

PECULIARITIES OF COMPENSATION FOR DAMAGE CAUSED AS A RESULT OF THE ARMED AGGRESSION OF THE RUSSIAN FEDERATION AGAINST UKRAINE IN CIVIL PROCEEDINGS

PECULIARIDADES DA INDENIZAÇÃO POR DANOS CAUSADOS COMO RESULTADO DA AGRESSÃO ARMADA DA FEDERAÇÃO RUSSA CONTRA A UCRÂNIA EM PROCESSO CIVIL

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Abstract: The article in question is devoted to the problems of compensation for damage resulting from military actions under martial law. It examines the imperfection of the legal approach to the issue of compensation for the damage caused by armed aggression in the current legislation and analyzes court decisions. Since reforming legislation and adapting it to the conditions of martial law takes time and is a very complicated process, the author suggests ways to solve this problem based on research in this area. The purpose of this article is to establish the possibility of applying the institution of civil liability to the Russian Federation for damage caused to real estate on the territory of Ukraine as a result of armed aggression, as well as to provide prospects for protecting the rights of owners of damaged property in Ukrainian courts. The article will consider the general grounds of civil liability for property damage caused by the Russian Federation on the territory of Ukraine.

Keywords: Compensation. Property Damage. Civil Liability. Real Estate. Armed Aggression.

Resumo: O artigo em questão é dedicado aos problemas de reparação de danos decorrentes de ações militares sob lei marcial. Examina a imperfeição da abordagem jurídica da questão da reparação dos danos causados pela agressão armada na legislação vigente e analisa decisões judiciais. Como reformar a legislação e adaptá-la às condições da lei marcial leva tempo e é um processo muito complicado, o autor sugere maneiras de

resolver esse problema com base em pesquisas nessa área. O objetivo deste artigo é estabelecer a possibilidade de aplicar a instituição de responsabilidade civil à Federação Russa por danos causados a imóveis no território da Ucrânia como resultado de agressão armada, bem como fornecer perspectivas de proteção dos direitos dos proprietários de bens danificados nos tribunais ucranianos. O artigo considerará os fundamentos gerais da responsabilidade civil por danos materiais causados pela Federação Russa no território da Ucrânia.

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Palavras-chave: Indenização. Dano à Propriedade. Responsabilidade Civil. Bens Imóveis. Agressão Armada.

1. Introduction

Since the beginning of 2022, Ukraine has witnessed a local armed conflict in the East of the country, but everything changed dramatically on the morning of February 24, when the Russian Federation began military aggression against Ukraine, causing great damage, losses, and moral injuries not only to the military but also to ordinary citizens, physical and legal entities that contribute to the economy of Ukraine and the emotional state of Ukrainians.

The beginning of the military aggression of the Russian Federation against Ukraine, which began back in February 2014, led to many negative consequences for civilians who suffered property and moral damages. This created a significant number of questions regarding jurisdiction, amenability, and the procedure for compensation of damages, taking into account the specifics of this legal relationship, which arose as a result of the usage of armed force by the Russian Federation against Ukraine. Lawyers consider such issues as effective ways of protecting rights in disputed legal relations and others.

Civilians suffer significant losses and infrastructure is severely damaged, resulting in significant social, environmental, and economic losses. New evidence of large-scale damage to civilian objects and infrastructure, such as the destruction of residential buildings, infrastructure objects, offices, warehouses, and industrial premises, is emerging on a daily basis. Information on these damages is updated daily.

The topic researched in this article is very relevant, especially in relation to the legal protection of Ukrainian citizens and compensation for damage caused as a result of Russian aggression. This issue is becoming more and more important, since the war has been going on for a year, and concrete decisions regarding its settlement have not yet been made. Considering the main factor, a full-scale war, we can say that this topic is currently extremely relevant.

The only way to compensate for the damages caused as a result of the armed aggression of the Russian Federation and to protect violated rights is to go to court. The issue of compensation for damage is within the competence of the national courts of Ukraine, the European Court of Human Rights, as well as the International Criminal Court. However, nowadays, compensation for damages that were caused as a result of the full-

scale invasion of the Russian Federation on the territory of Ukraine is considered only in Ukrainian courts.

2. Theoretical framework and literature review

It should be noted that the topic of compensation for damage caused by terrorist acts, emergency situations, and armed conflicts has not been sufficiently studied in scientific works. However, some authors, such as Ye. Karmanyi, S. Koroied, H. Lutska, V. Makhinchuk, A. Mamushkina, V. Krutov, V. Smirnov, V. Hordiienko and others, dealt with this topic in their scientific papers or scientific studies.

3. Research design and methods

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

4. Results and Discussion

Every individual has the right to go to court to protect their property rights, and compensation for damages as a civil legal measure is one of the methods of judicial protection of violated rights, which has a restorative function.

It is difficult to deny that the obligations that arise as a result of damage caused by a terrorist act have the characteristics of civil-law relations, taking into account some characteristic features (Mamushkina, 2018).

In Ukraine, there is no special legislation that would regulate in detail the mechanisms of compensation or compensation for damage in the conditions of the introduction of hostilities or in the occupied territories. The compensation mechanism introduced by national legislation may be applied partially or limitedly depending on the procedure and methods provided by this legal institution in such areas as economic law,

civil law, economic procedural law, civil procedural law, criminal law, criminal procedural law, administrative law, and administrative proceedings. This mechanism can be applied only on the territory of Ukraine, which is not under military and/or hostilities and which is free for movement and possession, management of all subjects of law within the borders defined by the norms of international law and/or liberated, de-occupied, with the presence of all-powerful national institutes and institutions in these territories. The absence of a universal or special compensation mechanism for subjects affected by the military aggression of the Russian Federation against Ukraine leads to significant economic problems at the state level, such as migration processes of the working population and relocation of industrial enterprises, a decrease in consumer demand, and failure to restore economic sectors.

In work entitled “Individual problems of the protection of property rights of natural persons in the conditions of armed conflict in the East of Ukraine”, A. Anisimova claims that different administrative and legal regimes (such as an anti-terrorist operation, an operation of joint forces, and an emergency situation) in conditions of armed conflict cause only a small number of problems in the field of law enforcement. This is caused by an attempt to apply legislation that does not meet the conditions of an armed conflict. In her article, the author focuses on the fact that one of the problems determining the responsibility for the damage caused is the fault of the one who caused it. The conclusion from this is that the application of the civil-law mechanism of compensation for damage during the operation of the ATO regime, as it was until February 2022, is an ineffective way of judicial protection of the property rights of natural persons in the conditions of an armed conflict (Anisimova, 2021).

In the article “Problems of compensation for property damage caused by damage to real estate as a result of the armed aggression of the Russian Federation”, S. Koroied examines the possibilities of compensation for damage and destruction of real estate on the territory of Ukraine caused by the armed aggression of Russia and guarantees for the protection of the rights of owners of damaged property in Ukrainian courts. The author analyzes the general grounds for civil liability for property damage caused by Russia’s actions and examines the provisions of Ukrainian legislation related to this problem. In this article, S. Koroied seeks to find out the possibilities of implementing the institution of civil legal responsibility against the aggressor state for damage and destruction of real estate on the territory of Ukraine caused by armed aggression and also examines the guarantees of

protection of the rights of owners of damaged property in Ukrainian courts in modern conditions (Koroied, 2022).

In her article, N. Semchuk draws attention to the fact that, along with material consequences, damaging nature has very serious consequences, in particular, crimes against nature. She emphasizes that even though during hostilities it seems that solving issues related to nature is not a priority, after the end of the conflict this issue must be taken into account during the reconstruction of the state, receiving reparations, and international aid. Therefore, only a quick determination of the extent of the damage and its compensation can help, at least partially, restore the beauty of Ukraine's nature and compensate for the caused damage (Semchuk, 2022).

Chapter 82 of the Civil Code of Ukraine regulates the issue of compensation for damages that do not arise under the contract but due to the imposition of damages (tort obligations). Tort obligations may be associated with causing damage to property or a person. The occurrence of tort liability requires the presence of damage, illegal behavior, and a causal connection between them. Damage can be any devaluation of a good protected by law, and property damage entails negative property consequences for the offender.

Article 1166 of the Civil Code of Ukraine specifies that a person who has caused damage to the property of a natural or legal person or their property as a result of illegal decisions, actions, or inaction is obliged to compensate it in full. According to Part 1 of Article 4 of the Civil Procedure Code of Ukraine, every person has the right to apply to the court for the protection of their violated, unrecognized, or disputed rights, freedoms, or legitimate interests.

According to Article 22 of the Civil Code of Ukraine, if a citizen has suffered losses due to a violation of their civil law, they have the right to compensation for these losses, which include losses incurred in connection with the destruction or damage of an item, as well as costs aimed at restoring it the violated right.

Therefore, the implementation of the institution of civil liability in Ukraine in the form of compensation for property damage can be carried out either voluntarily or by the coercive (judicial) procedure. The legal basis for the application of such liability is the composition of a civil offense, as well as establishing the person who is a violator, i.e. caused property damage. Proving these facts (except guilt) rests on the victim.

Compensation for property damage in this case will be a measure of civil liability; at the same time, the principle of full compensation for property damage should be applied.

Consideration and resolution of civil cases related to compensation for damage caused as a result of the armed aggression of the Russian Federation against Ukraine do not differ from the procedure for consideration and resolution of other civil cases that are considered in legal proceedings. For civil proceedings in these cases, the Constitution of Ukraine, the Civil Procedure Code of Ukraine (hereinafter referred to as the Code of Civil Procedure), Laws of Ukraine “On international private law” dated 23.06.2005 N2709-IV, “On the implementation of decisions and application of the practice of the European Court of Human Rights” dated 23.02.2006 N3477-IV, as well as international treaties that are binding on Ukraine, and other laws and regulatory acts that were in force at the time of consideration and resolution of the case, are used. However, these civil cases have certain features that result from special legal norms that were established for consideration and resolution of the corresponding category of civil cases.

We would like to note that usually property damage is compensated through a civil court process, where the victim can apply to the court with a claim against the person responsible for causing the damage and provide evidence confirming the fact of damage and the fault of a specific person. However, in the case of war, these procedures can be ineffective, as victims often find it difficult to find out which enemy servicemen harmed them and to collect the necessary evidence of guilt. Even if it was possible to collect evidence, filing a civil lawsuit does not guarantee the restoration of violated rights due to the low probability of enforcement of a court decision on the recovery of funds for damages.

Ukrainian legislation does not contain special laws that would regulate the procedure for compensation for damages caused by military actions. However, an interesting fact should be noted: in some cases, the state undertakes the obligation to compensate for damages caused as a result of criminal offenses, in particular, in accordance with Part 1 of Article 1177 of the Civil Code of Ukraine, Part 2 of Article 127, Part 1 of Article 128, and Part 1 of Article 129 of the CPC of Ukraine. A person who has suffered property damage as a result of a criminal offense may file a civil lawsuit against the accused or a person who is civilly responsible for their actions before the start of the trial during the criminal proceedings. The court may satisfy the civil claim wholly or partially or refuse it. The most common legal basis for compensation for property damage caused by military

actions is a violation of the laws and customs of war in accordance with Article 438 of the Criminal Code of Ukraine. However, compensation for property damage on these grounds is not an effective way of protection, as it does not provide sufficient compensation for all victims.

Ukrainian legislation provides for compensation for damage caused as a result of criminal offenses in accordance with Articles 1177 of the Civil Code of Ukraine and 127 of the Criminal Procedure Code of Ukraine.

Property damage caused by a terrorist act can be expressed in the following consequences:

- destruction, damage, damage to things (property), for example destruction, damage to residential buildings and other buildings, structures, vehicles, personal belongings of citizens, etc.;
- loss of a provider, burial expenses, construction of a monument as a result of causing the death of a citizen;
- expenses for treatment, third-party care, prosthetics, etc. due to damage to a citizen's health;
- loss of wages and other income due to loss of working capacity due to health damage;
- expenses of persons who suffered as a result of a terrorist act, incurred in connection with moving to another area or the need to rent housing, etc (Koroied., Lutska and Makhinchuk, 2022).

Compensation for property damage is closely related to property relations, which is a legal form of commodity-monetary relations and can be considered as one of the ways to compensate for losses.

Article 1 of the Law of Ukraine "On Combating Terrorism" dated March 20, 2003 No. 638-IV contains the following definitions:

- anti-terrorist operation is a set of coordinated special measures aimed at predicting, preventing, and stopping terrorist activity, releasing hostages, ensuring the safety of the population, neutralizing terrorists, minimizing the consequences of terrorist activity;
- anti-terrorist operation area - areas of the terrain or water area, vehicles, buildings, structures, premises, and territories or water areas adjacent to them and within which the specified operation is carried out, determined by the management of the anti-terrorist operation;

- terrorist activity is the activity that includes the planning, organization, preparation, and implementation of terrorist acts; incitement to commit terrorist acts, violence against individuals, or organizations, destruction of material objects for terrorist purposes; the organization of illegal armed groups, criminal groups (criminal organizations), organized criminal groups to commit terrorist acts, as well as participation in such acts; recruitment, arming, training and usage of terrorists; propaganda and spread of the ideology of terrorism; terrorism training; leaving Ukraine and entering Ukraine for terrorist purposes; financing and other support for terrorism;

- a terrorist act is a criminal act in the form of using a weapon, committing an explosion, arson, or other actions, the responsibility for which is provided by Article 258 of the Criminal Code of Ukraine. In the event that terrorist activity is accompanied by the commission of crimes provided for by Articles 112, 147, 258-260, 443, and 444, as well as other articles of the Criminal Code of Ukraine, responsibility for their commission arises in accordance with the Criminal Code of Ukraine.

In accordance with Article 19 of the Law of Ukraine “On Combating Terrorism”, in case of damage to citizens by a terrorist act, compensation for damage caused to citizens by a terrorist act shall be carried out at the expense of the State Budget of Ukraine in accordance with the law and with the subsequent recovery of the amount of this compensation from the persons who damage has been caused, in accordance with the procedure established by law. Thus, the obligation to compensate for the damage is assigned to the state, regardless of its fault, and the right of claim against the guilty person is transferred to the state that compensated the damage to the individual.

In accordance with Part 1 of Article 79 of the Law of Ukraine “On International Private Law” No. 2709-IV dated 23.06.2005, the provisions on diplomatic missions and consular institutions of foreign countries in Ukraine, approved by Presidential Decree No. 198/93 of June 10, 1993, Article 32 of the Vienna Convention of 1961 and Article 5 of the UN Convention on Jurisdictional Immunities of States and Their Property dated December 2, 2004, filing lawsuits against a foreign state without the consent of its competent authorities is prohibited. Admission to filing a lawsuit against a foreign state, its involvement in the case as a defendant or a third party, seizure of property belonging to a foreign state and located on the territory of Ukraine, as well as the usage of any other means of securing a lawsuit and recovery of such property, can be carried out only with the consent of the competent authorities of the relevant state unless it is stipulated by an

international treaty of Ukraine or the law of Ukraine. In practice, obtaining the consent of the competent authorities of the state of the Russian Federation for this is unrealistic. In addition, the direct right to file a claim against the Russian Federation in a Ukrainian court is not provided for either by an international treaty of Ukraine or by the law of Ukraine. Therefore, it is impossible for the affected citizens to exercise their right to compensation for property damage caused by the destruction or damage to their property at the expense of the Russian Federation, even in the event that the actions of the Russian Federation constitute a civil offense.

In some court cases for 2022, there are cases when the courts closed the proceedings or refused to satisfy the demands on the basis that the Russian Federation did not agree to the filing of a lawsuit against it and involvement in the case as a defendant. Also, the courts sent requests to the Russian Embassy in Ukraine to obtain consent or disagreement on the consideration of a civil case and to stop the proceedings in the case until a response is received.

Only after a citizen of Ukraine or a Ukrainian legal entity applies to the national courts of the Russian Federation and receives a refusal of legal protection (a final decision of a court of the Russian Federation on the refusal of compensation) regarding a civil claim for compensation for property damage caused by damage or destruction of real estate on the territory of Ukraine as a result of the armed aggression of the Russian Federation, it is possible to file an application with the European Court of Human Rights, which is an effective means of protection in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms. Yet, the civil action itself can be filed only in the relevant national court of the Russian Federation in accordance with the procedural legislation of the Russian Federation.

Let us note that individuals have the right to apply to the European Court of Human Rights (ECtHR) to receive compensation for destroyed or damaged property. The basis for such an appeal is a violation of Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms (regarding the property protection) and Articles 6 and 8 of the Convention itself. However, it is worth paying attention to the fact that on March 16, 2022, the ECtHR decided to suspend consideration of all complaints against Russia after its withdrawal from the Council of Europe. This means that from September 16, 2022, the Russian Federation ceases to be a party to the Convention but remains responsible for violations before that date.

At this stage, the state of the Russian Federation cannot be recognized as responsible for compensation for property damage in Ukraine; citizens and legal entities should look for other entities that can provide compensation for destruction or damage to property. In order to ensure real compensation for damage and destruction of certain categories of real estate as a result of hostilities, acts of terrorism, and sabotage caused by the military aggression of the Russian Federation, the bill of Ukraine “On compensation for damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation” which was adopted in the first reading as a basis on April 1, 2022, and which will be considered by the Verkhovna Rada of Ukraine in February 2023. This law provides for the definition of legal and organizational principles for providing compensation for damage and destruction of certain categories of real estate objects as a result of military operations.

This bill “On compensation for damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation” No. 7198 introduces a compensation mechanism for destroyed and damaged housing, which proposes to create a State register of damaged and destroyed property and introduce compensation for damage and destruction of real estate caused by hostilities.

Compensation will be provided only for property damaged or destroyed since February 24, 2022, and within three years of the cessation or abolition of martial law in the territory where such property is (was). The legislation does not apply to property in the temporarily occupied territory on the day martial law was introduced. Compensation is offered only for damaged or destroyed residential real estate, including apartments, other residential premises (for example, rooms in dormitories), manor houses, garden and country houses, and construction objects on which supporting and external structures are erected. The common property of the apartment building will also be compensated, but only in case of damage.

Compensation can be received by natural persons, citizens of Ukraine, who have ownership rights to damaged or destroyed property, including members of cooperatives who have paid for housing, but have not yet registered their ownership rights, construction customers, and investors. In addition, their heirs may also receive compensation. Condominiums, housing cooperatives, managers, and other authorized co-owners of apartment buildings can receive compensation for damaged common property. Persons on

the sanctions list and those with convictions for crimes against national security, and their heirs, cannot receive compensation.

The approach to compensation in the bill was changed before the second reading. It will not be possible to receive monetary compensation for damaged property; in such cases, restoration through construction works and/or provision of construction materials is proposed. Owners of destroyed apartments and other residential premises will also not receive monetary compensation but will receive a housing certificate - a document confirming the state's guarantee to finance the purchase of an apartment or other residential premises (including one that will be built in the future) for the amount specified in the document.

Owners of private houses will have the opportunity to choose between receiving a housing certificate for the purchase of an apartment or house or monetary compensation, which will be transferred to a special account to finance construction. There is no limit on the amount of compensation, both in cash and in the form of a housing certificate, and there are no restrictions on the location, type, and area of new housing that will be financed through the certificate. In addition, there is an opportunity to choose a more expensive home and cover the difference with your own funds or to use several certificates from different owners to purchase one object. A housing certificate can be used for 5 years from the date of its issuance, but it cannot be sold during this period, except in cases of inheritance.

If the price of the housing is less than the amount specified in the certificate, the recipient will pay the remaining amount of compensation from his own funds, except for the unreceived part, which will be reimbursed to the recipient from the funds received from the state to compensate for losses.

The deadline for submitting an application for compensation for destroyed housing was extended until the second reading. The application can be submitted during martial law and within one year from the date of its termination or cancellation in the territory where such an object was located. The application can be submitted through the “Diia” portal or in paper form through the Administrative Services Center, social security agencies, or a notary public. To submit an application, it is necessary to attach a copy of a document confirming ownership or purchase of the real estate, as well as, if available, photo and video recording materials before or after destruction. In the absence of these documents, the consideration of the application will be stopped until they are provided.

The commission for consideration of issues regarding the provision of compensation for the destroyed property will be responsible for considering applications and making decisions on providing or refusing to provide compensation. Such commissions will be created by executive bodies of local councils and military or military-civilian administrations of settlements, which will approve decisions on granting or refusing to grant compensation. The provision that executive bodies of local councils were to provide compensation is now excluded from the bill.

The recipient of the compensation will contact the legal entity designated by the Cabinet of Ministers of Ukraine to finance the purchase of housing. This legal entity is obliged to consider the appeal within 10 working days. Participants in hostilities, large families, and persons with disabilities of groups I and II will have a priority right to receive compensation for destroyed objects of real estate. The recipient of the compensation will not have the right to alienate the housing that he purchased or invested using the housing certificate for five years. In order to submit an application for compensation for destroyed property, it is necessary to attach a copy of the document confirming the right of ownership or purchase of real estate and photo and video recording materials before or after the destruction.

The bill defines methods of compensation, which oblige the recipients to use the funds only for the construction or purchase of housing. However, this does not take into account that some owners of destroyed property may not intend to buy a new property within a five-year period, or at all, but all housing needs require financing. This applies especially to those who have another home, or those who have already bought or received it but need financing for improvements, such as repairs, plumbing fixtures, heating systems, furniture, etc. Therefore, the bill does not fully take into account the interests of the owners of destroyed apartments, who will not be able to receive financing for the construction of a new house, even if they have a suitable plot of land.

5. Conclusion

It seems appropriate for Ukraine to adopt a special law on the property liability of the Russian Federation for damage caused by its armed aggression, which would provide for the following provisions:

Violation of paragraph 4 of article 2 of the UN Charter: the Russian Federation committed significant and unjustified armed aggression against Ukraine on February 24, 2022. This fact of large-scale and unjustified armed aggression of the Russian Federation against Ukraine was recognized by the resolution of the extraordinary special session of the UN General Assembly dated March 2, 2022, No. ES-11/1. Therefore, this fact is common knowledge and does not need to be proven during the trial and has prejudicial significance;

The Russian Federation bears full legal responsibility for the property and non-property damage caused to civilian individuals and legal entities as a result of its armed aggression, including property damage caused by armed forces under its control, as well as property damage caused by armed forces controlled by Ukraine during their lawful the right to self-defense. In particular, compensation is subject to damage caused as a result of damage or destruction of property during hostilities; seizure of property by armed groups under the control of the Russian Federation; loss of property by a person who was forced to leave his place of residence due to hostilities or occupation.

In order to more effectively protect the interests of victims of Russia's armed aggression, the execution of court decisions on the recovery of funds for compensation for the damage caused should be carried out within the framework of joint executive proceedings under a special procedure, which is controlled by Ukraine.

The adoption of a law on such a procedure will provide Ukraine with a legal basis to appeal to the governments of other countries with a request to provide assistance in the execution of court decisions by confiscation of Russian assets located in these countries. Therefore, research on compensation for damages caused to the population as a result of damage or destruction of their housing during armed aggression confirms the need to adopt a special law on social protection and specifics of compensation for damages to the population whose housing was damaged or completely destroyed during such aggression. In conclusion, it can be concluded that the implementation of the current legislation on the compensation of material damages is possible, but with some significant limitations that must be taken into account at each stage of their application.

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