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## SCIENTIFIC AND PRACTICAL ANALYSIS OF CURRENT REGULATIONS, JUDICIAL PRACTICE AND LEGISLATIVE INITIATIVES IN THE FIELD OF COMPENSATION FOR PROPERTY DAMAGE CAUSED BY DAMAGE TO REAL ESTATE AS A RESULT OF ARMED AGGRESSION OF THE RUSSIAN FEDERATION

**Abstract.** The military aggression of the Russian Federation against Ukraine, which began on February 24<sup>th</sup>, 2022, has already raised a lot of questions about the grounds for the procedure and methods of compensation (retribution) for property damage caused by the Russian Federation as a result of military aggression. Let's analyze what prospects we have today regarding the possibility of implementation of such an opportunity.

**Purpose.** The main aim of the article is to show and stress that the present Ukrainian juridical compensation mechanisms (especially civil law regulation) are not proper to the case of the Russian war aggression. Such theoretical and practical issue may be solved by special complex rule concerning the compensation mentioned above.

**Research methods.** The biggest part of data in this article were used to analyze and compare two situations: the compensation for property damage caused by damage to real estate as a result of armed aggression of the Russian Federation in 2022 and the period of ORDLO (Russian aggression in Donetsk and Lugansk oblasts in 2014).

**Results.** The conclusions made in this article show that for Ukrainian residents affected by the Russian war aggression, especially ones whose property were damaged or ruined by the Russian Federation as a result of military aggression, are not provided with effective juridical compensation mechanisms to cover losses caused by the 2022 armed aggression of the Russian Federation.

**Conclusions.** The solution to the above problem is the adoption of a specific complex law. Such law should determine and provide the grounds, subjects, whose property is compensated, and procedure for seizing and recovering property in favor of Ukrainian residents who have suffered from property damage. The Ukrainian Parliament is already discussing some law drafts. The most debatable and polemical issues today are which sources of Russian assets could and should be used to cover losses caused by the Russian Federation's military aggression.

The Draft Law № 7169 was registered in the Verkhovna Rada; it intends to amend the Law of Ukraine "On Fundamental Principles of Forced Withdrawal in Ukraine of Property of Russian Federation and its Residents" that came into force on 7 March 2022 (hereinafter – Law of Ukraine № 2116-IX dated 03 March 2022). This Draft Law aims to widen the scope of persons, whose property could be withdrawn in Ukraine due to Russian full-scale military aggression and specifies the purpose of such actions: towards future reparations to Ukraine.

The second vector of the Draft Law – specification of the purpose of forced withdrawal, is clear and necessary. However, the first vector is ambiguous and potentially dangerous.

If the Verkhovna Rada would pass the Draft Law № 7169, it would be possible to withdraw the property which belongs not only to the residents of the Russian Federation and legal entities, where Russia acts as a shareholder, beneficiary and/or owns a share (expressly or implicitly) in the charter capital. Property withdrawal may concern any individuals and legal entities (irrespective of their nationality, residency, centre of main interests etc.), who have political and/or economic links with the aggressor state. Political links are expressed in public support or objection of military aggression of the Russian Federation in Ukraine. Economic links are shown in proceeding of business activities on the territory of the aggressor state during martial law in Ukraine.

In other words, authors of the Draft Law № 7169 laid a potential opportunity to withdraw the property of any person, who "in word or in deed" supports military aggression against Ukraine, decisions of the Russian government and its policy

**Key words:** property damage, armed aggression, compensation, retribution violation of the Convention, assets, confiscation, withdraw property.

### 1. Introduction

General theoretical civil science defines overall characteristics of the grounds for civil liability for property damage caused by the actions of the Russian Federation on the territory of Ukraine.

The general grounds for liability for property damage are determined by the Civil Code of Ukraine, following the provisions of which:

- property damage caused by illegal decisions, actions or omissions to personal non-property rights of a person or entity, as well as damage caused to the property of a person or entity shall be reimbursed in full by the person who caused it. The person who caused the damage is exempt from reimbursed if he proves that the damage was not his fault (Article 1166 of the Civil Code of Ukraine. Implementation of this rule is carried out either in civil or criminal proceedings – when it is reviewed in a civil lawsuit);

- damage caused to an individual who has suffered from a criminal offense must be reimbursed in accordance with the law. Damage caused to the victim as a result of a criminal offense is compensated at the expense of the State Budget of Ukraine in cases and in the manner enshrined by law (Article 1177 of the Civil Code of Ukraine. However, this rule does not apply because there is no law);

- unless otherwise provided by law, taking into account the circumstances of the case, the court may, at the choice of the victim, oblige the person who caused damage to property, reimburse it in kind (transfer the thing of the same kind and quality, repair the damaged thing, etc.) or reimburse damages in full. The amount of damages to be reimbursed to the victim is determined in accordance with the real value of the lost property at the time of the case or the performance of work necessary to restore the damaged thing (Article 1192 of the Civil Code of Ukraine).

Thus, the implementation of the institute of civil liability in Ukraine, in particular in the form of compensation for property damage, is carried out either voluntarily or compulsorily

(judicially). The legal basis for such liability is the body of a civil offense and also identification of the violator who caused property damage. Proof of these facts (except guilt) rests with the victim. Compensation for property damage is a measure of civil liability; the principle of full compensation for damage is applied.

In order to impose civil liability in the form of compensation for property damage caused to immovable property on the territory of Ukraine as a result of armed aggression of the Russian Federation, it requires each individual victim – the owner of the damaged property – to sue the state of the Russian Federation. That is, the state of the Russian Federation must act as a defendant in a civil lawsuit.

It should be noted that four years ago, the Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" as of January 18, 2018, № 2268-VIII provided that liability for material or immaterial damage caused to Ukraine as a result of the armed aggression of the Russian Federation shall be borne by the Russian Federation in accordance with the principles and norms of international law (Part 4, Article 2 of this Law). In addition, the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" as of April 15, 2014, № 1207-VII also provided that: *compensation for material and moral damage* caused by the temporary occupation of Ukraine, legal entities, public associations, citizens of Ukraine, foreigners and stateless persons, *is fully imposed on the Russian Federation* as the state carrying out the occupation. The State of Ukraine will use all possible means to compensate for material and moral damage by the Russian Federation (Part 6 of Article 5 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine"). This Law even established that in case of damage by non-resident foreign state entities, jurisdiction will

be established by the place of damage, taking into account the rules of jurisdiction established by this Law (Article 12).

To implement these provisions in terms of judicial protection in Ukrainian courts, the Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" amended Article 28 of the CPC of Ukraine (paragraph 17) and Article 5 Of the Law of Ukraine "On Judicial Fees" (paragraphs 21 and 22), by which the state of Ukraine "formally" provided for the legal possibility for victims of property destruction in eastern Ukraine, citizens of Ukraine, to fill with the national (Ukrainian) courts (at their place of residence or stay) against the aggressor state of the Russian Federation for compensation for property and / or moral damage in connection with the temporary occupation of Ukraine, armed aggression, armed conflict that led to forced relocation from the temporarily occupied territories of Ukraine, deaths, captivity, unlawful imprisonment or abduction as well as violation of the right of ownership on movable and/or immovable property under the rules of the CPC of Ukraine.

As mentioned above, in the implementation of civil liability in the form of compensation for property damage, the state of the Russian Federation must act in a civil case in the procedural status of the defendant in a civil lawsuit filed against it. However, it should be noted that filing lawsuits against a foreign state without the consent of its competent authorities is expressly prohibited by Art. 79 of the Law of Ukraine "On Private International Law", provisions on diplomatic missions and consular posts of foreign states in Ukraine, approved by Presidential Decree as of June 10, 1993, № 198/93 (198/93), Article 32 of the 1961 Vienna Convention, Article 5 of the Convention of United Nations on the jurisdictional immunities of states and their property as of December, 2 2004. It is unrealistic to obtain such consent from the competent authorities of the Russian Federation. And neither Ukraine's international treaty nor the law of Ukraine provides for the direct possibility of filing a lawsuit against the Russian Federation in a Ukrainian court. That is, the exercise (including in court) in the Ukrainian courts by citizens of the right for compensation for damage caused by the destruction of their property at the expense of the Russian Federation is excluded, even if the actions of the Russian Federation will be proven as a civil offense.

In addition, the case law of the Supreme Court on filing such lawsuits against the state of the Russian Federation has already been formed. For example, the judgment of the Supreme Court

of the Second Judicial Chamber of the Civil Court of Cassation as of 27.10.2021 in case № 710/784/19 (proceedings № 61-5289cb20) concluded that the defendant, the Russian Federation, has judicial immunity in Ukraine and, therefore, the consent of the diplomatic mission is required to file a claim for damages. In the absence of such consent, a foreign state cannot obtain the legal status of a defendant in the civil proceedings in Ukraine, and the Ukrainian court has no right to carry out further procedural actions. Similar conclusions are found in the judgment of the Supreme Court as of May 13, 2020, in case № 711/17/19, as of June 9, 2021, in case № 265/7703/19, as of August 11, 2021, in case № 542/1323/18, as of September 1, 2021, in the case № 754/10080/19 (Judgment of the Supreme Court of the Second Judicial Chamber of the Civil Court of Cassation as of 27.10.2021 in case № 710/784/19 (case № 61-5289cb20) (URL: <https://www.zakon-i-normativ.info/index.php/component/lica/?href=0&view=text&base=5&id=134424&menu=135063>).

Therefore, a civil lawsuit can be filed against the Russian Federation for compensation for property damage caused to real estate in Ukraine as a result of the armed aggression of the Russian Federation only in the relevant national court of the Russian Federation in accordance with the procedural legislation of the Russian Federation.

After applying to the national courts of the Russian Federation and receiving a refusal of judicial protection (final judgment of the court of the Russian Federation refusing compensation), the victim, the citizen of Ukraine or Ukrainian legal entity, has the right under the Convention for the Protection of Human Rights and Fundamental Freedoms to apply to the European Court of Human Rights, which will be an effective means of protection. However, it is worth highlighting the recent resolution of the European Court of Human Rights (March 22, 2022) on the consequences of Russia's termination of membership in the Council of Europe in the light of Article 58 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to which the judge of the Supreme Court T. Antsupova rightly drew attention: a) The Russian Federation ceases to be a High Signatory Party to the Convention as of September 16, 2022; b) The Court shall have jurisdiction to rule on applications against the Russian Federation which may constitute a violation of the Convention, provided that they have lasted until September 16, 2022 (Comment of the judge of the Supreme Court Tetyana Antsupova on the adoption by the European

Court of Human Rights of the Resolution on the consequences of the termination of Russia's membership in the Council of Europe. Official website of the Supreme Court. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1264425/>). Therefore, the facts of causing property damage as a result of destruction and damage to immovable property on the territory of Ukraine as a result of military aggression of the Russian Federation from February 24<sup>th</sup>, 2022 till September 16<sup>th</sup>, 2022 may be reviewed by the European Court of Human Rights.

## 2. Analysis of the draft law No. 7198 (as adopted on April 1, 2022)

Given the above provisions of civil law of Ukraine, owners, citizens and legal entities, can obtain compensation for property damage caused by the damage or destruction of property in Ukraine on the grounds and in the manner prescribed by law and from a clearly defined responsible entity.

As noted above, it is impossible to exercise civil liability in Ukrainian courts in relation to the state of the Russian Federation within the legal field of Ukraine. Therefore, in order to ensure real compensation for property damage, another entity must be identified, which with its consent (in the absence of a statutory obligation to bear civil liability for the actions of another entity) will provide compensation for destroyed and damaged property due to hostilities, terrorist acts, and sabotage caused by the military aggression of the Russian Federation. Therefore, in order to determine the legal and organizational basis for state compensation for damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, and sabotage caused by military aggression of the Russian Federation from the date of entry into force of Presidential Decree as of February 24, 2022, № 64 "On the imposition of martial law in Ukraine", the Verkhovna Rada of Ukraine submitted the draft law of Ukraine "On compensation for damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation", adopted by the Verkhovna Rada of Ukraine in the first reading on the basis from 01.04.2022 (Draft Law of Ukraine "On Compensation for Damage and Destruction of Certain Categories of Immovable Property as a Result of Combat, Terrorist Acts, Sabotage Caused by Military Aggression of the Russian Federation" from March 24<sup>th</sup>, 2022 № 7198. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?pf3516=7198&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=7198&skl=10))(hereinafter – bill № 7198).

Analysis of the provisions of the content of draft № 7198 shows that its legal regulation will apply to:

1) individuals – citizens of Ukraine who are: a) owners of damaged and/or destroyed real estate; b) individuals who have invested and financed the construction of housing construction objects in respect of which the right to perform construction works has been obtained and which have not been put into operation; c) members of housing construction (housing) cooperatives who bought an apartment, other residential premises of the cooperative, but did not register the ownership of it; d) the heirs of the individuals specified in subparagraphs "a" – "c" of this paragraph;

2) associations of co-owners of apartment buildings, managers of apartment buildings, housing construction (housing) cooperatives, which maintain the relevant buildings, to restore the damaged common property of the apartment building.

The compensation mechanism provided in draft № 7198 is relatively simple and includes the following stages: a) submission of an application (including in electronic form) for compensation to the relevant Commission, regardless of the place of residence (stay) of the individual or location of the legal entity the recipient of compensation may independently provide an assessment of the value of the damaged real estate or an inspection of the possibility/impossibility of restoring of real estate). The application is submitted through the administrator of the center for the provision of administrative services, an official of the social protection body, or a notary; b) consideration of the application for compensation by the Commission and decision-making on compensation (the term of consideration of the application by the Commission does not exceed 30 calendar days from the date of submission of the application); c) providing the executive body of the council with compensation.

The draft law provides for the provision of compensation in the form of: 1) monetary compensation by transferring funds to the current account of the recipient of compensation with a special regime of use for these purposes. The procedure for opening and maintaining such accounts is determined by the National Bank of Ukraine (the amount of monetary compensation is determined by the assessment of the cost of restoration of the damaged property, considering the degree of its damage and the cost of its restoration); 2) a real estate object by financing its construction (by financing the construction of a new real estate object with an equivalent area, type and functional purpose. The maximum amount of compensation in the form of a real estate object may not exceed 150 m<sup>2</sup> per unit) The calculation of the value of 1 m<sup>2</sup> of the area of the real estate object is carried out according

to the methodology determined by the Cabinet of Ministers of Ukraine); 3) financing of construction works on restoration of damaged joint property of an apartment building (the amount of compensation in the form of financing of construction works is determined by estimating the cost of restoration of damaged common property of an apartment building taking into account the degree of damage).

However, as it can be seen from the explanatory note to the relevant draft, *"implementation of the draft law will not require additional funding from state or local budgets"*, so it needs a detailed analysis of the compensation mechanism provided by the bill to assess its feasibility. It should also be noted that the draft law *will not directly regulate* public relations to which it is aimed, because in accordance with its Final and Transitional Provisions, the Cabinet of Ministers of Ukraine is tasked *to develop a procedure for compensation*, and ensure: *approval of action plan* of actions for implementation of this law; *development and submission* to the Verkhovna Rada of Ukraine of the draft law of Ukraine on amendments to some legislative acts aimed at providing compensation for destroyed real estate as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation in the form of providing facilities real estate; *adoption of normative legal acts* necessary for the implementation of this Law and bringing its normative legal acts in compliance with this Law; *adoption of the procedure and conditions for providing* and using subventions from the state budget to local budgets to provide compensation for damaged and destroyed real estate as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation; bringing ministries and other central and local executive bodies in line with their regulations in accordance with this Law; bringing building norms and other normative documents in line with the Law of Ukraine "On Energy Efficiency of Buildings", including the definition of an energy certificate as the only document that defines energy characteristics during the design of a construction project; *creation of the State Register of property* damaged and destroyed as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation; *collection of information* on apartments, other living quarters in the building, private houses, garden and country houses that were destroyed as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation in the manner prescribed by the Cabinet of Ministers of Ukraine; *annually in the state budget*

*to provide expenditures* for the implementation of measures provided by this Law.

*This set of measures, which the bill provides for the Cabinet of Ministers of Ukraine, as well as the bill provides sources of funding for compensation (fund for the restoration of property and destroyed infrastructure of Ukraine in connection with the armed aggression of the Russian Federation; international technical and/or repayable or non-repayable financial assistance; other sources, not prohibited by the legislation of Ukraine) in the absence of real guarantees for the formation of such a fund and the receipt of international assistance in sufficient quantities, indicate an unlikely and long-term prospects for the purpose of the bill.*

Thus, the compensation mechanism provided by draft № 7198 is not legally compensation for property damage as a measure of civil liability, although it provides for the principle of full compensation in understanding of provisions of the Civil Code of Ukraine. And the implementation of the proposed compensation mechanism requires the implementation of a number of formalities and finding sources of funding.

### **3. Analysis of other drafts focused on compensation due to Russian aggression**

The draft law of Ukraine "On Protection of Property Rights and Other Real Property Rights of Victims of Anti-Terrorist Operation or Joint Forces Operation" (Draft law of Ukraine "On Protection of Property Rights and Other Real Property Rights of Victims of Anti-Terrorist Operation or Joint Forces Operation" as of 17.03.2021 № 5177-1. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/25987>) (draft № 5177-1) and the draft law of Ukraine "On Protection of Property Rights and Others Proprietary Rights of Victims of Armed Aggression" (Draft law of Ukraine "On Protection of Property Rights and Others Proprietary Rights of Victims of Armed Aggression" as of 01.03.2021 № 5177. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/25726>) (draft № 5177), which set out alike mechanisms for state compensation (both drafts were included in the agenda), are similar to draft № 7198.

At the same time, two more drafts were registered in the Verkhovna Rada of Ukraine: the draft law of Ukraine "On Reconstruction of Housing Lost as a Result of the Russian Federation's Armed Aggression Against Ukraine" (Draft law of Ukraine "On Reconstruction of Housing Lost as a Result of the Russian Federation's Armed Aggression Against Ukraine" as of 10.03.2022 № 7134. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39189>.) and the draft law of Ukraine "On Amendments to the Budget Code of Ukraine on Financing

the Reconstruction of Housing Lost as a Result of the Armed Aggression of the Russian Federation against Ukraine" (Draft law of Ukraine "On Amendments to the Budget Code of Ukraine on Financing the Reconstruction of Housing Lost as a Result of the Armed Aggression of the Russian Federation against Ukraine" as of 10.03.2022 № 7135. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39190>) do not contain specific compensation mechanisms.

The draft law of Ukraine "On Compensation for Property Lost, Damaged and Destroyed as a Result of the Armed Aggression of the Russian Federation and Fair Distribution of Reparations" (Draft law of Ukraine "On Compensation for Property Lost, Damaged and Destroyed as a Result of the Armed Aggression of the Russian Federation and Fair Distribution of Reparations" from 31.03.2022 № 7237. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39332>)(bill № 7237), which, compared to draft № 7198, provides for a slightly different compensation mechanism is of particular interest. The relevant draft stipulates that the protection of property rights of affected individuals, their heirs and affected legal entities is carried out by paying primary (1) and full (2) compensation for lost, damaged, or destroyed property. 1) Primary compensation is used to protect property rights, the right to housing of individuals, the restoration of vital functions and/or services provided by legal entities, as well as the restoration of normal life in Ukraine. The right to primary compensation is provided gradually and proportionally depending on the financial capabilities of the state of Ukraine. 2) Full compensation is used to protect the property rights of victims, to ensure fair and targeted distribution of reparations and/or other penalties from the Russian Federation. The right to full compensation is guaranteed subject to the payment of reparations and/or other penalties from the Russian Federation. It means that draft № 7237 does not provide for the principle of full reimbursement. Analysis of the content of the opinion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the draft № 7237 shows that it, according to experts, is not consistent with the draft № 7198, which was adopted in first reading on 01.04.2022, because Compensation for damage caused to the aggression of the Russian Federation on real estate remains unclear. The compensation payment mechanism proposed in this project needs to be refined.

Therefore, it can be assumed that the text of the draft № 7198 adopted in the first reading on 01.04.2022 will be the basis for legislative regulation of the compensation procedure.

4. Problems of compensation for property damage caused to citizens as a result of destruc-

tion or damage to their property due to the armed conflict in eastern Ukraine (2014-2021). Grounds of responsibility of the Russian Federation and the state of Ukraine.

In addition, it is worth taking into account the historical and legal experience and emphasizing that this problem of the legal field of Ukraine is not new, as the issue of compensation for property damage caused to citizens' property (as a result of damage or destruction of residential buildings (According to the Office of the UN High Commissioner for Human Rights, as of February 2019, about 50,000 houses on both sides of the line of contact were damaged or destroyed, of which about 20,000 were in the territory controlled by the Government of Ukraine.) as a result of the armed conflict in connection with the activities of illegal Russian and pro-Russian armed groups in the war in eastern Ukraine began to emerge after 2014 with the Ukrainian authorities conducting an anti-terrorist operation and a Joint Forces operation.

The Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" stipulates that *liability for material or non-material damage caused to Ukraine as a result of armed aggression by the Russian Federation imposed on Russian Federation* in accordance with international law (Part 4 of Article 2 of the Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" as of January 18, 2018, № 2268-VIII).

Since the legal status of the temporarily occupied territories in Donetsk and Luhansk oblasts, as well as the legal regime in these territories is determined, in addition to the above Law, by the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territories of Ukraine" then said Law also provided that: *compensation for material and moral damage* caused by the temporary occupation of the state of Ukraine to legal entities, public associations, citizens of Ukraine, foreigners and stateless persons, *fully relies on the Russian Federation* as the state carrying out the occupation. The State of Ukraine will use all possible means to compensate for material and moral damage caused by the Russian Federation (Part 6 of Article 5 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" of April 15<sup>th</sup>, 2014 № 1207-VII). This Law even established that in case of damage by residents of foreign state entities, jurisdiction is established at the place

of damage, considering the rules of jurisdiction established by this Law (Article 12). For this purpose, Article 28 of the CPC of Ukraine is supplemented by a new part 17, which stipulates that claims for protection of violated, unrecognized or disputed rights, freedoms or interests of individuals (including compensation for damage caused by restriction of ownership of real estate or its destruction, damage) in connection with the armed aggression of the Russian Federation, armed conflict, temporary occupation of the territory of Ukraine, emergency situations of natural or man-made may also be presented at the place of residence or stay of the plaintiff. And the plaintiff in lawsuits against the aggressor state of the Russian Federation for compensation for property and/or moral damage in connection with the temporary occupation of Ukraine, armed aggression, armed conflict, which led to forced relocation from the temporarily occupied territories of Ukraine, death, injury, captivity, unlawful deprivation of liberty or abduction, as well as violation of ownership of movable and/or immovable property, was exempted from court fees (paragraphs 21 and 22 of Part 1 of Article 5 of the Law of Ukraine "On Judicial Fees").

However, as mentioned above, since the recovery of property damage from the state of the Russian Federation necessitates filing of a lawsuit against it as a defendant by the affected citizens, but according to Article 79 of the Law of Ukraine "On Private International Law" *filing a lawsuit against foreign state, the involvement of a foreign state in the case as a defendant may be allowed only with the consent of the competent authorities of the state, unless otherwise provided by international treaty of Ukraine or the law of Ukraine, and since such consent of the competent authorities of Russian Federation will be unreal to obtain and neither an international treaty of Ukraine nor a law of Ukraine provides for a lawsuit against the Russian Federation in a Ukrainian court*, so the victims tried to recover property damage caused by destruction or damage to property (residential buildings) in eastern Ukraine from the state of Ukraine.

Thus, since the 2014 events in Donetsk and Luhansk oblasts were recognized as terrorist acts, and the activities to ensure peace and regain control of uncontrolled territories were called an anti-terrorist operation, it caused legal confusion and uncertainty regarding the application of relevant legislation. Opinions of lawyers were divided: some believed that compensation for damage to destroyed real estate should be based on Article 19 of the Law of Ukraine "On Combating Terrorism" as damage caused to citizens by a terrorist act; another opinion – on the basis of Article 1177 of the Civil

Code of Ukraine as damage to an individual victim of a criminal offense (Shishkina E. Compensation for damaged/destroyed property due to armed conflict in court: mission possible? Legal newspaper. 2019. № 33–34 (687–688); Segeda U. Compensation for damage caused as a result. ATO: hopes and realities. Legal Gazette. 2016. № 18–19 (516–517)).

The national case law went two ways: in some cases, claims for damages for destroyed property as a result of an anti-terrorist operation were based only on the Law of Ukraine "On Combating Terrorism" (and some additionally referred to Article 1177 of the Civil Code), and in others – on the norms of the Civil Protection Code of Ukraine. With regard to the claims based on the provisions of the Law of Ukraine "On Combating Terrorism", the long-awaited decision of the Grand Chamber of the Supreme Court from 04.09.2019 in civil case № 265/6582/16-ц, which states that compensation for damage caused to citizens by the terrorist act, is carried out at the expense of means of the State budget of Ukraine *according to the law* and with the subsequent collecting of the sum of this compensation from the persons who caused damage, in the order *established by the law*. Compensation for damage caused to an organization, enterprise or institution by a terrorist act is carried out in the manner *established by law* (Article 19 of the Law of Ukraine "On Combating Terrorism"). The Grand Chamber concluded that the right, under Article 19 of the Law of Ukraine "On Combating Terrorism", for compensation for *established by law* damage caused to citizens by a terrorist act, *given the lack of relevant law* does not generate legitimate expectation to receive such compensation from the State of Ukraine for damages. During the anti-terrorist operation, the object of non-residential real estate, regardless of the territory in which – controlled or uncontrolled Ukraine – the specified act took place (Judgement of the Grand Chamber of the Supreme Court as of September 4, 2019, in a civil case № 265/6582/16-ц. URL: <https://reyestr.court.gov.ua/Review/86310215>). There have also been cases of lawsuits under Part 10 of Article 86 of the Civil Protection Code of Ukraine as compensation for damage to property caused by such an emergency situation as a terrorist act (Judgement of the Grand Chamber of the Supreme Court as of September 4, 2019, in a civil case № 265/6582/16-ц. URL: <https://reyestr.court.gov.ua/Review/8631021>). At the same time, Article 1177 of the Civil Code of Ukraine provides for the possibility of compensation for property damage caused to a victim of a criminal offense, by the State Budget of Ukraine, depending on the existence of a special (sepa-

rate) law, which does not currently exist. On the basis of the general norms on civil liability (Articles 1166, 1173, 1174 of the Civil Code of Ukraine) the state of Ukraine may be liable for damage to property of citizens in the territory of the anti-terrorist operation (Joint Forces operation) only in the case of establishing in the actions of state authorities of Ukraine of a civil offense.

Judge of the Civil Court of Cassation of the Supreme Court O.V. Stupak noted that this category of cases raises many questions about law enforcement. Most of the relevant lawsuits raised the issue of compensation for damage caused by a terrorist act, and to substantiate the fact of the latter was it was applied a certificate from the Security Service of Ukraine on inclusion of information into the Unified Register of Pre-Trial Investigations on the basis of a terrorist act. However, there is no judgment in this case yet. "The civil court in the case of compensation for damaged property cannot determine whether a terrorist act was committed," – said the judge. Thus, she noted the legal path in this category of cases, with reference to Article 19 of the Law of Ukraine "On Combating Terrorism", as unpromising. Another way for lawyers is to apply the Civil Protection Code of Ukraine, given that the order of the Cabinet of Ministers of Ukraine as January 26, 2015, № 47-r established a state of emergency in the conflict zone. Article 86 of the Code regulates the provision of housing for victims of emergencies. However, the judge noted that in this case, it is only about buildings, and a person can receive compensation only in the case of transfer of damaged housing to local government. The judge noted that today, before resolving these issues, the judicial system was practically left alone. After all, the legislature has not passed a law that determines the procedure for compensation for damage caused by events in eastern Ukraine (With the issue of compensation for housing destroyed by armed conflict, the judicial system was left alone. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/753159/>). However, none of the drafts submitted in 2014, 2015, 2016 to the Verkhovna Rada of Ukraine concerning compensation for property damage caused during the anti-terrorist operation in Donetsk and Luhansk regions has been adopted (Draft Law of Ukraine "On Compensation for Property Damage Caused During the Anti-Terrorist Operation in Donetsk and Luhansk Oblasts" as of 10.07.2014 № 4272a. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=51684](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51684); Draft Law of Ukraine "On Amendments to the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" (on

Compensation for the Value of Damaged Property)" as of 18.02.2015 № 2167. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=54094](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54094); Draft Law of Ukraine "On Amendments to the Law of Ukraine, "On Combating Terrorism, "On Compensation for Damaged Housing as a Result of the Anti-Terrorist Operation" as of 09.11.2015 № 3434. URL : [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57001](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57001); Draft Law of Ukraine "On Compensation for Destroyed or Damaged Private Housing to Persons Whose Private Housing or Private Households Were Damaged (Destroyed) During an Anti-Terrorist Operation" as of 24.03.2016 № 4301. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=58524](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58524); Draft Law of Ukraine "On Compensation for Damage to Housing of the Population as a Result of the Anti-Terrorist Operation" as of 11.04.2016 № 4301-1. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=58670](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58670)).

At the same time, the Resolution of the Cabinet of Ministers of Ukraine as of September 2, 2020, № 767 was approved by a new Order for providing and determining the amount of financial assistance to victims of emergencies and the amount of monetary compensation to victims whose houses (apartments) were destroyed due to a military emergency caused by the armed aggression of the Russian Federation (hereinafter – the Order № 767). This new Order was adopted to replace the previous Order as amended by the Resolution of the Cabinet of Ministers of Ukraine as of July 10, 2019, № 623. The victims are determined citizens of Ukraine, foreigners and stateless persons, whose residential buildings (apartments) (hereinafter – housing) are damaged/destroyed as a result of an emergency situation, or as a result of works to eliminate its consequences (hereinafter – the victims). Financial assistance is provided to victims whose homes have been damaged as a result of an emergency situation or work to eliminate its consequences *and who have refused to evacuate, resettle and remain at their previous place of residence and/or within the relevant settlement*. Monetary compensation is provided to victims who own housing located in the territories controlled by Ukraine and destroyed as a result of a military emergency caused by armed aggression of the Russian Federation, after the date of entry into force of the Presidential Decree as of April 14, 2014, № 405 "On the decision of National Security and Defense of Ukraine Council as of April 13, 2014 "On Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine". Persons whose housing was destroyed, but on the date



of the inspections is fully or partially rebuilt, are entitled to monetary compensation, unless the same destroyed housing was completely restored at the expense of state or local budgets or business entities. Local governments, and in their absence – military-civil administrations of population centers conduct inspections of damaged or destroyed housing, record it, compile and approve lists of victims in the area, collect information necessary to make decisions on granting or refusing monetary compensation and issue certificates of recognition of a person as a victim of an emergency situation. The decision to provide financial assistance and its amount is made by the Council of Ministers of the Autonomous Republic of Crimea and local executive bodies (represented by the relevant commissions formed in Donetsk and Luhansk regions by Donetsk and Luhansk regional state administrations). *The amount of financial assistance to victims is from three to 15 subsistence minimums for employable persons.* When determining the amount of financial assistance, the amount of material damage, insurance payments, and other types of assistance are taken into account. The amount of monetary compensation to victims is determined by the indirect cost of housing construction in the regions of Ukraine according to the location of housing, which are valid on the date of approval of the generalized list, respectively (*but not more than 300 thousand hryvnias for one destroyed housing*). In the case of payment by the Treasury of funds for the execution of a court judgment on compensation (reparation) for the same destroyed housing, the maximum amount of monetary compensation determined by this paragraph is reduced by the total amount of previously received funds.

#### **5. Prospects for the application of the Order № 767 in modern conditions**

*At the same time, it should be noted that the Order № 767 can be applied even now, in the context of the full-scale armed aggression of the Russian Federation against Ukraine, which began on February 24<sup>th</sup>, 2022.* However, the relevant order applies only to victims – citizens – and only to their residential buildings (apartments), which were just destroyed. This Order does not apply to owners – legal entities and other real estate objects (non-residential premises and buildings), as well as to the facts of damage of residential buildings (apartments) without their complete destruction.

The Order applies only to those civilians who remain living in the settlement where their homes were destroyed. The resolution does not apply to internally displaced persons and other persons who have moved to another locality. It also does not apply to persons living

on the territory controlled by armed groups. These shortcomings of the Order were highlighted in the report of the High Commissioner of the Office of the United Nations on the human rights on the situation with human rights in Ukraine (Report of the High Commissioner of the Office of the United Nations on the human rights on the situation with human rights in Ukraine from May 16<sup>th</sup> to August 15<sup>th</sup>, 2019. URL: [https://www.ohchr.org/Documents/Countries/UA/ReportUkraine-16May15Aug2019\\_UA.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraine-16May15Aug2019_UA.pdf)).

Therefore, if the payment of compensation does not fall under the said Order № 767, to receive compensation (retribution) from the state of Ukraine in another way or in court (in particular based on Article 19 of the Law of Ukraine "On Combating Terrorism" and Article 86 of the Code of Civil Defense of Ukraine) is currently legally impossible.

#### **6. State registration of termination of ownership due to the destruction of real estate as a result of hostilities. Termination of payment of real estate tax, other than land, and depreciation accrual**

Since the objects of residential and non-residential real estate are subject to taxation on real estate other than land (except for objects listed in paragraph 266.2.2 paragraph 266.2 Article 266 and paragraph 38.6 paragraph 38 of subsection 10 of section XX of the Tax Code of Ukraine), and the payer of this tax are individuals and legal entities – owners of the real estate, so it is important to stop paying such tax due to the destruction of such objects (Note: The Law from 24.03.2022 № 2141 provides that for the period from March 1st, 2022 to December 31st, 2022 must not be charged and paid tax on real estate owned by legal entities located in combat areas. According to paragraph 69.22 of subsection 10 of section XX of the Tax Code of Ukraine, the temporary provisions of Art. 266 of the Tax Code are applied taking into account the following features: (for legal entities for non-residential buildings) temporarily, for the period from March 1st, 2022 till December 31st, in which the martial law imposed or abolished by Decree № 64/2022 is not accrued and will not be paid real estate tax for non-residential real estate, including their shares located in the territories where hostilities are (were) conducted or in the territories temporarily occupied by the armed forces of the Russian Federation. The Cabinet of Ministers of Ukraine is authorized to approve the list of such territories).

This issue is also relevant to legal entities that accrue depreciation of fixed assets, because depreciation is charged during the useful usage (operation) of fixed assets (Articles 138, 177

of the Civil Code of Ukraine), and the destruction of such fixed assets excludes this.

Thus, both the payment of real estate tax and the accrual are associated with the physical existence of the real estate (subject to recognition as an asset, i.e., crediting in balance sheet of the enterprise) and the existence of the ownership to the subject. It is provided that the tax base of residential and non-residential real estate, including their shares owned by individuals, is calculated by the supervisory authority on the basis of the State Register of Real Property Rights (p. 266.3.2 p 266.3 Article 266 of the Tax Code of Ukraine).

Given that under Part 1 of Article 182 of the Civil Code of Ukraine, the right of ownership and other real rights to immovable property, encumbrance of these rights, their origin, transfer and termination are subject to state registration and, in accordance with paragraph 4 of Part 1 of Article 346, Article 349 of the Civil Code of Ukraine, ownership of property is terminated in case of destruction of property, such a fact is subject to state registration in accordance with the Law of Ukraine "On State Registration of Real Property Rights and Encumbrances", Article 14 of which states that in case of destruction of real estate, the relevant section of the State Register of Rights and the registration file are closed. From this point on, for the purposes of tax law, the person ceases to be the owner, and the relevant real estate object ceases to exist.

Therefore, the company must, after receiving information about the destruction of objects from the SES (taking into account the resolution of the Cabinet of Ministers of Ukraine as of April 5, 2022 "On amendments to the Procedure for inspection of commissioned construction sites"), conduct an inventory and write off such destroyed objects in the established manner, by drawing up of a document on the write-off of fixed assets – real estate from the balance of the enterprise in connection with the destruction, which will be grounds for exclusion of such object from the assets of the enterprise. This will be the basis for the termination of accrual of depreciation.

With regard to the payment of real estate tax, it is necessary to record information on the termination of ownership of the destroyed object in the State Register of Real Property Rights at the request of the owner. Since the state registration of ownership of a completed object in connection with its destruction is carried out in the presence of information on the fact of destruction obtained by the state registrar from the Unified State Electronic System in the field of construction (paragraph 75 of the State Registration of Real Property Rights

and their encumbrances, approved in the edition of the resolution of the Cabinet of Ministers of Ukraine dated August 23, 2016, № 553), the owner of the destroyed property should ensure that relevant information is entered into the Unified State Electronic System in the Procedure approved by the Cabinet of Ministers of Ukraine as of June 23, 2021, № 681.

#### 7. Conclusions

– The solution to the above problem is the adoption of a specific complex law. Such law should determine and provide the grounds, subjects, whose property is compensated, and procedure for seizing and recovering property in favor of Ukrainian residents who have suffered from property damage. The Ukrainian Parliament is already discussing some law drafts. The most debatable and polemical issues today are which sources of Russian assets could and should be used to cover losses caused by the Russian Federation's military aggression.

– Draft Law № 7169 was registered in the Verkhovna Rada; it intends to amend the Law of Ukraine "On Fundamental Principles of Forced Withdrawal in Ukraine of Property of Russian Federation and its Residents" that came into force on 7 March 2022 (hereinafter – Law of Ukraine № 2116-IX dated 03 March 2022). This Draft Law aims to widen the scope of persons, whose property could be withdrawn in Ukraine due to the Russian full-scale military aggression and specifies the purpose of such actions: towards future reparations to Ukraine.

– Increased attention should be focused on international efforts to block and afterwards seized Russians assets.

– Regardless of the country that supports EU or US sanctions against Russia or imposes its own sanctions against Russia due to military aggression against Ukraine, the most difficult and important measure is to take further steps with blocked Russian assets and, above all, with a legal mechanism to turn these seized assets in favor of Ukraine. It should be noted that this is the issue that is currently the "bottleneck", namely the inconsistency of the announced statements and slogans with the possibility of its implementation.

– Therefore, summarizing the above stated, it should be highlighted that without the adoption of a separate special comprehensive law on retribution (compensation) for damage caused by military aggression against Ukraine, which should determine the grounds, subjects whose property is compensated, and the procedure for seizure and reversal of this property in favor of Ukrainian residents who have suffered from property damage, there is no sense to talk about such compensation.

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**According to the Office** of the UN High Commissioner for Human Rights, as of February 2019, about 50,000 houses on both sides of the line of contact were damaged or destroyed, of which about 20,000 were in the territory controlled by the Government of Ukraine.

**According to the Ministry** of the Temporarily Occupied Territories and Internally Displaced Persons of Ukraine, 1,321 housing facilities were damaged (destroyed) in Luhansk and Donetsk oblasts, of which 825 were communally owned, 12,188 were privately owned, and 8 buildings were owned by unions of co-owners of apartment buildings). The estimated amount of funds needed for the restoration of these facilities is 2 billion 719 million.

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## НАУКОВО-ПРАКТИЧНИЙ АНАЛІЗ ЧИННОГО НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ, СУДОВОЇ ПРАКТИКИ ТА ЗАКОНОДАВЧИХ ІНІЦІАТИВ У СФЕРІ ВІДШКОДУВАННЯ МАЙНОВОЇ ШКОДИ, ЗАВДАНОЇ ПОШКОДЖЕННЯМ НЕРУХОМОГО МАЙНА ВНАСЛІДОК ЗБРОЙНОЇ АГРЕСІЇ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ

**Анотація.** У статті представлений науково-практичний аналіз чинного нормативно-правового регулювання, судової практики та законодавчих ініціатив у сфері відшкодування майнової шкоди, завданої пошкодженням нерухомого майна внаслідок збройної агресії Російської Федерації від 24 лютого 2022 року. **Мета.** У статті за допомогою емпіричного матеріалу і проведеного аналізу обґрунтовується авторська позиція стосовно відсутності в українському відповідному законодавстві натепер ефективного механізму компенсації матеріальної шкоди, завданої внаслідок російської військової агресії від 24 лютого 2022 року. Окремо аналізуються процесуальні складнощі щодо визначення відповідного відповідача у таких провадженнях і визначення відповідної юрисдикції щодо подачі таких позовів.

**Методи дослідження.** Автором використовуються широкий спектр наукових методів пізнання сутності сформульованої проблеми і шляхів щодо вирішення останньої. Акцент зроблено на порівняльному методі дослідження, який дозволяє провести відповідні паралелі і віднайти спільні техніко-юридичні проблеми щодо відшкодування завданої матеріальної шкоди від російської агресії у 2022 році і ситуацією з російською агресією і окупацією деяких районів Луганської і Донецької областей у 2014 році.

**Результати дослідження.** У статті автор резюмує, що відсутність в українському відповідному законодавстві натепер ефективного механізму компенсації матеріальної шкоди, завданої внаслідок російської військової агресії від 24 лютого 2022 року, призводить до неможливості компенсації останньої за наявних юридичних механізмів. Питанню судового імунітету відповідача – Російської Федерації в Україні приділена окрема увага, адже необхідність згоди дипломатичного представництва на пред'явлення до нього позову про відшкодування шкоди призводить до неможливості надати Російській Федерації правового статусу відповідача в цивільному процесі.

**Висновки.** З метою забезпечення реального відшкодування майнової шкоди має бути визначено іншого суб'єкта, який за своєю згодою (за відсутності передбаченого законом обов'язку нести цивільно-правову відповідальність за дії іншого суб'єкта) буде надавати компенсацію за знищене та пошкоджене майно внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації. Тому з метою визначення правових та організаційних засад надання державою компенсації за пошкодження та знищення окремих категорій об'єктів нерухомого майна внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації, з дня набрання чинності Указом Президента України від 24 лютого 2022 р. № 64 «Про введення воєнного стану в Україні» до Верховної Ради України суб'єктами права законодавчої ініціативи було внесено проєкт Закону України «Про компенсацію за пошкодження та знищення окремих категорій об'єктів нерухомого майна внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації агресії Російської Федерації», прийнятого Верховною Радою України в першому читанні за основу 01.04.2022 (далі – законопроект № 7198).

**Ключові слова:** військова агресія Російської Федерації, компенсація, відшкодування, активи, підстави цивільної відповідальності, майно, репарації, форс-мажорні обставини.

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