

UDC 343.1

DOI <https://doi.org/10.32849/2663-5313/2022.5.18>**Mykhailo Burtovyi,***External Postgraduate Student at the Department of Criminal Procedure, National Academy of Internal Affairs, 1, Solomianska Square, Kyiv, Ukraine, postal code 03035, Kashpur\_Anna@ukr.net***ORCID:** [orcid.org/0000-0003-1132-3515](https://orcid.org/0000-0003-1132-3515)

Burtovyi, Mykhailo (2022). Fulfilment of victim's right to compensation for damages in criminal proceedings. *Entrepreneurship, Economy and Law*, 5, 124–132, doi: <https://doi.org/10.32849/2663-5313/2022.5.18>

## FULFILMENT OF VICTIM'S RIGHT TO COMPENSATION FOR DAMAGES IN CRIMINAL PROCEEDINGS

**Abstract. Purpose.** The purpose of the article is to outline, relying on the analysis of the legislation of Ukraine, scientific approaches and international experience, problematic aspects of the regulatory framework for forms and procedure of compensation for damage in criminal proceedings, to identify problematic issues arising during their enforcement and to make scientifically justified proposals aimed at improving the mechanism for enjoying the victim's rights to indemnity (compensation) for damage in criminal proceedings. **Results.** The article considers a number of topical issues related to the legal regulatory framework and order of compensation for damage caused to the victim as a result of a criminal offence, subject to both criminal procedure law, and individual legal provisions of civil law. In particular, the state of art in scientific development of this issue and reserves for further research of the topic has been evaluated; the modern regulatory model of compensation for damage in criminal proceedings is analysed and specific problem issues, arising in the law enforcement, are described; the existing legislative initiatives to improve the mechanisms for ensuring the right to compensation are examined. It is underlined that the Ukrainian legislator has a rather important and difficult task to implement an effective and efficient procedure for compensation for damage caused to the victim as a result of a criminal offence from the State budget of Ukraine. **Conclusions.** It is concluded that the settlement of problematic issues of indemnity (compensation) for damage to a victim in criminal proceedings from the State Budget of Ukraine requires further scientific research and urgent legislative reinforcement. In this regard, it is promising for the legislator to consider proposals developed in modern doctrine that meet the needs of practice. Therefore, the establishment of a special State Fund, identification of the sources of its formation, allocation of a separate department, responsible for the making public policy on indemnity (compensation) for damage caused by a criminal offence from the State, should be of paramount importance for Ukraine within the framework of the European integration processes.

**Key words:** victim, compensation for damage, State budget, criminal procedure, criminal offence.

### 1. Introduction.

Article 3 of the Constitution of Ukraine establishes that the individual, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. The main duty of the State is to affirm and ensure human rights and freedoms. The implementation of these and other constitutional provisions in criminal proceedings is connected not only with the need to improve the activities of investigative bodies, the Prosecutor's office, the court and the bar, but also with the consistent implementation of the procedural rights of the parties to the proceedings, including victims of criminal offences. If, despite all the measures taken by the State, a criminal offence has been committed, the victim should be afforded due pro-

cess and guarantees. By these constitutional provisions, the State assumed the obligation to restore the rights of victims violated by a criminal offence, including by compensation for damage caused to them (Constitution of Ukraine, 1996; Draft Law of Ukraine on Compensation to Victims of Violent Criminal Offences, 2020).

Thus, one of the tasks of criminal proceedings is to protect individuals, society and the State from criminal offences and to protect the rights, freedoms and legitimate interests of participants in criminal proceedings. The concept of compensation in criminal proceedings is essential for a fair trial and the protection of violated rights.

Indeed, the review of the legislation in force and the investigative and judicial practice aimed at ensuring the victim's right to success-

ful compensation for damage caused by a criminal offence enables to argue that compensation mechanisms are not always effective. In view of the above, it is urgent to develop and implement more effective mechanisms aimed at enjoying the victim's right to indemnity (compensation) for damage in criminal proceedings.

Theoretical and legal issues of compensation for damage caused by a criminal offence have been doctrinally considered in the writings by domestic scientists, such as: Yu.P. Alenin, M.I. Hoshovskyi, S.V. Davydenko, V.V. Kryvobok, O.V. Krykunov, O.P. Kuchynska, O.I. Nazaruk, V.T. Nor, T.I. Prysiashniuk, V.M. Savitskyi, I.I. Tataryn, L.D. Udalova, and others.

However, the issue of indemnity (compensation) to the victim remains controversial and requires scientific research, organisational support and legislative regulatory mechanism.

The purpose of the article is to outline, relying on the analysis of the legislation of Ukraine, scientific approaches and international experience, problematic aspects of the regulatory framework for forms and procedure of indemnity for damage in criminal proceedings, to identify problematic issues arising during their enforcement and to make scientifically justified proposals aimed at improving the mechanism for enjoying the victim's rights to indemnity (compensation) for damage in criminal proceedings.

## **2. Main forms of indemnity (compensation) for damage to the victim in criminal proceedings**

The reform of the law enforcement system in Ukraine and the constant improvement of criminal procedure law show that the victim's right to compensation for damage caused by a criminal offence remains one of the most important problems. Furthermore, Article 56 of the Criminal Procedure Code (hereinafter referred to as the CPC) establishes the right of the victim to compensation for damage caused by a criminal offence. A State governed by the rule of law implies the affirmation of democratic human and civil rights and freedoms and the mechanisms to guarantee them. The objectives of criminal proceedings are related to the expansion and proper exercise of the procedural rights of victims of criminal offences, in particular with regard to the right to compensation for damage caused by a criminal offence (Hroshevyi, Tatsii, Tumanians, 2013; Honcharenko, 2013). Accordingly, current legislation provides for the forms and procedures for compensation for damages in criminal proceedings.

The analysis of article 127 of the CPC of Ukraine provides grounds for highlighting three forms of indemnity (compensation) for harm to the victim in criminal proceedings.

For example, article 127, part 1, of the CPC provides for a voluntary form of compensation for damage, i.e., it establishes that a suspect, accused person or any other natural or legal person, with his or her consent, has the right at any stage of the criminal proceedings to make reparation to the victim, territorial community, the State as a result of a criminal offence. Part 2 of this provision establishes the form of coercion, which provides that damage caused by a criminal offence or other socially dangerous act may be recovered by a court decision on the basis of the outcome of a civil action in criminal proceedings. Article 128 of the CPC contains certain requirements for such an action. For example, its form and content shall meet the requirements of civil proceedings. With regard to the third form, compensation for damage caused by a criminal offence is paid from the State budget of Ukraine, according to Article 127, part 3, of the CPC of Ukraine (Syt-enka, Makarchuk, 2020).

In addition to the above-mentioned forms of compensation for damage in criminal proceedings, some scholars have singled out criminal procedural restitution. For example, M.I. Tlepova notes that criminal procedural restitution should be understood as a way to restore the property of the victim by returning to him or her things or other material objects, directly removed from his or her lawful possession as a result of committing a criminal offence against him or her (Tlepova, 2016).

The Civil Code of Ukraine (hereinafter referred to as the Civil Code) also provides for that damage caused to the person shall be compensated from the State budget of Ukraine in the cases and in the manner prescribed by law (Art. 1177, Part 2, of the Civil Code). Accordingly, property or moral damage to a person as a result of the criminal offence is a ground for not only criminal but also civil liability.

Therefore, the determination of the essence and content of the structure "enjoying the victim's right to indemnity (compensation) for damage in criminal proceedings" requires consideration of one of its forms of realisation, noted above, namely compensation for damage, caused by the criminal offence, from the State budget of Ukraine in the cases and in the manner prescribed by law.

Bearing in mind that the State has assumed the obligation to guarantee human rights and freedoms, it is understood that the State shall remedy the effects of a criminal offence by providing compensation in cases where the law enforcement bodies have failed in their functions.

In addition, article 127, part 3, of the CPC of Ukraine provides for that the victim of a crim-

inal offence shall be compensated from the State budget of Ukraine in the cases and in the manner prescribed by law, which is also due to the alignment of national legislation with international legal standards. In particular, on April 8, 2005, Ukraine signed the European Convention "On Compensation to Victims of Violent Crimes" of 24 November 1983 (hereinafter - the Convention), in which Article 2 specifies that if compensation for damage caused by an intentional violent crime cannot be provided from any other sources, the State shall be responsible for this (European Convention on Compensation for Victims of Violent Crimes, 1983). At the same time, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985 states that victims of crime have the right to prompt compensation for damage caused in accordance with national legislation (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985; Azarov, Pysmennyi, Khablo, 2014).

### **3. Promising trends in the legal regulatory mechanism for indemnity (compensation) for damage to the victim in criminal proceedings**

The Verkhovna Rada of Ukraine has developed several draft laws aimed at improving the mechanism of compensation for damage, in particular: "On compensation to citizens for material damage caused by crimes" as of September 11, 2001, "On compensation from the State for material damage to individuals affected by crime" as of October 27, 2010, "On compensation to victims of violent criminal offences" as of July 16, 2020 (Azarov, Pysmennyi, Khablo, 2014), "On Amendments to the Code of Ukraine on Administrative Offenses and Criminal Procedure Code of Ukraine on assuring the mechanism of compensation to victims of violent criminal offenses" as of July 16, 2020 (Draft Law of Ukraine On Amendments to Code of Ukraine on Administrative Offenses and Criminal Procedure Code of Ukraine on Assuring the Mechanism of Compensation to Victims of Violent Criminal Offenses, 2020), "On amendments to the Budget Code of Ukraine concerning the mechanism of financial provision for compensation to victims of violent criminal offenses" as of July 16, 2020 (Draft Law of Ukraine On Amendments to Code of Ukraine on Administrative Offenses and Criminal Procedure Code of Ukraine on Assuring the Mechanism of Compensation to Victims of Violent Criminal Offenses, 2020). However, today this issue remains open, and the absence of a special law in force leads to non-compliance with the provisions of article 127, part 3, of the Criminal Code of Ukraine and article 1177, part 2, of the Civil Code of Ukraine, as a result of which

the courts render decisions rejecting claims for compensation from the State of Ukraine for damage caused by a criminal offence (Draft Law of Ukraine On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Procedure Code of Ukraine on Ensuring the Mechanism of Compensation to Victims of Violent Criminal Offenses, 2020).

Thus, the way to enjoy the right to compensation for damage caused by a criminal offence is to bring a civil action in criminal proceedings or to bring an action in a manner prescribed by civil proceedings.

Our study requires to decide on the conceptual apparatus, because the clarification of its content will allow to express own perspective on the essence of the subject matter of the study.

For example, the term "compensation" means a form of liability, giving someone something else as a recompense for the lost, spent, destroyed, etc. In the theory of criminal procedure, it is considered appropriate (regarding moral damage) to use the term "compensation for damage" (from Latin *compensatio* – "compensation"), because it is difficult to imagine indemnity for suffering, while compensation for the latter is quite possible. With this in mind, Chapter 9 of the CPC of Ukraine is called "Indemnity (compensation) for damage in criminal proceedings, a civil action, payment of remuneration to the accuser", while article 1177 of the Civil Code "Indemnity (compensation) for damage to a natural person who suffered from a criminal offence" (Khablo, Konishenko, Tsurikova, 2019).

When considering the problem of compensation for damage from the State, it should also be determined what kind of damage is subject to compensation, since article 127 of the CPC and article 1177 of the Civil Code does not specify this.

Etymologically, the word "damage" means loss, harm resulting from the commission of any unlawful acts caused by a criminal offence.

Damage is a combination of adverse personal non-pecuniary, as well as property consequences arising in the event of violation of the subjective rights of a natural or legal person. It is a condition or ground for the obligation to make indemnity. The category of "damage" is closely related to civil liability issues. The civil liability grounds, along with the unlawfulness of the conduct (act or omission), a causal link between the unlawful conduct and the damage caused by the guilty person who caused damage, necessarily distinguish the presence of property and/or moral damage.

In the theory of criminal procedure, the concepts of "damage" and "loss" are distinguished. Damage is any impairment of the good pro-

tected by law, so it is grouped into property and non-pecuniary (intangible), while loss is a monetary estimate of damage, calculated if compensation in kind is impossible (Khablo, Koniushenko, Tsurikova, 2019).

For example, article 55 of the CPC of Ukraine provides for that the victim in criminal proceedings may be a natural person who has suffered moral, physical or property damage caused by a criminal offence, a legal person who has suffered property damage caused by a criminal offence, as well as an administrator for the issue of bonds who, under the provisions of the Law of Ukraine "On Capital Markets and Organised Commodity Markets" acts for the benefit of bondholders who have suffered property damage caused by a criminal offence. The article specifies three types of indemnifiable (compensable) damage during criminal proceedings: moral, physical and property. However, it is significant that the victim who is a natural person can be compensated for moral, physical and property damage, while the victim who is a legal entity and the administrator for the issue of bonds shall be compensated only for property damage caused by the criminal offence (Hroshevyi, Tatsii, Tumanians, 2013; Honcharenko, 2012).

At the same time, physical damage is defined as a set of changes that have objectively occurred in the human condition as a result of a criminal offence. The components of physical damage include bodily injury, impairment of health, physical suffering, and therefore cannot be effectively compensated. The costs of physical recovery are calculated in monetary terms and relate to property damage. They estimate the cost of restoring the health of the victim and, in the event of his or her death, of burying and paying for the maintenance of material well-being and raising disabled family members of the victim and his or her underaged children; costs expended by the health institution on inpatient treatment of the victim of crime (Azarov, Pysmennyi, Khablo, 2014).

Therefore, to be recognised as a victim a natural person should have suffered any of the three specified types of damage, although a criminal offence usually causes several types of damage.

The legislation in force defines all the non-pecuniary consequences with the term "moral damage". The content of this concept is revealed in Resolution 4 of the Plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases of Compensation for Moral (Non-pecuniary) Damage" of March 31, 1995, in which it is determined that moral damage is non-material loss due to moral or physical suffering or other negative phenomena caused to a natural or legal person by unlawful acts or

omissions of other persons. Accordingly, moral damage may consist in the humiliation of honour, dignity, prestige or business reputation, moral distress in connection with damage to health, violation of property rights (including intellectual), rights granted to consumers, other civil rights, illegal stay under investigation and trial, violation of normal life ties due to the impossibility of prolonging active public life, violation of relations with surrounding people, at the occurrence of other negative consequences (Resolution of the Plenum of the Supreme Court of Ukraine On Judicial Practice in Cases of Compensation for Moral (Non-pecuniary) Damage, 1995).

Non-pecuniary damage caused to a legal person should be understood as non-pecuniary loss, infringement on the brand name, trademark, production mark, disclosure of trade secret, as well as the commission of actions aimed at diminishing or undermining the credibility of its activities (Resolution 4 of the Plenum of the Supreme Court of Ukraine On Amendments to the Resolution of the Plenum of the Supreme Court of Ukraine of March 31, 1995 "On judicial practice in cases of compensation for moral (non-pecuniary) damage", 2001).

Moreover, in the course of the study of the topic, the issue arose as to whether the State should also assume the obligation to compensate for moral damage caused by a criminal offence. Provision of article 4 of the Convention stipulates that "compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance" (European Convention on Compensation for Victims of Violent Crimes, 1983).

In this regard, Yu.I. Azarov and D.P. Pysmennyi argue that the civil legislation in fact formulate the legal basis for the right of the victim to compensation for damage from the State, it is a question of compensation for property damage (Civil Code, art. 1177) or damage caused by injury, other harm to health or death (Civil Code, art. 1207). According to the authors, the State should only compensate for property damage, which includes costs spent on restoring the health of the victim and, in the event of his or her death, on funeral, maintenance payments for disabled family members of the victim and his or her underaged children (Azarov, Pysmennyi, Khablo, 2014).

However, the very fact of committing a criminal assault on the property of the victim may entail moral damage. In addition, civil law literature has repeatedly given examples that any property has a certain value for its owner,

sometimes a very high non-pecuniary value, and therefore the very loss of such property by theft, fraud, etc. cannot but cause him or her mental suffering. The fact that the identity of the perpetrator has not been established can also aggravate the mental suffering, which reduces the likelihood of the return to the owner of his or her belongings and property. And since the State is accountable to the individual for its activities, affirming and ensuring human rights and freedoms, its duty should be to compensate for moral harm in this particular delict (Onyshchenko, 2017).

Property damage is property and/or monetary loss caused to a legal or natural person.

Losses are wastage suffered by a person as a result of a criminal offence in connection with the destruction or damage of things, as well as expenses that the person has made or should make to recover his or her violated right; income that a person could realistically obtain under normal circumstances if his or her right had not been violated.

The concept of property damage caused by a criminal offence to the victim covers direct damage to the person in his or her property and money; not the proceeds of a criminal offence; assessed expenses for the rehabilitation of the victim's health and, in the event of his or her death, for funeral and maintenance of material well-being and for the upbringing of disabled family members of the victim and his or her underaged children; costs spent by the health institution on inpatient treatment of the victim of crime (Khablo, Koniushenko, Tsurikova, 2019).

#### **4. Specificities of indemnity (compensation) for damage to the victim in criminal proceedings in civil and criminal legislation**

As noted above, article 55, part 1, of the CPC of Ukraine provides for that a legal entity and an administrator for the issue of bonds, who, under the provisions of the Law of Ukraine "On Capital Markets and Organised Commodity Markets", acts in the interests of bondholders, may also be the victim. Accordingly, the criminal offence may cause direct damage in terms of property and money to the victim, who is a legal person and the administrator for the issue of bonds.

Article 1177 of the Civil Code provides for indemnity (compensation) for damage to a natural person who has suffered a criminal offence. According to part 1 of this article, as a general rule, damage caused to a natural person by a criminal offence shall be compensated as prescribed by law. Furthermore, Article 1177, part 2, of the Civil Code contains a rule, which similar to part 2 of Article 127 of the CPC of Ukraine, determines that the damage caused to the victim as a result of a criminal offence

shall be compensated from the State Budget of Ukraine in the cases and in the manner prescribed by law (Civil Code of Ukraine, 2003).

We advocate M.P. Tkach's perspective that the provisions of the articles of the Civil Code, which determine the grounds for compensation for damage caused by a criminal offence, have blanket dispositions and provide for that the conditions and procedures for compensation by the State are determined by a special law, which does not currently exist. The trend of law application to refuse to satisfy such claims, due to the absence of special law and real mechanisms of compensation for damage, these provisions have no practical implementation (Onyshchenko, 2017).

The focus should also be on the issue of determining the amount of property damage that should be compensated. For example, according to statistics, the amount of damage caused by a criminal offence, which remains unrecovered, is considerable. The problem is that the State assumed an obligation to indemnify, but could not actually do so. In our view, in order to give effect to the victim's right to indemnity, the provisions of the Convention, under which compensation may be reduced or refused on account of the applicant's financial situation (art. 7), on account of the victim's or the applicant's conduct before, during or after the crime, or in relation to the injury (art. 8, part 1), on account of the victim's or the applicant's involvement in organised crime or his or her membership of an organisation which engages in crimes of violence (art. 8, para. 2); if an award or a full award would be contrary to a sense of justice or to public policy (art. 8, para. 3). In addition, article 5 of the Convention specifies that, the compensation scheme may, if necessary, set for an upper limit above which and a minimum threshold below which such compensation shall not be granted (European Convention on Compensation for Victims of Violent Crimes, 1983; Azarov, Pysmennyi, Khablo, 2014).

The conditions and grounds for indemnity (compensation) for damage caused to the victim from the State should include: the entry into the Unified Register of Pre-trial Investigations of information on the criminal offence committed; the presence of the victim (a person's application declaring that a criminal offence has been committed against him or her or declaring that he or she has been prosecuted as a victim, provided that there is no decision denying him or her recognition as a victim); determination of the amount of damage caused by a criminal offence.

According to the study by V. V. Vasyliiev, if the law modifies, limits or extends the range

of conditions necessary to compensate for the damage caused, then these are special conditions of compensation, based on the rules on general delict. Such special conditions are: damage (property, physical, moral, suffered by a natural person, members of his or her family or his or her close relatives); damage as a consequence of a criminal offence; non-identified perpetrator of a criminal offence (it is obvious that this condition includes the declaration of the perpetrator of a criminal offence as wanted, etc.); the perpetrator of a criminal offence must be insolvent (Civil Code, arts. 1177, 1207) (Vasyliiev, 2016).

During the investigation of criminal offences, there may be cases which preclude full compensation for damage caused by a criminal offence to the victim. For example, declaring the perpetrator of a criminal offence wanted or terminating the pre-trial investigation on the basis of an amnesty, etc. In such a case, the latter two conditions should be replaced by one, more universal, providing for any cases that preclude compensation for damage caused by a valid offender and where the State has an obligation to compensate for damage (property, moral) caused by a criminal offence (Vasyliiev, 2016).

Currently, it is topical whether compensation for damage caused to Ukrainian citizens in the area of the Joint Forces Operation (hereinafter referred to as the JFO). Hundreds of thousands of people in the east of Ukraine since 2014 have experienced terrible moral, physical suffering, lost their loved ones and left homeless, lost their property there. There is an urgent need for the State to protect their constitutional rights and to establish an effective mechanism for recompense (Stiebieliev, 2016).

However, the absence of a unified legal approach to this important issue makes impossible the right of Ukrainian citizens to compensation for the damage caused to them in the area of the JFO. In this case, some lawyers argue that damages for destroyed real estate should be based on Article 19 of the Law of Ukraine "On Combating Terrorism", which specifies that compensation for damage caused to citizens by a terrorist act, is carried out from the State Budget, as prescribed by law, and with subsequent recovery of the amount of this compensation from persons who have caused damage in the manner established by law, the other - on the basis of Article 1177 of the Civil Code as damage to a natural person injured by a criminal offence.

In sporadic cases, the plaintiff's action on compensation for damage was initially refused by the court of first instance, while the Court of Appeal issued a new decision on compensation from the State budget of Ukraine to the plaintiff for the damage caused by the terrorist act, for

the damaged apartment in the amount of UAH 363,789.40. The Court of Appeal based this decision on the provisions of Article 19 of the Law of Ukraine "On Fight against Terrorism" (Stiebieliev, 2016).

Definitely, the fact that the property of Ukrainian citizens has been destroyed or damaged in the area of the JFO is the case when the State assumes the obligation to compensate the victim of a criminal offence. Therefore, in our view, the process of compensation for damage caused to Ukrainian citizens in the area of the JFO should not take place within the framework of criminal proceedings, but in accordance with Article 19 of the Law of Ukraine "On Fight against Terrorism".

Therefore, article 1177, part 2, of the Civil Code and article 127, part 3, of the Criminal Code of Ukraine stipulate that the law must establish cases in which the State assumes the obligation to compensate damage to the victim of a criminal offence.

In the context of the study, the focus should also be on the certainty of terms during which the victim is entitled to reparation from the State. For example, article 6 of the Convention states that the compensation scheme may specify a period within which any application for compensation must be made (European Convention on Compensation for Victims of Violent Crimes, 1983). The need for time limits arises because, in order to make compensation from the State such as not to identify the perpetrator of a criminal offence, the pre-trial investigation bodies must have a certain time, after which it can be said that the person in fact could not be identified. It is therefore reasonable to stipulate that the right to compensation of the victim arises six months after the damage was caused by the criminal offence, provided that during this period the perpetrators of the criminal offence, or their location could not be identified.

Moreover, the result of the victim's right to compensation for damage from the State and its amount must be determined by a court, taking into account the specific circumstances of the case (nature and extent of the damage suffered by the citizen, his or her financial situation and the composition of the family), etc.

The promulgation of the above provisions requires addressing the issue of sources of funding. In this case, international experience should be studied and applied. The procedure for compensation to victims in criminal proceedings from the State is provided in many countries of the world, including the United States, Germany, the United Kingdom, France, Poland, Austria, the Netherlands, the Czech Republic, Belgium, Spain, etc.

In the United Kingdom, for example, a British Parliament commission, which conducted a comparative study of the issue, considered that a system of compensations for damages to the victims of crime from the State is the best, as it defines a wide range of offences, victims thereof receive monetary compensation and substantial cash payments are established (Smirnov, 2007).

Persons who have suffered damage as a result of one or more serious crimes and have the right to compensation from the State; the damage caused by the crimes that led to the arrest of the suspect shall be compensated; compensation shall be paid to the victim in cases where any damage has been caused.

In addition, the United Kingdom has the Criminal Injuries Compensation Authority. It administers a special fund set up to compensate victims of crimes for even minor damage not covered by approved general rates.

In Germany, compensations from the State are provided for victims of deliberate violence, including acts of sexual violence. The existence of physical or mental harm as a result of an assault is a prerequisite for obtaining compensation (Karpenko, 2018).

Payments are made regardless of the victim's application to the law enforcement agency and regardless of the conclusion of the pre-trial investigation, because the very fact of commencement of proceedings suffices. Several levels of consequences have been defined according to the degree of injury suffered from violent

criminal offences. Compensation for moral damage to a victim of a violent criminal offence is possible in Germany only by court order. In addition, the victim does not indicate its amount in the application. The court determines this. As a rule, such amounts are not significant (Draft Law of Ukraine on Compensation to Victims of Violent Criminal Offences, 2020). The right to compensation from the State exists as an integral part of the social right to compensation, independent of any claim by the victim for compensation from the offender.

The Ukrainian legislator has a rather important and difficult task to implement an effective and efficient procedure for compensation for damage caused to the victim as a result of a criminal offence from the State budget of Ukraine.

### 5. Conclusions

The settlement of problematic issues of indemnity (compensation) for damage to a victim in criminal proceedings from the State Budget of Ukraine requires further scientific research and urgent legislative reinforcement. In this regard, it is promising for the legislator to consider proposals developed in modern doctrine that meet the needs of practice. Therefore, the establishment of a special State Fund, identification of the sources of its formation, allocation of a separate department, responsible for the making public policy on indemnity (compensation) for damage caused by a criminal offence from the State, should be of paramount importance for Ukraine within the framework of the European integration processes.

### References:

- Konstytutsiia Ukrainy:** vid 28 cherv. 1996 r. № 254k/96-VR [Constitution of Ukraine from June 28, 1996 № 254k/96-VR]. (1996). *zakon.rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> (in Ukrainian).
- Proiekt Zakonu Ukrainy Pro vidshkoduvannia shkody poterpilym vid nasylnytskykh kryminalnykh pravoporushen:** vid 17 lyp. 2020 roku № 3892 [Draft Law of Ukraine on Compensation to Victims of Violent Criminal Offences from July 17, 2020 № 3892]. (2020). *zakon.rada.gov.ua*. Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69541](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69541) (in Ukrainian).
- Hroshevyi, Yu.M., Tatsii, V.Ia., Tumanians, A.R. ta in.** (2013). *Kryminalnyi protses [Criminal proceedings]*. Xarkiv: Pravo (in Ukrainian).
- Honcharenko, V.H.** (2012). *Naukovo-praktychnyi komentar kryminalnoho protsesualnoho kodeksu Ukrainy [Scientific and practical commentary on the Criminal Procedure Code of Ukraine]*. Kyiv: Yustinian (in Ukrainian).
- Sytenka, O.S., Makarchuk, Yu.V.** (2020). Realizatsiia prava poterpiloho na vidshkoduvannia shkody u kryminalnomu provadzhenni: okremi pytannia [Exercise of the victim's right to compensation in criminal proceedings: some issues]. *Yurydychnyi naukovyi zhurnal - Legal scientific journal*, 8, 451–454 (in Ukrainian).
- Tlepova, M.I.** (2016). Pravova pryroda kryminalnoi protsesualnoi restytutsii [Legal nature of criminal procedural restitution]. *Kryminalnyi protses ta kryminalistyka, sudova ekspertyza - Criminal procedure and criminology, forensic examination*, 4, 227–228 (in Ukrainian).
- Evropeiskaia konventsiia po vzmeshcheniu ushcherba zhertvam nasilstvennykh prestuplenii ot 24 noiab. 1983 goda** [European Convention on Compensation for Victims of Violent Crimes of November 24, 1983]. (1983). *zakon.rada.gov.ua*. Retrieved from [http://zakon4.rada.gov.ua/laws/show/994\\_319](http://zakon4.rada.gov.ua/laws/show/994_319) (in Russian).
- Deklaratsiia osnovnykh printsiptov pravosudiia dlia zhertv prestuplenii i zloupotrebleniia vlastiu ot 29 noiab. 1985 goda** [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of November 29, 1985]. (1985). *zakon.rada.gov.ua*. Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_114#Text](https://zakon.rada.gov.ua/laws/show/995_114#Text) (in Russian).
- Azarov, Yu.I., Pysmennyi, D.P., Khablo, Yu.O.** (2014). Vidshkoduvannia shkody poterpilomu u krymi-

nalnomu provadzhenni za rakhunok derzhavy [Compensation for damage to the victim in criminal proceedings from the state]. *Yurydychna nauka - Legal science*, 5, 49–56 (in Ukrainian).

**Proiekt Zakonu Ukrainy** Pro vnesennia zmin do Kodeksu Ukrainy pro administratyvni pravoporushennia ta Kryminalnogo protsesualnogo kodeksu Ukrainy shchodo zabezpechennia mekhanizmu vidshkoduvannia shkody poterpilym vid nasylnytskykh kryminalnykh pravoporushen: vid 17 lyp. 2020 roku № 3893 [Draft Law of Ukraine On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Procedure Code of Ukraine on Ensuring the Mechanism of Compensation to Victims of Violent Criminal Offenses from July 17, 2020 № 3893]. (2020). *rada.gov.ua*. Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69542](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69542) (in Ukrainian).

**Proiekt Zakonu Ukrainy** Pro vnesennia zmin do Biudzhethnogo kodeksu Ukrainy shchodo mekhanizmu finansovoho zabezpechennia vidshkoduvannia shkody poterpilym vid nasylnytskykh kryminalnykh pravoporushen: vid 17 lyp. 2020 roku № 3894 [Draft Law of Ukraine On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Procedure Code of Ukraine on Ensuring the Mechanism of Compensation to Victims of Violent Criminal Offenses from July 17, 2020 № 3894]. (2020). *rada.gov.ua*. Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=69543](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69543) (in Ukrainian).

**Khablo, O.Iu., Koniusheko, Ya.Iu., Tsurikova I.V.** (2019). *Kryminalnyi protses [Criminal proceedings]*. Kyiv: Natsionalna akademiia vnutrishnikh sprav (in Ukrainian).

**Postanova Plenumu Verkhovnoho Sudu Ukrainy** Pro sudovu praktyku v spravakh pro vidshkoduvannia moralnoi (nemainovoi) shkody: vid 31 berez. 1995 roku № 4 [Resolution of the Plenum of the Supreme Court of Ukraine On Judicial Practice in Cases of Compensation for Moral (Non-pecuniary) Damage from March 31, 1995 № 4]. (1995). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/v0004700-95#Text> (in Ukrainian).

**Postanova Plenumu Verkhovnoho Sudu Ukrainy** Pro vnesennia zmin ta dopovnen do postanovy Plenumu Verkhovnoho Sudu Ukrainy vid 31 berez. 1995 roku № 4 «Pro sudovu praktyku v spravakh pro vidshkoduvannia moralnoi (nemainovoi) shkody» vid 25 trav. 2001 roku № 5 [Resolution of the Plenum of the Supreme Court of Ukraine On Amendments to the Resolution of the Plenum of the Supreme Court of Ukraine of March 31, 1995 № 4 "On judicial practice in cases of compensation for moral (non-pecuniary) damage" from May 25, 2001 № 5]. (2001). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/v0005700-01#Text> (in Ukrainian).

**Onyshchenko, O.S.** (2017). Vidshkoduvannia moralnoi shkody u deliktnykh zoboviazanniakh [Compensation for non-pecuniary damage in tortious obligations]. *Candidate's thesis*. Kyiv: Nats. akad. vnutr. sprav (in Ukrainian).

**Tsyvilnyi kodeks Ukrainy** vid 16 sichnia 2003 roku № 435-IV [Civil Code of Ukraine of January 16, 2003 № 435-IV]. (2003). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text> (in Ukrainian).

**Vasyliiev, V.V.** (2016). Pravove rehuliuivannia vidshkoduvannia shkody, zavdanoi zlochynom [Legal regulation of compensation for damage caused by crime]. *Candidate's thesis*. Kharkiv (in Ukrainian).

**Stiebieliev, A.M.** (2016). Pravove rehuliuivannia vidshkoduvannia (kompensatsii) shkody u kryminalnomu protsesi Ukrainy [Legal regulation of indemnity (compensation) for damage in the criminal process of Ukraine]. *Candidate's thesis*. Kharkiv (in Ukrainian).

**Smirnov, S.V.** (2007). O kompensatsii usherba v ugovolnom protsesse [On compensation for damages in criminal proceedings]. *Vestnik Dnepropetrovskogo universiteta - Bulletin of Dnepropetrovsk University*, 4, 70–71 (in Russian).

**Karpenko, Ye.M.** (2018). Mizhnarodnyi dosvid vidshkoduvannia shkody poterpilomu yak odna z form zapobihannia zlochynom [International experience in compensating the victim as one of the forms of crime prevention]. *Pravovyi chasopys Donbasu - Legal magazine of Donbass*, 1 (62), 190–196 (in Ukrainian).

**Михайло Буртовий,**

здобувач кафедри кримінального процесу, Національна академія внутрішніх справ, Солом'янська площа, 1, Київ, Україна, індекс 03035, [Kashpur\\_Anna@ukr.net](mailto:Kashpur_Anna@ukr.net)

**ORCID:** [orcid.org/0000-0003-1132-3515](http://orcid.org/0000-0003-1132-3515)

## РЕАЛІЗАЦІЯ ПРАВА ПОТЕРПІЛОГО НА ВІДШКОДУВАННЯ (КОМПЕНСАЦІЮ) ШКОДИ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

**Анотація. Мета.** Мета статті полягає в тому, щоб на основі аналізу законодавства України, наукових підходів та міжнародного досвіду окреслити проблемні аспекти нормативного регулювання форм та порядку відшкодування шкоди у кримінальному провадженні, виявити проблемні питання, які виникають під час їх правозастосування, та запропонувати науково обгрунтовані пропозиції, спрямовані на удосконалення механізму реалізації прав потерпілого на відшкодування (компенсацію) шкоди у кримінальному провадженні. **Результати.** Розглянуто низку актуальних питань, що стосуються правового регулювання та регламенту відшкодування шкоди, завданої потерпілому

внаслідок кримінального правопорушення, яка одночасно перебуває у як площині кримінального процесуального законодавства, так й окремих правових норм цивільного закону. Зокрема, оцінено сучасний стан наукової розробки цього питання та резерви для подальшого дослідження проблематики; проаналізовано сучасну нормативну модель відшкодування шкоди у кримінальному провадженні та охарактеризовано окремі проблемні питання, що виникають у правозастосуванні; досліджено існуючі сьогодні законодавчі ініціативи щодо покращення механізмів забезпечення права на відшкодування шкоди. Наголошено, що перед українським законодавцем стоїть доволі важливе та складне завдання щодо запровадження ефективної та дієвої процедури відшкодування шкоди, завданої потерпілому внаслідок кримінального правопорушення за рахунок Державного бюджету України. **Висновки.** Зроблено висновок, що урегулювання проблемних питань відшкодування (компенсації) шкоди потерпілому у кримінальному провадженні за рахунок Державного бюджету України потребує подальшого як наукового дослідження, так і нагального законодавчого закріплення. У зв'язку із цим перспективним є врахування законодавцем пропозицій, які напрацьовані в сучасній доктрині з урахуванням потреб практики. Тому першочергове значення для України в межах євроінтеграційних процесів має стати створення спеціального Державного Фонду, визначення джерел його формування, виділення окремого відомства, відповідального за реалізацію державної політики у сфері відшкодування (компенсації) шкоди, завданої кримінальним правопорушенням за рахунок держави.

**Ключові слова:** потерпілий, відшкодування шкоди, державний бюджет, кримінальний процес, кримінальне правопорушення.

*The article was submitted 19.07.2022*

*The article was revised 09.08.2022*

*The article was accepted 30.08.2022*