

## ISSUES OF PRIVATE LEGAL REGULATION OF SOCIAL RELATIONS

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### ISSUES OF LEGAL REGULATION OF THE APPLICATION OF CIVIL LIABILITY FOR DAMAGES CAUSED BY CORRUPTION

**Ігор Алексєєнко, Олексій Стасюк. ПИТАННЯ ПРАВОВОГО РЕГУЛЮВАННЯ ЗАСТОСУВАННЯ ЦИВІЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ШКОДУ, ЗАПОДІЯНУ КОРУПЦІЙНИМИ ПРАВОПОРУШЕННЯМИ.** У статті, аналізуючи положення національного законодавства про подолання корупції, досліджуються особливості притягнення до цивільно-правової відповідальності за порушення корупційного характеру. Як свідчить практика, від проявів корупції потерпають не лише держава та суб'єкти приватного права, але і інші публічно правові утворення також зазнають майнових втрат від проявів корупції і потребують захисту своїх прав. Отже, захисту інтересів цих суб'єктів також слід приділити увагу. Крім того, за час, що минув, істотно оновилося законодавство про запобігання корупції та напрацьовано певну судову практику щодо застосування його положень, яка потребує вивчення.

Одним із найбільш дієвих способів захисту цивільних прав є відшкодування шкоди. Отже, відшкодування шкоди є лише одним із цивільно-правових наслідків вчинення діянь корупційного характеру. Стаття 65 Закону «Про запобігання корупції» передбачає притягнення особи за вчинення корупційних або пов'язаних з корупцією правопорушень до цивільно-правової відповідальності у встановленому законом порядку. Специфічні властивості цивільно-правової відповідальності з об'єктивного боку забезпечують більш глибоку можливість індивідуалізації наслідків корупційної поведінки та усунення її негативних наслідків не тільки для суспільства в цілому, а, головним чином, для окремих учасників суспільних відносин, потерпілих від цих правопорушень. Особливості цього роду державно-примусових заходів обумовлені двома обставинами: по-перше, цивільно-правові санкції, спрямовані на відновлення майнового становища особи, яке існувало до порушення її права, а отже, мають бути виявлені негативні наслідки корупційних явищ у сфері економічних відносин за участю потерпілого. По-друге, вони спрямовані на захист приватних інтересів конкретних учасників цивільних відносин, порушених корупційним діянням. Відповідно, ініціатива подолання наслідків корупційного діяння виходить не від публічно-правових інститутів, а безпосередньо від потерпілого. Приватна ініціатива потерпілого у подоланні наслідків корупційних явищ може мати місце у формах звернень до компетентних органів з повідомленнями про порушення корупційного законодавства та вчинення позову про захист порушеного права у порядку цивільного судочинства. Тому у дослідженні, робиться висновок, що застосування відшкодування шкоди та інших засобів цивільно-правового впливу, у зв'язку із вчиненням таких правопорушень, може мати прояв самостійних наслідків корупційної поведінки

**Ключові слова:** *цивільно-правова відповідальність за шкоду заподіяну проявами корупції, корупційні діяння та правопорушення пов'язані з корупцією, судова практика.*

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**Problem statement.** The task of overcoming corruption in Ukraine in recent years at all levels of government has been recognized on the record as a key problem that hinders the development of our state and society. This negative phenomenon of social life in various aspects has been widely studied in the domestic scientific literature, and the number of scientific works devoted to its study is measured by hundreds. At the same time, the civil-law aspect of corruption in public relations has been fragmented. Compensation for damages is only one of the civil consequences of corruption.

Accurate familiarization with the practice of applying in the courts the provisions of the law on compensation for corruption in relation to the manifestations of corruption indicates that there are certain problems with the application of the civil legal consequences of these negative phenomena, which necessitates a more detailed study of these issues and making proposals for improvement of the legislation damage caused by corruption and corruption-related offenses.

**Analysis of publications that started solving this problem.** The main part of the scientific publications, where the legal side of corruption, is devoted to improving relations in the field of public administration, as well as to improving the legislation on administrative and criminal liability for offenses in this area was investigated.

A number of dissertations and monographs of such scientists as D. Zabroda, S. Ivashenko, O. Klok, O. Litvinov, E. Nevmerzhitsky, D. Mashlyakevich, M. Melnik, O. Prokhorenko, Ya. Filip, S. Rogulsky, O. Tkachenko, R. Tuchac, O. Banchuk, T. Grek, I. Griniova, I. Koliushko, O. Onishuk, G. Malyar, V. Tymoschuk, I. Yatskiv and others were used in this research.

In our opinion, scientific research, that had been conducted by the above-mentioned scientists, still does not pay enough attention to the analysis of the civil legal consequences of corruption phenomena. In this direction, the results of scientific research were presented by V. Gvozdetsky and S. Bratkov, who drew attention to "the lack of clarity on the legal relationship for compensation for damage caused by corruption and other corruption-related offenses." [1] They raised such issues as the absence in the Central Committee of Ukraine of a norm that would regulate the peculiarities of compensation for damages for this type of offense and made an appropriate proposal to supplement Chapter 82 of the Civil Code of Ukraine (hereinafter – the Central Committee of Ukraine) with a special article on liability for damage caused by corruption offenses. Our experience in studying jurisprudence in this direction gives reason to agree with the mentioned scientists, who noted the existence of difficulties in identifying the elements of civil relations, and the presence of complications in the mechanism of compensation [1]. In the work of V. Gopanchuk and S. Nizhensky [2] the issue of supplementing Article 82 of the Civil Code of Ukraine with the provisions raised within the norms of which the authors proposed to provide special provisions to restore the violated rights of a legal entity or an individual as a result of corruption offenses. The issues of civil liability for corruption offenses were investigated in the PhD dissertation written by S. Nijinsky [3] who identified the features inherent in the civil liability of this species

However, in our opinion, a number of issues in this area of scientific researches require further studying. Not only private law entities and the state are affected by corruption. Other public law entities also suffer property losses from corruption and the need of their rights being protect. Therefore, the protection of the interests of these entities should also be given consideration. In addition, the legislation on the prevention of corruption has been substantially updated in the past and some case law on the application of its provisions has been developed, though needs further studying.

**The article's objective** is to systematically analyze the provisions of national legislation on combating corruption and substantiate the theoretical foundations of the application of compensation for harm and other means of civil and legal influence, in relation to committing such offenses as independent consequences of corrupt behavior.

**Basic content.** Recent national anti-corruption legislation pays close attention to the use of preventative means of preventing corruption in public life. The mere fact of non-compliance with such measures constitutes an offense which entails liability of the individual. Part one of Article 65 of the Law of Ukraine "On Prevention of Corruption" of 14.10.2014 No. 1700-VII (hereinafter – Law No. 1700-VII) [4] provides that for committing corruption or corruption-related offenses, the persons mentioned in Part 1 of Article 3 of this Law shall be prosecuted administrative, civil and disciplinary responsibility in accordance with the procedure established by law. As we can see, all types of legal liability can be applied in connection with the

commission of corruption or corruption-related offenses. And so, naturally, the issue of the possibility to combine cross-sectoral sanctions in determining a person's responsibility arises.

Law 1700-VII provides for two types of offenses: corruption and corruption-related offenses. Since no specific term has been created by the legislator to refer to these two types of offenses, further, in this article, we will define them as "acts of corruption". Corruption and corruption-related acts are offenses in the area of public-law regulation of public relations.

A corruption offense is defined by Law No. 1700-VII as an act that contains signs of corruption committed by a person referred to in paragraph 1 of Article 3 of this Law, for which the law establishes criminal, disciplinary and / or civil liability [4]. A similar approach was applied by a legislator in the construction of the concept of the notion "corruption offense". The difference between the latter is only in the absence of signs of corruption, in an act that violates the requirements established by Law No. 1700-VII.

Both types of offenses are more differentiated in the relevant provisions of the Criminal Code of Ukraine and the Code of Administrative Offenses of Ukraine. These legislative acts exhaust the list of acts of corruption. Outside these legislative acts, there are no types of corruption offenses that would constitute a purely civil tort or a disciplinary offense of a corrupt nature.

Therefore, civil liability can only be applied as a result of criminal or administrative offenses. Detection of a criminal offense, its fixation and bringing a guilty person to criminal responsibility for having committed a crime is the exclusive authority of the state government. Accordingly, only after the state has fixed the fact of committing corruption by a person, can raise the issue of civil legal consequences driven by its committing.

According to Part 1 and Art. 7 of the Code of Ukraine on Administrative Offenses, no one can be subjected to a measure of influence in connection with an administrative offense except on the grounds and in the manner established by law. The use of measures of administrative influence by authorized bodies and officials shall be carried out within the scope of their competence, in accordance with the law. Therefore, similar conclusions can be drawn regarding the establishment of facts of corruption offenses. Criminal justice and administrative sanctions can only affect the cessation of unlawful activity and have a negative impact on the perpetrator. The private interests of a person whose rights have been violated by corruption require protection by civil means.

The cumulation of multi-sectoral sanctions provides a versatile impact on the perpetrator and is driven by the need to influence the consequences of corrupt behavior in various areas of public life.

Disciplinary responsibility extends to the sphere of private law regulation.

The powers to establish the fact of disciplinary misconduct fall within the competence of the other party to the employment contract, the employer. The subject of corruption is often the person who is in the public service or in the service of local self-government bodies. Civil servants and officials of local self-government are subject to the legislation of Ukraine on labor, taking into account the peculiarities stipulated by special laws.

So, in accordance with Part 3 of Art. 7 of the Law of Ukraine "On Service in Local Self-Government Bodies" N 2493-III of 07.06.2001, the provisions of Chapter 9 of the Labor Code of Ukraine (hereinafter referred to as the Labor Code of Ukraine) on guarantees for imposing material liability on employees are subject to for the damage caused to the enterprise, institution, organization. The same provision existed for civil servants (Part 3 of Article 4 of Law No. 4050-III "On Civil Service" of 17.11.2011). Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (new version) the relations of material liability of civil servants received a special legal regulation in Chapter 3 of Section 8 of the Law. According to part 4 of Art. 81 of this law in determining the amount of compensation shall take into account the state of the civil servant, the ratio of the amount of damage caused to his salary, the risk of harm, experience of public service given to the civil servant orders, as well as other circumstances in which the full compensation of the civil servant for the damage will be unjustified. Therefore, a legislator proceeds from the necessity of full compensation of the damage and determines the grounds for reduction of this amount under the influence of certain factors. An important legal guarantee of the status of a civil servant is financial liability only for intentional acts (Part 3 of Article 80 of Law No. 889-VIII). At the same time, special law No. 1700-VII "On Prevention of Corruption", in Part 2 of Art. 68 limits the types of non-recoverable damages in recourse and determines that no recoverable amount of compensation related to labor relations and non-pecuniary damage is recoverable. Thus, the provisions of a special law that determine the lia-

bility of public servants for offenses of a corrupt nature establish additional limits of liability for public servants, such as prohibiting the recovery of sums incurred from them for compensation for work-related benefits and non-pecuniary damage.

It should be noted that Law No. 1700-VII, in accordance with the provisions of the Civil Convention for the Suppression of Corruption [6] Articles 66-68, provide for the use of a number of civil remedies to counteract the effects of acts of corruption. Means of this kind are contained in the relevant provisions of the Civil Code of Ukraine. The following remedies include: restoration of violated rights (Clause 4, Part 2, Article 16 of the Civil Code of Ukraine); compensation for material and non-pecuniary damage (Chapter 82 of the Civil Code of Ukraine); the invalidation of transactions concluded in violation of the requirements of Law No. 1700-VII (Chapter 16 of the Civil Code of Ukraine); recognition of illegal legal acts, decisions issued (adopted) in violation of the requirements of Law 1700-VII (Article 21 of the Civil Code of Ukraine). As practice shows, compensation for harm is one of the most effective ways to protect civil rights. Therefore, damages are only one of the civil consequences of committing acts of corruption. Article 65 of Law No. 1700-VII provides for the prosecution of a person for committing corruption or corruption-related offenses in civil liability in accordance with the procedure established by law.

Application by the legislator in Art. 1 of Law No. 1700-VII in defining acts of a corrupt nature, the combination of prepositions "and / or" before the words "Civil liability" gives reason to return to the issue of the possibility of independent application of civil sanctions as a consequence of a corruption offense. As we know, civil liability is a form of state coercion that involves the application of civil penalties to a person for committing an offense in the field of legal regulation of civil relations.

Civil rights and legitimate interests that have been violated as a result of acts of a corrupt nature require their being restored and protected through civil sanctions, since the penalties provided by the relevant law do not ensure the restoring of the violated civil law. The peculiar features of civil liability on the objective side provide a deeper opportunity to individualize the consequences of corrupt behavior and eliminate its negative consequences not only for the society as a whole, but mainly for individual participants in the social relations affected by these offenses.

The peculiarities of this kind of state-coercive measures are conditioned by two circumstances: first, civil sanctions aimed at restoring the property status of a person that had existed before the violation of his right, and therefore, the negative consequences of corruption phenomena in the sphere of economic relations with participation of the victim should be revealed. Secondly, they are aimed at protecting the private interests of specific participants in civil relations that had been violated by corruption. Accordingly, the initiative to overcome the effects of corruption comes not directly from the public-law institutions, but directly from the victim.

The victim's private initiative in overcoming the consequences of corruption can take the form of appeals to the competent authorities with reports of violations of the corruption legislation and of bringing a claim for protection of the violated right in the civil procedure. As already noted, it is only in the case of bringing a person to commit a criminal act of criminal or administrative responsibility, can be a question of applying the civil legal consequences of such an act.

With regard to the possibility of applying civil penalties independently for such offenses, it should be noted that this is possible only in cases where the closure of relevant court cases occurred on non-rehabilitative grounds, but the fact of committing acts of corruption was established by the court. Therefore, the use of compensation for harm and other means of civil influence in connection with the committing of such offenses may manifest itself as an independent consequence of corrupt behavior. The general conditions for the occurrence of obligations arising from causing harm are set out in Part 1, Art. 1166 of the Civil Code of Ukraine, according to which property damage caused by wrongful decisions, acts or omissions of personal non-property rights of a natural or legal person, as well as damage caused to property of a natural or legal person, is fully compensated by the person who caused it.

The historical experience of the legal regulation of relations for the compensation of harm indicates that it is not possible to be satisfied with one rule for the full compensation of the harm by the person who caused it. Evidence of this is the current state of development of the civil law institute of liability for compensation, the norms of which are systematized in Chapter 82 of the Civil Code of Ukraine. Seeking to improve the efficiency of protection of the rights of participants in property relations, the legislator in the norms of this institute provided a considerable number of cases where the direct infliction of damage is brought to civil liability

only in the manner of recourse or at all absolved from liability.

As a result, a system of general and special torts was formed at the Tort Institute. Fixing in the current Civil Code of Ukraine the legal bases for the occurrence of obligations to compensate for damage provides a sufficiently wide opportunity to protect the rights of victims of material and non-pecuniary damage. However, anti-corruption legislation in force in Ukraine contains special rules on compensation for damage caused by acts of corruption.

Norms of Art. 66 and 68 of Law No. 1700-VII respectively enshrine the right of the state, as well as of individuals and legal entities, to recover damages caused by corruption or corruption-related offenses. These rules set out the specific legal bases for justifying claims for damages. According to the classification criteria for special torts given by T.S. Kivalov [7], it can be affirmed that Law No. 1700-VII defines special torts, which are characterized by peculiarities of the subject composition and peculiarities of the unlawful behavior of the persons who caused the harm.

It should be noted that the adoption of the Law on Prevention of Corruption was preceded by considerable experience of legislative regulation of relations in the sphere of combating corruption. Law No. 1700-VII changed the system of anti-corruption legislation of the state for the fourth time. All four pieces of legislation regulating anti-corruption relations at different time intervals set out the peculiarities of damages to the state and individuals and legal entities. However, in all anti-corruption laws, these provisions have undergone some changes. Despite the legislator's attention to improving the legal regulation of relations for compensation for damage caused by acts of corruption, these norms are not without shortcomings that would be desirable. Law No. 1700-VII, as well as the laws that have previously been in force, enshrines in various legal norms the right of the state to compensate for damage and the similar right of legal entities and individuals (Articles 66 and 68 of Law No. 1700-VII).

However, the range of civil law entities is not restricted by these persons. Part two of Art. 2 of the Civil Code of Ukraine determines that the participants in civil relations are: the State of Ukraine, the Autonomous Republic of Crimea, territorial communities, foreign states and other subjects of public law. These social and legal entities, if they suffer a violation of civil rights as a result of corruption, also need protection. For example, in the context of decentralization of power and reform of law enforcement, the territorial community can most acutely feel the impact of corruption. However, its right to compensation for damages due to the deficiencies of the current legislation requires complicated legal justification. Given the imperative nature of the norms of the institution of damages, to use such remedies as an analogy of the law, without violating the constitutional guarantees of the rights of participants in public relations, is extremely dangerous. In the "passion of the fight against corruption" it is easy to forget about proclaiming Ukraine being a country of the rule of law. And, therefore, legislation on the rights and obligations of persons arising from harm requires clarity and detail. Undoubtedly, while suffering from a corruption offense, the territorial community, like any other subject of civil law, can demand damages to be compensated. There is no direct norm as in Art. Art. 66, 68. Law No. 1700-VII, and in Chapter 82 of the Civil Code of Ukraine. Legal justification of the claim on behalf of the territorial community requires complex legal justification with reference to the provisions of Art. Art. 142, 143 Of the Constitution of Ukraine, Art. 16 of the Law of Ukraine "On Local Self-Government", and references to the guarantees of property rights, enshrined in part four of Art. 13 of the Constitution of Ukraine, according to which "the State provides protection of the rights of all subjects of property and economic rights, ... All subjects of property rights are equal before the law." In view of the need to protect the rights of territorial communities, we draw attention to the problem of the separation of responsibilities before the territorial community and its representative body – the relevant council.

Case study shows. that almost all the cases we have studied. claims for damages were justified by the reference to causing harm to the state. However, the issue of correctly identifying a creditor in a tort obligation is extremely important. Cash. recovered for damages. must be provided either to the needs of the village council, or to the needs of the relevant territorial community, or for the benefit of the state or public-law entity, into the appropriate budget. The decision of the Petrovsky District Court of the Kirovograd region of July 27, 2015 in civil case no. : 400/809/15-c) [8] upheld the claim of the Prosecutor of the Petrovsky district in the interests of the representative body of the territorial community, Iskra village council of the Petrovsky district of the Kirovograd region Iskra Village Council on Compensation for Damage Caused by Administrative Corruption Offenses, envisaged by Art. On March 3, 2015, he personally made the decision № 16 on the remuneration of his wife, the head of the Iskra Rural

Library, in March 2015, for conscientious performance of official duties and active participation in the public life of the village in the amount of 1678 UAH salary. , which was accrued and paid last March 2015. contrary to Art. 14 of the Law of Ukraine "On Principles of Prevention and Combating Corruption", did not inform the session of the Iskra Village Council of Petrovsky District about the conflict of interests when deciding to pay a monetary premium to his wife, in the amount of 1678 UAH.

The application of civil sanctions in this case was preceded by the prosecution of the guilty official to administrative responsibility for the alleged corruption act. In this case, there was a refund for future use according to the needs of the village council. However, it is worth paying attention to another side of this case. The essence of the administrative offense is that the decision of the village council session was not informed of a conflict of interest.

It is possible that the librarian deservedly received the award, but failure to take a precautionary measure when deciding on her award turned the decision of the chairman of the village council into an administrative offense, which resulted in the spending of the village council funds. On the other hand, if one does not look at the details of a particular case, it is impossible miss the fact that the person who has received such illicit goods remains beyond legal regulation and beyond the attention of law enforcement agencies. It turns out that material goods illegally obtained by one person are obliged to return by another person who created the conditions for their illegal receipt.

As you know, the subject of corruption is often the person who is in the public service or in the service of local self-government bodies. Civil servants and officials of local self-government are subject to the legislation of Ukraine on labor, taking into account the peculiarities stipulated by special laws (Part 3, Article 7 of the Law of Ukraine "On Service in Local Self-Government Bodies" N 2493-III of 07.06.2001. Accordingly, local government officials are subject to the provisions of Chapter 9 of the Labor Code of Ukraine on guarantees in the case of liability to employees for the damage caused to the enterprise, institution or organization. The same provision existed for civil servants (Part 3 of Article 4 of Law No. 4050-III "On Civil Service" of 17.11.2011). The Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015, the relations of material liability of civil servants received a special legal regulation in Chapter 3 of Section 8 of the Law. According to part 4 of Art. 81 of this Law, in determining the amount of compensation, account is taken of the financial position of the civil servant, the ratio of the amount of damage caused to his salary, the risk of harm, experience of the civil service given to the civil servant orders, as well as other circumstances in connection with which would make the total compensation of the civil servant unjustified. Therefore, the legislator proceeds from the necessity of full compensation of the damage and determines the grounds for reduction of this amount under the influence of certain factors. An important legal guarantee of the status of a civil servant is financial liability only for intentional acts (Part 3 of Article 80 of Law No. 889-VIII). At the same time, special Law No. 1700-VII in Part 2 of Art. 68 limits the types of non-recoverable damages in recourse and determines that no recoverable amount of compensation related to labor relations and non-pecuniary damage is recoverable. Therefore, if the defendant in the above case no: 400/809/15-c) [8] were a civil servant, the amount of the bonus paid in connection with the employment relations would not be chargeable. Such differences in the responsibilities of civil servants and local government officials can only be explained by the shortcomings of the legislation. In our opinion, the Law of Ukraine "On Service in Local Self-Government Bodies" generally requires improvement and, in particular, regulation of the responsibilities of this category of officials. With regard to officials of local self-government bodies, the provisions of the Law of Ukraine "On Service in Local Self-Government Bodies" should be supplemented with norms analogous to the provisions of Chapter 3 of Section 8 of the current Law "On Civil Service". Article 1174 of the Civil Code of Ukraine sets out the legal grounds for compensation for damage caused by officials or officials of public authorities and local self-government. It is in the sphere of activity of these entities that corruption offenses are manifested. Article 1174 of the Civil Code of Ukraine defines the special conditions and sources of compensation for damage caused by an official or official of a governmental authority, an authority of the Autonomous Republic of Crimea or a local government body. those responsible for causing harm to private law entities by unlawful decisions, acts or omissions of their officials and servants.

Part 4. Art. 1191 of the Civil Code of Ukraine established that the state, the Autonomous Republic of Crimea, territorial communities, having compensated the damage caused by an official, as a result of illegally made decisions, actions or omissions according to state au-

thorities, bodies of the Autonomous Republic of Crimea, bodies of local self-government, have the right to request the guilty person in the amount of compensation paid (except for compensation related to labor relations and non-pecuniary damage). As shown above, recourse to a civil servant can only be asserted if his guilt is established in the form of intent.

The right to compensation for damage to individuals and legal entities by acts of a corrupt nature is enshrined in Part 1 of Art. 68 of Law No. 1700-VII. Individuals and legal entities whose rights have been violated as a result of committing a corruption or corruption-related offense and who have suffered moral or pecuniary damage, losses, are entitled to the restoration of rights, damages and damage in accordance with the procedure established by law. These provisions define the subjective composition of the legal action for damages and its content. The second part of this article contains provisions on the grounds and limits of filing recourse claims against the guilty person.

Thus, it can be said that compensation for harm caused by corruption and corruption-related offenses form a special tort. In essence, these rules are self-sufficient and do not require additional recourse to the provisions of Art. 1174 and Part 4 of Art. 191 of the Civil Code of Ukraine, which determine the content of legal relations for causing harm by officials of the executive power and local self-government and contain identical prescriptions. Since acts of a corrupt nature form a group of special torts, the norms of Art. 1174 of the Civil Code of Ukraine as general grounds of liability are not subject to application. At the same time, the norms of Chapter 82 of the Civil Code of Ukraine, in large numbers, retain their significance in the settlement of other parties to special tortious relations that arise as a result of causing harm by acts of corruption. Utilized in Art. 68 of Law No. 1700-VII, the concept of "statutory procedure" for compensation for damage caused by officials of state authorities and local self-government covers a set of norms of different branches of law that determine the legal mechanism for the exercise of the right to compensation for damage. As we can see, the special rules of the current anti-corruption law do not establish the obligation of the subject of corruption to directly compensate for the damage caused. However, the jurisprudence goes the other way.

Thus, the decision of the Dvorychansky district court of Kharkiv region of 23.07.2009 in civil case No. 2-214 / 09 [9] upheld the claim of the Prosecutor of the Dvorychansky district for damages to an individual caused by a corruption administrative violation in such circumstances. Defendant in the case, working as the director of the center of services for family and youth of Dvorychansky district state administration of Kharkiv region, being a civil servant of the 12th rank of 6 category, in January and February 2009 gave her subordinates, employees of the center, including the plaintiff, an oral instruction to hand over her money in the amount of 50 UAH. 00 kopecks. from each, explaining that these funds are needed to travel to Kharkiv. As the employees voluntarily gave the money, the official intimidated them into dismissal and forced them to donate money.

In total, in January and February of 2009, the defendant, illegally using his official position, illegally received money from his subordinates 100 UAH. 00 kopecks. from each for a total amount of 300 UAH. The civil case was preceded by a person being brought to administrative responsibility. By a resolution of the Dvorychansky District Court of Kharkiv region, she was found guilty of committing the corruptive act provided for in Article "a" of Art. 1 of the Law of Ukraine "On Combating Corruption" and imposed a fine of UAH 425 on it.

As the defendant did not voluntarily compensate for the benefit of one of the victims, illegally received funds in the amount of 100 UAH, the prosecutor brought a claim in his interests for compensation for the damage caused by administrative corruption in the amount of 100 UAH. The legal basis for claims for damages was determined by Art. 15 of then law in affect which is the Law of Ukraine "On Combating Corruption" of 05.10.1995, the provisions of which defined the subject and the content of the right to compensation for corruption through acts and referred to the "Order. established by law ", and in essence to Art. 1174 and Part 4 of Art. 191 of the Central Committee of Ukraine.

According to Article 1174 of the Civil Code of Ukraine, damage caused to an individual or a legal person by unlawful decisions, actions or omissions of an official or official body of a governmental authority, an authority of the Autonomous Republic of Crimea or a local government body in the exercise of its authority, by the State, Crimea local self-government, regardless of this person's fault. The above judgment is typical. As we have shown, it does not contain the proper legal justification for imposing a civil liability on a corruption subject.

In cases of damage caused by acts of corruption of the state, the subject of the relevant duty is defined in Article 66 of Law No. 1700-VII as the direct cause of harm. According to the

rules of this article, damage caused to the state as a result of corruption or corruption-related offenses shall be compensated by the person who committed the respective offense in accordance with the procedure established by law [4]. Comparing the provisions of Art. 66 of Law No. 1700-VII with the rules contained in the anti-corruption legislation, which was in force earlier, we would like to draw attention to the following points: The state's right to compensation for damages in this area of public relations was enshrined in every legislative act. This way, Art. 13 of the Law of Ukraine "On Combating Corruption" N 356/95-BP dated 05.10.1995, provided for the right to compensation for losses caused to the state, enterprise, institution, organization. The disadvantages of this article can be attributed to inaccuracies in determining the range of victims, as well as unnecessary detail of the actions that entitle the state to claim damages. The following two pieces of legislation on preventing and combating corruption: No. 1506-VI of June 11, 2009 and No. 3206-VI of April 7, 2011, were limited to the general observation that "damage caused to the state as a result of a corruption offense is subject to compensation in the manner prescribed by law". Fully rational legislative improvement contains Art. 66 of the Law of Ukraine "On Prevention of Corruption", defining the basis of liability. The legislator limited himself to pointing to the task of harming a corruption or corruption-related offense as a special ground of civil liability of the person who committed the offense. In Art. 66 of Law No. 1700-VII we have norms that are suitable for practical application with a certain number of subjects of the relevant protective legal relationship. These rules have been applied in the jurisprudence. Thus, in case № 300/648/15-c, considered by the Volovets district court of Zakarpattya region on the claim of the Prosecutor of the Volovets district in the interests of the state in the person of the Central Election Commission on recovering the damage caused by a criminal offense. By the court decision of 21.08.2015 [10], the head of the polling station election commission No. 2101052 and the secretary of this commission were jointly and severally charged in favor of the Central Election Commission for UAH 2100 in damages caused by a criminal offense. The civil case was preceded by criminal proceedings. By the verdict of the Volovetsky district court of Zakarpattya region of April 23, 2015, these persons were found guilty of drafting a polling station election commission No. 210152 on a petition to the district election commission No. 70 to award them. These persons were found guilty of misrepresentation in the document, which by its content should have given the members of PEC No. 210152 the right to a one-time monetary remuneration. The defendants provided the above-mentioned PEC decision to the territorial election commission for further directing and approval by the constituency election commission of the single-mandate constituency No. 70, illegally deciding for themselves a monetary remuneration. Following the approval of a deliberately false document by the district election commission, the accused were charged and paid a lump sum cash payment of UAH 1,050 each. For these actions the chairman and secretary of PEC No. 2101052 were found guilty of committing the crimes provided for in Part 3 of Article 141 of the Criminal Code of Ukraine (hereinafter – the Criminal Code of Ukraine) and Part 1 of Article. 366 of the Criminal Code of Ukraine. As a result of the misconduct of the defendants, the state in the person of the Central Election Commission, was caused 2100 UAH damage. On the grounds provided for in Art. 1166 of the Civil Code of Ukraine, Art. 66 of Law No. 1700-VII, the claim was satisfied and in accordance with Art. 1190 of the Central Committee of Ukraine jointly and severally inflicted damage to the state. The rules of the Central Committee of Ukraine do not enshrine the state's right to compensation for the damage caused. Therefore, it can be argued that the provisions of Article 66 of Law No. 1700-VII constitute a special tort that has a specific subjective composition – in the person of the subject of law – the State and the subject of the obligation – of the person guilty of corruption. The content of the rights and obligations of these entities will also have their own characteristics, depending on the size of the liability of the claimant. As shown above, the amount of liability of local government officials, civil servants, and other persons defined in paragraph 2 of part one of Article 3 of Law No. 1700-VII has significant differences, which cannot help affecting the amount of liability of a person before the state for the damage caused. Undoubtedly, a government party, a territorial community, or other public-law entity that is recognized as a subject of civil law may act as a managed party in a tortious obligation arising out of corruption. Recognizing these entities as participants in civil relations, the legislator in the Civil Code of Ukraine in no way regulated the relations in compensation of damage caused to them. Even in the most general norms of Art. 1166 of the Civil Code of Ukraine, defining the right to compensation for damage, the legislator identified the subjects of such rights of individuals and legal persons, without mentioning other subjects of civil law, referred to in Part 2 of Art. 2 of



the Central Committee of Ukraine. It is clear that these entities can be harmed not only by corruption, their right to compensation for damages should be enshrined in the rules of Art. 1166 of the Civil Code of Ukraine. Considering this, as Art. 1166 of the Civil Code of Ukraine, and Art. 66 of Law No. 1700-VII are subject to amendment, which should eliminate a significant gap in the system of rules governing relations for damages. As Art. 1174 of the Civil Code of Ukraine, and Art. 68 of Law No. 1700-VII, defines the debtor in tort, the state, as well as the local self-government bodies, which, having compensated for the damage, are entitled to bring a recourse action against the persons whose wrongful acts caused the damage.

However, in cases where these persons caused damage directly to the local self-government body in which they served, the liability in the recourse procedure cannot be realized due to the coincidence in the person of the local self-government of the debtor and creditor in accordance with Article 1174 of the Civil Code of Ukraine. Therefore, these relations are necessary and could be settled as in Art. 1174 of the Civil Code of Ukraine and in the current Law on Prevention of Corruption, accordingly, identifying and extending the cases of direct liability of the corruption offender in order to regulate property relations between officials and public entities, and creating a common approach to determining the right of both the state and other public entities to seek redress.

Article 66 of Law No. 1700-VII would be desirable to supplement, by enshrining alongside the law of the state, the right of territorial communities and other entities of public law, granting them the right to seek compensation from officials who, while on duty, have caused acts of corruption. Given the difference in the design of the proposed novella, Art. 66 of the said Law should be supplemented by a separate part. When discussing the issues of delimitation of cases of harm to the state and individual legal entities, it should be noted that district state administrations and the absolute majority of state authorities are endowed with the status of a legal entity. And despite the fact that these persons carry out the operative management of state property, it is necessary to distinguish between cases where losses are directly suffered by the state and cases of harm to specific legal entities. This is important for recovering assets under specific budget items. Thus, in Case No. 2-652 / 2007, the legal entity that made payments from the funds allocated to its wages was incurred. The decision of the Zvenigorod District Court of Cherkasy region of 07.11.2007 [11-12] satisfied the claim of the Zvenigorod inter-district prosecutor in the interests of the state in the person of the Zvenigorod district state administration to the head of the material support department of the Agroindustrial Development Department of the Zvenigorod Regional State Administration of the Cherkasy region, in compensation action in the amount of 363 UAH.74 cop. He, having the status of a civil servant of the 11th rank of 7th category, illegally received material benefits in the form of payment for a sick leave and salary in connection with the performance of official functions during his time spent abroad in Turkey.

As a result, the state suffered pecuniary damage in the amount of UAH 363.74. By a decree of the Zvenigorod District Court of February 16, 2007, the said official was found guilty of committing an administrative corruption offense – unlawful obtaining by a person authorized to perform the functions of the state in connection with the performance of such functions, material goods, for which responsibility was provided. n "a" Part 2 of Art. 1 and Part 1 of Art. 7 of the Law of Ukraine "On Combating Corruption" and is subject to administrative penalties.

In this case, the court referred to the rules of Art. 15 of the Law of Ukraine "On Corruption" in force at that time, it is reasonable to consider that the damage was caused to the district state administration, which is a legal entity, not the state.

We have repeatedly approached the discussion of the issue of legal support of claims for the recovery of illegally obtained material goods (their value) from the perpetrators. This case, on the other hand, reveals another legal problem. The behavior of a person who knowingly participated in the misappropriation of budget funds remained without legal consequences. Above were also cases in which the misconduct of persons indirectly involved in the offenses and taking advantage of the unlawful rewards of corrupt behavior did not respond to the offenses.

Taking into account this, it would be worthwhile to solve the issue of expanding the scope of subjects of civil liability, which, while not being special entities of administrative or criminal responsibility for acts of corruption, involved in causing harm. As civil liability is functionally aimed at restoring the state of economic equilibrium in society, illegally obtained material goods are subject to return by the person who illegally received them. Based on this, we believe that for this purpose in Art. 66 and Part 1 of Art. 68 of Law No. 1700-VII, the main subject of civil liability should be to identify the person who illegally acquired material bene-

fits as a result of committing acts of corruption, stating that "property (its value) was obtained as a result of committing corruption or corruption-related offenses shall be liable to recovery from the persons who received it" and to establish subsidiary liability for the subject of a corruption offense by virtue of which the property was acquired by third parties.

Such an approach would have a comprehensive impact on property relations in society and would increase the civil liability of every person directly or indirectly involved in acts of corrupt behavior. In our opinion, this provision will not contradict Art. 3 of Law No 1700-VII, which defines special entities responsible for corruption and corruption-related offenses, because it is a matter of normalizing property relations. It is unlikely that the fact that the person who illegally received the property benefits should return them to the one who lost them.

The practice of applying anti-corruption legislation has shown that there are difficulties in identifying a victim in the sphere of corruption encroachments on the illegal use of state and communal property. This way, in civil case No. 2 291/09 [13] by the decision of the Zvenigorod District Court of Cherkasy region of 04.06.2009 the claim of the Zvenigorod inter-district prosecutor in the interests of the territorial community of the village was satisfied. Stetsivka to the Head of the Stetsivska Village Council for compensation of losses in the amount of 500 UAH, inflicted on the state as a result of corruption.

As the court proceeded on the grounds that the damage was caused to the state, a representative of the State Treasury was involved in the case. According to the lawsuit, the prosecutor asked to recover from the defendant for the benefit of the local community. Stetsivka Zvenigorod district of Cherkasy region losses in the amount of 500 UAH. The same question arises as to who is the victim: the state or the territorial community?

The claim of the prosecutor was based on the fact that Spetsivsky village chairman, using his position, instructed the secretary of the village council Moshenets V.M. to prepare the decision of the village council № 21-2 / U of 24.01.2009 "On the norms of funds for payment of compensation for the use of a passenger car for business trips and the procedure of their spending", on the basis of which he should pay compensation for the use of his private car for business trips in January 2009. On the basis of the said decision, the lease agreement of the vehicle dated 24.01.2009 and the act of renting the car No. 1 dated 28.01.2009 the defendant was paid compensation for the use of his car for business trips in the amount of 500 UAH. (payment order № 10 of 28.01.2009), as a result, according to the prosecutor, the state sustained pecuniary damage in the amount of 500 UAH. By a resolution of the Zvenigorod District Court of February 9, 2009, the defendant was found guilty of committing an administrative corruption offense under Article 2 (a) (a). 1 of the Law of Ukraine "On Combating Corruption" and is subject to administrative penalties. In satisfying the claim of the prosecutor, the court referred to the rules of Art. 15 of the said Law, which at that time determined the grounds for damages to individuals and legal entities. Such a rationale for the decision should create significant difficulties in its implementation, since it is not clear from the court's judgment what the property should be recovered from and at what expense should the state treasury be credited?

Also, considering the practice of applying anti-corruption legislation, it is worth discussing the types of damages that are subject to compensation for corruption offenses. Thus, according to the Decision of the Lyubeshiv District Court of Volyn region of 05.02.2009 [14] in civil case No. 2-32 / 09, the subject of the claim was not received due to the administrative offense of the village head, the receipt of the local budget of the Bykhiv village council in the form fee for special use of forest resources in the amount of 370 UAH. and personal income tax in the amount of 1425 UAH, and the total amount of 1795 UAH. The findings of the court in a civil case were based on the facts established by the Resolution of the Kovel City District Court of 22.09.2008 on finding the defendant guilty of committing the corruption offense provided for in p. 3 (d). 5 of the Law of Ukraine "On Combating Corruption", causing damage to the Bykhiv Village Council.

Bykhiv village head in violation of the requirements of paragraph "g" part. 3 Art. 5 of the Law of Ukraine "On Combating Corruption", gave the illegal advantages to the citizen, without a corresponding decision of the session, giving consent to the location and functioning of the reception point of berries in the territory of the Bykhiv Village Council, without having the relevant permits provided for in p. 1.9 of the Procedure for issuing special permits and setting limits for the procurement of secondary forest materials and the implementation of by-products of forestry, approved by the decision of Volyn Regional Council № 19/13 of 21.05.2008.

As a result, in the period from 01.07 to 07.07.2008 the government purchasing agent created in the village Bykhiv of Lyubeshiv district, the point of receiving berries and for six days bought blueberries from the population at the price of UAH 9.50. per 1 kg, thus preparing 1000 kg of blueberries. In violation of the requirements of the Decree of the Cabinet of Ministers of Ukraine No. 174 of February 21, 2006 "On payment for the use of forest resources", the latter failed to pay UAH 370 to the local budget revenue. fee for special use of forest resources, in violation of the requirements of the Law of Ukraine " On Individual Income Tax" did not pay to the local budget 1425 UAH. tax.

In satisfying the claim of the prosecutor, the court referred to the rules of Art. 15 of the Law "On Combating Corruption" and Article 116 of the Civil Code of Ukraine, which defines the procedure for compensation of damage caused to individuals and legal persons. In this case, also the behavior of the government purchasing agent identified by the payer to the local budget. remained without proper legal evaluation. In addition, no income, no matter what they are received, can be considered as direct actual harm. After all, there is no damage or loss of property in this case. From a civilistic point of view, such losses could be regarded as a lost advantage.

However, offenses in the field of taxation are sanctioned by special rules of tax legislation and in accordance with Part 2 of Art. 1 of the Civil Code of Ukraine to these relations, the rules of civil law are not applied in the absence of direct instructions of the law. The issue of tax evasion is beyond the scope of civil law. The person must pay the taxes and be liable for their non-payment. determined by tax law. The prosecution of another person in civil liability for failure to comply with tax obligations is governed by tax law, not civil law, and the described case is not provided for by special tax law. The above case prompts us to discuss the types of property claims that may be claimed in this area. The current Law No. 1700-VII in Art. 66 and Part 1 of Art. 68. By defining the consequences of acts of corrupt behavior, it establishes the right to compensation for harm and damages by using these terms through comma. These civilistic concepts, in their logical content, partially intersect and reflect different sides of the same phenomenon of social life. As you know, damage is the monetary equivalent of property damage. Therefore, the word "losses" in Art. Art. 66 and 68 of the said Law should be bracketed or excluded altogether. The concept of "losses" in Art. 22 of the Central Committee of Ukraine is regarded as a fairly wide range of monetary losses in monetary terms. Contents of Art. 66 and 68 of Law No. 1700-VII give grounds for claiming claims in the form of both actual loss and loss of profit inflicted on the business entities. The state is also actively involved in economic relations with public procurement, public-private partnerships, lending and more.

Therefore, it can be an issue of compensating the lost profit as a result of acts of corruption in the economic relations with the participation of the state.

Insufficient tax revenues or contributions to special trust funds cannot be considered as a lost benefit as a result of committing acts of corruption, since such relationships are publicly legal and governed by special legislation.

**Conclusions.** The gaps identified in the legislation do not contribute to the strengthening of the rule of law in the state and do not provide sufficient legal guarantees for the protection of property rights of persons who are held to civil liability in connection with committing acts of corruption. Outside the attention of the law enforcement system are persons who have benefited from the effects of corrupt behavior by others, which requires the assistance of the legislature in improving anti-corruption legislation. In all the cases analyzed, the defendants acknowledged the claims made and all judgments were based on the findings of other court acts for bringing those responsible to administrative liability for corruption offenses. However, despite the lack of litigation in civil cases, we believe that the provisions on compensation for damage caused by corruption and corruption-related offenses require refinement in the light of the offered proposals.

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### Summary

In the article, analyzing the provisions of the national legislation on combating corruption, the peculiarities of bringing civil liability for corruption offenses are investigated. It is concluded that the use of compensation for harm and other means of civil influence, in connection with the perpetration of such offenses, may have an independent effect of corrupt behavior.

**Keywords:** *civil liability for corruption-related harm, corruption and corruption-related offenses, case law.*

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### PROBLEMATIC ISSUES OF NORMATIVE SETTLEMENT OF CERTAIN TYPES OF SALES CONTRACTS

**Інна Болокан, Дмитро Санакоєв. ПРОБЛЕМНІ ПИТАННЯ НОРМАТИВНОГО ВРЕГУЛЮВАННЯ ОКРЕМИХ РІЗНОВИДІВ ДОГОВОРУ КУПІВЛІ-ПРОДАЖУ.** Значну частку цивільного і господарського права становлять договірні відносини. При врегулюванні тих чи інших їх аспектів законодавець доволі часто залишає на розсуд сторін вирішення тих чи інших питань, натомість базові моменти, як правило, законодавець доволі чітко врегулює, або, принаймні, пропонує певне регулювання, надаючи сторонам право у своїх конкретних договорах змінити ці положення. Нормативне врегулювання лише тоді може бути визнане ефективним, коли норми не потребують зусиль щодо свого тлумачення, коли вони однозначні у сприйнятті, що значно покращує процес їх реалізації. Одним із недоліків норм договірної права є «подвійне» врегулювання одних і тих самих договірних конструкцій.

У статті аналізуються позитивні та негативні аспекти «подвійного» нормативного врегулювання таких різновидів договору купівлі-продажу, як міна, контракція сільськогосподарської продукції, постачання енергетичними та іншими ресурсами через приєднану мережу у Цивільному та Господарському кодексах України. Зазначається на наявності дублювання, акцентується на потребі приведення до уніфікованого вигляду дефініцій цих договорів, які наразі суттєво відрізняються, що ускладнює процес тлумачення, а, відтак, і реалізації нормативних положень. Пропонуються можливі варіанти вдосконалення нормативного врегулювання, натомість аргументується доцільність закріплення дефінітивної норми в одному кодифікованому акті та бланкетної норми з посиланням на інший кодифікований акт, або закріплення в одному з актів лише бланкетної норми та концентрація загальних норм в іншому кодифікованому акті. Зважаючи на дещо звужений, порівняно з цивільними відносинами, суб'єктний склад господарських відносин, обґрунтовується доцільність такої концентрації саме у Цивільному кодексі України. Як на істотний недолік нормативного врегулювання вказується на відсутність нормативного визначення (дефініції) предметів більшості з договорів, аналіз яких проводиться у публікації.

**Ключові слова:** *договір міни, договір контракції сільськогосподарської продукції, договір постачання енергетичними ресурсами, сільськогосподарська продукція.*

**Problem statement.** A significant part of both civil and commercial law are contractual relations. When regulating certain aspects of the law, the legislator often leaves the parties to decide on certain issues, but instead the bases, as a rule, the legislator quite clearly regulates, or at least proposes some regulation, giving the parties the right in their specific contracts to

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