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**Current Issues of Compensation for Damages to Victims of Crimes
under the Present Conditions in Ukraine**

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Article 3 of the Constitution of Ukraine establishes that a person, their life and health are recognized as the highest social value¹. This implies a direct obligation of the state to ensure the right to life of those under its jurisdiction, in particular through the adoption of effective norms of criminal law aimed at preventing the commission of criminal offences against the person. In the event that, despite all the measures taken by the state, a criminal offence is still committed, the victim must be provided with due process rights and guarantees. This definitely includes the legal mechanism of compensation to the victim for damages caused as a result of the crime.

1. The Beginnings under Soviet Law

It is appropriate to emphasize that the emergence of the legal basis of the procedure to compensate the damages of victims of crimes on the territory of modern Ukraine dates back to the adoption of the Criminal Procedure Code of the RSFSR (Russian Socialist Federative Soviet Republic) in 1922. Articles 14-18 of that law laid the foundations of the mentioned procedure, determining its lawsuit nature². Under these conditions, the victim of crimes filed a lawsuit against the guilty person or the person responsible for the guilty person's actions. This claim was considered by the court together with the criminal proceedings.

The Ukrainian Criminal Procedure Code of 1960 maintained the lawsuit nature of the procedure for compensation of damages to victims of crimes. In addition, several amendments were introduced to the code at that time. As a result, the costs of the in-patient treatment of the victim of the crime were also reimbursed in the lawsuit. Law enforcement agencies were expected to assist the victim in the enforcement of their claims by imposing a seizure on deposits, valuables and other property of the accused or suspect or persons by law financially responsible for their actions, wherever these deposits, valuables and other property were located, as well as by confiscating the seized property (Article 126 of the Criminal Procedure Code of Ukraine of 1960). Another innovation was that the prosecutor was authorized to present or support a lawsuit filed by the victim for damages caused by the crime if the protection of the interests of the state so required or the victim, due to their health or other reasons, was unable to protect their rights (Articles 29, 93-1 of the Criminal Procedure Code of Ukraine of 1960)³.

¹ The Constitution of Ukraine. Verkhovna Rada of Ukraine; Constitution of Ukraine, Constitution, Law on June 28, 1996 № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>.

² Criminal procedure code of the USSR 1922.
URL: <https://topawardpicks.top/?u=arnpae3&o=n5f2tyf&cid=c2RsO2Y0ZTBjMDJhMjQ=>.

³ Criminal Procedure Code of Ukraine. Code of Ukraine; Law, Code of 12/28/1960 No. 1001-05.
URL: <https://zakon.rada.gov.ua/laws/show/1001-05#Text>.

One of the key lacunae in the criminal procedural codes of the Soviet era in the context of compensation for damages to crime victims was the lack of a normative definition of the state's obligation to provide compensation to victims from state funds, as well as the lack of a reliable mechanism for this. Domestic academics repeatedly drew attention to these gaps in the law.

2. The Ukrainian Criminal Procedure Code of 2012 and the Ukrainian Civil Code of 2003

Since the declaration of Ukraine's independence in 1991, the national legislator has been working to gradually improve the situation of crime victims in both the legal and factual (practical) spheres.

First of all, certain positive legal developments that have taken place since the adoption of the new Criminal Procedure Code of Ukraine in 2012 should be noted. Its Article 127 [Reparation (compensation) of damage to the victim] states:

„1. The suspected person, the accused person as well as, with their consent, any other physical or juridical person has the right at any stage of the criminal proceedings to compensate the damage caused to the victim, the territorial community, or the state as a result of a criminal offence.

2. Damage caused by a criminal offence or other socially dangerous act may be recovered by a court decision based on the results of the consideration of a lawsuit in criminal proceedings.

3. The damage caused to the victim as a result of a criminal offence shall be compensated to them at the expense of the State Budget of Ukraine in the cases and in the manner prescribed by law.”

In addition, the Criminal Procedure Code of Ukraine of 2012 established that damage caused to the victim as a result of a criminal offence may be compensated on the basis of a reconciliation agreement between the victim and the guilty person (Article 479)⁴.

So, in fact, the new and key conditions of the 2012 code in the context of determining the legal mechanism for the compensation of damages to victims of crimes were the establishment of the obligation of the state to compensate such losses to the victim, as well as the establishment of the legal procedure for compensation of damages on the basis of reconciliation agreements between the victim and the perpetrator.

⁴ Criminal Procedure Code of Ukraine. Code of Ukraine; Law, Code of April 13, 2012 No. 4651-VI.
URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

The approach of the domestic legislator regarding the normative determination of the order of damages to victims of crimes is not limited to the norms of the Criminal Procedure Code. Since one of the ways of compensating victims of crimes is a lawsuit, it is quite natural that this is also defined in the Civil Code of Ukraine of 2003. Articles 1177 and 1207 of the Civil Code indicate that damage caused by mutilation, other damage to health or the death of a citizen, or damage to private property as a result of a crime, shall be reimbursed by the state if the person who committed the crime has not been identified or is insolvent. The conditions and procedure for the compensation by the state for the specified damage shall be established by law⁵.

3. Open Questions

It should be noted that in the field of compensation for damages to victims of crimes, the following issues remain partially resolved or not resolved at all.

3.1. A Partial Solution: Execution in the Assets and Income of the Perpetrator

The first open issue is the problem of the forced collection of assets from the guilty person under conditions of non-reimbursement of damages to the victim. Today, this problem has been partially solved by the Ukrainian legislator. The legal mechanism to force the perpetrator of a crime to pay damages to the victim is regulated by a number of normative legal acts, in particular the Law of Ukraine „About Execution Proceedings“ of 2016, the Criminal and Execution Code of Ukraine of 2003 and a number of subordinate normative legal acts. Subjects that carry out the enforcement of court decisions regarding the recovery from persons guilty of crimes are state bodies belonging to the portfolio of the Ministry of Justice of Ukraine. The most important one is the State Execution Service of Ukraine. This state body implements in accordance with Article 10 of the Law of Ukraine „About Enforcement Proceedings“ of 2016 the following measures to enforce decisions on compensation for damages to victims:

1) foreclosure on funds, securities, other property (property rights), corporate rights, intellectual property rights, objects of intellectual and creative activity, other property (property rights) of the debtor, including if the debtor owns them jointly with other persons;

2) foreclosure on wages, pensions, grants, and other income of the debtor (guilty person).

⁵ Civil Code of Ukraine. Code of Ukraine; Law, Code dated 16.01.2003 No. 435-IV.
URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

If the person guilty of the crime is in a place of deprivation (restriction) of freedom or in prison, the execution of the court decision on compulsory collection is carried out by the State Criminal Enforcement Service of Ukraine. This is especially relevant when the guilty person does not have any property specified in clause 1 of Article 10 of the Law of Ukraine „About Execution Proceedings“ of 2016. In such a case, the State Criminal Enforcement Service of Ukraine carries out forced collection from the wages of convicts who work while in prison. The amount of deductions from the wages of convicted persons to compensate for damages may range from 20 to 50% (Article 70 of the Law of Ukraine „About Execution Proceedings“)⁶. According to Article 3-1 of the Law of Ukraine „About the Remuneration of Labour“ of 1995, the amount of an employee’s salary for a fully completed monthly (hourly) rate of work cannot be lower than the amount of the minimum wage⁷. This should equally apply to convicts who work at production enterprises in prisons. It should be noted that according to Article 8 of the Law of Ukraine „About the State Budget of Ukraine for 2024“, the minimum wage in Ukraine from January 1, 2024, was 7,100 hryvnias (165-170 EUR), since April 1, 2024, it has been 8,000 hryvnias (185-190 EUR). Hourly rates were 42.6 hryvnias (1 EUR) from January 1, 2024, and 48 hryvnias (1.13 EUR) from April 1, 2024. This article also states that the amount of the minimum wage, if it is used as a calculation value for calculating payments according to court decisions, is determined at the level of 1,600 hryvnias (37.5-38 EUR)⁸. The last part of this article is quite relevant in today’s conditions in the context of the existence of a legal mechanism of forced collection from the wages of convicts in order to compensate victims of crimes. This is due to the fact that the volume of production in most enterprises of penal institutions is extremely small. As a result, convicts are quite often paid according to the hourly payment scheme and therefore do not always receive the full monthly (hourly) work rate while in prison. As already mentioned, the minimum calculation value for calculating payments according to court decisions is set at the level of 1,600 hryvnias, but given the reality of remuneration of prison labour, the wages of convicts may be less than even this amount of money. Consequently, the collection of 20 to 50% of such an extremely meagre salary in order to compensate the damages the prisoner’s crimes caused, which may amount to hundreds of thousands of hryvnias and sometimes even more, indicates a significant problem in the context of compensating victims of crimes.

Therefore, the problem of the mechanism of forced recovery from guilty persons for the benefit of victims of crimes has been resolved partially by the legislator. On the one hand, if the person

⁶ About execution proceedings. Law of Ukraine dated 02.06.2016 No. 1404-VIII.
URL: <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

⁷ About salary. Law of Ukraine dated March 24, 1995 No. 108/95-VR.
URL: <https://zakon.rada.gov.ua/laws/show/108/95-%D0%B2%D1%80#Text>.

⁸ About the State Budget of Ukraine for 2024. Law of Ukraine; Budget, Distribution, List dated November 9, 2023 No. 3460-IX. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>.

guilty of the crime has property that can be levied, the victim may receive adequate satisfaction. On the other hand, if the convicted person does not have such property and the only income is the minimum wage obtained while in prison, the victim can recover only a small part of their claims for damages.

3.2. Unresolved Issues: Destitute or Unknown Perpetrator or Closure of the Criminal Prosecution Procedure

Apart from this at least partially resolved issue, there are now urgent issues in the context of compensation for damages to victims of crimes which have not yet been resolved at all by the legislator. Such questions will arise under the following conditions:

- 1) if the guilty person does not have liquid assets (liquid property) that can be levied to compensate victims of crimes and also does not have any income from which deductions can be made;
- 2) it is not possible to establish the person who committed the crime;
- 3) criminal proceedings are suspended or the criminal case is closed.

These cases quite naturally lead to the solution of an active intervention of the state, which must assume the burden of compensation for damages to victims of crimes. It is this aspect of present-day realities that remains unresolved in today's Ukrainian legislation. This has an extremely negative impact on society's assessment of the effectiveness of the entire criminal justice system, which is quite naturally perceived by many citizens at an extremely low level.

It should be noted that the state has indeed taken certain steps to introduce a state mechanism to compensate victims of crimes. Thus, in 2005, Ukraine signed the European Convention on the Compensation of Victims of Violent Crimes of 1983. Also, Ukraine signed in 2011 and ratified in 2022 the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of 2014, better known under the name of 'Istanbul Convention'. These international treaties provide for the creation and operation of specified legal mechanisms for the compensation of damages that victims of crimes incurred. In order to fulfil its international obligations, the Cabinet of Ministers of Ukraine in 2020 prepared and submitted to the Supreme Council of Ukraine a number of draft laws, among which the following should be highlighted: draft law on the Compensation for Victims of Violent Criminal Offences, dated July 17, 2020, No. 3892; and draft law on Amendments to the Budget Code of Ukraine on the Mechanism for Financial Support of Compensation for Victims of Violent Criminal Offences, also dated July 17, 2020, No. 3894.

Draft law No. 3892 establishes a procedure for strengthening the protection of the rights of, and providing state support for, victims of violent criminal offences. This draft law defines the list of

persons entitled to compensation from the state and the nature of the damage to be compensated by the state. Payments may be made for lost earnings (income) as a result of a damage to health, expenses for medical services, medicines and medical products, and expenses incurred by family members of the victim for treatment and/or burial in the event of the victim's death. The draft determines the amount of damage and the procedure for its compensation by the state and regulates the procedure for the formation of the state fund. That fund was to be financed by money received from the execution of pecuniary punishments and fines as well as from correctional works⁹.

This bill was considered by a number of committees of the Supreme Council of Ukraine. The Committee on Ukraine's Integration into the European Union concluded that that draft law complied with Ukraine's international legal obligations in the field of European integration. On the other hand, the Main Scientific and Expert Department of the Supreme Council of Ukraine expressed a number of comments regarding draft law No. 3892. These comments generally related to the inconsistency of the norms of the draft law with the current legislation of Ukraine. Similar remarks were made by the Committee on Law Enforcement of the Supreme Council of Ukraine and the Committee on Budget Issues of the Supreme Council of Ukraine. Ultimately, in February 2021, this draft law was withdrawn from consideration by the Supreme Council of Ukraine. Since that time, no revised version of this draft law has been submitted to the Supreme Council of Ukraine for reconsideration.

Draft law No. 3894 defined the concept of the State Fund for Compensation for Victims of Violent Criminal Offenses and the state sources of the formation of that fund¹⁰. The Committee on Ukraine's Integration into the European Union considered that draft law and concluded that it complied with Ukraine's international legal obligations in the field of European integration. However, the Main Scientific and Expert Department of the Supreme Council of Ukraine commented that the legal categories used in that draft law were incorrect, leading to the inconsistency of certain proposed norms of the draft with the norms of the current legislation of Ukraine. The Department also emphasized that that project was systemically related to project No. 3892 and that both projects should be considered jointly. As a result, draft law No. 3894, too, was withdrawn in February 2021, and since then it has not been submitted again.

⁹ Draft Law on Compensation for Victims of Violent Criminal Offenses dated 07.17.2020 № 3892.
URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69541.

¹⁰ Draft Law on Amendments to the Budget Code of Ukraine on the mechanism of financial provision of compensation for damages to victims of violent criminal offenses dated 07.17.2020 № 3894.
URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/3416>.

All other drafts submitted to the Supreme Council of Ukraine in the context of the legal mechanism for providing compensation to victims of crimes at the expense of the state, namely draft laws No. 3149¹¹, 3150¹², and 3893¹³, were in fact earlier versions of draft laws 3892 and 3894.

It should be noted that the cited draft laws were related to shaping the legal mechanism for compensation of damages to victims of violent crimes. Draft law No. 3892 defined this category of crimes as an intentional, socially dangerous act included in the Criminal Code of Ukraine, as a result of which the victim suffered serious bodily injury or death, as well as a socially dangerous act against sexual freedom and sexual integrity or committed against a child, which caused physical harm or psychological abuse to the victim.

In accordance with the official statistical information of the Office of the Prosecutor General of Ukraine, there were 355,023 victims of crimes in Ukraine in 2023. Among these were 48,404 victims of violent crimes. In 2022, the total number of victims of crimes in Ukraine amounted to 230,939, among them 13,202 victims of violent crimes. In 2021, the total number of victims of crimes in Ukraine was 197,274, with 3,249 of them being victims of violent crimes¹⁴.

It is not difficult to calculate that even under the conditions of the introduction of legal mechanisms for the compensation of damages to victims of violent crimes into the current legislation, a considerable number of victims of other categories of crimes remain who would not at all be able to claim state assistance for compensation for the damages they suffered as a result of crimes committed against them.

As an example, we may cite the quantitative indicators of victims of other categories of crimes, which traditionally carry a specific weight among all crimes committed in Ukraine, i.e. crimes against property. In 2023, there were 153,770 victims of crimes against property, among them, 76,814 victims of thefts, 2,126 victims of robberies, and 74,830 victims of fraud¹⁵. The numbers for 2022 are 91,725 victims of crimes against property, comprising 62,517 victims of theft, 2,660 victims of robberies and 26,548 victims of fraud¹⁶. Finally, in 2021, 125,540 persons fell victim to this category of crimes, including 101,758 victims of theft, 5,679 of robberies and 18,103 of fraud¹⁷.

¹¹ Draft Law on the Compensation for Victims of Violent Criminal Offenses dated 03.03.2020 № 3149.

URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68286.

¹² Draft Law on Amendments to the Budget Code of Ukraine on the mechanism of financial provision of compensation for damages to victims of violent criminal offenses dated 03.03.2020 № 3150.

URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68287.

¹³ Draft Law on Amendments to the Code of Ukraine on Administrative Offences and the Criminal Procedure Code of Ukraine on Providing a Mechanism for Compensation for Victims of Violent Criminal Offenses dated 07.17.2020 № 3893. URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69542.

¹⁴ About registered criminal offences and the results of their pre-trial investigation. URL: <https://gp.gov.ua/ua/posts/prozareystrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>

¹⁵ The same source.

¹⁶ The same source.

¹⁷ The same source.

As already mentioned, this sufficiently large number of victims does not belong to the categories of victims of violent crimes. Consequently, their prospects of receiving assistance from the state as a result of compensation for damages caused by crimes presently are practically zero.

4. Conclusion

In conclusion, it should be noted that even in Soviet times, the protection of the rights and legitimate interests of individuals and legal entities was a legal task of the criminal justice system (Article 2 of the Criminal Procedure Code of Ukraine of 1960). This is reflected in Article 2 of the current Criminal Procedure Code of Ukraine of 2012, but has remained unresolved until today in the context of state provisions of compensation for damages to victims of crimes. This fully applies to victims of violent crimes, the protection of whose rights Ukraine has recognized as a priority by signing and ratifying the relevant international conventions, as well as victims of other categories of criminal offences, since the legal mechanism for restoring the violated rights of these victims is also unresolved in Ukraine's present judicial system. These topical issues of today's legal reality of Ukraine are extremely relevant for the entire sphere of criminal justice of our country and need to be settled and resolved.

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