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Damage compensation mechanism in the criminal process

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Abstract

It discusses the problematic issues of consideration and resolution in a criminal case of a civil claim for compensation for property damage or compensation for moral damage caused by a criminal offense. The essence and content of the «civil claim in the criminal process» is determined, the advantages are noted, and the problems of a civil lawsuit in the criminal process of Ukraine are discussed. The authors propose to consider the filing of a civil claim as a right of the victim, corresponding to the obligation of the criminal prosecutor's office and the court to take measures for the timely reparation of damages. Some reasons are revealed that complicate the implementation of the principle of inevitability of civil liability for a crime committed simultaneously with the procedure for convicting the perpetrator. As a conclsuion se proposes to develop new approaches to the institution of a civil lawsuit in the criminal process of Ukraine, contributing to the improvement of the activities of the criminal prosecution authorities and the court to restore the violated civil rights of victims of crime.

Keywords: civil claim; victim; criminal procedure; compensation for damage; procedural actions.

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Mecanismo de indemnización por daños en el proceso penal

Resumen

Se analizan las cuestiones problemáticas de consideración y resolución en un caso penal de una demanda civil de indemnización por daños a la propiedad o indemnización por daño moral causado por un delito penal. Se determina la esencia y el contenido de la «demanda civil en el proceso penal», se anotan las ventajas y se discuten los problemas de una demanda civil en el proceso penal de Ucrania. Los autores proponen considerar la presentación de una demanda civil como un derecho de la víctima, correspondiente a la obligación de la fiscalía penal y del tribunal de tomar medidas para la reparación oportuna de los daños. Se revelan algunas razones que complican la implementación del principio de inevitabilidad de la responsabilidad civil por un delito cometido simultáneamente con el procedimiento para condenar al perpetrador. Como conclsuion se propone desarrollar nuevos enfoques para la institución de una demanda civil en el proceso penal de Ucrania, contribuyendo a la mejora de las actividades de las autoridades de enjuiciamiento penal y el tribunal para restaurar los derechos civiles violados de las víctimas de delitos.

Palabras clave: demanda civil; víctima; proceso penal; indemnización por daños; acciones procesales.

Introduction

In accordance with Art. 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on November 29, 1985 by UN General Assembly Resolution 40/34, victims of crime have the right to access the mechanisms of justice and prompt compensation for harm suffered in accordance with national law.

According to Art. 3 of the Constitution of Ukraine a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to man for his activities. The establishment and protection of human rights and freedoms is the main duty of the state (Constitution of Ukraine, 1996). In the context of reforming the legislation, in particular the criminal procedure, the implementation of constitutional provisions becomes especially important.

The protection of the rights and freedoms of the victim, the creation and functioning of a system of reliable legal guarantees to ensure the right

to justice and judicial protection in criminal proceedings are important. According to Art. 2 of the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine), the main tasks of criminal proceedings are the protection of the individual, society and the state from criminal offenses, as well as protection of rights and freedoms and legitimate interests of participants in criminal proceedings. One of the legal means of protection of violated rights of victims is compensation (compensation) for damage caused by a criminal offense (Criminal procedure code of Ukraine, 2012).

Therefore, the independent task of criminal proceedings should be to ensure compensation for damage caused by a criminal offense. In addition, the procedural activities of persons and bodies conducting criminal proceedings should be aimed at successfully solving these tasks (Groshevii *et al.,* 2013).

It should be noted that the reform of Ukrainian legislation, including in the field of protection of victims of crime, is due to the need to bring it in line with international standards on human and civil rights. The International Covenant on Civil and Political Rights obliges the state to provide any person with an effective remedy in the event of a violation of his or her rights and freedoms. The right to protection for any person in need is guaranteed by the state, its competent judicial, administrative or legislative bodies (International covenant on civil and political rights, 1966). In addition, the victim's right to compensation (compensation) for the damage caused by a criminal offense is provided by a special European Convention on Compensation to Victims of Violent Crimes (European convention on compensation to victims of violent crimes, 1983).

We must also pay attention to the domestic, adopted for the implementation of international standards, the Concept of ensuring the protection of legal rights and interests of victims of crime, which was approved by the Decree of the President of Ukraine dated 28.12.2004 № 1560/2004. The concept indicates the need to develop new and improve existing legislation to protect the legal rights and interests of victims (International covenant on civil and political rights, 1966).

One of the most important factors determining the effectiveness of the restoration of violated rights is the timeliness of their protection. In criminal proceedings, the duty of the state to ensure adequate protection of the civil rights of victims of crimes is implemented by resolving claims for compensation for property damage or compensation for moral damage. Fundamental measures are needed to reduce the general crime in Ukraine, to clearly take into account the amount of not only material (property), but also physical and moral harm caused by crimes, the introduction of modern scientifically grounded methods, technical, organizational and other means aimed at the most effective restoration of the existing one before the crime, condition of a victim of a crime, a natural or legal person.

Given the difficult economic and socio-political conditions of recent years, we see an increase in the number of criminal offenses, as well as the fact that the problem of compensation for damage caused by crime requires a comprehensive scientific and practical study. All of the above emphasizes the relevance and significance of the study conducted by the authors.

1. Methodology of the study

The methodological basis of the study was the theory of knowledge of legal phenomena. Given the specifics of the topic and purpose of the study, the following methods are used in the article: dialectical method phenomena); method of integrated approach (for analysis of legal sources devoted to the researched problem); formally logical method of research (to define the concept and forms of compensation in criminal proceedings); comparative legal method (to analyze the rules of the current CPC of Ukraine in comparison with the rules of criminal procedure of other states; to analyze other views expressed in theory and practice to ensure compensation for damage caused by a criminal offense; formally legal method (to understand the essence and interpretation certain legal norms on the provision of compensation for damage caused by a criminal offense, to formulate definitions and conclusions), the method of legal analysis (to study and analyze current domestic and foreign regulations defining the principles of compensation).

2. Analysis of recent research

Problems of establishing and compensating for the damage caused by criminal damage have been the subject of research by such scientists as: V. Popelyushko (Popelyushko, 2020), Y. Groshevii, V. Tatsiy, A. Tumanyants (Groshevii *et al.,* 2013), V. Kovalenko, L. Udalova, D. Pysmenniy (Kovalenko *et al.,* 2013). O. Pchelina (Pchelina, 2011), I. Tataryn (Tataryn, 2015), Y. Chornous (Chornous *et al*., 2021), C. Roxin, B. Schünemann (Roxin and Schünemann, 1998), V. Dubrovin (Dubrovin, 2010) and others. A number of fundamentally important provisions formulated in their works. At the same time, issues related to the establishment and compensation of damages in criminal proceedings need further investigation.

The purpose of this article is to disclose the content of legal provisions relating to civil lawsuits in criminal proceedings and the current practice of their application, primarily the Supreme Court of Ukraine and the European Court of Human Rights (ECtHR), outline the implementation of the institution of compensation for criminal damage, offenses and providing proposals for improving criminal procedure legislation in this area.

3. Results and discussion

Legal science divides the damage caused by crime into three types: moral, physical and property (material). Moral damage as a consequence of the crime is intangible and, in accordance with Part 2 of Art. 23 of the Civil Code of Ukraine, is expressed: 1) in physical pain and suffering that an individual has suffered in connection with an injury or other damage to health; 2) in mental suffering that an individual has suffered in connection with illegal behavior towards himself, members of his family or close relatives; 3) in mental suffering suffered by an individual in connection with the destruction or damage of his property; 4) in humiliation of honor and dignity of a natural person, as well as business reputation of a natural or legal person (Civil code of Ukraine, 2003). Physical harm is the negative changes in the victim's physical and mental health caused by the crime, expressed in various degrees (death of a person, causing severe, moderate or light bodily injuries, mental disorders, changes in the normal development of the body, etc.) (Tataryn, 2012). Property damage is any reduction or destruction of a property subjective right protected by law of interest or property, which causes loss to the victim (Mitrofanov and Gaikova, 2012).

Compensation in criminal proceedings is subject to moral and property damage, as physical damage defined as a set of changes that have objectively occurred in the human condition because of a criminal offense. The components of physical harm include bodily injury, ill health, physical suffering, and therefore their actual compensation is impossible. The cost of restoring physical health calculated in monetary terms and is included in property damage. These are: the monetary costs of restoring the health of the victim, and in the event of his death – the burial and payments to maintain the material well-being and upbringing of disabled family members of the victim and his minor children; funds spent by the health care institution for inpatient treatment of a victim of crime (Kovalenko *et al.,* 2013).

Chapter 9 of the CPC of Ukraine provides for forms of compensation (compensation) for damage in criminal proceedings, namely: 1) voluntary compensation (compensation) for damage (Part 1 Art. 127); 2) filing a civil lawsuit (Part 2 Art. 127, 128, 129); 3) application for bail to enforce the sentence in part of property penalties (Part 1 Art. 177; Parts 4, 11 Art. 182); 4) compensation for damage to the victim caused by a criminal offense, at the expense of the State Budget of Ukraine (Art. 127, Part 2, Art. 3, Art. 572); 5) criminal-legal restitution (item 5 part 9, part 10 Art. 100; part 4 Art. 374); 6) compensation (compensation) for damage caused by illegal decisions, actions or omissions of the body carrying out operational and investigative activities, pre-trial investigation, prosecutor's office or court, in cases and in the manner prescribed by law (Article 130) (Criminal procedure code of Ukraine, 2012).

It should be noted that the institution of damages is an interdisciplinary institution: in addition to criminal procedural law, it is also provided by civil procedure law, which provides for a claim for damages in civil proceedings. This method of protection of violated property and personal non-property rights and legitimate interests of the victim can be implemented both before and after the criminal proceedings, in particular in cases of failure to file a civil lawsuit in criminal proceedings or leave it without trial.

An analysis of law enforcement practice shows that victims of crime do not always receive adequate compensation for the harm caused to them, and therefore their rights and legitimate interests are not fully restored. In domestic criminal proceedings, the restoration of violated rights and legitimate interests of victims, as a rule, is realized by a claim form of compensation for property damage or pecuniary damage, ie, by filing a civil lawsuit. In relation to this issue, scientific circles highlight a number of reasons for the weak protection of the victim of the crime in terms of compensation for damage. One of the reasons for the impossibility of fully restoring the rights and legitimate interests of victims is the lack of unambiguous understanding of the nature of civil proceedings by participants in criminal proceedings, and in particular by persons whose interests have been violated by the crime.

There is no longer any doubt that a civil action does not contradict a criminal case, and the resolution of a civil action in criminal proceedings is a higher priority than in civil proceedings. Thus, the jurisdiction and jurisdiction of a civil action are determined by the jurisdiction of the criminal case. Thus, a person recognized as a civil plaintiff in a criminal case is released from the need to participate twice in court proceedings, first in a criminal case, then in a civil case.

Thus, a civil action in a criminal case does not complicate the criminal process. The advantages of a civil action in a criminal case are obvious from the point of view of procedural economy and the completeness of the examination of evidence.

There is a discussion among scholars and practitioners about the expediency of expanding the grounds of a civil lawsuit in a criminal case; admissibility of the appearance of a civil plaintiff in a criminal case, when the amount of damage has not yet been precisely determined, and the person who committed the crime has not been identified; resolution of a civil claim when considering a criminal case in a special order of court proceedings; the competence of the courts to eliminate the shortcomings of the preliminary investigation in terms of civil lawsuits in criminal cases. These issues are “taste”, evaluative in nature and the lack of their unambiguous understanding among lawyers does not significantly affect the solution of the tasks set before the state to ensure judicial protection of the rights of victims of crime.

It seems that, despite the position of the victims, the state, as one of the subjects of criminal proceedings, is obliged to take measures to timely compensate for the damage caused to them as a result of the crime. In this regard, the filing of a civil action should be considered as a right of the victim, corresponding to the duty of the prosecuting authorities and the court to clarify such a right and ensure the real possibility of its exercise.

The exercise by victims of the right to bring a civil action in a criminal case directly depends on how complete the mechanism for exercising this right will be and how well the conditions for its exercise will be created. There is no doubt that the optimal conditions for ensuring the execution of a sentence in a civil action must be created immediately after the initiation of a criminal case, ie at the pre-trial stages of criminal proceedings.

Therefore, it is the persons carrying out criminal prosecution who are obliged to carry out procedural actions aimed at compensating for the damage caused: to take all measures provided by law to identify civil defendants and search for property to be recovered, seize property, etc. However, investigators interrogators, their leaders have mainly the necessary knowledge and some experience in the field of criminal and criminal procedure law. A civil action in a criminal case is based on civil law and must be considered through the prism of civil and civil procedural law.

Imbalance of public legal principles and private legal principles in criminal procedure, imperfection of the mechanism of compensation, some incompetence of prosecutors in matters of civil law disorient them and do not allow to take effective measures to restore violated civil rights.

The resolution of civil lawsuits in a criminal case is based on the establishment of such legal facts as the existence of a crime, the infliction of harm by a crime, the existence of a causal link between the crime and the harm caused.

Claims for pecuniary damage are resolved based on the amount of damage caused as a result of the crime, which is established during the preliminary investigation and checked during the trial. The resolution of claims for non-pecuniary damage is conditional on the nature of the suffering caused, the requirements of reasonableness and justice.

Claims for compensation for damage caused to the life and health of a citizen, due to their specificity due to the complex subject of evidence, are not considered in criminal proceedings and are fairly attributed to the scope of regulation of civil proceedings. Thus, a “civil action” in criminal proceedings should be understood as a procedural means of judicial protection of property rights and legitimate interests of victims of crime. Citizens or legal entities have the right to file a civil lawsuit in a criminal case if there are grounds to believe that they have suffered property damage as a result of the crime, as well as citizens in the event of moral and (or) physical suffering.

Compensation for non-pecuniary damage caused by property crimes is possible only in cases expressly provided by law. If the plaintiff's property rights have been violated in the criminal case and no violation of his non-property rights has been established, and the legislation does not provide for the possibility of compensation for non-pecuniary damage, the victim has no grounds to sue for compensation for non-pecuniary damage.

The question of whether it is possible to maintain in criminal proceedings the "presumption" of guilt of the defendant who caused the harm in criminal proceedings requires some clarification. In civil proceedings, the "presumption" of the perpetrator's guilt presupposes that the defendant himself must provide evidence of his innocence. The fact of causing harm, its size, the causal link between the act of the defendant and the harmful consequences is proved by the plaintiff. In criminal proceedings, the proof of a civil claim is made according to the rules of criminal procedure and taking into account the requirements of the principle of the presumption of innocence. Therefore, the decision on the issue of civil liability must also be based on the provisions of the presumption of innocence, that is, the "presumption" of guilt of the defendant in this case becomes meaningless and all irreconcilable doubts must be interpreted in his favor.

In our opinion, the burden of proving one's claims lies with the civil plaintiff, but there is no obligation to prove it, given that the law does not provide for any sanctions for non-fulfillment of such an obligation by the said party.

The institute of civil action in the Ukrainian criminal process is an extremely positive phenomenon, given at least that obtaining compensation for the damage caused to the victim by a criminal offense is for him almost more significant than the punishment imposed on the guilty. However, the filing, consideration, and resolution of a civil lawsuit in criminal proceedings has several advantages over if it took place in civil proceedings.

First, such a path is the shortest way to compensate for the damage, as the actual resolution of the claim in civil proceedings is possible only after the entry into force of a court decision in a case under criminal proceedings. Until then, civil proceedings in civil proceedings, even if the claim was filed during criminal proceedings, should be suspended (paragraph 6 of Part 1 Art. 251 of the Civil Procedure Code of Ukraine) (Civil procedure code of Ukraine, 2004).

This way, secondly, significantly facilitates the work of the civil plaintiff to prove the grounds, subject matter, and number of claims. In this case, both the grounds and the subject and amount of the claims are nothing but a criminal offense, the guilt of the accused in its commission and the amount and type of damage caused by the criminal offense, which have both substantive (criminal and civil) and procedural (criminal and civil-

procedural) nature, are the circumstances to be proved in criminal proceedings (paragraphs 1, 2, 3 of Part 1 Art. 91 of the CPC of Ukraine), and proving these circumstances by collecting, verifying and evaluating evidence is carried out, moreover, as the performance of criminal procedural duty by the investigator and the prosecutor, and by checking and evaluating the evidence also the court (Part 2 Art. 91, Art. 92-94 of the CPC of Ukraine).

Thirdly, when filing a civil lawsuit in criminal proceedings, the court fee is not paid, and if it is satisfied, the convict is not charged (the decision of the Supreme Court of Cassation in case № 187/291/17 of January 23, 2019). And fourth, the consideration of a civil lawsuit in this order gives procedural savings, because it eliminates its consideration in the order of civil proceedings (Popelyushko, 2020).

It should also be noted that the ECtHR has repeatedly emphasized in a number of decisions, including those against Ukraine, the benefits of a civil action in criminal proceedings, emphasizing that in criminal proceedings the civil aspect is so closely linked to the criminal aspect that the outcome of the criminal proceedings is crucial for the consideration of the civil claim, for the civil right of the applicant to compensation.

Therefore, such compensation is covered by the scope of paragraph 1 of Art. 6 of the Convention (cases: "Serdyuk v. Ukraine" of 20 September 2007; "Koziy v. Ukraine" of 6 November 2009; "Krivova v. Ukraine" of 9 November 2010). In the case of, for example, Ignatkin v. Ukraine of 21 May 2015, the ECtHR further stated that "the criminal proceedings were decisive for the applicant's right to compensation in civil proceedings" (§ 69), and emphasized: "in In cases concerning liability for actions that have caused serious damage to health, the authorities are obliged to act particularly carefully and carry out proceedings with special speed" (Case "Ignatkina v. Ukraine"of 21.05.2015).

In Part 1 Art. 128 of the CPC of Ukraine contains general provisions, which together with the corresponding provisions of other legal norms determine the subjects of the right to file a civil lawsuit in criminal proceedings, its grounds and subject matter, time of filing and civil defendants.

Thus, as a general rule, a civil lawsuit in criminal proceedings may be filed by a natural person who has suffered property and / or moral damage by a criminal offense or other socially dangerous act, a legal entity who has suffered property damage by a criminal offense or other socially dangerous act, and a legal entity to which property damage has been caused by a criminal offense or other socially dangerous act (Part 1 Art. 61 of the CPC of Ukraine). The claim must be filed during the criminal proceedings, and therefore after the pre-trial investigation (Part 2 Art. 214 of the CPC of Ukraine), but before the trial, it means before the examination of evidence, ie before the interrogation of the accused (Art. 351 CPC of Ukraine). From the

moment of filing a statement of claim to the body of pre-trial investigation or court, these persons automatically acquire the status of civil plaintiffs (Art. 61 of the CPC of Ukraine).

In the case of filing a civil lawsuit by the victim, both procedural statuses are combined in one person – the victim (Art. 55-57 of the CPC of Ukraine) and the civil plaintiff (Art. 61 of the CPC of Ukraine).

As for the method of compensation for property damage, at the request of the injured party, and according to the circumstances of the case, it may be compensated not only in cash but also in another way, in particular, may be reimbursed in kind (transfer of the same kind and the same quality, repair of the damaged thing, etc.), unless otherwise provided by law (Part 4 Art. 22, Part 1 Art. 1192 of the Civil Code of Ukraine).

Part 4 Art. 128 of the CPC of Ukraine stipulates that the form and content of the statement of claim must meet the requirements established for lawsuits filed in civil proceedings. Currently, the requirements for the form and content of the statement of claim are set out in Art. 175 Civil Procedure Code of Ukraine, where, in particular, states that in the statement of claim the plaintiff sets out its claims on the subject matter of the dispute and their justification, that the statement of claim is submitted to the court in writing and signed by the plaintiff or his representative, another person legally entitled to go to court in the interests of another person, and then its semantic elements are given.

The court is not entitled to properly file a civil lawsuit for resolution in civil proceedings, but is obliged to resolve it within the framework of criminal proceedings. Support of the declared civil claim in court finds its manifestation in substantiation by the civil plaintiff before court of claims for compensation and / or compensation of the damage caused to it by a criminal offense, and objection against the civil claim – in refutation by the civil defendant of the bases and / or the size presented to it, requirements, in connection with which they can actively use the rights granted to them by the criminal procedure law.

The civil plaintiff, in addition to the rights and obligations of the actual civil plaintiff, has the rights and obligations provided by law for the victim, in the part relating to the civil claim (Part 3 Art. 61 of the CPC of Ukraine), and the civil defendant – the relevant rights and obligations ties provided by law for the suspect, accused (Part 3 Art. 62 of the CPC of Ukraine). This means that they are granted equal procedural rights to state objections, petitions, give explanations, testimony, participate in the examination of evidence, appear in court debates, etc. (Art. 42, 56 of the CPC of Ukraine).

Specific, belonging only to the civil plaintiff is his right, due to the essence of the claim as the will of the person who filed a claim for compensation / compensation for the damage caused to him, which he has the right to

dispose of, is the right to support the civil claim or refuse to remove it, court in the deliberation room for a court decision (Part 3 Art. 61 of the CPC of Ukraine). And only the civil defendant has the right to recognize the claim in whole or in part or to object to it (Part 3 Art. 62 of the CPC of Ukraine).

With regard to the right of these participants in the trial to give explanations, testimonies, the explanations here should be understood as a way for them to inform the court of information about certain circumstances related to a civil lawsuit in cases where the civil plaintiff is not both a victim and a civil defendant. is not accused, because the CPC of Ukraine does not provide explanations of these persons as a source of evidence in criminal proceedings (Part 2 Art. 84, Part 1 Art. 95 of the CPC of Ukraine).

Explanation of civil plaintiffs and civil defendants under the CPC of Ukraine is one of their fundamental rights as participants in the case (paragraph 3 of Part 1 Art. 43 of the CPC of Ukraine), which is reduced to expressing their attitude in court to written, physical and electronic evidence or protocols their review (Part 5 Art. 229 of the CPC of Ukraine), to the testimony of witnesses announced in court (Art. 233 of the of Ukraine), to the means of supplementing the case file after the court clarifies all its circumstances and verifies the evidence (Art. 241 of the CPC of Ukraine), etc., ie in essence, they are one of their main means of proof in the trial of a civil claim, although they are not directly referred to the sources of civil procedural evidence by law (Art. 76 of the CPC of Ukraine). These persons testify when the civil plaintiff and the victim and, accordingly, the civil defendant and the accused act in the same person.

Participation in the trial is the right of the civil plaintiff. A civil action may be heard in the absence of the civil plaintiff, his representative or legal representative, if he has filed a request for consideration of the claim in his absence or if the accused or civil defendant has fully acknowledged the claim. If the civil plaintiff, his representative or legal representative in the absence of these conditions did not appear in court, the court leaves the civil claim without consideration (Part 1 of Art. 326 of the CPC of Ukraine).

In case of non-appearance at the court hearing at the summons of the civil defendant, who is not the accused, or his representative, the court, after hearing the opinion of the participants in the proceedings, depending on whether it is possible in their absence to clarify the circumstances of the civil lawsuit, conducting a trial without them or postponing the trial.

In this case, the court has the right to impose a fine on the civil defendant in the manner prescribed by chapter 12 of the CPC of Ukraine (Part 2 Art. 326 of the CPC of Ukraine). The civil plaintiff has the right in the manner prescribed by Art. 171 of the CPC of Ukraine, in order to secure a civil lawsuit, apply to the court for seizure of property. In the judicial procedure, a civil claim is considered in general according to the rules of

criminal prosecution (§ 3, chapter 28 of the CPC of Ukraine) and the rules concerning the consideration of the actual civil claim.

If he files such a claim in criminal proceedings, the opening of civil proceedings must be denied with the return of the statement of claim (Art. 185, paragraph 1, part 1 Art. 186 of the CPC of Ukraine). A person who has not filed a lawsuit in criminal proceedings, as well as a person whose civil lawsuit has been left without consideration in criminal proceedings, has the right to file it in civil proceedings (Part 7 Art. 128 of the CPC of Ukraine).

The law does not provide for the court to decide in criminal proceedings on the issue of compensation (compensation) for damage caused by a criminal offense or a socially dangerous act if a civil lawsuit has not been filed. If the subject of the criminal case together with the accusation (socially dangerous act of a minor or insane person) was a civil lawsuit, the court in the deliberation room when sentencing (ruling) must also decide whether to satisfy the civil lawsuit and if so, in whose favor, in what amount and in what order (paragraph 7 of Part 1 Art. 368 of the CPC of Ukraine).

The motivating part of the sentence (ruling) of the court must indicate the grounds for satisfaction of the civil claim or rejection, left without consideration, the reasons for the decision and the provisions of the law governing the court, and in the operative part – the decision on the civil claim (Art. 374 CPC of Ukraine).

In cases where the damage was caused by several persons, and in respect of some of them the criminal proceedings were closed at the pre-trial investigation or in the preparatory proceedings on the grounds provided for in Art. 284 and 314 of the CPC of Ukraine, it is charged by the court in full from the accused, who, in case of compensation, has the right of recourse (recourse) to the specified co-perpetrators of its task (Part 1 Art. 1191 of the Civil Code of Ukraine). In the case of establishing the absence of an event of a criminal offense, as stated in Part 2 of Art. 129 of the CPC of Ukraine, the court rejects the claim.

This means that the court rejects the claim when passing an acquittal on the grounds that: 1) the absence of a criminal offense (paragraph 1 of Part 1 Art. 284, paragraph 2 of Part 1 Art. 373 of the CPC of Ukraine); 2) it has not been proved that a criminal offense in which the person is accused has been committed (paragraph 1, part 1 Art. 373 of the of Ukraine); 3) it has not been proved that the criminal offense was committed by the accused (paragraph 2, part 1 Art. 373 of the CPC of Ukraine). Similarly, the court rejects the claim when closing criminal proceedings on the application of coercive measures of an educational nature to minors who have not reached the age of criminal responsibility, as well as on the application of coercive measures of a medical nature on the grounds that: 1) no socially dangerous act; 2) it has not been proved that the relevant socially dangerous act was

committed; 3) it is not proved that this person committed the relevant socially dangerous act (Part 1 Art. 284, Part 1, 2 Art. 501 of the CPC of Ukraine; Part 1 Art. 504, Part 3 Art. 513 CPC of Ukraine).

Leaving the claim without consideration in case of acquittal of the accused in the absence of a criminal offense in his actions (Part 3 Art. 129 of the CPC of Ukraine) should occur in cases where criminal proceedings are decided on the grounds if: 1) it is not proved that the accused criminal offense (paragraph 3 of Part 1 Art. 373 of the CPC of Ukraine); 2) the absence in the act of a criminal offense (paragraph 2 of Part 1 Art. 284, paragraph 2 of Part 1 Art. 373 of the CPC of Ukraine).

Such a solution to this issue in a criminal case allows the victim to compensate for the damage caused to him in civil proceedings, as it allows to prove the illegality of the act of the acquitted, which entails tort liability under the relevant rules of civil law.

But a civil claim may be considered in the absence of the civil plaintiff, his representative or legal representative, if he received a request for consideration of the claim in his absence or if the accused or civil defendant fully acknowledged the claim (paragraph 2, part 1 Art. 326 CPC of Ukraine). For any other reason, the court has no right to leave the claim without consideration when passing a guilty verdict (Resolution of the Supreme Court of Cassation of 16.05.2019 № 462/5779/15-k).

The above should also be applied by analogy in criminal proceedings concerning the application of coercive measures of an educational nature to minors who have not reached the age of criminal responsibility (§ 2 of Chapter 38 of the CPC of Ukraine) and the application of coercive measures of a medical nature (Chapter 39 of the CPC of Ukraine).

A person who has not filed a civil lawsuit or whose civil lawsuit has been left without consideration must be explained the right to file it in civil proceedings (Part 7 Art. 128 of the CPC of Ukraine).

Thus, filing a civil lawsuit in criminal proceedings provides the fastest restoration of property rights of a victim of a criminal offense, and is the most effective way to eliminate the negative consequences of a criminal offense, as it provides the fullest restoration of the victim's rights compared to other (non-litigation) injured. An important role in bringing and maintaining a claim on behalf of the victim belongs to the prosecutor, who can effectively enforce the victim's right.

As noted by O. Pchelina, forensic support for establishing the amount of damage and its compensation is to develop appropriate scientific and practical recommendations, forensic tools and technologies for their use by law enforcement and judicial authorities to optimize and facilitate activities to ensure compensation for damage caused by criminal offenses (Pchelina, 2011).

The first step in order to establish and compensate for the damage is carried out by the bodies conducting the investigation, because this task is directly provided in Art. 91 of the CPC of Ukraine, as a circumstance subject to proof in criminal proceedings. Thus, paragraph 3 of Part 1 of Art. 91 of the CPC of Ukraine establishes that in criminal proceedings the type and amount of damage caused by a criminal offense (Criminal procedure code of Ukraine, 2012) is subject to proof.

It is worth agreeing with E. Videnko that the type of damage and its amount, expressed in property (monetary) equivalent, is the subject of a civil lawsuit. In addition, proving the type and amount of damage caused in criminal proceedings involves not only the justification of a civil lawsuit for damages, but is primarily of criminal law significance. This can be explained by the fact that the amount of damage belongs to the objective side of the criminal offense, determines the degree of it's social danger, and often the criminal qualification (Videnko, 2014).

I. Tataryn proposes to understand the provision of damages at the stage of pre-trial investigation procedural activities of prosecutors, investigators and on their behalf procedural and operational-search activities of operational units, aimed at taking the necessary measures to search, identify property and other valuables and initiate a petition to the investigating judge seizure of such property in order to secure the civil claim filed in criminal proceedings.

Necessary measures to ensure a civil lawsuit at the stage of pre-trial investigation of criminal proceedings should be: a) the correct determination of the amount and amount of damage caused to the victim; b) search, detection and return of stolen property preserved in kind; c) detection of destroyed or damaged property and ensuring the return of lost property in kind or its monetary equivalent in full; e) ensuring full reimbursement to the victim of the value of the stolen property in case of impossibility of its return; d) ensuring compensation for other damage caused by a criminal offense; e) seizure of property, other valuables in order to compensate for the damage caused by a criminal offense; f) preservation of property and other valuables necessary for the execution of a court decision in case of satisfaction of a claim for compensation for damage caused by a criminal offense (Tataryn, 2015).

In order to ensure compensation for the damage caused by the crime, the bodies investigating it are obliged to establish: 1) the location of property, cash and non-cash funds, as well as other valuables obtained by criminal means; 2) the presence and location of movable and immovable property, cash and non-cash funds, other valuables belonging to the suspect on the right of ownership; 3) the suspect has rights to certain types of property or profit from the activities of relevant enterprises. Part 2 Art. 170 of the CPC of Ukraine stipulates that the investigator and prosecutor must take

the necessary measures to identify and search for property that may be seized in criminal proceedings, in particular by requesting the necessary information from the National Agency of Ukraine for Detection, Search and Management of Corruption Assets, and other crimes, other state bodies and local governments, individuals and legal entities (Criminal procedure code of Ukraine, 2012).

Given the mechanism of committing certain offenses, in order to ensure compensation for damage, there is a need for international cooperation with foreign law enforcement agencies and international law enforcement organizations. After all, firstly, international business entities may be involved in committing criminal offenses, and secondly, criminal income, money and property of the suspect are taken out of Ukraine.

However, in addition to requesting the necessary information from state bodies by persons investigating corruption crimes, information on objects that have been acquired by criminal means or other objects that can be used to provide compensation for damage is found during investigative (search) and covert investigative (search) actions. This may be information obtained during the interrogation of witnesses and the suspect, various documents found during inspections and searches, draft records with relevant information, as well as information obtained during the arrest and inspection of correspondence, removal of information from transport telecommunications networks and electronic information systems, inspection of publicly inaccessible places, housing or other property of a person, control over the commission of a crime.

After establishing the presence and location of these objects, law enforcement agencies must take all possible measures to return the objects obtained by criminal means, seize the suspect's property in order to prevent his alienation or concealment by the suspect.

A measure of securing a civil claim in a criminal case is the seizure of the property of the accused or persons who are legally liable for his criminal actions, or other persons who have property acquired by criminal means.

It should be noted that the procedural activities aimed at ensuring compensation for damage caused by a criminal offense, is most effectively implemented by conducting tactical operations aimed at solving this problem. It is worth agreeing with I. Tataryn that such tactical operations can include the following: 1) "Establishing the nature and extent of damage caused by a criminal offense"; 2) "Search for stolen property"; 3) "Identification and seizure of stolen property"; 4) "Identification of persons who bear property responsibility for the caused damage, and their involvement in criminal proceedings as civil defendants"; 5) "Search, identification of property subject to seizure, and appeal to the investigating judge for the purpose of seizing such property"; 6) "Preservation of seized property" (Tataryn, 2015).

Thus, the establishment and provision of compensation for damage caused by a criminal offense is carried out in the course of the entire investigation by investigators, prosecutors and, on their behalf, by operatives. Such activities include a significant number of overt and covert investigative (search) actions that are best implemented through tactical operations. In order to ensure compensation, Ukrainian law enforcement agencies may, within the framework of international cooperation, use the assistance of international law enforcement agencies and law enforcement agencies of other states, as well as cooperate with the National Agency of Ukraine for Detection, Investigation and Management of Corruption and Other Criminal Offenses. The final decision on compensation for damage caused by a corruption crime is made by the court.

As evidenced by the investigative and judicial practice, the resolution of a civil claim in criminal proceedings causes a lot of difficulties. For example, there is a negative trend that prevents adequate compensation for the harm caused to victims of crimes.

This is the lack of motivation on the part of the criminal prosecution authorities, the desire to shift the function of investigating the crime to the courts. It is indisputable that clarification of the right to file a civil claim, recognition as a civil claimant, involvement as a civil defendant, taking measures to secure the claim, familiarization of the civil claimant, civil defendant and their representatives with the materials of the criminal case is additional work for the preliminary investigation bodies. Therefore, the investigators, in order to avoid unnecessary worries, offer the victim to file a claim in court.

As a result, in criminal cases sent to the courts, often not all persons in respect of whom the fact of harm has been established are recognized as victims. Measures have not been taken to search for and arrest the property of the suspect, the accused or persons bearing financial responsibility. The indictments do not contain information about the civil plaintiff, if there is one at the stage of the investigation of the crime. The value of the stolen or damaged property has not been confirmed by appropriate evidence. When a crime is committed against several victims, there is no information about the amount of damage caused to each of them. The accused have not been explained the provisions of the law on the recognition of voluntary compensation for property damage and moral harm as a mitigating circumstance.

Criminal procedural legislation allows for the possibility of filing a civil claim before the end of the judicial investigation in a criminal case in the court of first instance. The court may explain to the victim his right to bring a civil claim at the preliminary hearing and in the preparatory part of the trial, as well as, if there are grounds for that, to take measures to secure a civil claim. However, the load on the courts is growing every year. The local

specialization of judges for civil lawyers and criminologists is increasingly being established, considering only civil or only criminal cases, respectively.

The quality of justice is determined by the number of canceled or changed decisions. Incorrect resolution of a civil claim in a criminal case entails the cancellation of the verdict in this part by the court of appeal. Due to the unresolvedness of a number of theoretical issues, the compensation by judges of the shortcomings admitted by the preliminary investigation bodies in terms of civil claims may lead to an expansion of the existing model of conditionally changeable (conditionally rigid) limits of judicial proceedings, including due to the emergence of new participants in criminal proceedings (civil lawsuits), plaintiff, civil defendant and their representatives).

Therefore, judges in the courts of criminal jurisdiction, in order to avoid judicial errors, not wishing to violate the principles of adversariality and equality of parties, do not always resolve civil claims in criminal cases. In turn, as noted earlier, the resolution of civil claims by civil judges is much slower. The sums recovered by the courts are purely symbolic. This causes obvious discontent among the victims, gives rise to an opinion about the indifference and indifference of the judiciary to their fate, the unwillingness of the courts to protect violated rights.

In conclusion, we note that the restoration of social justice in criminal proceedings requires neutralization of the consequences of a specific crime. Having provided for the possibility of filing a civil claim in a criminal case, the legislator, proceeding from the connection of the harm caused with a criminal act, pursued the goal of most effectively protecting the subjective civil rights of victims and ensuring their prompt access to justice.

In practice, the implementation of this goal is not yet highly effective and does not meet public expectations. Interesting in this case is the legislation on compensation to victims of damage caused by crimes in some foreign countries. For example, as we know, the Criminal Procedure Code of the Federal Republic of Germany does not contain the concept of "civil action". However, according to Section 3 of Book 5 of the Criminal Procedure Code of the Federal Republic of Germany "Payment of compensation to victims", compensation for damage is carried out by the court when the victim or his heir makes a corresponding request (Roxin and Schünemann, 1998).

If the harm remains uncompensated at the expense of the perpetrators, then the Law on Payment of Compensation to Victims of Violence is applied. According to this Law, which has been in force for more than 35 years, individuals who have suffered bodily, mental or mental harm as a result of the commission of intentional violent crimes, as well as close relatives, if the violent act immediately or later led to the death of the victim, have the right to state compensation for this, harm in the form of cash benefits (Gesetz über die Entschädigung für Opfer von Gewalttaten).

A similar mechanism has been successfully functioning for a long time in the United States of America, Great Britain, France, Austria, Finland, and other foreign countries (Dubrovin, 2010). All this testifies to the need to develop in Ukrainian legislation new scientific approaches to the institution of a civil claim in a criminal case, prompted, inter alia, by international experience. Otherwise, certain articles of the Constitution of Ukraine will be declarative in nature, not ensuring the restoration of violated civil rights of victims of crimes and the solution of preventive tasks of criminal proceedings.

Conclusions

The logical conclusion of the content of the scientific article are the corresponding conclusions made as a result of research of problematic issues:

- The main forms (methods) of realization of the right of victims to compensation of the damage caused by a criminal offense are a civil claim, criminal-legal restitution and voluntary compensation of the guilty of the caused damage.
- Under the provision of compensation for damage from a criminal offense at the stage of pre-trial investigation should be understood: procedural activities of investigators, prosecutors and on their behalf procedural and operational-investigative activities aimed at taking the necessary measures to search, identify property and other valuables and petition the investigating judge seizure of such property in order to secure the civil claim filed in criminal proceedings.
- Necessary measures to ensure a civil lawsuit in criminal proceedings are: correct determination of the amount and amount of damage; search, detection and return of stolen, destroyed or damaged property; ensuring full reimbursement of the value of stolen property in case of impossibility of its return; ensuring compensation for other damage caused by a criminal offense; seizure of property, other valuables in order to compensate for the damage caused by a criminal offense; preservation of property and other valuables necessary for the execution of a court decision in case of satisfaction of a claim for compensation for damage caused by a criminal offense.
- The decisions of the courts considered in the article indicate the presence of problematic issues when filing a civil claim in civil and criminal proceedings. The realization of the rights of victims related to compensation for material damage and moral harm depends

on the timeliness of filing claims, the correct determination of jurisdiction and mandatory compliance with the relevant grounds and conditions imposed by the criminal procedural legislation to a civil claim. Given the constant variability of judicial practice in resolving a civil lawsuit in criminal proceedings, in addition to strict compliance with the relevant provisions of procedural and substantive laws, it is necessary to take into account the case law of the Supreme Court of Ukraine and the ECtHR.

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