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Approaches to compensation for damage caused by unconstitutional law in Eastern Europe

IRYNA E. BERESTOVA[1*], OLEG O. PERVOMAYSKIY[1], HANNA V. SHARKOVA[2], VALERIIA V. ARTIUKHOVA[3] and PAVLO O. KOLOMIITSEV[4]

The paper investigates the issue of compensation for damages caused to persons by a law that is recognized as unconstitutional. The civil law procedure for compensation for pecuniary and non-pecuniary damage in the countries of Eastern Europe is modelled on the basis of the study of the constitutional procedure for compensation for such damages in the said countries. The purpose of the paper is to investigate constitutional and civil law approaches to compensation for damages caused by an unconstitutional law in the countries Eastern Europe. The chosen methodology of interdisciplinary research (integrative, dialectical, systemic, systemic and structural, intersectoral methods) is aimed at studying the essence of all the essential and procedural phenomena in constitutional and civil proceedings. The main results of the study. The problem of presumption of constitutionality of laws in the countries of the Roman-German system of law (countries of written law) is revealed. It is substantiated that the presumption of constitutionality of law is one of the important components of presumption of truth of law. It is proved that the Constitutional Court plays a very important part in shaping the constitutional policy, which does not always coincide with the legislative one. In this article we examined the conceptual issues of compensation for damages caused to persons by law, recognized by the Constitutional Court as unconstitutional. The constitutional law approach and the civil law procedure for compensation for pecuniary and non-pecuniary damages in the countries of Eastern Europe and Ukraine are modelled. It is proved that constitutional legal responsibility has an ascertaining (system-forming) character and also acts as a guarantee of the constitutional system of the state.

Keywords: presumption of constitutionality, civil procedural remedy, compensation for damages, lost profit, decision of the Constitutional Court.

[1]Department of Jurisdictional Forms of Legal Protection of Private Law Subjects, Judicial System and Legal Proceedings, Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine,01042, 23-a Rayevsky Str., Kyiv, Ukraine

[2]Department of Private Law, Kropyvnytskyi Institute of State and Municipal Governance, 25026, 73 M. Levytskyi Str., Kropyvnytskyi, Ukraine

[3]Department of Criminal Law, Criminology and Judicial System, V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, 01601, 4 Tryokhsviatitelska Str., Kyiv, Ukraine

[4]Department of Constitutional Law and Human Rights, National Academy of Internal Affairs, 03035, 1 Solomianska Ave., Kyiv, Ukraine

*Corresponding author

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INTRODUCTION

Integrated, non-linear development of countries is always fraught with certain difficulties. For example, analysis of the surge in scientific and technological progress suggests that social relations are constantly transforming, completely new relations emerge (the use of cryptocurrency as a form of payment, the introduction of elements of artificial intelligence in social relations, etc.). And law, as a universal regulator, must manage to carry out legal ordering of new and newest social relations. Furthermore, one should always remember about ordinary, basic social relations with a thousand-year legal protection (relations of safety of life and health of property, constitutional freedoms, issues of interaction between authorities, etc.), which also do not remain unchanged. These relations also develop, and sometimes even mutate, that is, their essence can be distorted depending on the needs of society in a certain period of time.

Regardless of the level of development of the country, law never manages to timely respond to the legislative regulation of all relations. As a rule, practice responds first and forms its own vision of the future statutory regulation. Naturally, in such conditions, the rights of individuals may be infringed both between the participants in public relations and the state. For example, for the adoption of laws which, in their essence, contradict the Fundamental Law of the state and are subsequently recognized as unconstitutional. We shall state that a characteristic feature of democratic countries is, inter alia, the presence of responsibility of the state to everyone: man and citizen, including other participants in public relations. The real, and not hypothetical responsibility of the state for its actions has always been the subject of both contentious scientific debate and recurring legal controversy in various courts and jurisdictions.

For instance, in Ukraine the last decade is characterized by a surge in legal nihilism, by the consequences of overcoming various financial crisis phenomena in society, numerous revolutionary processes, and permanent legal reforms. The latter, in turn, were both comprehensive (judicial reform) and selective (individual issues of the rights of participants in public relations). We shall state that, unfortunately, Ukraine is not fully capable of performing its constitutional obligations to man, which is confirmed by the jurisprudence of international courts. For example, according to the analytical statistics of the European Court of Human Rights (hereinafter referred to as the ECHR) indicate the following. In 2018, Ukraine ranked fourth among countries whose citizens most often appeal to this international judicial institution (in 2018: I place – Russian Federation – 11,750 claims, II place – "other states" – 8,800; Romania – 8,500; Ukraine – 7,520) (Analysis of

statistics 2018), rising from fifth place in 2017 (7,110 claims) (Analysis of statistics 2017).

At the same time, this situation actually indicates that Ukraine, unfortunately, remains one of the three leading countries in this direction, because if compared, for example, with Russia, the population of Ukraine is significantly smaller, and the number of applications filed is not much less. It should also be borne in mind that on October 12, 2017, the ECHR decided within the hearing of the Burmych and others v. Ukraine 2017 case to merge this case with 12,143 others concerning non-enforcement of decisions of national courts in Ukraine, which were transferred to the Committee of the Council of Europe.

These facts indicate that the inability of the state to perform its constitutional obligations (in particular, the constitutional obligation to enforce court decisions) can lead to fatal consequences. In this context, we shall note that most of the rights subject to conventional protection are also subject to constitutional protection. We shall note that the constitutional protection of human rights and freedoms is extremely important, but unfortunately, it is not a sufficiently effective means in the current period of development of Ukraine as a transitional state.

We argue that under these conditions, the concept of "constitutional damage" and compensation for damages due to unconstitutional laws is becoming increasingly relevant. Constitutional offenses are a special area in which policy issues are linked to ordinary civil tort liability (Wells 1996).

The claim on compensation for damages as a whole is not new to law (Field 1928), but from the time the Constitution was adopted, courts, time and again, have had to deal with the question of whether "constitutional damages" are an appropriate remedy against the state for infringing constitutional rights. Especially as remedies for these infringed rights (Toxopeüs 2018).

In this article, proceeding from the experience of Eastern European countries, we will formulate approaches to determining the procedure of compensation for damages caused by an act recognized as unconstitutional in Ukraine.

MATERIALS AND METHODS

Upon investigating the issue of constitutional tort and the features of their compensation in accordance with industry legislation, we shall argue that the civil procedure of compensation for damages caused by an unconstitutional act appears to be of the highest priority. In this study, we argue that each scientific industry is characterized by its own arsenal of methods aimed at studying certain types of legal proceedings. As a rule, such

methods are not fully designed for conducting interdisciplinary research, just as in our case.

The methodology we have chosen (integrative, dialectical, systemic, systemic-structural, interdisciplinary methods) is capable of exploring the essence of all the essential and procedural phenomena in constitutional and civil proceedings. The key method was integration in law at large, and in constitutional law in particular. Integrity guarantees not only consistency in the analysis and study of various constitutional and legal phenomena, but also provides the ability to verify the truth of the data obtained in this process.

We shall state that constitutional law is a system-forming component of the national legal system and affects the development and functioning of all other branches of public and private law in Ukraine. The integrative method of constitutional law that we use is to unite the will of the people into an indivisible whole, to direct it towards the achievement of the purposes and objectives it specifies, including in the aspect of protecting human rights (Grimm 2016).

In the paper, we use the imperative (method of subordination) and dispositive (method of coordination) (Kiriiak 2015), and emphasize the priority of using the former method in constitutional proceedings. We also highlight other methods of constitutional law regulation, applied for the use of specific types of constitutional law relations in constitutional law proceedings: the method of direct constitutional regulatory consolidation, the method of positive obligations, the method of resolution, the method of prohibition, the method of regulating the structure of legal relations, etc. (Skrypniuk 2013).

Methodology of constitutional law indicates that it is not intended for a detailed study of legal procedural phenomena. At the same time, in this direction we shall highlight the priority of due process as a constitutional guarantee of judicial protection of the rights of individuals – a procedural method of research.

The relationship of constitutional and civil proceedings in determining the grounds for compensation for damages caused by an unconstitutional act will be revealed through the lens of a systematic approach, considering these processes as open systems. In the most general scientific sense, a system is an ordered set of elements interconnected and interacting with each other, which is characterized by relative independence and organic unity, internal integrity and autonomy of functioning (Lewis 1970). Proceedings as a type of jurisdictional process and at the same time an open system is always associated with the human factor, since a person is a participant in multi-plane phenomena within the judicial process. The functional criterion for civil proceedings as an open system includes the civil

process itself and various types of proceedings (lawsuit, separate, order-based proceedings). The substantive criterion includes law enforcement cycles and law enforcement stages. At all these stages and components of the process, the human factor is always present.

Similarly, the constitutional proceedings, in addition to the above, interact with other complex social systems: Parliament, the President, the Ombudsman, the Government, the prosecutor's office, the bar, and participants in court proceedings. it also interacts with various socio-economic processes that affect the order and nature of the case under consideration in the Constitutional Court: inflation, recession, migration, unemployment, education crisis, etc.).

Furthermore, various legal and non-legal phenomena, such as morality, economic, demographic, political challenges and other processes, which can be called "social management" as a whole, affect the civil proceedings as well as the constitutional one (Kurochkin 2012). Such interaction is not directly regulated by law, but is directly affected by it (legal policy, legal culture, public inquiry, etc.). This interaction can be traced precisely at the stage of judicial protection, creating a comprehensive subject for the study of judicial law and the economy, sociology and other branches of science. These factors directly affect the occurrence of constitutional damage if it is impossible for the state to perform its obligations in the event of the adoption of acts that contradict the Fundamental Law of the state.

RESULTS AND DISCUSSION

Presumption of Constitutionality of the Law as a Component of Presumption of Truth of the Law

In countries with a centralized form of access to constitutional justice, a special body – the Constitutional Court disqualifies laws that, due to their content, contradict the Fundamental Law of the state. In the constitutional doctrine, there is a conventional point of view that all laws are considered to be constitutional before their recognition as unconstitutional, that is, they formally meet the criterion of "presumption of constitutionality of a legal act". Therefore, acts are applied, although their provisions may not always be adequate to the values of society in a particular period of its development.

From this standpoint, the Constitutional Court plays a very important part in the formation of constitutional policy. However, we shall emphasize that constitutional policy does not always coincide with legislative one. Constitutional policy presupposes the power of distribution, and legislative policy presupposes the use of power after distribution (Magnet 1980). Of

course, constitutional policy often intersects with the process of formulating legislative policy, namely in the process of developing specific laws. Ideally, legislative policy should be consistent with and be in conformity with constitutional policy. But at the same time, the right constitutional policy does not necessarily lead to constitutional laws and sound legislative policies. That is why the Constitutional Court should always be insightful, separating constitutional and legislative policies in the context of determining the presumption of constitutionality of law or absence thereof.

We shall state that the presumption of constitutionality of law is one of the important components of the presumption of truth of law. The truth of a legal act is conventionally understood as the correct reflection by an act of real conditions, relations requiring legal influence and the correct legal assessment of such assessments. The presumption of the truth of a legal act includes the presumption of constitutionality, the presumption of legality and legitimacy of a regulation (a somewhat synonymous category), as well as the presumption of legality and good faith in the activities of participants in legal relations (Babaev 1974). All these elements are in an organic relationship with each other and must manifest themselves in industry legislation.

The presumption of constitutionality of a legal act (primarily the law) indirectly arises from the provisions of the Constitution and is manifested in the substantive and procedural legal aspects. The specificity of constitutional matter lies in the fact that only the body of constitutional jurisdiction acts as the leading way to both establish and refute the presumption of constitutionality of the law. It is the Constitutional Court that is authorized to ascertain the unconstitutionality of the act, and the law is considered constitutional until it is enshrined in the decision of the Constitutional Court. Such is the substantive component of the presumption of constitutionality of a regulation.

The recognition of certain provisions or the entire law as unconstitutional opens up a number of legal consequences apart from the fact of disqualification of the rule. One of the key consequences in countries with a centralized form of constitutional control (as well as in individual countries with a centralized form, for example, in the Slovak Republic, Bosnia and Herzegovina, Ukraine, Macedonia, etc.) is the emergence of the right of everyone to compensation for pecuniary and non-pecuniary damage caused to them by the provisions of a law that was recognized as unconstitutional.

Constitutional and Legal Regulation of Compensation for Damage Caused by the Law That Is Recognized as Unconstitutional in the Countries of Eastern Europe

The legislation of the countries of Eastern Europe in the matter of compensation for damages caused by unconstitutional law generally does not contain sufficient regulation. Only some countries separate and consolidate the powers of the courts to make decisions on awarding compensation to persons in the event that a particular regulatory act is recognized as unconstitutional. We shall state that the experience of the countries that we will investigate below will be very useful for shaping approaches to the civil law procedure of compensation for damages caused by the law that was subsequently declared unconstitutional.

Thus, the Constitution of the Slovak Republic by paragraph 3 of Article 127 stipulates that "the Constitutional Court may, by its decision that satisfied the complaint, award appropriate financial compensation to a person whose rights were infringed in accordance with paragraph 1" (Constitution of the Slovak Republic 1992). Clause 1 of Article 127 of the Constitution of the Slovak Republic determines that "the Constitutional Court shall decide on complaints by individuals and legal entities regarding an infringement of their fundamental rights and freedoms or fundamental rights and freedoms arising from an international treaty ratified by the Slovak Republic and published in accordance with the law, if decisions to protect these rights and freedoms are not made by another court" (Constitution of the Slovak Republic 1992).

The specified powers of the Constitutional Court of the Slovak Republic are disclosed in the Law "On the Constitutional Court of the Slovak Republic", which establishes "the right to award sufficient financial compensation by a state body that infringed the applicant's fundamental rights and freedoms within two months after the decision of the Constitutional Court becomes final" (Constitutional Court of the Slovak Republic 1993). In accordance with Article 74 of the Rules of the Constitutional Court of Bosnia and Herzegovina "in a decision on a complaint, the Constitutional Court may award compensation for non-pecuniary damage. If the Constitutional Court considers that compensation for non-pecuniary damage is necessary, it shall award it on an equitable basis, considering the standards set out in the case law of the Constitutional Court" (Rules of the Constitutional Court… 2014). That is, the Constitutional Court of Bosnia and Herzegovina is authorized to independently formulate standards and criteria for the inflicted non-pecuniary damage, which affects the basis and amount of its payment, including the time of compensation for damage.

In the Republic of Croatia, a person has the right to apply to the appropriate authority to amend an individual act adopted on the basis of a

revoked provision of the law. In accordance with paragraph 2 of Article 58 of the Constitutional Law on the Constitutional Court of the Republic of Croatia, "every individual or legal entity that applied to the Constitutional Court with a request to verify the constitutionality of a provision of the law or the constitutionality and legality of another act, should the Constitutional Court accept the appeal for consideration and cancel this provision of a law or other act, shall have the right to file a petition with the competent authority to replace the final individual act, which infringed their right, and which was adopted on the basis of the revoked provision of the law of another act, through the proper application of the provisions on the resumption of proceedings" (Constitution of the Republic of Croatia 2010). In the event of revocation of the law as unconstitutional, Articles 58, 59 of the said Law enshrine the right of a person to "claim compensation for damages for an infringed right if it cannot be restored" (Constitution of the Republic of Croatia 2010).

Similarly, in the Republic of Macedonia, a person can review an individual act adopted in accordance with a law that was further revoked or demand compensation for damages if it is impossible to eliminate the consequences caused by the application of the provisions of such a law. Namely: "Anyone whose right has been infringed by a final or legally enforced act, adopted on the basis of a law, regulation or other common act which by a decision of the Constitutional court is being revoked, has right to ask from the competent organ to revoke that individual act, within 6 months from the day of publishing the decision of the Court in the "Official newspaper of the Republic of Macedonia" (Rules of procedure of the Constitutional Court…1992).

"If by changing the individual act with respect to paragraph 1 of this article, the consequences from applying the law, regulation or the common act which by a decision of the Constitutional court is revoked, cannot be eliminated, the Court may determine the consequences to be eliminated by their returning in the previous condition, with a compensation of damage or in another way.

The execution of the legally enforced individual acts adopted on the basis of a law, regulation or other common act, which by a decision of the Constitutional court is being annulled, cannot be allowed, nor implemented, and if the execution has been started it will be cancelled" (Article 81 of the Rules of procedure of the Constitutional Court of the Republic of Macedonia) (Rules of procedure of the Constitutional Court… 1992). The Constitution of Ukraine establishes that "Pecuniary or non-pecuniary damage inflicted on individuals or legal entities by acts and actions that were recognized as unconstitutional shall be compensated by the state in accordance with the

legally established procedure" (part 3 of Article 152 of the Constitution of Ukraine).

The Constitutional and Legal Mechanism for Recovering Damages as a Universal Remedy for Human Rights and Freedoms

Constitutional tort litigation is necessary in all cases where a remedy is required to rectify injustice (Love 1992). Compensation for damages caused by unconstitutional law in the countries of the Romano-German legal system ("countries of the written law") is characterized by certain features. Thus, due to constitutional tort, constitutional damages in relation to citizens and legal entities are transformed into civil right and compensated in accordance with civil litigation procedure. The basis of such compensation is the totality of: the provisions of the Constitution on a specific fundamental human right or freedom (infringed by the law), the rule of law, the provisions of the Civil Code, the Civil Procedure Code and a specific decision of the Constitutional Court, which recognized the provisions of the law as unconstitutional.

The analysis of this issue obliges to investigate the essence of the category of "damages" in the civil law meaning, as well as to reveal its constitutional meaning. When it comes to a specific court case, the rule of law can be applied in both constitutional and non-constitutional meaning, especially in the face of ever-changing legislation. Therefore, we shall emphasize that the interpretation of the statutory provision upon judicial enforcement should be constitutional and consistent with the Fundamental Law.

When considering constitutional complaints, the Constitutional Court establishes the constitutional meaning of the statutory provisions. As a result of the consideration of the case, this meaning is objectified by a motivated constitutional legal means of the final decision of the Constitutional Court regarding the constitutionality of the content of the provision. The Constitutional Court is also authorized (for example, in Ukraine) to establish that the application of the statutory provision by general courts was either consistent or inconsistent with the constitutional method of interpretation. If the Constitutional Court recognizes the provision of civil law as constitutional, but at the same time discovers that the court has applied this law (its provisions), interpreting it in such a way that does not comply with the Constitution, the Constitutional Court shall specify this in the operative part of its decision. This is conditioned upon the fact that the increased threat to constitutional values associated with incorrect legal regulation lies in recurrent and systematic reproduction of a defective statutory provision in particular legal relations with regard to an unlimited scope of people. As a

rule, such a threat is hidden, inconspicuous (covert), since its facade is disguised as a legitimate form, and infringement of constitutional rights and freedoms is purportedly "covered up" by an unconstitutional law or subordinate legislation.

The constitutional law method of compensation for pecuniary damage caused by an unconstitutional act is a public method, and in this mechanism, the priority form of the state's obligation to compensate for damages is the right to a recovery function, not a compensatory one. This is the difference from the private law method of compensation for damages, which is characterized by the full restoration of the civil authority of the person-victim to the inflictor of damages – the state. A purely private law approach to compensation for damages can lead to many practical issues, since the public law specificity of the state will not disappear in relations regarding compensation for damages as tort civil relations.

Although, if it is necessary to rectify constitutional infringements, victims of the unconstitutional law may demand compensation for damages or they may seek binding injunctions regarding the correction of conditions that led to the violation of their constitutional rights. An injunction may also establish the procedure for responsible government bodies to compensate for damages: that is, to reallocate resources from public spending to private (Pilkington 1984).

We shall emphasize that, unlike the system of Romano-German law, common law stipulates that, in the constitutional tort court, compensation losses have two functions – compensatory and deterrent. With that, the problem is that in many constitutional tort cases the plaintiffs demand compensation for losses such as damages inflicted by the deprivation of a certain fundamental right (for example, constitutional right to vote). And in such case, it is difficult for the plaintiff to assess the monetary value of this infringed right because of its intangible nature. If such a determination is not possible, the awarded compensation will have neither the desired compensatory nor the deterrent effect (Love 1992). For example, in the United States, the Supreme Court in Carey v. Piphus developed the theory of the "paramount importance of a deterrent and compensatory functions of compensation for damages in a constitutional tort court" (Carey v. Piphus 1978).

In Ukraine, the Constitutional Court has repeatedly pointed out the responsibility of the state for its activities to a person and the procedure for such responsibility. In particular, in a Decision of May 30, 2001, the Constitutional Court of Ukraine of Ukraine established that "the Constitution of Ukraine enshrined the principle of responsibility of the state to a person for its activities, which is manifested primarily in the constitutional definition

of state obligations (Articles 3, 16, 22 of the Fundamental Law). Such responsibility is not limited only to the political or moral responsibility of public authorities to society, but has certain attributes of legal responsibility as the application of measures of the public law (in this case, constitutional law or international law) nature of the state and its bodies for non-performance or improper performance of their obligations. In particular, ...Article 152 of the Constitution of Ukraine obliges the state to compensate for pecuniary or non-pecuniary damages inflicted on individuals or legal entities by acts and actions that are recognized as unconstitutional. ...The Constitution of Ukraine provides for the responsibility of state bodies, local self-government bodies and their officers, establishing appropriate measures of influence (sanction) in them for certain actions or inaction. In particular, this refers to ... revocation of unlawful regulations, recognition of laws and other legal acts as unconstitutional (Articles 106, 118, 152 of the Constitution of Ukraine)" (paragraphs 4, 5 of paragraph 2 of the reasoning part of this Decision No. 7-рп/2001 of May 30, 2001) (Decision of the Constitutional Court of Ukraine… 2001).

Thus, part 2 of Article 152 of the Constitution of Ukraine establishes that "Laws, other acts or their individual provisions that are recognized as unconstitutional, become null and void from the day the Constitutional Court of Ukraine makes a decision on their unconstitutionality, unless otherwise established by the decision itself, but not earlier than the day it is adopted". To this end, the Constitutional Court of Ukraine indicated that "in accordance with part 2 of Article 152 of the Constitution of Ukraine, laws, other acts or their individual provisions that are recognized as unconstitutional, become null and void from the day the Constitutional Court of Ukraine makes a decision on their unconstitutionality, unless otherwise specified by the decision. According to this principle, laws and other legal acts have legal force until they are recognized as unconstitutional by a separate decision of the constitutional control body (paragraph 2 of clause 4 of the reasoning part of Decision of the Constitutional Court of Ukraine No. 8-zp/1997 of December 24, 1997) (Decision of the Constitutional Court in the case… 1997).

Thus, a law, or other regulation, according to which a constitutional proceeding shall be opened regarding its unconstitutionality is not null and void, but disputed. The decision of the Constitutional Court of Ukraine regarding the unconstitutionality of the law, other act or their individual provisions does not annul the law completely and with retroactive force (action). That is, all legal rules, tasks and consequences formed by law are cancelled only from the moment the decision is made by the Constitutional

Court of Ukraine, unless otherwise specified by the decision itself, but not earlier than the day the decision is made.

We shall state that a law, another act or their individual provisions, which are recognized as unconstitutional, cannot be recognized null and void ab initio (in the first place), since the legal order, in order to avoid anarchy, empowers certain authorities to adopt the relevant regulations in accordance with the appropriate procedure and terms of reference (Kelsen 1942). Failure to take these criteria into account is a ground for contesting a particular act, but it is not a ground for rendering it declarative and automatically annulled, depriving it of legal force from the moment such law enters into force. For example, the Constitutional Court of Ukraine, upon emphasizing the importance of guaranteeing the protection of human and civil rights and freedoms, pointed out that the Constitution of Ukraine establishes that "... no one can be held accountable for acts that were not recognized by the law as an offense ..." (paragraph 6 of clause 2 of the reasoning part of the Decision of the Constitutional Court of Ukraine No. 7-rp 2001 of May 30, 2001) (Decision of the Constitutional Court of Ukraine… 2001). Thus, in the constitutional legal mechanism of compensation for damages caused to individuals or legal entities by acts and actions that are recognized as unconstitutional, there is no obligation of the state to compensate for the profit that a person could actually receive under ordinary circumstances provided that their right had not been infringed by the law, other act or their individual provisions (lost profit).

Civil Law Method of Compensation for Damage Caused to a Person by the Law That Was Recognized as Unconstitutional: Prospects in Ukraine

Considering the issue of compensation for pecuniary (losses and lost profits) and non-pecuniary damages in practical terms, we shall state that the civil procedure regarding compensation for damages caused by an unconstitutional act is the most effective.

We shall emphasize that compensation for pecuniary and non-pecuniary damage is a compensatory form of civil liability, which essentially amounts to a real restoration of the right or its full compensation in the event of the impossibility of the former from the moment of infringement of the law. This refers to the reimbursement of profit that a person could actually receive under ordinary circumstances provided that their right had not been infringed (lost profit) including a law that is subsequently recognized as unconstitutional. The Constitution of Ukraine consolidates the state compensation for pecuniary or non-pecuniary damages caused to individuals or legal entities by acts and actions that were recognized as unconstitutional,

with the same to be carried out in accordance with the legally established procedure (part 3 of Article 152 of the Constitution of Ukraine).

In the context of the investigated issue, we shall also point out a rigid combination of an array of key elements of the grounds and procedure of compensation for damage:

1) causing property damages to an individual or legal entity; damages caused by the act(s) recognized to be unconstitutional;

2) the act is recognized as unconstitutional, and it has become null and void (or there is a transitional period for further unconditional or partial loss of force. If the act partially loses force, the provisions that were or will be revoked, constitute a statutory provision that governs certain public relations);

3) such damages are compensated by the state;

4) the damages are compensated in accordance with the legally established procedure.

The last element in the chain of compensation for damage caused by an unconstitutional act is currently legally absent in Ukraine, since a special law on compensation for damages caused by acts or actions recognized as unconstitutional has not been adopted. However, the Fundamental Law of Ukraine enshrines the rule that the provisions of the Constitution are directly applicable. Therefore, we shall state that as of today, a separate law is not required to compensate for the damages caused to a person by an unconstitutional law. Thus, the Constitution of Ukraine establishes the right of everyone to recover, at the expense of the state or local authorities, pecuniary and non-pecuniary damages caused by illegal decisions, actions or inaction of state authorities, local authorities, and their officers in the exercise of their powers (Article 56).

In continuation, the Civil Code of Ukraine secures the responsibility of the state to the person for the actions of its bodies. In accordance with the provisions of Article 1173 of the Civil Code of Ukraine, damages caused to an individual or legal entity by unlawful decisions, actions or inaction of the authority, authority of the Autonomous Republic of Crimea or local government in the exercise of their powers, shall be compensated by the state, the Autonomous Republic of Crimea or local government regardless of the guilt of these bodies. Article 1175 of the Civil Code of Ukraine states that damage caused to an individual or legal entity as a result of the adoption of a regulation by a state authority, an authority of the Autonomous Republic of Crimea or local government, which was recognized as unlawful and revoked, shall be compensated by the state, the Autonomous Republic of Crimea or a local government regardless of the guilt of officers of these bodies.

In addition, certain features of compensation for damages caused to a citizen by illegal actions of bodies carrying out intelligence operations, pre-trial investigation bodies, prosecutors and courts are established by the Law of Ukraine "On the procedure of compensation for damages caused to a citizen by illegal actions of bodies carrying out intelligence operations, bodies of pre-trial investigation, Prosecutor's Office and Court" No. 266/94-BP dated December 1, 1994 (as amended) (The Law of Ukraine "On the Procedure of Compensation... 1994) and a number of sublegislative acts. These acts have common approaches in the formation of the primary defendant in cases of compensation for damages caused by illegal actions of state bodies – the state itself represented by the treasury. In the event of compensation for damages caused by an unconstitutional act, the subject to be compensated for the damage is also the state in accordance with part 3 of Article 152 of the Constitution, and the treasury may act as the direct debtor, proceeding from the rules for applying the analogy of the law.

Furthermore, in this context, we shall recall that the second sentence of part 3 of Article 8 of the Fundamental Law of Ukraine establishes that "Appeal to the court for protection of constitutional rights and freedoms of person and citizen directly on the basis of the Constitution of Ukraine is guaranteed". The specified constitutional postulate found its, albeit not detailed, but legislative consolidation of the procedure of recovery in the Code of Civil Procedure of Ukraine: "If the contentious relationship is not regulated by law, the court applies the law that governing relations that are similar in content (*analogia legis*), and in the absence of such – the court shall proceed from the general principles of legislation (*analogia iuris*). It is forbidden to refuse to consider cases on the grounds of absence, incompleteness, vagueness, inconsistency of the legislation governing contentious relations (part 9, 10 of Article 10 of the Civil Procedure Code of Ukraine). We shall emphasize that Article 10 of the Code of Civil Procedure of Ukraine has the title "Rule of Law and Legislation According to Which the Court Decides Cases".

That is, the specified provision indicates the rules for the application of regulations (of various levels), in accordance with which the court decides on the merits of the substantive law dispute. And such provisions upon compensation for damages caused to a person by an unconstitutional act in aggregate are: Articles 8, 56, 152 of the Constitution of Ukraine, Articles 22, 1175 of the Civil Code of Ukraine, Articles 2, 3 of the Law of Ukraine "On State Guarantees Regarding the Execution of Judicial Decisions" (The Law of Ukraine "On the State's Guarantees... 2012), etc. With that, the moment of occurrence of the right to compensation for pecuniary damages, its volume (including real losses or lost profits) and the procedure of compensation will

be most efficient in the presence of a special law on the procedure of state compensation for damages caused by a law that was recognized as unconstitutional. This is precisely what will be investigate in our further research.

CONCLUSIONS

In this paper, we investigated conceptual approaches to compensation for damages caused to persons by law that was recognized as unconstitutional by the Constitutional Court. We modelled the constitutional law approach and the civil law procedure of compensation for pecuniary and non-pecuniary damages in the countries of Eastern Europe and Ukraine.

We proved that the constitutional law method of compensation for pecuniary damages caused by an unconstitutional act is a public law method, and in this mechanism, the priority form of the state's obligation to compensate for damages is the function of restorative justice, and not the compensatory one. This is the difference from the private law method of compensation for damages, which is characterized by the full restoration of the civil authority of the person-victim to the inflictor of damages – the state. A purely private law approach to compensation for damages can lead to many practical issues, since the public law specificity of the state will not disappear in relations regarding compensation of damages as tort civil relations. We established that, unlike the system of Romano-German law, in common law, in the constitutional tort court, compensation for damages has two functions – compensatory and deterrent.

The constitutional law mechanism of compensation for damages caused to individuals or legal entities by acts and actions that were recognized as unconstitutional does not oblige the state to compensate for the income that a person could actually receive under ordinary circumstances, provided that their right had not been infringed by law, another act or their separate provisions (lost profits). With that, we emphasize that compensation for pecuniary and non-pecuniary damages is a compensatory form of civil liability, which essentially amounts to a real restoration of a fundamental right or its full compensation in the event of impossibility of the former from the moment of infringement of the right. This refers to compensation not only for real losses, but also for the income that a person could really receive under ordinary circumstances, provided that their right had not been violated (lost profit), including a law that would be rendered unconstitutional in the future.

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