

**Evgen O. Kharytonov, Olena I. Kharytonova,
Mykola M. Biloshkurskyi**

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Civil Liability for Corruption Offenses: Confiscation or Compensation?

Responsabilidade civil por crimes de corrupção: confisco ou indenização?

Evgen O. KHARYTONOV¹
Olena I. KHARYTONOVA²
Mykola M. BILOSHKURSKYI³

ABSTRACT: Against the backdrop of Ukraine's European integration and the conditions of martial law, this article examines the modernization of penalties for corruption offenses. This study is a conceptual and policy-legal analysis grounded in the examination of Ukrainian legislation, statistics, and the judicial practice of the High Anti-Corruption Court (HACC) from 2021–2025, as well as relevant ECHR judgments. The primary argument is that traditional confiscation and special confiscation are problematic, as they may be unconstitutional and violate the right to peaceful enjoyment of property. Instead, the authors substantiate the expediency of introducing compensation (damages) as an alternative civil-law sanction. This approach aligns with the legal principle of human-centricity and, unlike confiscation, performs not only a punitive but also a restorative and preventive function. Key findings demonstrate that the HACC already applies *de facto* compensation within plea agreements (in the form of transfers to the Armed Forces of Ukraine), yet this practice is inconsistent. Analysing the deficiencies of Draft Law No. 11340, the authors insist that mandatory conditions for such agreements must include full cooperation with the investigation (including testimony against accomplices) and the complete return of all illicitly obtained funds, rather than merely the payment of a fine.

KEYWORDS: civil liability, corruption offense, punishment, confiscation of property, special confiscation, compensation.

RESUMO: Tendo como pano de fundo a integração europeia da Ucrânia e as condições da lei marcial, este artigo examina a modernização das sanções para crimes de corrupção. Este estudo é uma análise conceptual e jurídico-política baseada no exame da legislação ucraniana, estatísticas e prática judicial do Tribunal Superior Anticorrupção (TSA) de 2021–2025, bem como da jurisprudência relevante do TEDH. O argumento principal é que o confisco tradicional e o confisco especial são problemáticos, pois podem ser inconstitucionais e violar o direito ao gozo pacífico da propriedade. Em vez disso, os autores fundamentam a conveniência de introduzir a indenização (compensação por danos) como uma sanção alternativa de direito civil. Esta abordagem alinha-se com o princípio jurídico do centrismo humano e, ao contrário do confisco, desempenha não só uma função punitiva,

¹ Doctor of Legal Science, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Head of the Civil Law Department, National University “Odesa Law Academy”, Odesa, Ukraine. ORCID: <https://orcid.org/0000-0001-5521-0839>. E-mail: zharuton@gmail.com.

² Doctor of Legal Science, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Head of the Intellectual Property and Patent Justice Department, National University “Odesa Law Academy”, Odesa, Ukraine. ORCID: <https://orcid.org/0009-0004-9675-0654>. E-mail: lh2512@gmail.com.

³ Applicant for Higher Education at the Faculty of Civil and Economic Justice, Civil and Economic Justice Undergraduate Course, National University “Odesa Law Academy”, Odesa, Ukraine. ORCID: <https://orcid.org/0009-0003-2945-6749>. E-mail: m.m.biloshkurskyi@gmail.com.

mas também restaurativa e preventiva. As principais conclusões demonstram que o TSA já aplica uma compensação de facto no âmbito de acordos de colaboração premiada (na forma de transferências para as Forças Armadas da Ucrânia), embora esta prática seja inconsistente. Analisando as deficiências do Projeto de Lei n.º11340, os autores insistem que as condições obrigatórias para tais acordos devem incluir a cooperação total com a investigação (incluindo o testemunho contra cúmplices) e a devolução integral de todos os fundos obtidos ilicitamente, em vez do mero pagamento de uma multa.

PALAVRAS-CHAVE: responsabilidade civil, crime de corrupção, punição, confisco de bens, confisco especial, indemnização.

1. Introduction

In the course of the European integration process in Ukraine, as well as under martial law, the fight against corruption has become more urgent; the problem of bringing to justice those guilty of corruption offenses has become particularly acute, not only public liability, such as criminal or administrative, but also private liability, such as civil and property.

Following the proclamation of the State Anti-Corruption Programme for 2023–2025 (2023),⁴ as well as after the publication of the Draft Law ‘On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine on Improving the Efficiency of Plea Bargaining’ No. 11340 (2024)⁵ and its adoption in the first,⁶ the issue of introducing the most effective type of punishment for corruption offenses, in particular, bringing to civil liability, primarily property liability, has become particularly relevant and publicly visible.

Despite some contradictions and the need for further development of Draft Law No. 11340, its appearance in the legal field of our country is an important and necessary decision on the way to the European community, and public discussion is an important part of the democratic process in the implementation of Ukraine’s anti-corruption policy. Therefore, there is a need to improve the existing measures of punishment for corruption offenses, in particular, property liability.

The problem of introducing fair punishments for various, primarily criminal,

⁴ CABINET OF MINISTERS OF UKRAINE. Resolution “On Approval of the State Anti-Corruption Programme for 2023–2025,” No. 220. 2023. Available from: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text> [Accessed 1 Sep. 2025].

⁵ SCIENTIFIC AND EXPERT OPINION. First reading on the Draft Law on Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine on Improving the Efficiency of Plea Bargaining, No. 11340. 2024. Available from: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/2441260> [Accessed 1 Sep. 2025].

⁶ PRESS SERVICE OF THE VERKHOVNA RADA OF UKRAINE. “The Verkhovna Rada of Ukraine Adopted as a Basis a Draft Law on Improving the Efficiency of Plea Bargaining.” *Official Web Portal of the Parliament of Ukraine*. 2024. Available from: <https://www.rada.gov.ua/news/razom/251942.html> [Accessed 1 Sep. 2025].

offenses is one of the most popular topics of public discussion. Civil sanctions for corruption offenses are an important part of anti-corruption legislation that needs to be modernized, given the urgency of harmonizing the Ukrainian legal framework with the European one. This issue attracts the attention of scholars, which is reflected in the works of both foreign and domestic legal scholars.

V. Savić considers the autonomous liability of a legal entity as an organism with its own will and substantiates its theoretical foundations in criminal and civil law.⁷ O. Yermak, and Ye. Kozma clarify the essence of special confiscation in Ukrainian criminal law and distinguishes it from confiscation of property as a form of punishment.⁸ T. Trinchera analyses the confiscation of proceeds from corruption in Italian law and proposes the use of extended confiscation or confiscation without conviction, which, in his opinion, more effectively deprives criminals of illegal gains and remains constitutional.⁹ The study by N. Orlovska, and J. Stepanova examine the role of confiscation in combating organized crime and corruption, focusing on the balance between public and private interests, taking into account international standards and ECHR practice.¹⁰

D. López-Rojas, and I. Martínez-Montenegro analysed the evolution of confiscation as a strategy against ‘commercial crimes’ and concluded that international European legislation, which develops mechanisms for ‘confiscating assets of unknown origin’, is gradually moving away from the general principles of confiscation that were laid down in the national legislation of most European countries.¹¹ S. Latif, and R. Ramadani emphasize that the effectiveness of the fight against corruption depends

⁷ SAVIĆ, Vanja-Ivan. “Concept of Autonomous Liability of Legal Person and Its Application in Criminal Law.” *Godišnjak Akademije Pravni Znanosti Hrvatske* II, no. 1 (2011): 41–68. ISSN 1849-0778. Available from: <https://hrcak.srce.hr/79894> [Accessed 1 Sep. 2025].

⁸ YERMAK, Oleksii and Yevheniia Kozma. “Features of the Legal Nature of the Special Confiscation as a Means of Criminal Law.” *Comparative and Analytical Law* 3 (2018): 244–246. ISSN 2524-0390. Available from: https://pap-journal.in.ua/wp-content/uploads/2020/08/3_2018.pdf#page=244 [Accessed 1 Sep. 2025].

⁹ TRINCHERA, Tommaso. “Confiscation and Asset Recovery: Better Tools to Fight Bribery and Corruption Crime.” *Criminal Law Forum* 31, no. 1 (2020): 49–79. ISSN 1572-9850. Available from: <https://doi.org/10.1007/s10609-020-09382-1> [Accessed 1 Sep. 2025].

¹⁰ ORLOVSKA, Natalya and Julia Stepanova. “Confiscation of proceeds and property related to crimes: international standards and the ECHR practice.” *Juridical Tribune* 10, no. 3 (2020): 493–511. ISSN 2248-0382. Available from: <https://tribunajuridica.eu/arhiva/An10v3/9.%20Orlovska%20Stepanova.pdf> [Accessed 1 Sep. 2025].

¹¹ LÓPEZ-ROJAS, Dayan Gabriel, and Isnel Martínez-Montenegro. “Criminological foundations and evolution of confiscation as a political-criminal strategy against “profit crime.” *Revista Científica General José María Córdova* 22, no.47 (2024): 867-888. ISSN 1900-6586. Available from: <https://doi.org/10.21830/19006586.1375> [Accessed 15 Nov. 2025].

on compensation to the state, the main instrument of which is confiscation.¹² V. Cherniei et al. analyse the challenges of Ukraine's anti-corruption policy, compare it with international experience, and propose strengthening cooperation between the authorities and the public by ensuring legality, transparency, and accountability.¹³

S. Shatrava, and K. Chyshko analyse anti-corruption practices in Asian countries and the prospects for their application in Ukraine.¹⁴ Ye. Kruk examines international cooperation in the field of civil liability for corruption offenses and asset recovery.¹⁵ The study by G. Sobko et al. emphasizes Ukraine's lag in the fight against corruption and propose using foreign experience to improve the effectiveness of anti-corruption agencies.¹⁶ I. Ibrahim, and B. Arifi argue the importance of providing legal remedies for victims of corruption, including the possibility of compensation for damages. The authors analyse gaps in the legislation of the Republic of Kosovo and propose ways to improve the mechanism for compensation for damages caused by corruption offenses.¹⁷ N. Serohina, and A. Mazalov consider reducing corruption risks in the military sphere, emphasizing the inevitability of punishment and severe sanctions.¹⁸ I. Odnolko analyses special confiscation as an effective criminal law measure to influence corrupt officials, based on judicial practice.¹⁹

Even a cursory analysis of the existing scientific works on this issue gives rise to

¹² LATIF, Syahiruddin and Rizki Ramadani. "The Recovery of State Losses through Corruption Asset Confiscation: Policies and Obstacles." In *Proceedings IAPA International Conference and International Indonesia Conference on Interdisciplinary Studies (IICIS)*, 2022: 312–321. ISSN 2686-6250. Available from: <https://doi.org/10.30589/proceedings.2022.703> [Accessed 1 Sep. 2025].

¹³ CHERNEI, Volodymyr et al. "Criminal remedies and institutional mechanisms for combating corruption crimes: The experience of Ukraine and international approaches." *Juridical Tribune* 12, no. 2 (2022): 227–245. ISSN 2248-0382. Available from: <https://doi.org/10.24818/TBJ/2022/12/2.05> [Accessed 1 Sep. 2025].

¹⁴ SHATRAVA, Serhii and Kateryna Chyshko. "Features of State Anti-Corruption Policy in Eastern Countries." *State and Regions. Series: Law* 1, no. 79 (2023): 348–353. ISSN 1813-338X. Available from: <https://doi.org/10.32840/1813-338X-2023.1.57> [Accessed 1 Sep. 2025].

¹⁵ KRUK, Yevhen. "Peculiarities of Interstate Cooperation in Matters of Civil Responsibility for the Commission of a Corruption Offense." *Law and Society* 2, no. 2 (2023): 265–270. ISSN 2078-3736. Available from: <https://doi.org/10.32842/2078-3736/2023.2.2.38> [Accessed 1 Sep. 2025].

¹⁶ SOBKO, Ganna et al. "International anti-corruption concepts and their implementation in Ukraine." *Novum Jus* 17, no. 2 (2023): 219–49. ISSN 1692-6013. Available from: <https://doi.org/10.14718/novumjus.2023.17.2.9> [Accessed 1 Sep. 2025].

¹⁷ IBRAHIMI, Adrianit and Besa Arifi. "Defending the Rights of the Victims of Corruption in the Republic of Kosovo: With a Special Focus to the Pandemic COVID-19." *SEEU Review* 15.1 (2021): 3–23. ISSN 1857-8462. Available from: <https://doi.org/10.2478/seeur-2020-0001> [Accessed 15 Nov. 2025].

¹⁸ SEROHINA, Nataliia and Andrii Mazalov. "Ways to Reduce Corruption Risks in Military Operations Taking into Account the International Experience of Conducting Hostilities." *Taurida Scientific Herald. Series: Public Management and Administration* 2 (2024): 54–55. ISSN 2786-474X. Available from: <https://doi.org/10.32782/tnv-pub.2024.2.7> [Accessed 1 Sep. 2025].

¹⁹ ODNOLKO, Inna. "Application of Special Confiscation during the War in Ukraine (Some Legal Provisions and Case Law)." *Academic Visions* 30 (2024): 3–7. ISSN 2786-586X. Available from: <https://doi.org/10.5281/zenodo.11298947> [Accessed 1 Sep. 2025].

the conclusion that the study of the civil law aspects of liability for corruption offenses is insufficient and fragmented, which is in favour of the topic of scientific research chosen by the authors and forms the main purpose of the study.

2. Materials and Methods

This study constitutes a conceptual and policy-legal analysis aimed at examining the problems and prospects of applying civil liability for corruption offenses in Ukraine. As the research is not empirical – meaning it does not involve surveys, interviews, or experiments – its methodology is grounded in a transparent and replicable protocol for source selection and analysis.

The material basis for this research comprises a wide array of sources. The national legal framework governing criminal and civil liability, including the Criminal Code of Ukraine, the Civil Code of Ukraine, Draft Law No. 11340, and the Law “On the High Anti-Corruption Court” (HACC), was analysed using the official web portal of the Verkhovna Rada of Ukraine. National judicial practice was selected from the Unified State Register of Court Decisions (USRCD), with a specific focus on judgments from the HACC, the Supreme Court, and the Constitutional Court of Ukraine. To contextualize the analysis within international standards, materials were drawn from the HUDOC database of the European Court of Human Rights – notably the judgments in ‘Iatridis v. Greece’ and ‘Frizen v. Russia’ – as well as the EU Directive on Asset Recovery and Confiscation (2022). Academic literature and requisite statistical data were gathered from the Google Scholar database and the official public reports of the HACC.

Source selection was guided by a structured search protocol utilizing combinations of English and Ukrainian keywords, such as “civil liability” AND “corruption”, “special confiscation”, “compensation” AND “corruption”, “plea bargaining” AND “Ukraine”, and “HACC” AND “statistics”. The temporal scope of the analysis is predominantly focused on the period from 2018 (the adoption of the Law on the HACC) to 2025, ensuring coverage of the most current data and legislative initiatives. A key limitation of this study is its exclusive reliance on published documents (laws, court judgments, and academic articles), precluding the incorporation of empirical data gathered directly from legal practitioners or judges.

The selected body of materials was analysed using a combination of general scientific and specific legal methods. Content analysis was employed for the

systematic study of the legal framework's provisions governing civil liability for corruption. The formal-logical method was applied to analyse foundational concepts – particularly the distinction between 'confiscation' and 'special confiscation' – and to interpret the texts of judicial decisions. Furthermore, the comparative-legal method facilitated the assessment of current Ukrainian legislation on traditional and alternative types of property liability against international standards, including ECHR practice. The investigation of current problems and prospects for introducing compensation instead of confiscation is based on the formal-legal method.

3. Analysis of the Legal Framework Governing Civil Liability for Corruption

There are many levers of state and public influence that can and should be used to fight corruption. For example, one of the conditions for combating corruption is freedom of the media, as well as ensuring the rights of a person and citizens to express their own opinions.²⁰ At the same time, A. Prykhodko emphasizes the need for people's power – the ability of everyone to influence the law-making processes in the country, including the reform of anti-corruption bodies of Ukraine and to comprehensively combat corruption.²¹ In addition, the most effective ways to combat corruption include improving anti-corruption legislation, avoiding gaps and any hints of the possibility of interpreting the law in different ways, setting up a mechanism for bringing perpetrators to justice, etc.²² The inevitability of punishment for a corruption offense and fair and appropriate types of punishment are also effective. This position is shared by N. Serohina, and A. Mazalov, noting that it is the inevitability of punishment for corruption offenses and the development of the most serious penalties for such crimes that is an effective way to combat corruption in general and in the military sphere in particular.²³

²⁰ KHARYTONOV, Evgen et al. "Human Rights as the Basic Value of the Concept of Private Law in Modern Europe." *Amazonia Investiga* 8, no. 20 (2019): 477–485. ISSN 2322-6307. Available from: <https://amazoniainvestiga.info/index.php/amazonia/article/view/177> [Accessed 1 Sep. 2025].

²¹ PRYKHODKO, Andrii. "Administrative and Legal Support for Preventing and Counteracting Corruption in Ukraine in the Context of European Integration." Doctoral dissertation, Dnipro State University of Internal Affairs, 2020. Available from: <https://dduvs.in.ua/wp-content/uploads/files/Structure/science/rada/dissertations/33/d3.pdf> [Accessed 1 Sep. 2025].

²² DAVYDOVA, Iryna and Mykola Biloshkurskyi. "A Donation Contract as a Way to Avoid Punishment for Corruption Offenses." *Journal of Civil Studies* 50 (2023): 18–23. ISSN 2522-4840. Available from: <https://doi.org/10.32782/chc.v050.2023.3> [Accessed 1 Sep. 2025].

²³ SEROHINA, Nataliia and Andrii Mazalov. "Ways to Reduce Corruption Risks in Military Operations Taking into Account the International Experience of Conducting Hostilities." *Taurida Scientific Herald. Series: Public Management and Administration* 2 (2024): 54–55. ISSN 2786-474X. Available from: <https://doi.org/10.32782/tnv-pub.2024.2.7> [Accessed 1 Sep. 2025].

Currently, the most common sanctions for corruption offenses in court practice are imprisonment, restriction of liberty, arrest, fine, prohibition to hold certain positions, confiscation of property, etc. It should be noted that, currently, the most common types of property liability applied in corruption cases are confiscation of property and fines. The application of such sanctions is intended not only to punish the offender but also to compensate the state for losses incurred as a result of the corrupt official's actions. However, the confiscation of property as a sanction for corruption offenses, in the understanding of the national legislator, is intended to perform a punitive rather than restorative function. It is also necessary to distinguish between the concept of 'special confiscation', which was introduced by the Law of Ukraine 'On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine regarding the implementation of the Action Plan on Visa Liberalisation by the European Union for Ukraine' No. 222-VII (2013),²⁴ and 'confiscation of property' as a type of criminal punishment.

According to Art. 96-2 of the Criminal Code of Ukraine, special confiscation is applied if money, valuables, and other property: (1) were obtained as a result of a criminal offense and/or are the proceeds of such property; (2) were intended or used to induce a person to commit a criminal offense, finance and/or provide material support for a criminal offense, or reward for its commission; (3) have been the subject of a criminal offense, except for those that are returned to the owner (legal possessor), or, if the owner is not identified, become the property of the state; (4) were found, manufactured, adapted, or used as means or instruments of a criminal offense, except for those returned to the legal owner who did not and could not know about their illegal use.²⁵

In its turn, confiscation of property as a type of criminal punishment is regulated by Article 59 of the Criminal Code of Ukraine and consists of 'compulsory and free of charge seizure of all or part of the property owned by the convicted person into the ownership of the state'.²⁶ In addition, according to part 2 of Article 354 of the Civil Code of Ukraine, the scope and procedure for confiscation of property are established by

²⁴ LAW OF UKRAINE. "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the Implementation of the Action Plan on Visa Liberalization by the European Union for Ukraine," No. 222-VII. 2013. Available from: <https://zakon.rada.gov.ua/laws/show/222-18#Text> [Accessed 1 Sep. 2025].

²⁵ CRIMINAL CODE OF UKRAINE. No. 2341-III. 2001. Available from: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> [Accessed 1 Sep. 2025].

²⁶ *Ibid.*

law.²⁷

In fact, ‘special confiscation’ involves the confiscation of property that was used as an instrument in an unlawful act or was acquired as a result of an unlawful act, to prevent further crimes and/or restore social justice. In other words, this criminal law remedy performs exactly the restorative and preventive functions, eliminating the damage caused to the victim and preventing new offenses. In contrast, ‘confiscation of property’, as a type of criminal punishment, performs a directly punitive function, transferring property owned by the convicted person to the state free of charge, even though this property could have been acquired legally.

In addition to the theoretical and regulatory aspects of confiscation and special confiscation, we also suggest paying attention to the practical application of these types of criminal punishment and criminal law measures in corruption cases. The vast majority of corruption and corruption-related cases are heard by the HACC. The Law of Ukraine “On the High Anti-Corruption Court” dated 07.06.2018 No. 2447-VIII was adopted in 2018,²⁸ but the court actually started doing its thing on September 5, 2019.²⁹ The first verdicts in which the court applied such a type of punishment as confiscation and such a type of criminal law enforcement as special confiscation began to appear as early as 2021. Thus, the annual reports of the HACC were analysed, and the statistical data obtained are summarized in Table 1.

Table 1. Statistics on the Application of Confiscation and Special Confiscation by the HACC (2021–2024)

Year	Confiscation (Persons Convicted)	Special Confiscation (Persons Convicted)	Total Amount of Confiscated Funds (UAH million)	Average per Person (UAH thousand)
2021	9 ³⁰	3	4,931.9	411.0
2022	23 ³¹	11	32,473.9	955.1

²⁷ CIVIL CODE OF UKRAINE. No. 435–IV. 2003. Available from: <https://zakon.rada.gov.ua/laws/show/435-15#Text> [Accessed 1 Sep. 2025].

²⁸ LAW OF UKRAINE. “On the High Anti-Corruption Court,” 2447-VIII. 07 June 2018. Available from: <https://zakon.rada.gov.ua/laws/show/2447-19#Text> [Accessed 15 Nov. 2025].

²⁹ HIGH ANTI-CORRUPTION COURT PRESS-CENTRE. “The High Anti-Corruption Court began performing its duties”. 05 Sep. 2019. Available from: https://hcac.court.gov.ua/hcac/pres-centr/news/776588/?utm_source=chatgpt.com [Accessed 15 Nov. 2025].

³⁰ HIGH ANTI-CORRUPTION COURT OF UKRAINE. *Analysis of Judicial Proceedings by the High Anti-Corruption Court in 2021*. Kyiv: High Anti-Corruption Court, 2022. Available from: https://hcac.court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/analyses/justice_2021.pdf [Accessed 15 Nov. 2025].

³¹ HIGH ANTI-CORRUPTION COURT OF UKRAINE. *Analysis of Judicial Proceedings by the High Anti-Corruption Court in 2022*. Kyiv: High Anti-Corruption Court, 2023. Available from: https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/analyses/justice_2022.pdf [Accessed 15 Nov. 2025].

2023	26 ³²	8	333,862.1 (and other property)	9,819.5
2024	46 ³³	12	158,871.7 (and other property)	2,739.2

We can state that the number of cases of confiscation as a form of punishment in corruption cases and special confiscation as a criminal law measure is increasing. The number of convicted persons to whom this type of criminal punishment was applied increased from 9 in 2021 to 46 in 2024. It should be noted that over the past four years, the number of corruption cases in which this type of punishment has been applied and the number of persons to whom this type of punishment has been applied have been increasing, and this indicator has never been lower than in the previous year over the entire four-year period. Cases of special confiscation have also increased from 3 persons in 2021 to 12 persons in 2024. However, it should be noted that the growth of this indicator is not uniform. In 2022, special confiscation was applied to 11 persons, and the following year, in 2023, to 8. Despite this uneven trend, the number of cases of special confiscation in corruption cases, as well as the number of cases of confiscation as a type of punishment, is increasing.

4. Analysis of Law Enforcement Practice on Civil Liability for Corruption

It should be noted that the Second Chamber of the Cassation Criminal Court within the Supreme Court in case No. 644/5486/21 (2023)³⁴ expressed its vision of 'special confiscation', which fully coincides with the interpretation of the Criminal Code of Ukraine, and the court focused on the positions of this code regarding the following that special confiscation does not apply to money, valuables and other property referred to in Article 96-2 of the Criminal Code of Ukraine, which, according to the law, are subject to return to the owner (legal owner) or are intended to compensate for damage caused by a criminal offense.³⁵ At the same time, the Second Chamber of the Cassation Criminal Court within the Supreme Court, in case No. 366/1872/17 (2018),

³² HIGH ANTI-CORRUPTION COURT OF UKRAINE. *Analysis of Judicial Proceedings by the High Anti-Corruption Court in 2023*. Kyiv: High Anti-Corruption Court, 2024. Available from: https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/analyses/justice_2023.pdf [Accessed 15 Nov. 2025].

³³ HIGH ANTI-CORRUPTION COURT OF UKRAINE. *Analysis of Judicial Proceedings by the High Anti-Corruption Court in 2024*. Kyiv: High Anti-Corruption Court, 2025. Available from: https://court.gov.ua/storage/portal/hcac/statistics/analyses/justice_2024.pdf [Accessed 15 Nov. 2025].

³⁴ SUPREME COURT. Ruling in Court Case No. 644/5486/21. 2023. Available from: <https://reyestr.court.gov.ua/Review/112088029> [Accessed 1 Sep. 2025].

³⁵ Ibid.

referring to Article 1 of Protocol No. 1 to the European Convention on Human Rights, refused to apply a special confiscation.³⁶ In refusing to apply the confiscation of property, the Supreme Court noted that although there were formal grounds for applying a special confiscation of the car, it would be excessive for the accused and would violate the requirements of Article 1 of Protocol No. 1 to the European Convention on Human Rights. At the same time, the Court noted that the provisions of Articles 96-1 and 96-2 of the Criminal Code of Ukraine cannot be applied in cases where this would constitute a violation of Article 1 of Protocol No. 1 to the Convention. Thus, according to the Supreme Court, when applying a special confiscation in each particular case, the court must not only refer to the existence of formal grounds for this in the Criminal Code of Ukraine but also make sure that such application does not violate the 'fair balance between the requirements of the general interest and the protection of fundamental rights of individuals' by imposing an 'excessive individual burden'.³⁷ This decision has become an important impetus for the development of court practice and is already being used by lower courts. For example, the Uzhhorod City District Court of Zakarpattia Oblast in case No. 308/8473/22 (2024),³⁸ considering a case on special confiscation of a car that was an instrument of crime, also refused to grant special confiscation, despite the existence of formal grounds for this, using the case law of the Supreme Court in case No. 366/1872/17.³⁹

As noted by O. Yermak, and Ye. Kozma, special confiscation, as a criminal law measure, aims to prevent the continuation of criminal activity (criminal prevention) and to eliminate the damage caused, compensate the victim for the losses suffered, and restore social justice.⁴⁰ Also, special confiscation consists of the compulsory free-of-charge seizure of property by a court decision and its transfer to the state in cases specified by the Criminal Code of Ukraine, provided that an intentional act is

³⁶ SUPREME COURT. Ruling in Court Case No. 366/1872/17. 2018. Available from: <https://reyestr.court.gov.ua/Review/74842644> [Accessed 1 Sep. 2025].

³⁷ Ibid.

³⁸ UZHGOROD CITY AND DISTRICT COURT OF ZAKARPATTIA OBLAST. Ruling in Court Case No. 308/8473/22. Available from: <https://reyestr.court.gov.ua/Review/117579412> [Accessed 1 Sep. 2025].

³⁹ SUPREME COURT. Ruling in Court Case No. 366/1872/17. 2018. Available from: <https://reyestr.court.gov.ua/Review/74842644> [Accessed 1 Sep. 2025].

⁴⁰ YERMAK, Oleksii and Yevheniia Kozma. "Features of the Legal Nature of the Special Confiscation as a Means of Criminal Law." *Comparative and Analytical Law* 3 (2018): 244–247. ISSN 2524-0390. Available from: https://pap-journal.in.ua/wp-content/uploads/2020/08/3_2018.pdf#page=244 [Accessed 1 Sep. 2025].

committed.⁴¹ Therefore, a clear distinction should be made between ‘special confiscation’ and ‘confiscation of property’, since ‘special confiscation’ has preventive and restorative functions, while ‘confiscation of property’, as a type of criminal punishment, has a purely punitive function.

Based on the results of the analysis of Ukrainian legislation and court practice, we can conclude that ‘special confiscation’ and ‘confiscation of property’ (as a type of criminal punishment) give rise to many controversial issues. As noted by M. Hutsaliuk notes that the seizure of income in cryptocurrencies can be very difficult and requires some specialized training of law enforcement officers and a mechanism of international cooperation, as there are simply no relevant state bodies in the country that would monitor cryptocurrency transactions,⁴² which is logical, since the legislative consolidation and regulation of cryptocurrencies in Ukrainian legislation is currently only at the initial stage. The problem of improving Ukrainian legislation related to cryptocurrencies is also raised by O. Kulyk, analysing the regulation of the virtual asset market in the offshore zones of Bermuda, Gibraltar, and Malta.⁴³ The authors emphasize the anonymity of cryptocurrency accounts and the lack of a centralized registry, which complicates the confiscation of funds related to corruption and terrorist activities. Special confiscation or confiscation of Internet assets used in corruption offenses through the use of paid services in online video games also looks questionable. Their seizure is further complicated by the fact that it is not known for certain whether the development companies or online distribution services of these games, which are governed by the laws of foreign countries, will interact with Ukrainian law enforcement agencies under Ukrainian law.⁴⁴

It is also very important that the use of special confiscation or confiscation of property (as a form of criminal punishment) may violate private and human rights. The

⁴¹ YERMAK, Oleksii. “Confiscation of Property as a Punishment and Quasi-Special Confiscation in the Criminal Law of Ukraine.” *Scientific Bulletin of the International Humanities University. Series: Jurisprudence* 16, no. 2 (2015): 74–76. ISSN 2307-1745. Available from: https://www.vestnik-pravo.mgu.od.ua/archive/juspradenc16/part_2/22.pdf [Accessed 1 Sep. 2025].

⁴² HUTSALIUK, Mykhailo. “Combating Illegal Activities in Cyberspace: Confiscation of Crypto Assets Obtained by Criminal Means.” In *Proceedings of the VI International Scientific and Practical Conference Implementation of the State Anti-Corruption Policy in the International Dimension*, 212–214. National Academy of Internal Affairs, 2021. Available from: <http://surl.li/fbvomc> [Accessed 1 Sep. 2025].

⁴³ KULYK, Oleh. “Models of state regulation of the virtual assets market in offshore zones (on the example of Bermuda Islands, Gibraltar, and Malta).” *Balkan Social Science Review* 20 (2022): 43–61. ISSN 1857-8772. Available from: <https://doi.org/10.46763/bssr2220043k> [Accessed 1 Sep. 2025].

⁴⁴ DAVYDOVA, Iryna and Mykola Biloshkurskyi. “Using Paid Services in Online Video Games as a Way to Conceal Corruption Offences.” *Lex Sportiva* 2 (2023): 10–17. ISSN 2786-5975. Available from: <https://doi.org/10.32782/lexsportiva/2023.2.2> [Accessed 1 Sep. 2025].

existence of the problem that the application of confiscation may violate Article 1 of Protocol No. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) is recognized in many European countries and is the subject of a significant number of court cases.⁴⁵ Thus, as noted earlier, the Second Chamber of the Cassation Criminal Court within the Supreme Court in case No. 366/1872/17 (2018) refused to apply a special confiscation of a car, noting that although there were formal grounds for applying a special confiscation of the car, it would be excessive for the accused and would violate the requirements of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). O. Avramova⁴⁶ also believes that the confiscation of an apartment and a residential house, regardless of its size and the absence of other housing for the convicted person, is unconstitutional. According to N. Navalnieva, it is important to determine the justified grounds and legal consequences of confiscation, as this type is essentially an interference with the conventional and constitutional right to property.⁴⁷

Nevertheless, the Constitutional Court of Ukraine in case No. 1-22/2020 (391/20) (2020) concluded that the special confiscation is in line with the Constitution of Ukraine.⁴⁸ However, the Court also raises the issue of compliance of the ‘special confiscation’ with the European Convention on Human Rights, in particular, the provisions on state interference with private property. Taking into account the provisions of Art. 1 of Protocol No. 1 of the European Convention on Human Rights and the judgments of the European Court of Human Rights, the Constitutional Court of Ukraine concluded that in the case of special confiscation, the state’s interference with a person’s private property is based on law, the authority to carry it out is granted to the most qualified law enforcement entity – the court, which records it in a legal act of individual action (verdict, ruling), and it meets the legitimate aim of stopping the use of

⁴⁵ EUROPEAN COURT OF HUMAN RIGHTS. *Convention for the Protection of Human Rights and Fundamental Freedoms*. 1950. Available from: <https://prd-echr.coe.int/web/echr/european-convention-on-human-rights> [Accessed 1 Sep. 2025].

⁴⁶ AVRAMOVA, Olha. “Deprivation of Subjective Rights for Habitation.” PhD thesis abstract, Kharkiv National University of Internal Affairs, 2008. Available from: <https://dspace.univd.edu.ua/handle/123456789/17409> [Accessed 1 Sep. 2025].

⁴⁷ NAVALNIEVA, Nataliia. “Confiscation of Property: Civil and Legal Aspect.” *Scientific Notes of Taurida National V. I. Vernadsky University. Series: Juridical Sciences* 29, no. 68(6) (2018): 39–45. ISSN 2707-059X. Available from: <https://doi.org/10.32838/TNU-2707-0581/2018.6/07> [Accessed 1 Sep. 2025].

⁴⁸ CONSTITUTIONAL COURT OF UKRAINE. Decision in the Case on the Constitutional Petition of 47 MPs of Ukraine on the Compliance with the Constitution of Ukraine (Constitutionality) of Articles 961, 962 of the Criminal Code of Ukraine (on Special Confiscation) in court case No. 1-22/2020(391/20). 2022. Available from: <https://zakon.rada.gov.ua/laws/show/va01p710-22#Text> [Accessed 1 Sep. 2025].

applicant's rights was a clear violation of Greek law and therefore contravened the applicant's right to peaceful enjoyment of his property. All this gives grounds to believe that there has been a violation of Article 1 of Protocol No. 1 to the European Convention on Human Rights (1950). Given the Minister of Finance's refusal to comply with the first instance court decision in the applicant's case, the remedy under consideration cannot be considered 'effective' as required by Article 13 of the European Convention on Human Rights.⁵³

In this case, the European Court of Human Rights ruled that the confiscation of the land, along with the open-air cinema, violated Article 1 of Protocol No. 1 of the European Convention on Human Rights, a conclusion reached by all the judges unanimously. Also, by sixteen votes to one, the European Court of Human Rights ruled that there had been a violation of Article 13 of the European Convention on Human Rights.⁵⁴

Regarding the violation of the European Convention on Human Rights during confiscation in criminal cases, it is worth mentioning the case of the European Court of Human Rights 'Frizen v. Russia', No. 58254/00 (2005).⁵⁵ The case established that in 1996, the applicant's husband had founded a company that had provided her with a loan to purchase a car. The amount was transferred in full to the account of the car sales agent. Subsequently, in 1998, the applicant's husband was found guilty of fraud. The court ordered the confiscation of his property, his wife's car, and some items from her apartment. The applicant complained to the European Court of Human Rights, claiming that her car had been confiscated for a crime she had not committed and for which she had not been convicted.⁵⁶ The European Court of Human Rights unanimously concluded that there had been a violation of Article 1 of Protocol No. 1 to the European Convention on Human Rights in this case.⁵⁷

5. Problems and Prospects of Introducing Compensation Instead of Confiscation in Civil Liability for Corruption

Given the above, it can be assumed that the use of special confiscation and

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ EUROPEAN COURT OF HUMAN RIGHTS. Judgment in the Case of *Frizen v. Russia*, No. 58254/00. 2005. Available from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-68614%22%5D> [Accessed 1 Sep. 2025].

⁵⁶ Ibid.

⁵⁷ Ibid.

confiscation of property as a criminal sanction in the fight against corruption offenses may not be effective enough or may result in violations of private or human rights. It is important to note that the use of special confiscation for the gratuitous seizure of instruments of crime is entirely appropriate in many criminal offences (e.g., seizure of murder weapons). However, in the context of corruption offences, special confiscation can often be excessive, violate human rights, and be applied for purposes other than the gratuitous seizure of the instrument of the crime. For example, special confiscation in corruption offences may be aimed at seizing property that was acquired with corrupt funds, etc. In this context, special confiscation can be replaced by civil liability in the form of compensation, which would include the value of property obtained illegally through corruption.

Therefore, it seems appropriate to establish, instead of special confiscation or confiscation of property as a criminal punishment, civil liability in the form of damages or compensation to the state or persons affected by the offense, which would perform restorative, preventive, and punitive functions at once. The importance of compensation to victims, including those of corruption-related crimes, is also emphasized by the Council of Europe in its explanatory note to the Directive of the European Parliament and the Council on Asset Recovery and Confiscation (2022).⁵⁸

In a prior work, which serves as the de facto conceptual foundation for the present article, the authors advance another cogent argument supporting the expediency of applying civil liability – specifically, compensation rather than confiscation or special confiscation – when holding perpetrators of corruption offenses accountable. Whereas the previous study emphasizes the particular relevance of applying this form of liability under conditions of martial law and in the context of hybrid warfare, the present academic work substantiates the expediency of this type of civil liability also within the context of Ukraine’s European integration processes.⁵⁹

Specifically, the authors advocate for the mandatory observance of the legal principle of human-centricity (or anthropocentrism), particularly in the administration of

⁵⁸ EUROPEAN PARLIAMENT AND OF THE COUNCIL. Proposal for a Directive on Asset Recovery and Confiscation, No. 52022PC0245. 2022. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0245&qid=1653986198511> [Accessed 1 Sep. 2025].

⁵⁹ KHARYTONOV, Yevhen O., and Mykola M. Biloshkurskyi. Chapter 12. Civil-Law Liability for Corruption Offences in the Conditions of a Hybrid War. In KHARYTONOV, Yevhen. (Ed.), *Actual Problems of Regulation of Property and Non-Property Relations under the Conditions of a Hybrid War through the Prism of Person-Centred Civilistics*. Odesa: Phoenix; National University “Odesa Law Academy” 2025, pp. 384–410. Available from: <https://doi.org/10.32837/11300.29664> [Accessed 15 Nov. 2025].

justice. In this context, human-centricity, as a legal principle, posits that the paramount value in a democratic society is the human person, their dignity, and their rights. In the anti-corruption context, this signifies a reorientation from exclusively punitive approaches toward methods that account for individual circumstances, restore justice for victims (or provide redress to victims), and promote the public good.⁶⁰ Furthermore, adherence to this principle is crucial both in relation to the individuals held accountable for committing a corruption offense and to the victims of said offense.

We posit that the implementation of civil-law anti-corruption methods, which include establishing civil liability for corruption offenses, will foster adherence to the legal principle of human-centricity, benefiting both the accused and the victims of their corrupt acts.

In advocating for the implementation of compensation as an alternative to confiscation or special confiscation, we propose an examination of the established judicial practice (or existing case law) of Ukrainian courts in this regard. Such types of penalties, ‘in contrast to confiscation’, are already occasionally applied, particularly in corruption cases (Table 2).

Table 2. Statistics on Compensation for Corruption Crimes in HACC Judgments (2023–2025)⁶¹

Year	Number of Judgments	Total Number of Convicted Persons	Number of Persons Ordered to Pay	Total Amount of Compensation (UAH thousand)	Average per Convicted Payer (UAH thousand)
2023	7	9	9	77,498.0*	8,610.9*
2024	8	9	8	16,121.1	2,015.1
2025	1	7	2	9,638.1**	4,631.4**

* Calculations for 2023 are based on the average annual official NBU exchange rates for 2023: 1 USD = 34.00 UAH, 1 EUR = 37.50 UAH.

** Calculations for 2025 are based on the average annual official NBU exchange rates for 2024: 1 USD = 40.15 UAH, 1 EUR = 43.45 UAH.

The first judgments of the HACC in which penalties, that are in substance compensation, began to be applied started to appear in 2023. According to the open Unified State Register of Court Decisions,⁶² the very first such judgment was that of the HACC in case No. 991/688/23, dated March 2, 2023.

By this judgment, the court approved a plea agreement between the Specialized

⁶⁰ Ibid.

⁶¹ UNIFIED STATE REGISTER OF COURT DECISIONS. Court of Justice of Ukraine. Available from: <https://reyestr.court.gov.ua> [Accessed 15 Nov. 2025].

⁶² Ibid.

Anti-Corruption Prosecutor's Office (SAPO) and the accused. Under the agreement, the latter was found guilty of committing a criminal offense provided for by Part 4 of Article 369 of the Criminal Code of Ukraine – that is, offering or promising an undue advantage to an official holding a particularly responsible position, for that person or a third party. The court imposed a sentence of 5 years of imprisonment, which was immediately, pursuant to Article 75 of the Criminal Code of Ukraine, suspended and replaced with a 3-year probationary period.

More importantly, the court also obligated the accused to pay 100,000 USD to the "United24" Fund for the "Army of Drones," a joint project of the General Staff of the Armed Forces of Ukraine, the State Service of Special Communications and Information Protection of Ukraine (Derzhspetszviazok), and the Ministry of Digital Transformation.⁶³

Thus, instead of the penalty of 'confiscation of property', the court ordered the defendant to pay 100,000 USD to the Armed Forces of Ukraine. This resolution not only penalized the defendant but also restored social justice and compensated the state for damages.

In total, 7 such judgments were rendered in 2023 against nine individuals, as reflected in Table 2. Each convicted person was ordered by the court to transfer specific sums of money – contingent upon the gravity of the criminal offense they committed – for the benefit of the Armed Forces of Ukraine. The total amount of compensation for 2023 reached UAH 77,498.0 thousand.

The number of judgments in 2024 increased from 7 to 8; however, the actual number of convicted persons remained at the same level (9 individuals). This form of penalty (the transfer of funds to the army) was applied to 8 of these individuals, representing one person fewer than in 2023. The total amount of compensated funds in 2024 reached UAH 16,121.1 thousand.

As an example of the 2024 court cases in which this aforementioned penalty was applied, one can cite case No. 991/5422/24, dated July 23, 2024.⁶⁴ In this case, the High Anti-Corruption Court approved a plea agreement between the Specialized Anti-Corruption Prosecutor's Office and an official of the Main Directorate of the State Tax

⁶³ HIGH ANTI-CORRUPTION COURT OF UKRAINE. Judgment in Court Case No. 991/688/23. 2023. Available from: <https://reyestr.court.gov.ua/Review/109321257> [Accessed 15 Nov. 2025].

⁶⁴ HIGH ANTI-CORRUPTION COURT OF UKRAINE. Judgment in Court Case No. 991/5422/24. 2024. Available from: <https://reyestr.court.gov.ua/Review/120537944> [Accessed 1 Sep. 2025].

Service in the Kharkiv Oblast. The court imposed upon the latter a sentence of 5 years of imprisonment without confiscation of property, releasing him from serving this sentence and replacing it with probation pursuant to Article 75 of the Criminal Code of Ukraine, with a 3-year probationary period. The court also obligated the accused to pay UAH 500,000 to the “United24” Fund for the “Army of Drones,” a joint project of the General Staff of the Armed Forces of Ukraine, the State Service of Special Communications and Information Protection (Derzhspetszviazok), and the Ministry of Digital Transformation.⁶⁵

Thus, instead of the penalty of ‘confiscation of property’, the court ordered the defendant to pay UAH 500,000 to the Armed Forces of Ukraine. This resolution not only penalized the defendant but also upheld the principle of human-centricity, restored social justice, and restituted damages to the state.

As of the end of the first half of 2025, the HACC had issued only one judgment during that year imposing a penalty in the form of restitution to the army. However, in its judgment in case No. 991/8307/24 of February 19, 2025, the HACC convicted seven individuals simultaneously, applying the penalty of restitution to the army to two of them. Specifically, one of the convicted persons was obligated to pay UAH 5 million to the “United24” Fund for the “Army of Drones” – a joint project of the General Staff of the Armed Forces of Ukraine, the State Service of Special Communications and Information Protection (Derzhspetszviazok), and the Ministry of Digital Transformation – within 60 days of the judgment entering into legal force, and an additional UAH 4 million within the subsequent two years. The court obligated another accused to pay EUR 40,850 and USD 21,500 to the special account for fundraising in support of the Armed Forces of Ukraine.⁶⁶

Comparing the statistics presented in Table 1 (concerning the HACC’s application of the penalty of property confiscation and the criminal-law measure of special confiscation) with the data in Table 2 (which provides statistics on the application of the penalty as compensation), we can conclude that the trend of using compensation as a penalty for corruption offenses currently remains stagnant or is even decreasing. This is a negative trend. The use of plea agreements and subsequent compensation for damages by the convicted – rather than the confiscation of their property – requires

⁶⁵ Ibid.

⁶⁶ HIGH ANTI-CORRUPTION COURT OF UKRAINE. Judgment in Court Case No. 991/8307/24. 2025. Available from: <https://reyestr.court.gov.ua/Review/125270405> [Accessed 1 Sep. 2025].

significant expansion in its application, particularly in view of Ukraine's European integration processes and the adaptation of its legislation, including its criminal, civil, and anti-corruption laws as a whole.

Such commutations or reductions of sentences for pleading guilty and cooperating with the investigation are common in European countries and the United States. Thus, the legislation of many countries of the world provides for accelerated (shortened, special) proceedings. For example, in Italy, such proceedings are called 'pattagimento' and in Spain 'conformidad'. In exchange for pleading guilty to a crime, the laws of these countries provide for a limited sentence: no more than 6 years in prison, according to Spanish law, and a 1/3 reduction in the term of imprisonment, according to Italian law.⁶⁷

The most well-known institution of plea bargaining between a suspect and the pre-trial investigation authorities is the 'plea bargain' in the US criminal procedure. In the legal system of this country, such agreements have existed since 1839 and are a classic example of cooperation between the investigation and the suspect. The agreement provides for the defendant to plead guilty to all or part of the charges against him/her in exchange for a reduction of the punishment by reclassifying the act as a lesser offense, excluding certain charges, changing the form of complicity or the stage of the crime, excluding references to aggravating circumstances, submitting a recommendation to the court to impose a lighter sentence, etc.⁶⁸ Such agreements are very effective, as they help reduce the workload of courts and pre-trial investigation bodies.

About agreements that would replace the punishment for corruption offenses in the form of imprisonment, confiscation of property, etc., with other property punishments, such as fines, reimbursement, or compensation, changes in Ukrainian legislation have only recently been introduced. The driving factor was the publication of the Draft Law 'On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine on Improving the Efficiency of Plea Bargaining' No. 11340

⁶⁷ KRUSHYNSKYI, Serhii. "Plea Bargaining: International Experience and Prospects for Implementation in Ukraine." *University Scientific Notes* 4, no. 36 (2010): 238–245. ISSN 2078-9165. Available from: <http://old.univer.km.ua/doc/kkp/3.pdf> [Accessed 1 Sep. 2025].

⁶⁸ *Ibid.*, p. 241.

(2024)⁶⁹ and its adoption in the first reading.⁷⁰

Analysing the Draft Law No. 11340, it can be concluded that the main purpose of this draft law is to create a mechanism for interaction between pre-trial investigation bodies and persons suspected of corruption offenses by concluding a plea agreement, as well as to establish, within the framework of this agreement, an additional penalty in the form of a fine agreed by the parties in case such a penalty is not provided for in the sanction of the article. The number of fines was proposed as follows: (1) in the case of a criminal offense: from twelve thousand tax-free minimum incomes to one hundred and twenty thousand tax-free minimum incomes; (2) in case of committing a minor offense: from one hundred twenty-one thousand tax-free minimum incomes to one million two hundred thousand tax-free minimum incomes; (3) in case of committing a serious crime: from one million two hundred and one thousand tax-free minimum incomes to six million tax-free minimum incomes; (4) in case of a grave crime: from six million one thousand tax-free minimum incomes to twelve million tax-free minimum incomes.⁷¹

The draft law was criticized. In particular, the Verkhovna Rada Committee on Anti-Corruption Policy expressed its position that Draft Law No. 11340 does not meet the requirements of anti-corruption legislation,⁷² and the Specialized Anti-Corruption Prosecutor's Office and the National Anti-Corruption Bureau of Ukraine also see corruption risks. In addition, many comments and technical and legal shortcomings were contained in the scientific and expert opinion on the draft law.⁷³

The main flaw in this draft law is that to avoid imprisonment and receive a milder sentence of a fine, a corrupt official is not obliged to cooperate fully with the

⁶⁹ DRAFT LAW. On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to Improve the Efficiency of Plea Bargaining, No. 11340. 2024. Available from: <https://itd.rada.gov.ua/billInfo/Bills/Card/44421> [Accessed 1 Sep. 2025].

⁷⁰ PRESS SERVICE OF THE VERKHOVNA RADA OF UKRAINE. "The Verkhovna Rada of Ukraine Adopted as a Basis a Draft Law on Improving the Efficiency of Plea Bargaining." *Official Web Portal of the Parliament of Ukraine*. 2024. Available from: https://www.rada.gov.ua/news/news_kom/251942.html [Accessed 1 Sep. 2025].

⁷¹ DRAFT LAW. On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to Improve the Efficiency of Plea Bargaining, No. 11340. 2024. Available from: <https://itd.rada.gov.ua/billInfo/Bills/Card/44421> [Accessed 1 Sep. 2025].

⁷² PRESS SERVICE OF THE VERKHOVNA RADA OF UKRAINE. "The Committee on Anti-Corruption Policy Reviewed Draft Laws for Compliance with Anti-Corruption Legislation." *Official Web Portal of the Parliament of Ukraine*. 2024. Available from: https://www.rada.gov.ua/news/news_kom/251683.html [Accessed 1 Sep. 2025].

⁷³ SCIENTIFIC AND EXPERT OPINION. First reading on the Draft Law on Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine on Improving the Efficiency of Plea Bargaining, No. 11340. 2024. Available from: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/2441260> [Accessed 1 Sep. 2025].

investigation. It is sufficient for the defendant to plead guilty to the corruption offense with which he or she is accused, and it is not necessary to testify against accomplices. In addition, the confiscation of assets that the accused acquired illegally as a result of a corruption offense is limited to those assets that the investigation has been able to prove to be illegal. Also, according to scientific and expert opinion, the amounts of some fines, on the contrary, were significantly overstated and did not correspond to the existing types of punishment, etc.⁷⁴

Therefore, to ensure the cooperation of the accused with the investigation and to ensure the effectiveness of property penalties, the draft law should be revised: in particular, pleading guilty and cooperating with the investigation by testifying against all participants in the offense should be mandatory. In addition to the fine, the defendant must return the funds obtained illegally as a result of the corruption offense. At the same time, a prerequisite for such cooperation between the investigation and the suspect should be the return of all funds that the latter is suspected of having obtained. It is also necessary to justify the criteria for reassessing the number of fines, reducing or increasing them where necessary.

Finalizing this draft law is important. Firstly, as the European Court of Human Rights points out in ‘Natsvlshvili and Togonidze v. Georgia’ No. 9043/05 (2014),⁷⁵ “plea bargaining, in addition to providing important advantages of speedy trial and easing the burden on courts, prosecutors and defense lawyers, can also, if properly applied, be a successful tool in the fight against corruption and organized crime and can contribute to reducing the number of sentences imposed and, as a result, the number of prisoners.”⁷⁶ Secondly, the unloading of courts and pre-trial investigation bodies, especially now, in times of war, is an important advantage, as the problem of the courts’ inability to process all available cases within the time limits established by law is particularly acute due to martial law,⁷⁷ and will become even more acute in the post-war era. Finally, the implementation of the revised law will establish ways to bring perpetrators to justice, help increase the state budget by returning funds obtained

⁷⁴ Ibid.

⁷⁵ EUROPEAN COURT OF HUMAN RIGHTS. Judgment in the Case of *Natsvlshvili and Togonidze v. Georgia*, No. 9043/05. 2014. Available from: [https://hudoc.echr.coe.int/#/%22itemid%22:\[%22001-153730%22\]](https://hudoc.echr.coe.int/#/%22itemid%22:[%22001-153730%22]) [Accessed 1 Sep. 2025].

⁷⁶ Ibid.

⁷⁷ DAVYDOVA, Iryna and Mykola Biloshkurskyi. “Some peculiarities of regulatory and legal support for mediation and mediators’ activities.” *Journal of Civil Studies* 51 (2023): 83–87. ISSN 2522-4840. Available from: <https://doi.org/10.32782/chc.v051.2023.14> [Accessed 1 Sep. 2025].

through illegal, corrupt means and paying fines to the accused, avoid contradictions that arose when applying such types of punishment as confiscation, and most importantly, help establish cooperation between the investigation and suspects, and thus facilitate the integration of our country into the European community.

6. Conclusion

In the course of the study of civil liability for corruption offenses, the following results were obtained.

Firstly, the authors establish that the application of confiscation (as a type of criminal punishment) or special confiscation (as a criminal-law measure) is problematic. These instruments may be unconstitutional and violate human rights, specifically the right to the peaceful enjoyment of property, as guaranteed by the European Convention on Human Rights and Fundamental Freedoms and confirmed by ECHR case law. Despite this, an analysis of the statistics from the HACC shows that the use of confiscation as a penalty has a clear upward trend (from 9 persons in 2021 to 46 in 2024). This indicates the intensified use of a legally complex instrument.

Secondly, in light of the aforementioned risks, the authors substantiate the expediency of introducing compensation (damages) as an alternative civil-law sanction. Unlike confiscation, compensation performs not only punitive but also restorative and preventive functions, and most importantly, it protects the rights and interests of both the offender and the victims, which aligns with the principle of human-centricity. However, an analysis of the HACC's judicial practice reveals that although *de facto* compensation (in the form of transfers to the Armed Forces of Ukraine within plea agreements) began to appear in 2023, this trend remains stagnant or is even decreasing. This is a negative trend that indicates the absence of a stable practice.

Thirdly, the instability of the compensation practice underscores the need for clear legislative regulation. An analysis of Draft Law No. 11340 (2024) shows that, while it is a step in the right direction, it requires substantial revisions to avoid corruption risks. The authors insist that the mandatory conditions for plea agreements must include: full cooperation with the investigation (including testimony against all participants in the offense); compensation for the damages caused to victims; the return of all funds obtained illicitly, in addition to a fine; and defining the return of the entire sum of funds as a mandatory prerequisite for cooperation.

Finally, it is necessary to streamline the gradation of penalties according to the

types and danger of the offenses to ensure a fair and effective legal framework that aligns with the proposed reforms.

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Universidade Portucalense Cooperativa de Ensino Superior, CRL

Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: upt@upt.pt