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CIVIL LIABILITY FOR VIOLATION OF WATER LEGISLATION OF UKRAINE

In the system versions of liability for violation of water legislation in Ukraine the priority belongs to civil law, which in ecology can be used alone or together with other types of legal liability. Thus, Article 68 of the Law of Ukraine "On Environmental Protection" found that the application of disciplinary, administrative or criminal liability does not absolve the perpetrators of compensation for damage caused by environmental pollution and deterioration of natural resources, and art. 69 of the Act points to the need to compensate in full [1]. This provision applies directly responsible for water violations. In particular, Part 3. 111 of the Water Code of Ukraine stipulates that bring the perpetrators of violation of water legislation to justice does not exempt them from responsibility for damages caused to them due to violation of water legislation [2].

In 2011, for violation of water protection legislation of the total estimated losses to Ukraine amounted to 480 million 801 thousand UAH. Defendants for violation of water legislation and lawsuits filed claims totaling \$ 430 million 257 thousand, and the amount of claims recovered and claims was 60 million 257 thousand. [3]

The issue of civil liability for environmental offenses are investigated Ukrainian legal scholars in the field of environmental law: V.I. Andreytseva, G. Anisimov, A. Babiak, G.I. Baluk, V.D. Basaj, A.G. Bobkov, A. P. Getman, I. Karakash, V.M. Komarnicki, V. Kostytsky, N.R. Malyshev, M.I. Malishko, V.L. Muntean, O. Pogrebnoy, V.K. Popov, S.V. Razmyetayev, V.I. Semchyk, N. Titov, V. F., VS Shah, Y.S. Shemshuchenko, M. Shulga and others. Some issues of legal regulation of civil liability for violation of water legislation of Ukraine Boris studied Gavrylenko, L. Gorbach, V. Gordeev, V.A. Dzhuhan, Y.P. Kulakovsky, A.A. Sysuev, M.A. Hvesyk, A.M. Shumilo, but damage caused by civil law water violations and gaps in legislation on these matters require further investigation.

The current environmental legislation of Ukraine does not enshrine the concept of "civil liability for environmental violations," but this definition proposed by scientists in the field. According to

V.I. Andreytseva [4, p. 204] and M.I. Malishka [5, p. 13], material liability for environmental offenses - a kind of legal liability, which provides duty natural or legal persons for compensation for damage caused to the owners or users of natural resources violation of environmental laws or violation of environmental and other rights. In terms V.K. Popov [6, p. 168], S. Razmyetayeva and M. Shulga [7, p. 180], the essence of civil liability for violation of environmental laws is imposing on persons guilty of committing environmental offenses, property adverse effects. Its

essence is-renewable compensation and functions and it provides for, first, the Law of Ukraine "On Environmental Protection".

The main form of civil liability for environmental offenses are damages caused by the environment, which are awarded in accordance with the tariffs and methods of calculating damages, and in the absence of such - on the basis of Art 1166 of the Civil Code of Ukraine. [8]

Ukrainian law civil liability in the field of interaction between society and nature is mainly to assign the offender's obligation to compensate the injured party property or pecuniary damage caused by a breach of environmental and legal requirements.

Relationships on the use of natural objects are not identical civil law and have their specifics, which is caused by a particular value of natural objects, their inability to quickly Artificial reproduction, the complexity of the factors making up the damage distance display of environmental damage in time, space, missed income from loss or damage to data objects, etc. [9, p. 63]. Therefore, the relationship between liability for violation of environmental laws (including water) and liability is dealt scientists. Thus, N. Titova, proving the specificity of liability for violation of environmental law and distinguishes it from general liability and considered a separate type of legal liability civil group [10, p.46]. V. Petrov believes that the institution of liability in the field of environmental protection is a separate type of environmental liability, other than civil and administrative proceedings [11, p. 154].

The best is an affirmation of A.S. Kolbasov [12, p. 54] and Y.S. Shemshuchenko [13, p. 196] that liability for environmental damage is a kind of liability. Financial Responsibility for water violations is a civil liability and implemented in accordance with environmental and civil law.

In Art 111 of the Water Code of Ukraine it is only the financial responsibility as part of the liability. Property responsibility is in violation of water legislation and, where damage to life and health, and other natural resources, property and public organizations [2]. In particular, in accordance with paragraph 1 of Art 153 of the Commercial Code of Ukraine [14] and c. 3 Water Code of Ukraine [2], natural and legal persons are obliged to pay damages caused by a violation of water legislation in certain sizes and order.

According to Art 22 Civil Code of Ukraine, compensation is one way of compensation [8]. Thus, offendes water legislation in bringing to property shall pay actual damages and lost profits in the amount stipulated by the current legislation of Ukraine [15, p.57]. This type of liability applies regardless of bringing the perpetrator to administrative, criminal or disciplinary proceedings.

Civil liability provided for the guilty person for her property adverse consequences for violations in the use and protection of water. In the prosecution of the general conditions required the use of a particular type of responsibility. But for the application of civil liability is a prerequisite for the injury. If it is absent, respectively, there are no grounds to prosecute those responsible for this kind of responsibility.

Specificity of civil relations lies in the fact that not every breach of pulling the liability. Bilateral restitution can hardly be considered liability, regardless of whether it is feasible voluntarily or forcibly. But regardless of the voluntariness damages arising as a result of water pollution, it is a measure of responsibility. In this

case, the defendant has property adverse effects as a general rule, absent in restitution, and this feature of these relations [16, p. 72].

According to M. Shulga, the application of civil liability for environmental offenses is characterized primarily by the fact that in addition to losses expressed in monetary terms, as a result of possible misconduct causing environmental damage [7, p. 180].

It is necessary to distinguish between the concept of damage or loss because legal concepts as they have a different substance. Indisputable is the fact that they are both negative developments for persons and adverse outcome of subjective violation of civil rights and interests.

In the legal literature have a few thoughts on the concept of damages: a) losses that a person has suffered due to the destruction or damage of items and expenses that the person has done or should be done to restore their violated rights, income that a person could actually obtainable under normal circumstances if it is not right was violated [8] b) expenses incurred by the eligible party, loss or damage of property, and not received it income that eligible party would have received if the proper performance of obligations or comply rules of economic activity by the other party [14], c) terms of value of property damage caused by illegal actions of one entity to another [17, p. 293] (the notion of loss is wrong, because the damage can not be an expression of property damage, these concepts are related but not identical).

In civil legislation of Ukraine injury is any harassment or personal non-property wealth. Depending on whether the damage cost form, which is expressed in monetary terms, its share in the property and non-property (moral). Category property damage are also heterogeneous. Depending on the object that is undergoing distress, distinguish damage to assets, property, life or health of an individual. This division does not preclude but presupposes the existence of a single concept of harm, which is characterized by different qualities [16, p. 11-12]. Despite the fact that under Part 3.23 of the Civil Code of Ukraine moral hazard is usually compensated with money or other property [8], this money (property) can not be called compensation losses. Unfortunately, p. 225 of the Commercial Code of Ukraine includes pecuniary damages for non-pecuniary damage. However, in determining the amount of compensation for moral damage cost calculations are not carried out. These calculations are impossible due to the fact, what is the moral hazard. The size of compensation is due to other factors, including the nature and extent of suffering incurred by the claimant, the nature of moral losses and other factors.

Thus, the concept of harm is broader in scope than losses as encompassing not only the negative effects of the offense, which may be calculated as losses, but also non-pecuniary damage, which has cost equivalent.

V. Petrov shares to environmental damage (manifested in losses to the environment because of its pollution, depletion, destruction) and economic (manifested in the form of loss of property) [11, p. 149-150].

The legal regime does not match the economic assessment of damage and in the relationship of nature, but this does not indicate a lack of correlation between them. Therefore, the fight against the illegal use of water bodies for common grounds provided by civil law, i.e. by collecting only the actual damages that are directly dependent on the behaviour of the offender, without long-term effects, does not provide adequate protection of groundwater.

The main legal act which is calculated damages for environmental offenses is the Order of the Ministry of Environmental Protection of Ukraine "On Approval of the methodology for determining the amounts of compensation for damages caused by violation of legislation on the protection and sustainable use of water resources" on July 20, 2009 № 389 [18].

This order establishes the procedure for the determination of damages caused by violation of legislation on the protection and sustainable use of water resources. It contains a list of water violations for which comes liability of legal entities and individuals, including: unauthorized use of water resources in the absence of permits, fence, water use and discharge of pollutants into waters of the inverse of the violation of water set out in the permit for special use, pollution of surface and groundwater under the influence of landfills (dumps) solid waste and industrial waste water pollution, including those related to the unauthorized and accidental discharge of pollutants into water bodies by physical and chemical parameters of the inverse water or contaminants in pure form, consisting of raw materials, products or waste, except pollution territorial and internal sea waters and the exclusive maritime zone of Ukraine boats, ships and other floating objects, exceeding the approved standards and norms discharges of pollutants [18].

This fixed various methods of calculating damages, depending on the characteristics of natural water bodies (surface or groundwater).

This approach in itself is correct, but it has some drawbacks. Thus, the calculation of losses are different raising factors, including: a) factors, taking into account the category of water body, or rather its proper use in the household, and b) regional factors scarcity of water resources scarcity of surface water and groundwater, factors that take into account the value of marine waters, etc., regional water scarcity factors for surface and groundwater, which are set for each local government area of Ukraine. But often one of the administrative-territorial until are both water bodies of national or local importance. Therefore, in accordance with Annex 3 of the Order in this case, the single factor determined by law for the area, despite the significance of the object - national or local. In my opinion, during the calculation of reimbursement of losses caused by water bodies should be considered and appropriate legal regime of the water body. In addition, the amount of material responsibility on water bodies of national importance should be higher than on local water bodies. The foregoing suggests that this legal act in the calculation of losses should be taken into account the specificity of each water body, and the amount of damages should not only depend on the economic value and regionality of water body, but also from a legal regime of water at object.

Appendix 3 to this Order should be amended as follows: Table must define a local government area, the rate of surface water scarcity national importance and scarcity of surface water ratio of local importance. In accordance with Annex 10 to this Order should be formulated as follows: first administrative unit, and then the rate of groundwater scarcity of national and local importance. For example, according to Appendix 3 of this Order, for calculating the amount of damages caused in the Kyiv region used ratio 1.21 [18]. In my opinion, for the calculation of damages for water bodies of national importance in the Kyiv region should set ratio 1.21, and for objects of local significance on this area should be a factor of 1.10.

It is necessary to distinguish between damages as a form of property accountability from collecting payments for water pollution. Losses in all cases be compensated for the victim, and pollution charges are reimbursed to local governments for water resources pollutant substances both within the standards and exceeding these limits. In this case, payment shall not be regarded as a form of property accountability, as this event is set by the state as a form of economic impact and at the offense and its absence [7, p. 214].

In this order (according to Section 9.1) calculation of the size of damages caused to the state as a result of unauthorized use of water resources in the absence of permits is determined by multiplying the volume of water stations, willfully used, and the size, the same rate of duty for special use of water established c. 325 of the Tax Code of Ukraine on the date of detection of violations per hundred cubic meters. m [18]. The question arises whether a charge and charges for special use? The existing environmental legislation is inconsistened in this regard. According to Art 69 Law of Ukraine "On Environmental Protection", losses are charged, usually in full and no payments for environmental pollution, degradation of natural resources. So it does not mention anything about the possibility of damages, except charges for special use of water resources over the set limit or for unauthorized use of water resources. However century 111 of the Water Code of Ukraine states that the damages caused as a result of violation of water legislation does not relieve perpetrators from charges for special use [2].

According to Art 48 of the Water Code of Ukraine under special water use refers to water intake from water bodies using the facilities, technical equipment and dump them in the return water [2]. So, in this case, in addition to restitution, the offender must pay a fee for the diversion of water from water bodies. It is not clear to what extent [15, p. 58]. In accordance with paragraph 1 of Art 327 of the Tax Code of Ukraine, in excess of the annual limit set by water users to use water fee is calculated and paid in five times, based on actual volumes of water used in excess of the limit water use rates of duty and the coefficients [19].

Another drawback of this order is the formula number 23 (Section 9.1), which is as follows: $\text{withoutset} = 100 \times W \times \text{Tap}$, where W - the volume of water used illegally without permits (permits for special water use and / or special permits for subsoil use (underground water) Tar - size UAH/100 cu. meters, similar to the rate of the fee for special use of water established by Art. 325 of the Tax Code of Ukraine on the date of detection of violations (for seawater - size USD. / 100 cubic meters. similar rate fee for special use of surface water for the indicator "Other water bodies" established by Art. 325 of the Tax Code of Ukraine on the date of detection of violations). [19]

In accordance with Section 9. 325 of the Tax Code of Ukraine to the rates of duty utility companies use factor of 0.3. Consequently, utilities included in the formula multiplier is 0.3, which provides tax legislation and reduces the rate of tax (charge) for special use of water. Meaning numbers "100" and "0.3" does not have a civil explanation of their importance in determining damages (losses). Because otherwise specified in the order, then "100" - is increasing factor that increases the cost of consumed without water a hundred times, thus increasing civil liability than the actual loss. The figure "0.3" is decreasing cost of consumed without water, therefore it reduces civil liability than the actual loss. According to the local

commercial court ordered that contrary to Art 69 Law of Ukraine "On Environmental Protection", according to which principles set damages (damages) in its entirety without application of reducing the size of penalties. It also does not comply with Part 3. 22 Civil Code of Ukraine, which directly follows that cases of damages (damages) to a greater or lesser amount (as an exception to the general rule) should be established only by law.

Feature liability is that it can rely on the offender, along with the use of measures other responsibilities. The purpose of such liability is to compensate damage caused by ecological violations. Since actual damages under civil law is generally inapplicable in cases of misuse of water bodies, the compensation shall be determined by the environmental legislation of Ukraine.

The main problem of liability for water violations the problem of full compensation for the damage caused to water bodies. The Water Code of Ukraine the principle damages have not found a clear display. In Art 111 of the Water Code of Ukraine stipulates only that legal and natural persons are obliged to compensate damages caused due to violation of water legislation, in the amount and manner established by the legislation of Ukraine [2]. Article 69 Law of Ukraine "On Environmental Protection" found that the damage caused by breach of environmental law, subject to compensation, usually in full without the application of the reduction in the size of fines and no fees for environmental pollution and degradation natural resources [1]. In other words, this legal rule still contains the possible exceptions to the general rule for the full damages. This provision is not justified because the use of exceptions to the general rule does not contribute to the creation of conditions for development of the water sector remedying of environmental damage, pecuniary costs of restoration and protection of water bodies from crime. In any case, the damage water bodies should pay in full.

Thus, the characteristics of civil liability for violation of water legislation in Ukraine is that the damage caused by water bodies does not coincide with the civil law concept of loss is more complex in content, larger, and therefore should be reimbursed according to the norms of environmental rather than civil law. In addition according to civil law tort injurer must compensate the victim costs caused by offense, but is not obliged to pay future expenses and the cost of restoring the previous state of water bodies in most cases do not coincide in time with the time of injury and out beyond the statute of limitations. Therefore, taking into account all the above additions and deficiencies in the order of calculation of reimbursement of damages caused by violation of the legislation on the protection and rational use of water resources will more effectively and efficiently calculate damages and future costs of removal.

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