 11 airports and 12 military airfields (6,817 and 468 million dollars, respectively); 656 health care institutions (1,147 million dollars); 305 bridges (1,692 million dollars); 1,177 institutions of higher and secondary education (1,127 million dollars); 111 administrative buildings (607 million dollars); 668 kindergartens (576 million dollars); 141 religious buildings (81 million dollars); 203 cultural buildings (270 million dollars); 20 shopping centers (345 million dollars); 28 oil depots (227 million dollars). The pride of Ukrainian aircraft construction, the world's largest and most powerful the Antonov An-225 Mriya transport aircraft has been destroyed³.

The war takes lives of Ukrainians, destroys their homes, the usual

infrastructure all components of happy life before the war.

However, the key task of law enforcement agencies is to record every fact of war crimes and bring to justice those responsible for solving the war and specific war crimes. As of June 23, 2022, 19,086 crimes of aggression and war crimes; 9,396 crimes against national security were entered into the Unified Register of Pre-trial Investigations. A pre-trial investigation is underway into the so-called main case of aggression of Russian Federation, in which 623 persons representatives of military and political leadership of the aggressor country were reportedly suspected⁴.

Among the criminal proceedings initiated, 18,383 were initiated under Art. 438 *Violation of the law of war* of the Criminal Code of Ukraine⁵.

Many residents of Ukraine have suffered the destruction of their housing, sometimes it is not just destroyed, but destroyed and is not subject to restoration. Adjacent or household buildings, cars, household plots, etc. have been destroyed. Hosts are beginning to claim damages for armed aggression.

Already on 20.03.2022, the Cabinet of Ministers of Ukraine (hereinafter referred to as the *CabMin*) adopted Resolution *On Approval of the Procedure for Determining Damage and Damage Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation* № 326⁶, dated on 26.03.2022 —

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- 3 «Росія заплатить» / damaged.in.ua. Проект зі збору, оцінки й аналізу інформації про матеріальні втрати України від війни з Росією / Kyiv School of Economics. URL: <https://kse.ua/ua/russia-will-pay> (date accessed: 02.06.2022).
 - 4 Злочини, вчинені в період повномасштабного вторгнення РФ/ Офіц. сайт Офісу Генпрокурора. URL: <https://www.gp.gov.ua> (date accessed: 02.06.2022).
 - 5 Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 22.05.2022).
 - 6 Про затвердження Порядку визначення шкоди та збитків, завданих Україні внаслідок збройної агресії Російської Федерації : Постанова КМУ від 20.03.2022 р. № 326 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF/ed20220512#Text> (date accessed: 22.05.2022).

Resolution On Collection, Processing and Accounting of Information on Damaged and Destroyed Immovable Property as a Result of Combat Acts, Terrorist Acts, Sabotage Caused by the Military Aggression of the Russian Federation № 380. This Resolution approves the Procedure for Submitting Information Notice on Damaged and Destroyed Immovable Property as a Result of Combat Acts, Terrorist Acts, Sabotage Caused by the Military Aggression of the Russian Federation ⁷. A draft law on compensation for damage caused to the victim as a result of the armed aggression of the Russian Federation ⁸ has been developed and submitted to the Verkhovna Rada of Ukraine for consideration. Fixing any destruction and future compensation for damage caused by aggression is one of the priority tasks of the state.

Taking into account the fact that the damage was caused due to commission of war crimes, the question arises about the possibility of compensating it to the victims within the framework of criminal proceedings.

Analysis of Essential Researches and Publications

As we can see, one of the ways to protect the property and personal non-property rights and legitimate interests of the victims, violated as a result of the commission of a criminal offense or other socially dangerous act, is compensation (compensation) for the damage caused. Such compensation is an international legal standard established in the following documents: International Covenant on Civil and Political Rights ⁹; European Convention on the Compensation of Victims of Violent Crimes dated on 1983 ¹⁰; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 ¹¹; Recommendations Rec (2006)8 of the Committee of Ministers of the Council of Europe to member states on assistance to victims of crimes¹²; Resolutions (77)27 of the Committee of Ministers of the Council of Europe on compensation to victims of crime (September 28, 1977); Recommendations N R(85)11 of the

- 7 Про збір, обробку та облік інформації про пошкоджене та знищене нерухоме майно внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації : Постанова КМУ від 26.03.2022 р. № 380 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/380-2022-%D0%BF/ed20220526#Text> (date accessed: 02.06.2022).
- 8 Проект закону про відшкодування шкоди, завданої потерпілому внаслідок збройної агресії Російської Федерації від 17.05.2022 р. № 7385. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=74243 (date accessed: 02.06.2022).
- 9 Міжнародний пакт про громадянські і політичні права : прийнят. Генасамблеєю ООН 16.12.1966 р. ; ратифік. Указом Президії ВР УРСР від 19.10.1973 р. № 2148-VIII. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text (date accessed: 02.06.2022).
- 10 European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116) : Strasbourg, 24.XI.1983 / Council of Europe Portal. URL: <https://rm.coe.int/1680079751> (date accessed: 02.06.2022).
- 11 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : Resol. ad. by the Gen. Assembly 29 Nov. 1985. No. 40/34. URL: <http://www.un-documents.net/a40r34.htm> (date accessed: 02.06.2022).
- 12 Рекомендація Rec (2006) 8 Комітету Міністрів Ради Європи державам-членам щодо допомоги потерпілим від злочинів : ухвал. Ком. Міністр. Ради Європи 14.06.2006 р. на 967-му засід. заступ. міністр. URL: https://issuu.com/uccg/docs/12_rec_2006__8_of_coe_ukr (date accessed: 02.06.2022).

Committee of Ministers of the Council of Europe to member states on the position of the victim within the framework of criminal law and proceedings (June 28, 1985); Directive of the Council of the European Union 2004/80/EC on compensation to victims of crimes (April 29, 2004); Directive 2012/29/EU of the European Parliament and of the Council of the European Union on establishing minimum standards for the rights, support and protection of victims of crime and many others¹³.

Considering this international community approach, as well as requirements of the Constitution of Ukraine (Article 3), according to which a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as highest social values and affirmation and guarantee of rights and human freedoms are determined by the content, direction and main duty of the state¹⁴, domestic legislator provided in the Criminal Procedural Code of Ukraine¹⁵ a set of norms aimed at ensuring compensation for damage caused by a criminal offense, in particular, the introduction of the institution of civil action in criminal proceedings.

Civil claim issues of application and consideration in criminal proceedings and compensation for the damage caused to victim were devoted to research papers as well-known domestic scientists (Yu. P. Alenin, S. A. Alpert, O. A. Banchuk, I. V. Hloviuk, V. H. Honcharenko, M. I. Hoshovskyi, Yu. M. Hroshevyi, Yu. O. Hurdzhi, O. P. Kuchynska,

L. M. Loboiko, V. T. Maliarenko, M. M. Mykhieienko, V. T. Nor, D. P. Pysmennyi, M. A. Pohoretskyi, V. O. Popeliushko, L. D. Udalova, V. P. Shybiko, M. Ye. Shumylo), as such young scientists (I. A. Vorobiova, S. V. Davydenko, M. I. Demura, O. R. Mala, D. Yu. Kavun, Kh. R. Kakhnych, N. S. Kravchenko, A. M. Stebeliev, I. I. Tataryn et al.).

However, mentioned authors left aside the issue of compensation for damage caused to a citizen by the armed aggression of any state.

Article Purpose

Analysis of means of compensation for damage caused by the armed aggression of the Russian Federation against Ukraine; determination of possible risks from the statement of civil claim within the framework of criminal proceedings; identification of problems of enforcement (for example, due to inability to inspect the scene); calculation of the amount of damages caused by military actions; identification of the person who should be responsible for the claimed claim, or civil defendant. Authors also consider the purpose of the article to be the development of proposals for effective compensation mechanism and improvement of criminal procedural legislation.

Main Content Presentation

It should be noted that Criminal Procedural Code of Ukraine of Ukraine provides for

13 Банчук О. А., Дмитрієва І. О., Малишев Б. В., Саїдова З. М. Відшкодування потерпілим від насильницьких злочинів: європейські стандарти і зарубіжне законодавство : збірник / за заг. ред. О. А. Банчука. Київ, 2015. С. 34—112.

14 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254k/96-vp#Text> (date accessed: 02.06.2022).

15 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

several ways to compensate for damage caused by a criminal offense or other socially dangerous act: 1) voluntary (compensation) — Part 1 of Art. 127; 2) compulsory (compensation), in particular: a) under a civil lawsuit — Part 2 of Art. 127, Art. 128 and 129; b) with a pledge to execute a sentence in terms of property penalties (Part 11 of Art. 182); c) at the expense of the State Budget of Ukraine (Part 3 of Art. 127, Part 1 of Art. 130); d) criminal law restitution (Parts 1 and 5 of Part 9, Part 11 and 12 of Art. 100); e) under the right of retroactive claim (Part 2 of Art. 130) ¹⁶.

One of the most modern and common ways of compensating the victim in criminal proceedings is a claim form. At the same time, in recent years, in the legal literature, scholars have tried to provide arguments in favor of the opinion that institution existence civil lawsuit in criminal proceedings is inappropriate (noting that the “joint process” does not correspond to the nature and essence of the criminal process), despite its exclusively humane orientation. Gaps in regulatory regulation necessitated the need to formulate similar constructions of articles of criminal procedural legislation to norms of civil procedural legislation. Since in criminal proceedings the guilt of a person in committing a crime (and in causing damage) is proved by the bodies that conduct the process, and in civil proceedings each party is obliged to prove the circumstances to which it

refers, in civil proceedings for such proof the parties submit much more efforts, perform their functions more diligently than parties to criminal proceedings. The bodies of the pre-trial investigation are forced to be distracted from the answer to the main question of the investigation about the guilt of the person to prove the extent of caused damage, ensure the rights and legal victim interests or civil plaintiff, identify, collect documents to confirm ownership rights, etc. All this significantly lengthens the period of pre-trial investigation, sometimes causing controversial situations. In the case of a poor quality pre-trial investigation (in part of proving a civil claim) by a person who, in fact (given his position) is interested only in bringing the guilty to criminal responsibility, leads to the court leaving the civil claim without consideration, and the victim is forced to file a claim in the order of civil proceedings with the hope of compensating for damages caused by a criminal offense. In addition, scientists note: sometimes a judge (as an expert in the field of criminal justice), considering a civil lawsuit, does not delve into the material aspect, considering the subject of the lawsuit superficially. Even a well-versed prosecutor who supports the state prosecution in court is not always able to refute the arguments of the defense side regarding the civil lawsuit, and in case the lawsuit is left without consideration, he does not challenge this decision in the appeal procedure ¹⁷.

16 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

17 Кахнич Х. Р. З'єднаний процес як спосіб захисту прав потерпілого від злочину у кримінальному судочинстві : дис. ... канд. юрид. наук. Львів, 2013. С. 27—28 ; Титова В. Н. Проблемы реализации норм уголовно-процессуального законодательства о возмещении ущерба, причиненного преступлением : монография. Москва, 2013. С. 4—5 ; Шадрин В. С. Обеспечение прав личности при расследовании преступлений. Москва, 2000. 232 с.

We should note that scientists have expressed similar opinions recently, when the legal relations related to the rights to own, use and dispose of property have become significantly more complicated, the property volume that can be owned by a person has increased significantly and its value has increased the number of types of economic activities and economic relations have become more complicated. The victims file civil claims for compensation for moral damage, which is very difficult to calculate and is sometimes the topic of disputes between the civil plaintiff and the person responsible for damage caused by criminal offense.

However, such scientific trends are negative. The current Criminal Procedural Code of Ukraine is constantly criticized for insufficient attention to the mechanisms for protecting the rights of the victim, because depriving the victim of the right to compensate for the damage caused by a criminal offense will amount to several steps backwards compared to the existing procedure, since without such compensation, the tasks of criminal proceedings declared in Art. 2 of the Criminal Procedural Code of Ukraine cannot be considered solved ¹⁸.

Advantages of submitting, considering and resolving a civil claim in a criminal proceeding are obvious. Since the size of the damage often affects the legal qualification of the crime and the degree of punishment, the determination of the size of the damage requires the comprehensiveness and completeness of the investigation of all the circumstances of the criminal proceedings (Part 2, Article 9 of the Criminal Procedural Code of Ukraine ¹⁹), it

is easier to prove the existence of grounds and the size of the civil claim (because the type and the amount of the damage caused belongs to the circumstances that are subject to investigation in each criminal proceeding and which are enshrined in Clause 3, Part 1, Article 91, Clause 6, Part 1, Article 505 of Criminal Procedural Code of Ukraine ²⁰ and the subjects of proof are mainly not the victim (civil plaintiff) and investigator and prosecutor). Only in the event that the victim supports the accusation in private prosecution cases or when the prosecutor refuses to support the accusation, the victim becomes the subject of proof of a civil claim (Part 1 of Article 92, Articles 338 and 340, Chapter 36 of the Criminal Procedural Code of Ukraine ²¹). Consideration of a civil lawsuit within the framework of criminal proceedings significantly accelerates compensation for the damage caused, since a civil lawsuit is: a) an effective means of eliminating the negative consequences of an illegal act as soon as possible; b) a universal way of restoring violated property and personal non-property rights and legal interests of individuals. The combined process saves time and state funds, eliminates the need to consider the same circumstances twice in criminal and civil proceedings and the victim is not forced to experience the events of a criminal offense twice, which would be required by proof in each type of process. Equally important is the exemption of the civil plaintiff from paying the court fee (as opposed to the civil process). In order to protect the rights and legal interests of victims who have been harmed by a criminal offense and who, due to their physical condition or

18 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

19 Ibid.

20 Ibid.

21 Ibid.

financial situation, underage, advanced age, incapacity or limited capacity, are unable to defend their rights on their own, a civil lawsuit may also be brought by the prosecutor (para. 3 Part 1 of Article 1311 of the Constitution of Ukraine²²; Part 12 of Part 2 of Article 36, Part 3 of Article 128 of the Criminal Procedure Code of Ukraine²³; Part 2 of Part 1 of Article 2, Article 23 of the Law of Ukraine: *On the Prosecutor's Office*²⁴). The declared civil lawsuit stimulates pre-trial investigation bodies in criminal proceedings to take measures to ensure the declared lawsuit and future compensation for damage: for example, to seize property (clause 4, part 2, article 170 of the Criminal Procedural Code of Ukraine²⁵).

Thus, as mentioned above, a civil lawsuit in criminal proceedings can be one form of compensation for damage caused, in particular, by Russian aggression.

The following actions of an investigator, prosecutor can be considered as means of ensuring compensation for damage caused by criminal offense: 1) independent detection of a criminal offense or acceptance of a statement about its commission from an injured person, entering information into Unified Register of Pre-Trial Investigations; 2) acceptance of an application to involve a person in criminal proceedings as a victim; 3) explaining to the victim his right to file a civil lawsuit in criminal proceedings; 4) accepting a statement of claim from a person who was harmed by a criminal offense; 5) proving nature and extent of

the damage; 6) establishing and involving in criminal proceedings a person guilty of a criminal offense or a person responsible for damage caused by a guilty person; 7) application of measures to ensure criminal proceedings to ensure the declared civil claim.

However, it is worth noting some sensitive points related to the filing, proof and consideration of a civil claim in criminal proceedings in the event of harm caused by armed aggression.

The first problem is the impossibility (in particular, due to military actions) in accordance with Art. 214 of the Criminal Procedural Code of Ukraine²⁶ to inspect destroyed or destroyed as a result of shelling, aerial bombardment, etc. housing or other property after submitting a statement about the commission of a crime.

As you can see, the scene inspection is carried out with an important procedurally significant goal to discover and record information about the circumstances of the commission of a criminal offense (Part 1 of Article 237 of the Criminal Procedural Code of Ukraine²⁷). This is the only investigative action that is carried out before the information is entered into Unified Register of Pre-Trial Investigations, or (in lack of access to Unified Register of Pre-Trial Investigations) the investigator, prosecutor, decides to initiate criminal proceedings. The inspection itself is an investigative (research) action acquiring key importance, since (as an urgent) it has

22 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (date accessed: 02.06.2022).

23 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

24 Про прокуратуру : Закон України від 14.10.2014 р. № 1697-VII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text> (date accessed: 02.06.2022).

25 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

26 Ibid.

27 Ibid.

a local purpose: 1) to record the fact of a committed criminal offense; 2) directly examine and record the destroyed home and/or other personal property; 3) find out the previous reasons for the destruction or destruction of housing or other property.

On the basis of information recorded while the inspection, information is obtained about the circumstances of the commission of the criminal offense affecting the decision to enter information into Unified Register of Pre-Trial Investigations, the preliminary legal criminal offense qualification with article indication (article par) on criminal liability and find out other circumstances necessary for pre-trial investigation.

Combat operations can make it impossible or significantly difficult to inspect the scene. Certainly,, it is possible to fill in the gaps of the scene first inspection during a repeated and additional inspection. However, the vulnerability of this approach lies in the fact that most often the victims are already starting to restore the house and/or farm buildings that makes impossible to record in detail the destruction extent and determine the damage caused by the crime in case of a repeat inspection.

Without delving into detailed consideration of the issues of conducting the scene inspection during hostilities (since this is the subject of a separate research), we note that a high-quality inspection, correct recording of the destruction with the obligatory professional involvement and implementation of photo and video recording will ensure an objective reflection of committed criminal offense, will make possible to detect and record details that are weakly visible and invisible under visual observation, as well as destruction in the dynamics that will

contribute to objective determination of the damage caused to victim.

Impossibility of the investigator, prosecutor, to go to the scene of committed war crime leads to the fact that victims try to independently record the premises, buildings, structures, etc., that were damaged and/or destroyed as a result of hostilities (hitting means of destruction, explosions, fires, etc.). Current criminal procedural legislation does not prohibit such recording. According to the Criminal Procedural Code of Ukraine, victim has the right to submit evidence in support of his statement (clause 3, part 2, article 56 of the Criminal Procedural Code of Ukraine), as well as to submit evidence to the investigator, prosecutor, investigating judge, court throughout the entire criminal proceedings (clause 3, part 1 Article 56 of the Criminal Procedural Code of Ukraine)²⁸. In addition, the facts of destruction, destruction of homes, buildings, etc. are recorded by representatives of domestic and/or foreign mass media, creating photo and video documents. However, their inclusion in the materials of criminal proceedings is extremely vulnerable and may cause problems with evaluation, recognition as inadmissible as evidence: since they were collected by non-professional participants in criminal proceedings.

As it is known, the order of criminal proceedings and resolution of its tasks is ensured by criminal procedural form: a set of legally established legal procedures, conditions, guarantees, which observance contributes to achievement of tasks of criminal proceedings. Within the framework of the criminal procedural form, the Criminal Procedural Code of Ukraine provides for a system of means by which criminal procedural evidence is carried out (collection (consolidation), verification and

28 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

evaluation of evidence). The prosecuting party collects evidence by “conducting investigative (search) actions and covert investigative (search) actions, demanding and receiving from state authorities, local self-government bodies, enterprises, institutions and organizations, officials and individuals things, documents, information, expert opinions, conclusions of audits and reports of inspections, conducting other procedural actions” (Part 2 of Article 93 of the Criminal Procedural Code of Ukraine)²⁹. In view of the principle of publicity, the prosecutor and the investigator are obliged within their competence to start a pre-trial investigation in case of detection of signs of a criminal offense (except for cases when criminal proceedings can be started only at the request of the victim) or in case of receipt of a statement (notification) about the commission of a criminal offense, as well as take all the measures prescribed by law to determine the event of a criminal offense and the person who committed it (Art. 25 of the Criminal Procedural Code of Ukraine)³⁰. Therefore, it is the investigator, the prosecutor, who is obliged to conduct an inspection of the scene of the incident after submitting a statement or directly detecting a committed criminal offense, to record it in accordance with the requirements of the criminal procedural form.

Criminal Procedural Code of Ukraine stipulates that the obligation to prove the circumstances provided for in Art. 91 of the Criminal Procedure Code of Ukraine, entrusted to the investigator and prosecutor. The victim proves such circumstances in

exceptional circumstances, if he supports the prosecution in the case of a private prosecution, or the prosecutor refused to support the public prosecution (Article 92 of the Criminal Procedural Code of Ukraine)³¹. Regarding civil claimant, the law provides for the rights and obligations established in the Criminal Procedure Code of Ukraine for the victim in the part that concerns the civil claim (part 3 of Article 61 of the Criminal Procedure Code of Ukraine)³². At the same time, for a clear representation of the procedural status of the latter, a systematic interpretation of a number of norms of Criminal Procedural Code of Ukraine is necessary.

As you know, the circumstances to be proven are outlined in Art. 91 Criminal Procedural Code of Ukraine³³. From the declared civil claim proof, only three can be singled out among such circumstances: 1) criminal offense (time, place, method and other circumstances of the commission of the criminal offense); 2) guilt of the accused in committing a criminal offense, form of guilt, motive and purpose of the criminal offense; 3) type and amount of damage caused by a criminal offense. However, it is worth agreeing with domestic scientists that this state of regulation in the Criminal Procedural Code of Ukraine of relations with the proof of a civil claim does not contribute to their proper implementation by the bodies of pre-trial investigation, since proving all the circumstances necessary for making a correct decision on a civil claim in criminal proceedings is a guarantee of its fair solution³⁴.

29 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid.

34 Аленін Ю., Пожар В. Цивільний позов у кримінальному провадженні: особливості доказування та вирішення. *Право України*. 2014. № 10. С. 117.

Unfortunately, Criminal Procedural Code of Ukraine of Ukraine does not establish the of proof topic in a civil lawsuit: it is much broader than the circumstances that are subject to proof and are contained in Art. 91 Criminal Procedural Code of Ukraine ³⁵. The special (or local) subject of proof for a civil claim contains the following elements: 1) event of a criminal offense that caused damage (time, place, method and other circumstances of committing such an offense); 2) presence of damage from this offense and its specific type; 3) direct cause-and-effect relationship between the offense and the damage caused by it; 4) the fault of the person who committed the offense in causing damages; 5) a person who was harmed by an offense; 6) person who will be materially responsible for the declared civil claim; 7) amount of damages to be compensated.

Despite the fact that the obligation to prove the circumstances provided for in Art. 91 of the Criminal Procedural Code of Ukraine, entrusted to the investigator and prosecutor, when submitting a statement (or a lawsuit), the victim and/or civil plaintiff is obliged to indicate the damage caused by the criminal offense. The content of a civil lawsuit is not determined by criminal procedural legislation. At the same time, Part 4 of Art. 128 of the Criminal Procedural Code of Ukraine stipulates that form and content of the statement of claim should meet the requirements for claims filed in civil proceedings ³⁶ According to Art. 175 of Civil Procedural Code of Ukraine ³⁷ in the claim statement, the plaintiff sets

out his claims regarding the subject of the dispute and their justification. The claim statement is submitted to the court in writing, it is signed by the plaintiff, or his representative, or another person who is granted the right to apply to the court in interests of another person. Among other things, claim statement should contain: 1) claim *price*, if the claim is subject to a monetary assessment; 2) *reasonable calculation* of amounts charged or disputed; 3) content of claims (method(s) of protecting rights or interests provided for by law or contract, or other method(s) of protecting rights and interests that do not contradict the law and that plaintiff asks the court to determine in the decision); 4) statement of circumstances by which the plaintiff substantiates his claims; indication of evidence to confirm these circumstances (clauses 3, 4 and 5 of part 3 of Article 175 of the Civil Procedural Code of Ukraine) ³⁸. If a civil plaintiff files a lawsuit for the recovery of monetary funds for damage caused by a crime, he must indicate the amount that, in his opinion, the court should recover (clause 1, part 1, article 176 of Civil Procedural Code of Ukraine ³⁹.

If proving the fact of crime commission causing the emergence of criminal-legal relations, is entrusted to the investigator, prosecutor, then claim topic (substantive legal claim for compensation for damage caused by a war crime) must be confirmed by the civil plaintiff. Thus, it can be stated that civil defendant should assist the investigator, prosecutor in clarifying circumstances that are subject to proof,

35 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

36 Ibid.

37 Цивільний процесуальний кодекс України від 18.03.2004 р. № 1618-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1618-15/ed20220101#Text> (date accessed: 02.06.2022).

38 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

39 Ibid.

that is, he is the one who provides the documents that confirm the claim price and the right to property ownership, etc. However, sometimes this is quite difficult to do if the situation is complicated by destruction of property ownership documents together with the housing.

Thus, in accordance with the requirements of Clause 6, Part 2 of Art. 242 of Criminal Procedural Code of Ukraine ⁴⁰, the investigator or prosecutor is obliged to provide forensic examination to determine the amount of material damages, if the victim cannot calculate them and has not provided a document confirming the amount of such damage. Therefore, most often, determining the amount of damage from destruction or destruction of a person's home or other property is possible only by appointing and conducting construction and technical, commodity and other types of expertise. The need to apply expert knowledge in these extremely complex situations is obvious. The scale of the destruction within the state, significant number of proceedings that requiring forensic examination, significantly reduce efficiency and speed of the process of compensation for the damage caused by a civil claim within the framework of criminal proceedings.

We will note one nuance that is important for filing and resolving a civil lawsuit. A person who has been harmed by a war crime has the right, during criminal proceedings, *"submit a civil lawsuit against the suspect, accused, or against a natural or legal person who, by law, is civilly liable for the damage caused by the actions of the suspect, the accused"* before the start of the trial. (Part

1 of Article 128 of the Criminal Procedural Code of Ukraine) ⁴¹. In this context, let's consider two possible options. Some criminal proceedings have been initiated against specific persons - prisoners of war, who have been notified of the suspicion of committing war crimes (for some of them, indictments have already been sent to the court, even several verdicts have been issued, according to which they were found guilty). In such cases, within the framework of criminal proceedings, a civil action can be brought against a specific suspect or accused. However, even if the guilt of such a person in committing a crime (in particular, provided for in Article 438 of Criminal Code of Ukraine ⁴²) is proven, the execution of the court decision is impossible in the part of the civil lawsuit due to the lack of property of prisoners of war.

In another case, despite the significant number of initiated criminal proceedings and significant damage caused by the violation of war law, it is difficult to determine the person guilty of committing this and other crimes that indefinitely postpones legitimate expectations of the victim who seeks compensation.

It is logical to assume that during hostilities, aggressor state is responsible for the damage caused by the actions of the military. In this aspect, we note that issue of the procedural status of a civil defendant in criminal proceedings cannot be called sufficiently researched in domestic criminal procedural science. If the starting point is that the civil defendant can be a person who, by law, bears civil responsibility for the damage caused by the criminally illegal actions (inaction)

40 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

41 Ibid.

42 Кримінальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 02.06.2022).

of the suspect, the accused or an insanity committed a socially dangerous act and against whom a civil lawsuit has been filed in according to the procedure provided by the Criminal Procedural Code of Ukraine, then to find out who exactly can be a civil defendant, one should refer to the norms of civil legislation.

From the norms of the Civil Code of Ukraine⁴³ the following groups of individuals and legal entities can be singled out, which may bear civil liability for the damage caused: 1) parents (adoptive parents) or guardians (citizens or a corresponding educational, medical institution, institution of social protection of the population etc., which by law is the guardian of a minor suspect, accused; Articles 1178, 1179 of the Civil Code of Ukraine); 2) guardian of a person recognized as incapable, or a legal entity, is obliged to supervise him, if they do not prove that the damage was not caused by their fault (Article 1184 of the Civil Code of Ukraine); 3) legal or natural persons – owners of the source of increased danger, with which the suspect, the accused caused harm to the victim (Article 1187 of the Civil Code of Ukraine); 4) insurance company in which the suspect, accused has insured his liability under mandatory insurance, in the event of an insured event during crime commission (Article 979 of Civil Code of Ukraine and Article 7 of Law of Ukraine: *On Insurance*⁴⁴); 5) legal or natural persons, if the suspect, the accused (who was their employee) caused damage during the performance of his labor (official, official) duties (Article 1172 of the Civil Code of Ukraine).

Therefore, civil defendant is an independent participant in criminal proceedings, involved in it in the presence of legal grounds, due to which he bears civil responsibility for the actions of the suspect. However, in Part 1 of Art. 79⁴⁵ of Law of Ukraine: *On Private International Law* stipulates judicial immunity, according to which the filing of a lawsuit against a foreign state, the involvement of a foreign state in the case as a defendant or a third party, the seizure of property belonging to a foreign state and located on its territory of Ukraine, use of other means of securing a claim and enforcement of such property in relation to such property is possible only with the consent of the competent authorities of the relevant State, unless otherwise stipulated by an international treaty of Ukraine or the law of Ukraine. In this way, immunity of a foreign state from civil liability is ensured.

It is clear that domestic criminal procedural and civil legislation was adopted in peacetime and is designed to be applied to peacetime legal relations. In addition, responsibility for committed war crimes is provided for by the norms of international law which turned out to be completely imperfect. Such a situation requires a new toolkit, in particular, aimed at reparation for damage caused by war crimes. Ukraine should develop and implement such a compensation mechanism, through radical changes and additions to current legislation regulations, creating new compensation paradigm.

We believe that we should not neglect any opportunity aimed at restoring the

43 Цивільний кодекс України від 16.01.2003 р. № 435-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/ru/435-15/ed20220507> (date accessed: 02.06.2022).

44 Про страхування : Закон України від 07.03.1996 р. № 85/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80/ed20220615#Text> (date accessed: 02.06.2022).

45 Про міжнародне приватне право : Закон України від 23.06.2005 р. № 2709-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2709-15#Text> (date accessed: 29.06.2022).

violated victim rights and capable of a real result. As is clear from the above approach and the risks that may befall the victim whose home and other property is destroyed and/or damaged, criminal proceedings are a rather complex and long-term way to restore justice and compensate for the damage caused. However, the victim rights (civil plaintiff) should be protected in the most effective way. Within the framework of criminal proceedings, **two mechanisms** of such protection can be proposed.

Extraordinary situation where Ukraine found itself due to the war, started by the Russian Federation, necessitates search for non-traditional ways of solving it. In particular, we suggest that in case of impossibility to establish the specific person who caused the damage in criminal proceedings, find guilty the civil defendant, i.e. the Russian Federation. Since the damage was caused by war crimes committed by combatants serving in the armed forces of the aggressor country and carrying out its orders, the aggressor state should bear civil responsibility for the damage caused by.

On April 14, 2022, judicial panel of the Third Judicial Chamber of the Civil Court of Cassation of the Supreme Court expressed a rather important position ⁴⁶ for the formation of law enforcement practice in case № 308/9708/19: *“Feature of the legal status of the state as a subject of international relations is its immunity, which is based on the general principle of international law equal over equal has no power and jurisdiction. However,*

a necessary condition for observing this principle is mutual recognition of the country’s sovereignty, so when the Russian Federation denies the sovereignty of Ukraine and commits a war of aggression against it, there is no obligation to respect and observe the sovereignty of this country. <...> “After the start of the war in Ukraine in 2014, the court of Ukraine, considering a case in which the Russian Federation is identified as the defendant, has the right to ignore the immunity of this country and consider cases of compensation for damage caused to an individual as a result of armed aggression of the Russian Federation, based on a lawsuit filed specifically against of this foreign country” ⁴⁷. In this way, the Supreme Court of Ukraine created a precedent that should be supported and developed in law enforcement practice, and later enshrined in legislation, because impunity, as it turned out, causes tragic consequences. We should also note that we are only at the beginning of the difficult journey of recovering damages. However, the existing problem should be solved in the legal field, guided by the principles of legality and the rule of law, gradually creating compensatory mechanisms; changing international and national legislation regulations with the help of international legal institutions and judicial institutions.

The second mechanism is related to the creation of the State Compensation Fund. At one time, the Interdepartmental Working Group of the Ministry of Justice developed a draft law on compensation at the expense of the state for material

46 Невядомський Д. Грааль імунітету агресора. Ключ до розв’язання проблеми компенсацій від Росії слід шукати в області правової науки. *Закон і бізнес*. 23.06.2022. URL: <https://zib.com.ua/ua/151862.html> (date accessed: 29.06.2022).

47 Постанова Верховного Суду України від 14.04.2022 р. у справі № 308/9708/19, провадження № 61-18782св21. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/zakonodastvo/Rish_sud_imun.pdf (date accessed: 29.06.2022).

damage to individuals who suffered from a crime ⁴⁸, while preparing the ratification of the European Convention on the Compensation of Victims of Violent Crimes ETS № 116 (1983) ⁴⁹. Implementing the provisions of the Convention, the draft law proposed the following mandatory conditions for compensating the victim or members of his family: 1) commission of a crime resulting in damage to the victim's health; 2) initiation of a criminal case; 3) lack of information about the person who committed the crime or information about the whereabouts of identified person who committed the crime in criminal case for more than six months from the day the natural person was recognized as a victim; 4) availability of information in criminal case about insolvency of the person who committed the crime; 5) impossibility of compensating damages at the expense of guilty persons or other sources has been established by the court. According to this project, the right to compensation for damage at the expense of the state should arise from the victim not in all cases, but only in the case when the damage caused to him by the crime is significant, that is, the amount of which exceeds five times the minimum wage. The draft law also *limited the maximum* amount of compensation.

Introduction of such a mechanism of compensation by the state for damage

caused by a violent crime did not deprive the victim right to apply to the court to recover damage from the person who committed the crime in civil proceedings.

Compensation of damage to the victim at the expense of the state would be one of the types of social assistance, an important guarantee of basic human rights, which is responsibility of the social, legal State.

In the end, the project under consideration was not adopted, in particular, due to the following arguments: 1) such compensation, given the number of crimes committed will be too burdensome for the State Budget; 2) it is difficult to prevent abuses; 3) damage caused only in the case of serious and especially serious crimes, etc. should be compensated.

For the purpose of guaranteed and accurate execution of court decisions on compensation to victims of crime at the expense of the state, the draft law provided for the creation of a special Victim Fund in Ukraine (Art. 16 ⁵⁰) at the expense of part of the State Budget revenues from the payment of state duty and the rest of the budget revenues related to the activities of law enforcement agencies, as well as other revenues of the State Budget. It was from this Fund that compensation was planned under the current Law of Ukraine: *On the Procedure of Compensation of Damage Caused to a Citizen by Illegal Actions of Inquest, Pre-Trial Investigation, Office of Public Prosecutor and Judicial Bodies* ⁵¹.

48 Проект закону про відшкодування за рахунок держави матеріальної шкоди фізичним особам, які потерпіли від злочину, від 27.10.2010 р. № 7303. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=7303&skl=7 (date accessed: 29.06.2022).

49 Статус Европейской конвенции о возмещении ущерба жертвам насильственных преступлений ETS № 116 (Страсбург, 24.11.1983 г.). URL: https://zakon.rada.gov.ua/laws/show/994_541#Text (date accessed: 02.06.2022).

50 Проект закону про відшкодування за рахунок держави URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=7303&skl=7 (date accessed: 29.06.2022).

51 Про порядок відшкодування шкоди, завданої громадянину незаконними діями органів, що здійснюють оперативно-розшукову діяльність, органів досудового розслідування, прокуратури і суду : Закон України від 01.12.1994 р. № 266/94-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/266/94-вр#Text> (date accessed: 02.06.2022).

Despite progressiveness of approaches mentioned above, the legislators have not created a mechanism for implementing the right to compensation for victims of violent crimes. However, its foundations are laid in the current criminal procedural and civil legislation. In particular, you should refer to Art. 1177 of Civil Code of Ukraine: “Reparation (compensation) of damage to a natural person who suffered from a criminal offense”⁵², according to which damage caused to a natural person who suffered from a criminal offense is compensated in accordance with the law⁵³. In Part 3 of Art. 127 of Criminal Procedural Code of Ukraine “Reparation (compensation) of damage to the victim” stipulates: “*Damage caused to the victim as a result of a criminal offense shall be compensated to him at the expense of the State Budget of Ukraine in the cases and in the manner prescribed by law*”⁵⁴ [emphasis added].

Consequently, national legislation has a basis for building a mechanism of compensation for damage (caused, in particular, by armed aggression of Russian Federation against Ukraine) at the expense of a specially created State fund.

Funding for such a fund can come from various sources (both due to charitable contributions from foreign states and private individuals, and due to funds from confiscation, special confiscation, reparation, complementation, etc.): however, first of all, it should be filled at the aggressor State expense.

Conclusions

The performed research makes possible to formulate such conclusions. The armed aggression of the Russian Federation caused casualties among the civilian population, as well as mass destruction and destruction of property and other property of residents of Ukraine. Currently, the State is creating a number of mechanisms aimed at compensating (compensating) for the damage caused by armed aggression.

Filing a civil claim in criminal proceedings initiated due to the commission of a war crime is one of the means to compensate for the damage caused to the victim. This is determined by the legal nature of the civil lawsuit combining public and private principles due to the fact that the subject of the civil lawsuit is directly related to the committed crime, as well as due to the fact that it is the state bodies that are tasked with determining the type and amount of damage caused a criminal offense. At the same time, the filing of a civil claim for compensation for damage caused by armed aggression is preceded by a number of factors that inhibit the mechanism of compensation: difficulty of properly recording the fact of destruction, especially in the conditions of hostilities; problems with calculating the amount of such damage, which requires time and labor due to the appointment of appropriate examinations; mostly: missing a person against whom a civil claim can

52 Цивільний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/ru/435-15/ed20220507> (date accessed: 02.06.2022).

53 The article refers to compensation of damage caused by the destruction, destruction of housing and other possession of a person as a result of armed aggression. Attention should be paid to the fact that the legislation provides (however not implemented) opportunities for compensation from mechanisms under consideration for damage caused by mutilation, other damage to health or death as a result of armed aggression. Such bases are also laid in Art. 1207 of the Civil Code of Ukraine.

54 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20220520#Text> (date accessed: 02.06.2022).

be filed. However, we believe that every opportunity should be used to restore the victim rights.

In order to optimize procedural procedure for compensation for damage caused by war crimes, we consider it expedient to: 1) supplement the current criminal procedural and civil legislation with norms according to which aggressor State should be involved as a civil defendant in order to hold it responsible for the damage caused by its military staff; 2) create a state fund to compensate for the damage caused by war crimes.

In order to implement the proposed mechanism, we consider it appropriate to make the following changes and additions to the current Criminal Procedural Code of Ukraine of Ukraine.

1. Part 1 of Article 62: *Civil Defendant* after the first sentence shall be supplemented with the second sentence as follows: "In case of damage caused by war crimes or the crime of aggression against Ukraine, the civil defendant may be recognized as the aggressor State".

2. Part 1 of Art. 91: *Circumstances to be proved in criminal proceedings* after paragraph 7, add a new paragraph with the following content:

"The fact of the armed aggression of the Russian Federation against Ukraine cannot be proven".

3. Part 10 of Art. 100: *Storage of physical evidence and documents and resolution of the issue of special confiscation* shall be amended as follows:

"10. While resolving the issue of special confiscation, issue of returning money, valuables and other property to the owner (legal owner) and/or compensation for damage caused by a criminal offense must first be resolved. Special confiscation is applied only after the prosecution proves in a court of law that the owner (legal owner) of money, valuables and other

property knew about their illegal origin and/or use, *except for property, valuables, money and other material assets belonging to physical or legal entities persons of the aggressor state of the Russian Federation*. Such property, money, valuables, other material assets are subject to special confiscation in any case. In the event that the guilty person does not have property that can be levied, except for property that is subject to special confiscation, the damages caused to the victim, the civil plaintiff, are compensated at the expense of funds from the sale of the confiscated property, and the remaining part is transferred to the State ownership".

4. Relevant parts of Art. 170: *Property Seizure* should be amended as follows:

a) Part 2:

Property Seizure is allowed to ensure:

1) preservation of physical evidence;

2) special confiscation;

3) confiscation of property as a type of punishment or measure of a criminal legal nature against a legal entity;

4) compensation for damage caused as a result of a criminal offense (civil lawsuit) or recovery from a legal entity with illegal benefits.

5) *compensation for damage caused by armed aggression and temporary occupation of the territory of Ukraine by the Russian Federation*";

b) Part 10:

"10. Seizure may be imposed in accordance with the procedure established by this Code on movable or immovable property, money in any currency in cash or in non-cash form, in particular, funds and valuables held in bank accounts or in custody at banks or other financial institutions, expenditure transactions, securities, property, corporate rights, virtual assets, in which respect of decision of investigating judge, the court determines the need for seizure of property.

Property cannot be seized if it is owned by a bona fide acquirer, except for the seizure of property for the purpose of ensuring the preservation of material evidence or property belonging to natural or legal persons of the aggressor state of the Russian Federation”.

5. Part 4 of Art. 173: *Decision on Property Seizure* should be amended as follows:

“4. If the petition is granted, the investigating judge shall apply the least burdensome method of property seizure. The investigating judge, the court is obliged to apply such a method of seizure of property that will not lead to the suspension or excessive restriction of the lawful business activities of a person, or other consequences that significantly affect the interests of others. *This requirement does not apply to property owned by individuals or legal entities of the aggressor State of Russian Federation”.*

6. Part 11 of Art. 182: *Pledge* is proposed to read as follows:

“11. The pledge that has not been turned into the state income shall be returned to the suspect, accused, pledgor after the termination of this preventive measure. At the same time, the pledge made by the suspect, accused, may be fully or partially applied by the court for the execution of the sentence in terms of property penalties. The pledge taken by the pledgor may be applied by the court for the execution of the sentence in terms of property penalties only with his consent. *The pledge made in criminal proceedings initiated under Articles 109–114¹, 258-258⁵, 260, 261, 437-442 of the Criminal Code of Ukraine shall be applied by the court for execution of the sentence in terms of property penalties without the consent of the pledgor”.*

Проблеми відшкодування збитків, завданих громадянинові внаслідок збройної агресії: кримінальний процесуальний аспект

Оксана Капліна, Світлана Шаренко

Розглянуто актуальні проблеми відшкодування збитків, завданих

Україні збройною агресією Росії — повномасштабною війною, безпрецедентною (порівняно із Другою світовою та рештою війн XXI ст.) за розмахом, жорстокою за сутністю, геноцидною за метою, нищівною за засобами й наслідками. Одними з наслідків воєнних і військових злочинів, скоєних рашистськими агресорами починаючи з 24.02.2022 р. , є масові руйнування та пошкодження житла й іншого майна громадян України. У межах розпочатих кримінальних проваджень завдані збитки відшкодовують шляхом заявлення цивільного позову. Утім, специфікою підстав такого позову зумовлено виникнення певних ризиків для потерпілого, а також проблем із правозастосуванням і реалізацією слідчим та прокурором їхніх повноважень. Зокрема, складнощі можуть полягати в неможливості оглянути місце події, що зрештою негативно вплине на визначення розміру завданих збитків (розрахунок матеріального еквівалента шкоди). Проблемним також є визначення суми шкоди, завданої в результаті руйнування чи знищення житла, оскільки найчастіше це потребує призначення експертизи, водночас масштабність руйнувань у межах держави унеможлиблює проведення таких експертиз у розумні строки. Увагу акцентовано на проблемах установлення особи, яка має нести відповідальність за заявленим позовом, або цивільного відповідача. Також розглянуто можливість подолання юрисдикційного імунітету Росії як відповідача за заявленими цивільними позовами. Проведене дослідження дало змогу сформулювати пропозиції щодо механізму відшкодування завданої шкоди, а також щодо вдосконалення чинного кримінального процесуального законодавства України.

Ключові слова: відшкодування шкоди в кримінальному провадженні; цивільний позов у кримінальному провадженні; шкода, завдана кримінальним правопорушенням; потерпілий; цивільний відповідач.

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