

3. Criminal legal qualification of illegal enrichment under the legislation of Ukraine, Yasin I. M. Lviv, 2017.

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DETERMINATION OF THE SIZE OF MATERIAL DAMAGE DURING OFFICIAL NEGLIGENCE

In the vast majority of cases, the criminal law links the existence of a public danger to the act or omission of the offender of the envisaged Criminal Code of Ukraine with the nature of socially dangerous consequences, since such a sign is usually a criterion for distinguishing a crime from other types of unlawful conduct of disciplinary civil and administrative and administrative offenses and the fact of causing certain damage in the amount determined by law is a decisive sign of the objective side. A prerequisite for the presence of a criminal offense stipulated in Art. 367 of the Criminal Code of Ukraine is the infliction of substantial damage to the rights, freedoms and interests of individual citizens, or public or public interests, or the interests of legal persons, protected by law [1].

Significant damage is the violation of the rights and freedoms of man and citizen protected by the Constitution of Ukraine or other laws, the right to liberty and personal integrity and integrity of housing, election, labor, housing rights, etc., as well as undermining the authority and prestige of public authorities or local self-government bodies, violations of public security and public order, creating conditions and conditions. In resolving the question of whether the damage was significant, the number of injured citizens, the amount of moral damage or lost profit, etc., was taken into account, but the social aspect of such effects was based entirely on subjective evaluation criteria.

At the same time, the normative nature of the consequences should ensure accuracy in the interpretation of the criminal law when it is applied, since it defines the boundaries between socially dangerous consequences as signs of a crime and all other changes in the objective reality that arose as a result of the commission of a crime.

According to paragraph 3, the notes to Art. 364 of the Criminal Code of Ukraine in the old version, which existed before 04.06.2014, a significant harm in Art. 367 of the Criminal Code of Ukraine, if it is to cause material damage, it is considered a harm that is 100 times more than the non-taxable minimum income of citizens. That is, at that time, the legislator did not link the existence of material damage with the mere existence of material damage, and therefore the authorities of the pre-trial investigation substantiated the existence of such significant damage with: violation of the rights and freedoms of man and citizen protected by the Constitution or other laws (right to liberty and personal the inviolability and integrity of the home, election, labor, housing rights, etc.), undermining the authority and prestige of state authorities or local self-government bodies, violating public security and public order, an environment and conditions that impede the performance of the enterprise, the organization of its functions, concealment of crimes.

The concept of «substantial harm» as an obligatory feature of a part of official crime remains an appraisal category, and the question whether or not to recognize the harm caused by an official offense is substantial is decided on a case-by-case basis, taking into account the importance and extent of the disturbed interests, the degree of negative impact on the normal activities of enterprises and organizations, the number of victims of citizens, the severity of their property, physical and moral damage, and other factors (paragraph 4, paragraph 6 of the resolution of the Plenum of the Supreme Court «On judicial practice in cases of excess ing power or authority»).

Damage means harm in the civil law sense – damage to property (Article 22 of the Central Committee) and damage to the moral (non-property) (Article 23 of the Central Committee). Property damage in Art. 22 The Central Committee is actually identified with the notion of damage, although the article itself is entitled «Damages and other methods of compensation for property damage».

Given the clarification of the Supreme Court of Ukraine (Resolution dated October 27, 2014), substantial damage in the meaning of Art. Art. 364, 364-1, 365, 365-2, 367 of the Criminal Code of Ukraine, at present, may be property damage or manifestation of non-pecuniary damage, but only those who can obtain property compensation, that is, substantial damage can be considered any of the

by its nature, damage if it is subjected to a monetary valuation and, according to such assessment, has reached the amount set by the legislator, which is 100 times more than the non-taxable minimum income of citizens. It should be noted that these changes in the definition of significant harm can be applied to criminal offenses committed before their adoption, in the part that improves the status of the individual.

In addition, compensation is subject to moral (non-property) damage. Thus, in accordance with the provisions of the resolution of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of compensation for moral (non-property) damage» of March 31, 1995, No. 4, it was determined that moral damage is loss of non-property nature as a result of moral or physical suffering or other negative phenomena.

The Civil Code of Ukraine specifies that moral harm is: 1) in the physical pain and suffering that an individual has suffered due to injury or other damage to health; 2) in the spiritual suffering which an individual has suffered in connection with the unlawful conduct of himself, members of his family or close relatives; 3) in the spiritual suffering which an individual has suffered in connection with the destruction or damage to his property; 4) in humiliation of honor, dignity, and also business reputation of a physical or legal person. The non-personal damage caused to a legal entity should be understood as loss of non-personal nature arising from the humiliation of its business reputation, encroachment on the brand name, trademark, industrial mark, the disclosure of commercial secrets, and the commission of actions aimed at reducing prestige or undermining confidence in its activities.

In accordance with civil law, the amount of monetary compensation for moral damage is determined depending on the nature of the offense, the depth of physical and mental suffering, the deterioration of the ability of the victim or deprivation of his ability to implement them, the degree of fault of the person who caused moral harm, if the fault is a ground for compensation, as well as taking into account other circumstances that are of significant importance. In determining the amount of compensation takes into account the requirements of reasonableness and fairness. Non-pecuniary damage

is indemnified irrespective of the pecuniary damage to be recovered, but not related to the amount of this indemnity.

List of references

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MURDER OF THE NEWBORN CHILD BY MOTHER

Unfortunately, the mental state of a person is an extremely thin and sensitive mechanism that can fail due to such factors as stress, strong emotional anxiety, biological processes in the human body etc. In the case when the human psyche passes into a special condition (state of pathological affection), a person can not fully understand its actions, predict their consequences, its, and vegetative actions that are committing on the instinctive or subconscious level. That is why, criminal law is applied in a less serious form to those who committed acts while in a state of insanity. The example is Article 117 of the Criminal Code of Ukraine entitled «Killing a mother of her newborn child», the problems of which we will consider in this article.

The article's fabula reads as follows: «The deliberate murder of a mother of her newborn child during childbirth or immediately after birth ...». It is appropriate to same part of this article from the Commenting Criminal Code of Ukraine, that is sound like: «Only the mother's newborn child may suffer from this crime.

The objective side of this murder is characterized by: 1) actions - an encroachment on the life of a newborn child; 2) consequences in the form of her death; 3) a causal relationship between the indicated actions and the consequence 4) the time and certain conditions - this act can be committed only during the childbirth or immediately after birth.

Childbirth is a physiological process of human birth, which begins with regular contractions of the pregnant woman's uterus