Tort Law of Ukraine: Key Points

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TABLE OF CONTENTS

FOREWORD

The study of comparative legal systems, which examines the unique regulations of various social relations across different countries, is increasingly important in modern legal science. Scientific works that explore legal phenomena across different legal families are especially interesting. In the context of modern European integration processes and recent tragic events, the law of Ukraine is a phenomenon that receives significant attention from legal scholars.

Globalization has caused changes in modern civil law, in particular in tort law, which is considered a part of civil law in Ukrainian jurisprudence. However, it is important to note that compensation for damages is subject to national and cultural norms, which can vary significantly.

Therefore, to successfully resolve modern civil law cases, it is necessary to thoroughly examine its unique characteristics and provide clear explanations of its technical terms. In tort law, the complexity of concepts and their specific applications can often hinder understanding. In civil tort law, the complexity of concepts and their applications can often hinder understanding. Therefore, it is important to develop a uniform terminological apparatus and common legal concepts that can be universally understood and applied in the ever-changing society landscape to ensure clarity and consistency. In the context of international integration, it is important to consider legislation unification.

The legal nature of torts has been extensively discussed by various scholars of national and private law, including Prof. Valentina Vasylieva, Prof. Roman Maydanyk, Prof. Ina Spasibo-Fateeva, Prof. Evgen Kharytonov, Prof. Mykola Haliantych, Prof. Roman Shyshka. This study aims to a nalyze certain types of torts.

The term “tort law” is not commonly used in the Ukrainian civil law doctrine. However, Ukrainian scientists often use terms such as “tort liability”, “tort relation”, “tort”, etc. Researchers refer to tort law in different ways, such as a field of damage compensation, a segment of tort liability, or liability for causing damage. This general identification of concepts is due to the absence of definitions in the Civil Code of Ukraine. "Tort", "tort

liability", and "non-contractual obligations" are terms used in the Civil Code of Ukraine to refer to the obligation to compensate for damage. The second subsection of the special part of this Code devoted to non-contractual obligations specifically uses the term "compensation for damages".

The European doctrine of tort law, which was previously hidden behind a foreign language, has been incorporated into legal science. Prof. Simon Deakin, Prof. Helmut Koziol, Prof. Jean-Sébastien Borghetti, Prof. Olaf Riss, Prof. Attila Fenyves, Prof. Ernst Karner, Prof. Elisabeth Steiner, and Prof. Bernhard A. Koch have made significant contributions to the development of the social nature of tort.

Their ideas have allowed for a practical understanding of tort, particularly in terms of identifying differences in certain types of torts and formulating general development trends.

Current trends in Ukrainian legislation have highlighted the necessity for a comprehensive reform of Ukraine's civil law, in particular, the Civil Code of Ukraine (2003). Despite notable modifications over the last two decades, there is a dearth of conceptual clarity in the context of international integration processes. In this regard, tort law needs improving. The European integration processes in Ukraine and the need to harmonize legislation with other European countries in this area are important aspects.

The monograph systematically analyzes the theoretical foundations of tort liability in Ukrainian law. Through empirical and theoretical analysis, this monograph identifies the nature of tort and examines its elements. The author presents their classification of torts and explores the mechanisms of compensation for damage based on the results of a comprehensive analysis. The presentation of theoretical material departs from a purely scientific approach and includes a detailed analysis of Ukrainian tort legislation. The monograph provides general information about the current state of tort law in Ukraine.

The author would like to express their gratitude to the University Paris 1 Pantheon - Sorbonne and the Institute of European Tort Law of the Austrian Academy of Sciences, particularly to Professors Philippe Dupichot, Anne -Marie Leroyer, Jonas Knetsch, Helmut Koziol, and Ernst Karner, for thei r support of the creative initiatives of Ukrainian scholars and their assistanc e in publishing this monograph.

SECTION I.

GENERAL PROVISIONS ON TORT

CHAPTER 1

THE LEGAL NATURE OF TORT IN THE LAW OF UKRAINE

Article 15 of the Civil Code of Ukraine enshrines the right of every person to protect his or her civil rights in case of their violation, non-recognition, or challenge, as well as the right to protect his or her interest that does not contradict the general principles of civil law. One of the most effective civil remedies to protect the rights and interests of a person is compensation for damage (losses), which is carried out through protective legal relations, including tort liabilities.

An obligation resulting from damage, like other obligations, arises in the presence of certain legal facts. The legal fact with which the law links the emergence of this tort liability is the fact of causing damage, i.e. a tort.

The occurrence of a tort results in a person's liability for the caused damage. Such a liability consists of the obligation to compensate for the damage caused and to restore the property and non-property status of the victim.

Under a tort obligation, the offender is obliged to fully compensate for the damage caused, and the other party has the right to demand that the offender fulfill this obligation. The result of such compensation should be the full restoration of the property and non-property situation that existed before the violation of the victim's right.

In comparison to contractual liability, tort liability arises from a breach of the general rule of 'not to harm another, i.e. the absolute right of a person. The result of tort liability is the restoration of the victim's original state. Obligations to compensate for damages are regarded as non-contractual obligations that stem from the violation of the victim's personal non-property and property rights. These obligations are absolute and intended to ensure the fullest possible restoration of these rights, either at the expense of the party responsible for the harm or at the expense of other individuals who are legally obligated to provide compensation (Otradnova 2009. 240)

When considering liability for damage, the law follows the principle of general tort in the doctrine of tort law of Ukraine. This principle states that the mere fact that one person causes damage to another is a sufficient basis for the obligation to compensate for the damage. Therefore, the victim is not required to prove the unlawfulness of the actions of the tortfeasor or his or her guilt. In this regard, it is important to note that the tortfeasor can only be released from liability by proving their absence.

It is widely acknowledged that the principle of general tort is most fully expressed in Article 1382 of the French Civil Code, which states that "any action of a person who has caused damage to another obliges the person whose fault caused the damage to compensate for the damage".

It is worth noting that in addition to the general tort, the doctrine of tort law in Ukraine distinguishes special torts that contain exceptions to the rules of the general tort. Such exceptions relate to the subjects of the tort and such conditions of liability as the presence or absence of fault, unlawfulness or lawfulness of the damage, which together may change the general rule established by the general tort.

For instance, damage caused by a source of increased danger is subject to special rules of compensation. These rules stipulate that the person responsible for the damage is liable, regardless of their fault. Furthermore, special rules of compensation apply in cases where the damage was caused by a minor. In such cases, the minor's parents are responsible for paying compensation.

§ 1. The Essence of Tort Liability

In civil law, obligations are divided into two groups depending on the grounds for their occurrence, namely: contractual and non-contractual.

Contractual obligations arise from an agreement (contract) signed by the parties. They are aimed at regulating normal property relations for people both in business activities and in satisfying personal, family, and household needs. As a rule, parties to contractual obligations under civil law determine the terms of the contract at their discretion such as subject matter, quantity, quality, price, terms and procedure for fulfilling the agreement, and the liability of the parties for non-fulfillment or improper fulfillment of the obligations assumed. The parties shall agree in advance on the content of their rights and obligations under the agreement.

When the parties act within the framework of their contractual obligations, a breach of contract has consequences clearly defined by the terms of the contract. These may include payment of a fine or penalty, termination of the contract, or refusal to perform it.

The range of social relations between individuals is not limited to positive regulation. Therefore, social conflicts may acquire legal significance due to violations of the rights and obligations of others.

It is worth noting that a violation of a person's rights may occur even in the absence of a contract between the parties. Such a violation has non-contractual consequences since they arise in the absence of legal relations between the parties.

Non-contractual obligations are fundamentally different from contractual ones in terms of their nature, origins, and content. They arise not so much from the contract of the parties but on other grounds provided for by law.

Nevertheless, the absence of a contract between the parties does not preclude the existence of obligations between persons. However, the scope of such obligations is significantly limited. They exist only in the event of a need to compensate for damage. In other words, causing damage to a person has corresponding legal consequences related to its compensation.

Whereas other parts of civil law establish legal forms for entering into normal legal relations, the institution of compensation for damage is a legal formulation of society's reaction to violations of the existing legal system. The mechanism of compensation for damage does not perform an independent legal function, such as the institutions of property, contract, or inheritance, but rather establishes auxiliary rules that ensure that these institutions can fulfill their purpose without hindrance. Therefore, it is entrusted with a special, restorative function, which guarantees that the victim's property is restored to the state that existed before the offense.

Within Roman law, tort liabilities are non-contractual obligations and arise from offenses. It is worth noting that this type of obligation was historically the first. Since ancient times the state authorities did not interfere in the relations of private persons at all, it was up to the victims to respond to violations of their interests (Tort Obligations, 2021).

Non-contractual obligations resulting from damage received their name from the Latin word *delictum*, which means offense. Therefore, these obligations are often referred to as tort obligations in the literature and case

law. The classification of obligations based on their origin into obligations from contract (*ex contractu*) and obligations from torts (*ex delicto*) was developed by Roman lawyers and adopted by the legal systems of many ancient states. In the 2nd century AD, jurist Gaius Gaius, presenting this classification in the Institutes (3. 38), called it the basic division of obligations (*summa divisio*): "The basic division of obligations is reduced to two kinds, namely: any obligation arises either from a contract or from a tort". Thus, a contract was understood as an agreement recognized by civil law and enforceable by the courts. A tort was an unlawful act that caused damage." (Borisova 2019, 193 - 200).

In other words, if the contract is a form of entering into normal legal relations, compensation for damage is a legal consolidation of the state's response to violations of the virtuous behavior of persons, which is enshrined in the legal requirements of society.

§ 2. The Concept of Tort and Its Elements

In the doctrine of civil law of Ukraine, a tort is defined as a legal fact of causing damage that triggers legal and factual consequences. These consequences include the obligation to provide full compensation for the damage caused.

The factual consequence of a tort is the restoration of a person's position that existed before the violation of his or her right in the manner prescribed by law.

In turn, the legal consequence of a tort is the obligation of the tortfeasor to compensate for the damage caused and the corresponding right of the victim to demand reasonable compensation. The legal nature of these consequences is due to the availability of legal instruments of state coercion. For example, if the tortfeasor refuses to compensate for the damage, the injured person has the right to go to court and demand compensation.

It is worth noting that a tort exists outside the contract between the parties, i.e., it is a non-contractual obligation of the tortfeasor. In the event that the damage is caused during the performance of the contract between the parties, the mechanism of its compensation is established in accordance with the contract provisions and triggers the relevant legal consequences related to the breach of the contract.

It should be noted that a tort, unlike a contract, does not perform an independent legal function. Thus, the independent significance of a contract is that it regulates legal relations between contractors independently of national legislation. Pursuant to Article 6 of the Civil Code of Ukraine, the parties are entitled to enter into a contract that is not provided for by acts of civil law but complies with its general principles. The parties have the right to regulate contract relations provided for by civil law at their discretion.

In turn, a tort serves a remedial function that aims to restore the normal state of affairs that existed before the damage was caused and normalize relations between members of society. The compensatory function of a tort is generally acknowledged in law.

The principles of tort law in Ukraine stipulate that tort liability arises when specific conditions, referred to as elements of a tort, are met. These elements are 1) damage, 2) behavior, 3) a person's fault, and 4) a causal link between the behavior and the damage. The obligation to compensate for damage caused by a source of increased danger may be complete or reduced depending on the type of tort (Mishchuk, 2013, 146 - 151).

Generally, all four elements mentioned above must be present for the obligation to arise. For certain types of torts, referred to as special torts, only three elements are required to establish an obligation to compensate for damages. For instance, when a public authority causes damage, fault is not a mandatory element of the tort. In such cases, compensation for the damage is provided regardless of fault, i.e., a set of elements required for this tort is reduced.

2.1. Damage

Damage is the main element of a tort. It is noteworthy that a tort arises from a certain set of legal facts, damage being the key one. Although other elements of the tort may not be present, the existence of damage is a mandatory basis for compensation.

In the tort law of Ukraine, damage is defined as adverse consequences of a property or non-property nature suffered by the injured person as a result of the tortfeasor's actions or omissions.

Property damage. Property damage is expressed in the physical impact on a person's property, which results in a change in its quality and value characteristics. This, in turn, may lead to a decrease in its functional

abilities. In other words, property damage results in damage to property or its complete destruction.

In the civil law of Ukraine, in addition to the term "damage", the term "losses" is also used. However, despite their similarity, there are fundamental differences between them. Thus, Article 22 of the Civil Code of Ukraine defines losses as follows:

1) those losses that are incurred by a person in connection with the destruction or damage of a thing and expenses that a person has made or must make to restore *his or her* violated right (real damages);

2) the income that a person could have received under normal circumstances if *his or her* right had not been violated (lost profit).

Thus, the term "losses" is broader than the term "damage" since losses also include potential future profits that the injured person will no longer be able to receive due to damage to his or her property. In turn, the tort law of Ukraine does not recognize the income a person could have received under normal circumstances if his or her right had not been violated (lost profits) as damage and limits the amount of compensation to actual losses. Such real losses may include losses associated with the restoration of the damaged property or the costs of medical treatment associated with the restoration of a person's damaged health.

Non-pecuniary damage. In addition to the material sphere, damage may not relate to property. As a result of damage, not only property consequences may arise, but also consequences that cannot be esteemed in monetary terms. Thus, as a result of unlawful actions, damage may also be caused to the life or health of a person and lead to his or her death. In this case, such damage is called non-pecuniary damage since it is not the property that suffers, but a person.

Non-pecuniary damage should be understood as physical and moral suffering caused by the tortfeasor's misconduct and violating the personal rights of the injured person (right to life, health, dignity, and business reputation, etc.). However, regardless of whether it is property or non-property damage, the amount of compensation is determined in material form. In other words, regardless of the nature of the damage caused to a person (damage to health or damage to property), compensation is payable in the form of money.

The tort law doctrine considers non-pecuniary damage to be damage to human health (damage caused by injury, other damage to health or death of a person) and moral damage. Thus, damage to human health is a change in the state of full physical, psychological, and social well-being of a person under the influence of the person's behavior or other external factors (occupational disease, injury, mutilation, or any other damage to health).

Such damages in all cases cannot be compensated in the form of in-kind benefits or cash. However, in case of damage to the victim's health, he or she usually suffers property losses, is temporarily or permanently deprived of the possibility of receiving his or her former earnings or other income, and is forced to incur additional treatment costs. In the event of a citizen's death, such losses may also be suffered by persons close to the victim who are deprived of a source of income or maintenance, especially minor children or disabled family members.

Moral damage refers to losses of a non-property nature resulting from moral or physical suffering or other negative phenomena caused by unlawful acts or omissions of other individuals or legal entities.

Moral suffering is defined as an emotional and volitional experience that includes feelings of humiliation, irritation, depression, anger, shame, despair, inferiority, psychological discomfort, and similar experiences. Non-pecuniary damage through suffering refers to negative mental consequences that affect the victim's mind. These consequences are the determining indicators of the non-pecuniary damage occurrence. The concept of mental suffering is complex because this is a process that takes place in the human mind and thus it is almost impossible to define it using only legal terminology (Petrenko, 2019, 60-64).

An interesting definition of non-pecuniary damage is provided in the Resolution of the Plenum of the Supreme Court of Ukraine "On the Practice of Consideration of Civil Cases on Claims for Consumer Protection" of 12 April 1996, No. 5. Thus, according to paragraph 2, clause 23 of this Resolution, non-pecuniary damage means losses of a non-property nature that the consumer suffered as a result of moral or physical injures or other negative phenomena that occurred due to illegal actions of the seller, manufacturer, performer or due to their inaction.

Under Article 23 of the Civil Code of Ukraine, moral damage consists of the following elements:

1) physical pain suffered by an individual due to an injury or other damage to health;

2) mental distress suffered by an individual in connection with unlawful behavior towards him or her, members of his or her family or close relatives;

3) mental distress suffered by an individual in connection with the destruction or damage to his or her property;

4) humiliation of the honor and dignity of an individual, as well as damaging the business reputation of an individual or legal entity.

Given the abstract nature of non-pecuniary damage, it is currently quite difficult not only to procedurally document it when applying to court but also to collect and record evidence proving the fact of non-pecuniary damage and the amount of such damage.

Even though non-pecuniary damage does not have a clearly defined monetary value as compared to damage to property, it is compensated mainly in a monetary form. Due to the uncertainty of this amount, it is determined by the court, unlike compensation for property damage, the amount of which is determined by the cost of restoration or the actual value of the destroyed property.

In other words, current legislation does not provide a clear method for calculating non-pecuniary damage. The traditional understanding of tort law in Ukraine is that specialized knowledge is required to determine the amount of non-pecuniary damage, as each case has its distinctive features.

The amount of monetary compensation for non-pecuniary damage is determined depending on the nature of the offense, the level of physical and mental injuries, the deterioration of the victim's capacities, the degree of fault of the person who caused non-pecuniary damage if the fault is the basis for compensation, as well as other important circumstances.

It is also noteworthy that non-pecuniary damage is compensated regardless of property damage by a one-time payment. In addition to monetary compensation, compensation for non-pecuniary damage is also made by performing non-property actions (public apology, public refutation of false information about a person, etc.).

2.2. Tortious behavior

In contrast to cases of damage caused during the performance of a contract, where a guilty party is obliged to compensate for the damage as agreed upon in the contract, non-contractual damage has legal consequences for compensation by law. This is attributed to the fact that the tort arises against the will of the injured person and in the absence of any agreed legal relationship between the parties.

In other words, a tort is mainly unlawful behavior by its legal nature.

Unlawful behavior refers to any action, whether active or passive, that violates the rights of another person (the injured person) and the provisions of the national legislation of Ukraine.

The unlawfulness of a person's behavior is predominantly associated with the commission of active actions that lead to harmful consequences. However, unlawful behavior can also be expressed in the inaction of a tortfeasor. When a person is lawfully bound to perform a particular action but fails to do so, such an inaction is considered unlawful. An example of unlawful inaction can be a failure to act by a healthcare professional who is obligated to provide first aid to a person in need, leading to suffering harm.

The national legislation of Ukraine proceeds from the fact that any behavior of a person that leads to harm is presumed to be unlawful. This implies that the injured person has to prove only the fact of damage. The tortfeasor is presumed to be guilty of such damage by virtue of the mere fact that the victim suffered it. Thus, the tortfeasor is obliged to prove that the damage caused to the victim was not his or her fault.

However, the multifaceted nature of a tort and the conditions for its formation are so varied that the unlawfulness of a person's behavior is not the sole element. A tort may be committed through the lawful behavior of the tortfeasor.

The term "lawfulness" is defined as an act of a person who behaves within the limits of forms that are not prohibited by law. Since such behavior is carried out in accordance with the relevant legal provisions, it cannot be deemed unlawful. However, such lawful behavior may also have relevant negative (harmful) consequences for the injured person. This raises the issue of whether compensation should be provided for damage to a person even if caused by lawful behavior.

An example of lawful infliction of damage can be described in the following situation.

According to Article 353 of the Civil Code of Ukraine, in the event of a natural disaster, accident, epidemic, epizootic, and other extraordinary circumstances, the property may be forcibly alienated from the owner for the public needs on the ground of a relevant decision of the authority, provided prior and full compensation of its value (requisition).

In the case of martial law or a state of emergency, property may be forcibly alienated from the owner followed by full compensation of its value.

The adoption of a law or other legal act on the termination of ownership of certain property of a person is a legal action undertaken by a public authority within its competence established by law. At the same time, any compulsory deprivation of property, although it will be considered lawful under the above conditions, harms the owner. This harm shall be reimbursed with the actual value of the property in favor of the owner.

The right to self-defense is also exercised in the form of lawful behavior. However, in contrast to the previous case, the damage caused by a person while exercising the right to self-defense against unlawful attacks, including in a state of necessary defense, shall not be compensated if its limits are not exceeded. Nevertheless, when a person causes damage to another person while exercising the right to self-defense, this damage shall be compensated by the person who caused it, regardless of the lawfulness of the behavior *(Article 1169(2) of the Civil Code of Ukraine).*

An example of lawful damage is damage caused in conditions of extreme necessity.

Article 1171 of the Civil Code of Ukraine stipulates that damage caused to a person in connection with actions aimed at eliminating a danger threatening the civil rights or interests of another person or legal entity, when this danger could not be eliminated by other means under the circumstances (extreme necessity), shall be compensated by the person who caused it.

An example of lawful damage in maritime law is a *"general average".*

A "general average" stands for the intentional and reasonable incurring of extraordinary expenses or donations to save a vessel, its freight, and the

cargo it carries from a common danger *(Article 277 of the Merchant Shipping Code of Ukraine).*

Therefore, damage can be considered the main feature of a tort, whether a person's actions that caused it are deemed lawful or unlawful, and whether they are active or passive. This indicates that a person's behavior is mainly conditional. This element of the tort becomes essential only when determining the amount and procedure for compensation for the damage caused. Lawful infliction of damage includes cases when no compensation is provided for *(self-defense)*. In addition, the lawful infliction of damage may provide for the distribution of the amount of compensation between the injured persons and the tortfeasor *(general average).*

2.3. Causal link between the damage and the person's behavior

Causation is an objective, specific relationship between two phenomena, namely: the cause and the effect. The cause precedes and triggers the effect, while the effect is the result of the action of the cause. Causation is necessary for the imposition of the obligation to compensate for damage.

The problem of causation in law should be resolved via general philosophical categories, given that causation in civil law is one of the types of phenomena interconnection.

In this regard, causation is an objective relationship between phenomena that exists in reality regardless of people's subjective perception. It does not change its essence depending on the perceptions of society or an individual. This element of the tort consists of the cause and the effect, in which the cause always precedes the effect and causes it, and the effect is always the result of the cause.

In addition, causation is always concrete and can only be tied to a particular life situation, since a specific cause and a specific effect relevant to a particular case can be found in daily life. Creating an abstract possibility of an outcome does not give rise to a legally significant causal link.

According to the tort law doctrine, causation must be established not only in the case of an active action but also in the case of damage caused by unlawful inaction, when the victim suffers damage due to the failure of the responsible person to fulfill his or her duties.

Within the tort law of Ukraine, the obligation to establish causation is always mandatory because the tortfeasor is liable only for the damage

caused by his or her behavior. As a general rule, the absence of a causal link excludes a person's liability, as this may indicate that the damage was not caused by the tortfeasor's behavior but occurred as a result of other causes. Unlike other elements of tort (fault), this one is characterized by the fact that its existence must be proved by the injured person.

2.4. Fault

While these three elements of the tort are objective, the fault is a subjective one, The fault is defined as the mental attitude of a person to his or her behavior and its consequences.

According to Article 614 of the Civil Code of Ukraine, a person who breached an obligation is liable if he or she is guilty (by intent or negligence) unless otherwise provided by the contract or law. This provision regulates the liability for violation of subjective rights that constitute the content of a legal relationship of obligation. However, the fault is a prerequisite for any type of civil liability.

The tort law doctrine of Ukraine provides for a presumption of guilt of the person who committed the tort. According to Article 1166 of the Civil Code of Ukraine, a person who caused damage is exempt from compensation if he or she proves that the damage was not caused by his or her fault.

It is worth noting that the Civil Code of Ukraine does not define fault, but only specifies its forms and establishes that a person is innocent if he or she proves that he or she took all possible measures to properly fulfill the obligation.

The division of fault into forms and types is dictated by the need to differentiate various intellectual and volitional models of a person's behavior. Under different circumstances, these models may be given different legal significance, i.e., they may be recognized as sufficient to establish the condition of liability or not (Primak,, 2008, 432).

Article 614 of the Civil Code of Ukraine names two forms of fault, such as intent and negligence, although the criteria for their distinction are not provided. Thus, intent is defined as a person's mental attitude to his or her unlawful actions and their consequences, which is manifested in the foresight of negative consequences of unlawful behavior and the desire or deliberate allowing of its occurrence. The main psychological characteristic of intent is the intention to commit an unlawful act. Therefore, intent is

recognized as the most serious form of guilt. At the same time, negligence is a milder form of guilt, which is defined as a person's attitude to his or her behavior, characterized by a lack of due care, concern, and foresight. The main psychological characteristic of negligence is the lack of intellectual and volitional activity of the offender.

The civil law of Ukraine does not divide intent into direct and indirect intent, as is the case in criminal law. Meanwhile, it distinguishes between gross (simple) and slight negligence. However, in torts, this distinction is relevant only in relation to the assessment of the victim's behavior. The gross or simple negligence of the tortfeasor does not affect his or her liability to the victim. Thus, any fault of a person who caused damage to the health of another, regardless of its form, is sufficient to give rise to the obligation to compensate for this damage.

In tort law, neither the form of fault nor the degree of fault affects the amount of liability, except in cases specifically provided for by law, such as the consideration of the victim's fault in determining the amount of compensation. The amount of compensation depends not on the severity of the tortfeasor’s fault but on the amount of damage caused.

Thus, damage caused to the victim as a result of his or her intent is not compensated. In turn, if the victim's negligence contributed to the occurrence or increase of damage, the amount of compensation is reduced depending on the degree of his or her fault. In addition, the victim's fault is not taken into account in the case of compensation for additional expenses, for damage caused by the death of the breadwinner, and for funeral expenses.

Despite the fact that fault is a prerequisite for compensation for damages, the tort law of Ukraine provides for conditions of liability regardless of fault.

Certain types of special torts require compensation for the damage caused regardless of the fault of the tortfeasor. For example, damage caused by a source of increased danger is compensated regardless of the tortfeasor's fault, even in its absence *(Article 1187 of the Civil Code of Ukraine).*

In addition, liability for non-pecuniary damage arises regardless of the fault of the state authority, the authority of the Autonomous Republic of Crimea, a local self-government body, an individual, or a legal entity that caused it *(Article 1186 of the Civil Code of Ukraine)*. Moreover, damage caused to an individual or a legal entity by an unlawful decision, action, or inaction of an official or employee of a state authority, the authority of the Autonomous

Republic of Crimea, or a local self-government body in the exercise of their competences is compensated by the state, the Autonomous Republic of Crimea, or a local self-government body.

The question of guilt and innocence is determined by analyzing the person's attitude to his or her rights and obligations. If he or she shows the necessary care and prudence that can be required of him or her in a particular situation, he or she cannot be found guilty of causing damage.

Furthermore, damage often arises not only as a result of the actions (or inaction) of the tortfeasor but also of the victim's behavior. In such cases, it would be unfair to impose a full liability for damage only on the person who caused the damage. In this regard, the law contains rules on taking into account the victim's fault, as follows:

> "...Damage caused to the victim as a result of his or her intent shall not be compensated. If the gross negligence of the victim contributed to the occurrence or increase of damage, the amount of compensation shall be reduced depending on the degree of the victim's fault (also depending on the degree of the offender's fault in case of his or her fault)" (Article 1193 of the Civil Code of Ukraine).

At the same time, the victim's fault is not taken into account in the case of compensation for additional expenses, for damage caused by the death of the breadwinner, and for funeral expenses.

Consequently, the legal position of the victim should be qualified as follows: since he or she contributed to the occurrence or increase of damage, he or she should be considered an offender. Thus, in this case, a sanction for the victim's misconduct should be determined taking into account the victim's fault in causing or increasing the damage.

§ 3. Content of a Tort

In addition to the mentioned elements, a tort has its content. The content of a tort encompasses the subjects involved, the legal mechanism for determining the amount of compensation for damage, and the conditions that exempt from such compensation.

Thus, while the mentioned elements of a tort show the essence of the violation of human rights and the material assessment of the consequences of such a violation, the content of a tort reveals the scope of relations within which the compensation mechanism for damage is provided. In other words,

the content of a tort ensures the implementation of legal relations on compensation for damage.

3.1. Parties to a tort

Any party engaged in civil legal relations may be held liable for a tort. This traditionally includes an individual, a legal entity, and the state of Ukraine.

A natural person becomes a party to a tort if he or she acquires either incomplete or full civil capacity. A natural person who is aware of the significance of his or her actions and can control them has a civil capacity. *(A civil capacity of a natural person is defined as the ability to acquire civil rights for oneself and to exercise them independently, as well as the ability to create civil obligations for oneself, to fulfill them independently, and to bear responsibility in case of failure to do so).*

A person who has reached the age of eighteen (majority) has full civil capacity. In the case of marriage, a person who has not yet reached the age of majority acquires full civil capacity from the moment of marriage registration *(Article 34 of the Civil Code of Ukraine)*. A person who has reached the age of sixteen and is employed under an employment contract may be granted full civil capacity; the same applies to a minor who is registered as the mother or father of a child.

Individuals aged from fourteen to eighteen (juvenile) have incomplete civil capacity.

A natural person under the age of fourteen (minor) is not liable for any damage caused by him or her and is not a party to a tort.

A legal entity, from the moment of its registration, acquires civil rights and obligations and exercises them through its bodies acting in accordance with its constituent documents and the law *(Article 92 of the Civil Code of Ukraine).*

It should be noted that the theory of civil law recognizes the state of Ukraine as an independent subject of legal relations.

Articles 167 - 169 of the Civil Code of Ukraine stipulate that the state of Ukraine, the Autonomous Republic of Crimea, and territorial communities act in civil relations on equal terms with other participants in these relations.

The constitutional and legal status of the Autonomous Republic of Crimea and the territorial communities is determined by special legislation of Ukraine, including the Law of Ukraine "On Local Self-Government in Ukraine" of 21 May 1997 No. 280/97-BP and the Law of Ukraine "On the Autonomous Republic of Crimea" of 17 March 1995 No. 95/95-BP. However, their private legal status is enshrined in the Civil Code of Ukraine. Thus, the state of Ukraine, the Autonomous Republic of Crimea, and territorial communities in Ukraine are granted the right to participate in civil legal relations to ensure their constitutional status. These entities may act as parties to various types of contracts. For example, in order to exercise their constitutional powers to ensure sanitary and epidemiological well-being, territorial communities may enter into contracts with third-party companies for the removal of garbage and waste from the territories of villages and cities.

The distinguishing feature of the above persons is that they acquire and exercise rights and obligations through the relevant authorities (ministries, city halls, etc.) within their competence established by law *(Articles 170 - 173 of the Civil Code of Ukraine).*

There is no doubt that the relevant persons may cause property and non-property damage to other persons (individuals or legal entities) and suffer damage from other persons while exercising their powers *(Articles 174 - 176 of the Civil Code of Ukraine)*. It should be borne in mind that the state and territorial communities are liable for their obligations with their property, except for property that cannot be recovered under the law.

The state, the Autonomous Republic of Crimea, and territorial communities are not held liable for the obligations of legal entities established by them. Legal entities established by the state, the Autonomous Republic of Crimea, and territorial communities are not liable for the obligations of the state, the Autonomous Republic of Crimea, and territorial communities, respectively.

The state is not held liable for the obligations of the Autonomous Republic of Crimea and territorial communities. The Autonomous Republic of Crimea is not held liable for the obligations of the state and territorial communities. Similarly, a territorial community is not liable for the obligations of the state, the Autonomous Republic of Crimea, and other territorial communities.

In the civil law of Ukraine *(Article 510 of the Civil Code of Ukraine)*, these parties to a tort are referred to as a creditor and a debtor.

In contrast to contractual obligations, where each party may act either as a creditor or a debtor, in tort obligations, only one party (the one who suffered the damage) is a creditor, while the other party is a debtor (the person who caused the damage). Since the parties to a contract have mutual rights and obligations, they are both a creditor and a debtor in relation to each other. In contrast to a contract, while one party to a tort receives only rights (the right to claim damages), the other party receives only obligations (the obligation to compensate for the damage).

In order to determine the party to a tort, the doctrine of tort law also uses the concepts of "person who caused the damage" and "victim," which are used in Chapter 82 "Compensation for Damage" of the Civil Code of Ukraine. However, the doctrine of tort law, based on Western legal traditions, employs the term "tortfeasor" to refer to the person who caused the damage and the term "injured person," respectively.

In order to ensure the clarity and intelligibility of the legal information, I will use all of these verbal interpretations to define the parties to a tort.

A creditor is a person who suffered damage (the victim). It can be any person with legal capacity, i.e., a citizen of Ukraine, regardless of age and the extent of legal capacity, a foreigner, or a stateless person. The creditor may also be a legal entity, the state of Ukraine, the Autonomous Republic of Crimea, and territorial communities.

An individual may be the victim regardless of his or her age, health status, or other circumstances. For example, if the property owned by a three-month-old child as an heir is damaged, the child will be the victim of a tort obligation although some adult person (the guardian) will represent his or her interests.

It is worth noting that the tort law of Ukraine is based on the fact that compensation for damages is made directly in favor of the injured person. At the same time, in the event of the victim's death, Article 1200 of the Civil Code of Ukraine the following:

> *the victim's child gets compensation until he or she reaches the age of eighteen (pupil, student until graduation, but not more than until he or she reaches the age of twenty-three);*
>
> *the husband, wife, and parents (adoptive parents) who have reached the retirement age established by law are entitled to compensation for life;*

persons with disabilities can receive compensation for the period of their disability;

one of the parents (adoptive parents), the other spouse, or another family member, regardless of age and ability to work if they are not employed and are caring for children, brothers, sisters, or grandchildren of the deceased have the right to compensation until they reach the age of fourteen;

Other disabled persons who were dependent on the victim are entitled to compensation for five years after the victim's death.

A debtor is a person liable for the damage caused (the tortfeasor). Under the provisions of the Civil Code of Ukraine, while any person may be a creditor, the debtor is subject to special requirements regarding his or her tort capacity.

Firstly, a minor aged 14 years or older is the subject of a tort. Pursuant to Article 1179 of the Civil Code of Ukraine, a minor aged from fourteen to eighteen is liable for the damage caused by him or her on a general basis.

A legal entity is fully liable for the damage caused by it from the moment of its registration in the Unified State Register of Legal Entities and Individual Entrepreneurs.

Secondly, unlike a creditor, who is recognized as an injured person only, a debtor may not be only the tortfeasor but also other persons who assume the responsibility for the tortfeasor's behavior by law in the form of the obligation to compensate for the damage.

According to the tort law of Ukraine, debtors may also be legal representatives of an individual who, due to certain circumstances, does not have the tort capacity (a minor, an employee in the performance of labor functions, etc.). According to Articles 1178 and 1184 of the Civil Code of Ukraine, such legal representatives are parents (adoptive parents), guardians, educational institutions, healthcare institutions, or other institutions who are obliged to supervise a person who lacks legal capacity.

For example, pursuant to Article 1178(1) of the Civil Code of Ukraine, damage caused by a minor under the age of fourteen shall be compensated by his or her parents (adoptive parents), the guardian, or other individuals who are legally responsible for the minor's upbringing.

If a minor aged between fourteen and eighteen does not have the property sufficient to compensate for the damage caused by him or her, this damage

is compensated in the missing part or in full by his or her parents (adoptive parents) or the guardian, unless the minor proves that the damage was not caused by his or her fault. If the minor is in an institution that is legally a guardian, the institution is obliged to compensate for the missing part or in full.

In case of damage caused by an incapacitated person, the debtor is his or her guardian or an institution that is obliged to supervise him or her, unless he or she proves that the damage was caused through no fault of his or her own *(Article 1184 of the Civil Code of Ukraine).*

Pursuant to Article 1172 of the Civil Code of Ukraine, a legal entity shall compensate for damage caused by its employee when performing his or her official duties. In addition, business associations and cooperatives indemnify their participants (members) for damage caused by them in the course of their business or other activities on behalf of the association or cooperative.

Compensation for damage by an insurer is another case of compensation for damage caused by a person other than the tortfeasor. According to Article 980 of the Civil Code of Ukraine, the subject matter of an insurance contract may be property interests that do not contradict the law and are related to compensation for damage caused by the insured (liability insurance). Therefore, the insurer will be the debtor in this case and not the person who directly caused the damage.

The tortfeasor, who caused the damage but insured his or her civil liability, is obliged to pay the victim only the difference between the actual amount of damage and the insurance payment (insurance indemnity) if it is insufficient to fully compensate for the damage caused by him or her.

Third, the state is a special subject of tort liability. The Constitution of Ukraine enshrines the principle of the state's responsibility to a person for its activities, which is manifested primarily in the constitutional definition of the state's duties *(Articles 3, 16, 22 of the Constitution of Ukraine)*. Such a responsibility is not limited to the political or moral responsibility of public authorities to society but has certain features of legal responsibility, such as the application of legal measures to the state and its authorities for failure to perform or improper performance of their duties. In particular, Article 152 of the Constitution of Ukraine obliges the state to compensate for material or moral damage caused to individuals or legal entities by acts and actions that are recognized as unconstitutional. The state also compensates

for damage caused by an unjustified conviction in the event of the cancellation of a court verdict as unjust *(Article 62 of the Constitution of Ukraine).*

In furtherance of the provisions of the Constitution of Ukraine, the Civil Code of Ukraine establishes special torts, which provide for the liability of the state of Ukraine for the activities or inactivity of state authorities even though they have an independent legal status *(Articles 1173 - 1175 of the Civil Code of Ukraine).*

The state compensates for damage caused by unlawful decisions, actions, or inactions of a body conducting investigative activities, pre-trial investigation, prosecutor's office, or court *(Article 1176 of the Civil Code of Ukraine)*, as well as damage caused to an individual who suffered from a criminal offense *(Article 1177 of the Civil Code of Ukraine).* Similar requirements are also established for the Autonomous Republic of Crimea and territorial communities, which are also liable for damage caused by their authorities *(Articles 1173 - 1175 of the Civil Code of Ukraine).*

It is worth noting that damage can be caused not only by one person. There may be cases of damage caused by joint actions of several persons at the same time. These actions may be coordinated between tortfeasors or occur by chance.

Thus, the legislation of Ukraine provides that persons, who jointly caused damage are jointly and severally, are held liable to the victim *(Articles 1181, 1182, 1188, 1190 of the Civil Code of Ukraine)*. A prerequisite for joint and several liability is the establishment of the fact of joint actions of the accomplices. The damage that occurred must be causally related to the result of the actions in which all of these persons participated. At the request of the victim, the court may determine the liability of the persons who jointly caused the damage in proportion to the degree of their fault.

Consequently, it is obvious that in the case of joint and several liability, the creditor may claim damage in any part or in full from all tortfeasors together (joint and several debtors) or from any of them separately *(Article 543 of the Civil Code of Ukraine).* Thus, joint and several debtors remain obligated until their obligation is fulfilled in full. The creditor (the injured person) who did not receive full compensation from one of the joint and several debtors has the right to claim the shortfall from the remaining debtors.

The fulfillment of joint and several obligations in full by one of the debtors (tortfeasors) terminates the obligation of the other joint and several debtors to the creditor. In this case, the tortfeasor who fulfilled the joint and several

obligations has the right of recourse (regress) regarding each of the other joint and several debtors in equal shares *(Article 544 of the Civil Code of Ukraine).*

3.2. Determination of the amount of damage compensation. The right of recourse

The tort law of Ukraine adheres to the principle of full compensation for damages. This means that not only must the damage caused be compensated, but also that the compensation must fully cover all expenses incurred by the injured person.

The principle of full compensation for damage is specified in the rules that set out the methods of compensation. Traditionally, the law of Ukraine provides for alternative methods of compensation. These alternatives are manifested in the possibility for the injured person to choose the following methods of compensation for the damage caused:

- compensation for damage in-kind (provision of an item of the same kind and quality, repair of a damaged item, etc.);
- recovery of damage.

The compensation method is determined by the parties' agreement or by the court in the course of litigation.

Pursuant to Article 1192 of the Civil Code of Ukraine, the amount of losses to be reimbursed to a victim shall be defined in accordance with the real value of the lost property at the time of the course of litigation or the fulfillment of works necessary to restore a damaged item.

Compensation for damage in-kind is only possible in cases where the losses are expressed in the destruction of or damage to property. This compensation method involves restoring the damaged property or transferring to a victim the same kind of things as the destroyed ones.

In turn, recovery of losses is a compensation method applied both in case of destruction of or damage to property and in any other circumstances (damage to property that cannot be restored, non-pecuniary damage, etc.).

The decision to employ one or another compensation method does not solely depend on the will of a victim or a person who caused the damage but on other circumstances that the court assesses based on the totality of the facts.

For example, in one court case, a person who caused damage to a painting of artistic value demanded that the court provide him or her with the opportunity to compensate for damage in-kind, i.e., to restore it. However, a victim opposed this proposal, being aware of the mediocrity of the person who caused the damage. The court considered this fact and chose such a compensation method as the recovery of damages.

It is also important to consider the procedure for compensation. Thus, compensation for damages is provided in the form of one-time cash payments.

Concurrently, compensation for damage caused by injury, other damage to health, or the death of a victim is provided in the form of monthly payments. In the event of circumstances of material importance and in consideration of the financial situation of a person who caused the damage, the amount of compensation may be paid in a lump sum, but not more than three years in advance *(Article 1202 of the Civil Code of Ukraine).*

Compensation for moral damage caused by mutilation or other health damage can also be provided in the form of one-time or monthly payments.

This approach is predicated on the assumption that the process of compensation for damage may be protracted. Furthermore, the nature of the damage caused to a victim may preclude the possibility of full compensation in general, as in the case of disfigurement. In this case, the nature of the payments is to compensate for the impossibility of full compensation rather than to compensate for the damage. It is implicit that such compensation is only possible during the period of existence of circumstances that make full compensation impossible.

The rules relating to special torts stipulate that the method of compensation for property damage is not a matter of choice.

For example, when a citizen's health is injured, the only compensation method is the recovery of damages by a tortfeasor in the form of lost earnings (income) and additional expenses incurred by a victim *(Article 1195 of the Civil Code of Ukraine).*

The amount of losses to be reimbursed to a victim shall be defined in accordance with the real value of the lost property at the time of the course of litigation or the fulfillment of works necessary to restore a damaged item.

When recovering damages, one should proceed from the fact that they are defined as follows:

1) losses incurred by a person in connection with the destruction or damage of a thing, as well as expenses that a person has made or must make to restore his or her violated right (real damages)

2) income that a person could have actually received under normal circumstances if his or her right had not been violated (lost profits).

As previously stated, damages are compensated in full unless a contract or law specifies a smaller or larger amount. Concurrently, if the person who violated the right received income in connection with this, the amount of lost profit to be reimbursed shall not be less than the income received by the person who violated the right.

The court, determining the amount of compensation for damage, is entitled to reduce it based on the financial situation of the person who caused the damage. Furthermore, a person obliged to compensate for damage caused by injury or other damage to a victim's health has the right to demand that the amount of compensation be reduced if the victim's ability to work has increased since the decision on compensation was made.

In addition to a reduction in the amount of compensation for damages, the amount may also be increased.

A victim may demand the compensation to be increased based on a court decision. The increase in compensation may be attributed to the increased cost of living or the minimum wage. If a victim's ability to work has decreased since the compensation decision, he or she is entitled to an increase in compensation.

When determining compensation for environmental damage, specific rules established in legislative acts related to environmental protection are employed to ascertain the extent of the damage. Therefore, when it comes to the use of natural resources and environmental protection, the civil laws of Ukraine are applicable only in the absence of specific environmental legislation.

Special laws stipulate that compensation for environmental damage is made in accordance with the following:

(-) rates

A rate is a tool for calculating environmental damages. It is employed to determine the extent of damage to certain natural resources or objects in a fixed amount. For example, if a tree is damaged to the extent of non-stop growth up to 10 cm in size, the amount of compensation is set at UAH 75.

The amount of rate is determined depending on the ecological value of the respective species of flora and fauna, the costs incurred for their maintenance, and for each specimen.

(-) established calculation methods

The methodology for calculating damage is employed for compensation of damage caused by pollution of water, land, atmospheric air, etc. In this case, the amount of compensation is determined based on a formula.

For example, the extent of damage from land pollution is determined by the following formula:

$$PS = A \times GOZ \times PD \times KZ \times KN \times KEG,$$

where PS is the extent of damage from land pollution, UAH;
A is the specific cost of remediation of the consequences of land pollution, the value of which is 0.5;
GOZ is the normative monetary value of the land plot subjected to pollution (contamination), UAH/m^2;
PD is the area of the contaminated land plot, m^2;
KZ is the coefficient of contamination of a land plot, which characterizes the amount of a pollutant in the volume of contaminated land depending on the depth of seepage;
KN is the hazard coefficient of the pollutant;
KEG is the coefficient of ecological and economic value of land.

The following methods are currently in use:

1. The method for determining the amount of damage caused by pollution and contamination of land resources due to violation of environmental legislation, approved by Order of the Ministry for Environmental Protection and Nuclear Safety of Ukraine No. 171 of 27 October 1997;

2. The method for calculating the amount of compensation for damages caused to the state as a result of excessive emissions of pollutants into the

atmospheric air, approved by Order of the Ministry for Environmental Protection of Ukraine No. 639 of 10 December 2008;

3. The method for calculating the amount of compensation for damages caused to the state as a result of violation of legislation on protection and rational use of water resources, approved by Order of the Ministry for Environmental Protection and Nuclear Safety of Ukraine No. 389 of 20 July 2009

(-) cadastral valuation

The extent of damage resulting from a violation of legislation on the nature reserve fund is determined through the cadastral ecological and economic valuation of the territories and objects included in its composition. This valuation shall be subject to the Law of Ukraine "On the Nature Reserve Fund of Ukraine" of 16 June 1993 and special rates, approved by the Cabinet of Ministers of Ukraine.

(-) actual costs of restoring the damaged environment (in case of the absence of rates or methods).

This procedure is based on the fact that the general mechanism of damage compensation established in Article 1166 of the Civil Code of Ukraine does not always ensure full compensation for damages caused by violations of environmental legislation.

For example, the civil law of Ukraine (Article 1192 of the Civil Code of Ukraine) stipulates that a tortfeasor is obliged to compensate a victim for the costs incurred by the offense. However, this does not extend to future costs, and the costs of restoring the previous state of the environment in most cases do not coincide with the time of the damage and are beyond the limitation period.

Finally, a third party who has compensated for damage caused by another person has the right to seek recourse (regression) against the guilty party in the amount of the compensation paid.

3.3. Exemption from tort liability

Under Article 617 of the Civil Code of Ukraine, a person who breached an obligation is released from liability for breach of obligation if he or she proves that the breach was caused by an accident or force majeure. An event is not considered to be an event if the debtor's counterparty fails to comply

with his or her obligations, if the goods required to fulfill the obligation are not available on the market, or if the debtor does not have the necessary funds.

In addition, the legislator also includes the intent of the victim as a ground for exemption from the tort liability of the tortfeasor. On the contrary, the intent of the victim is not a ground for exemption from tort liability in case of damage caused by a source of increased danger *(Article 1187(5) and Article 1193 of the Civil Code of Ukraine).* Moreover, the victim's fault is not taken into account in the following cases:

a) reimbursement of additional expenses caused by the need for enhanced nutrition, sanatorium treatment, purchase of medicines, prosthetics, third-party care, etc. (Article 1195(1) of the Civil Code of Ukraine);

b) compensation for damage caused by the death of the breadwinner (Article 1200 of the Civil Code of Ukraine);

c) reimbursement of funeral expenses (Article 1201 of the Civil Code of Ukraine).

An accident is the infliction of damage without intent and negligence, i.e., if a person did not know, could not, and should not have known about the possibility of a harmful outcome. An accident means causing damage in the absence of the fault of the offender. Since there is no fault of the debtor, civil liability does not arise. However, this general rule has numerous exceptions, in particular, regarding the conditions of special torts that provide for liability in the absence of fault (strict liability).

For example, compensation for damage caused by an official or employee of a state authority, an authority of the Autonomous Republic of Crimea, or a local self-government body *(Article 1074 of the Civil Code of Ukraine)* is compensated regardless of the fault. No fault is required when compensating for damage caused by a source of increased danger *(Article 1187 of the Civil Code of Ukraine).*

Force majeure is an extraordinary and unavoidable external event that completely exempts the tortfeasor from liability, provided that he or she could not have foreseen it or could not prevent it, and caused the damage.

The very definition of force majeure contains features that characterize it. First, it is an extraordinary, exceptional circumstance that falls out of the ordinary. For example, an annual river flood, the onset of winter, the death

of a person, etc. cannot be considered a force majeure. Although these events are unavoidable, they are not extraordinary, and therefore cannot be classified as a force majeure.

The second sign of a force majeure is the inability to prevent its occurrence in the given circumstances. This is a circumstance that cannot be prevented even if it is possible to foresee it. Objective inevitability is not an abstract impossibility in general but the inability of a particular person to prevent the circumstances by the means available to him or her under specific conditions. It is quite possible that a circumstance that is unavoidable in specific circumstances will not be so in another specific case. For example, early ice formation in the Far North will be an insuperable force for maritime navigation but will not prevent the delivery of goods by air.

Traditionally, force majeure may also include certain social phenomena, such as military operations, epidemics, strikes, and various prohibitive measures by state authorities (for example, quarantine, transportation bans, trade bans under international sanctions, etc.). In other words, these are events that do not depend on the will of the parties.

To be released from liability, the debtor must prove the existence of the force majeure, a causal link between the breach of the obligation (damage) and the force majeure, and its impact on the inability to fulfill the obligation in a particular case. Therefore, an earthquake or a war are not force majeure events in themselves. They can be regarded as such if they affect a particular situation, which makes it impossible to fulfill the obligation. Thus, the fourth sign of force majeure is the impossibility of fulfilling obligations under these specific conditions.

CHAPTER 2

SOURCES OF TORT LAW IN UKRAINE

The tort law of Ukraine is an effective system for regulating tort relations. It is structured through national legislation based on fundamental approaches to the regulation of general torts.

Further details of national legislation can be found in special legislative acts and bylaws on certain elements of tort law. This includes the determination of compensation amounts, among other things.

§ 1. Codification of Tort Law in Ukrainian Legislation

The tort law of Ukraine and its legal consequences are primarily established in the Civil Code of Ukraine, which is a codified private law act. The Civil Code of Ukraine was adopted in 2003 and came into effect on 1 January 2004, along with the Commercial Code of Ukraine. Since it entered into force in 2004, the Civil Code of Ukraine has been amended only 21 times in terms of regulatory framework for compensation for damages. This is evidence of the normal development of civil society and the need to regulate the spheres of private life.

At the same time, it is necessary to emphasize that a significant number of amendments to the Civil Code of Ukraine have devastating consequences for the sustainable development of society. It concerns the dual regulation of relations by the provisions of the Civil Code of Ukraine and the Commercial Code of Ukraine. However, it has stipulated a discussion in the academic community about the need to reform the Civil Code of Ukraine and adopt appropriate amendments.

As of today, the tort is regulated in Book Five "Law of Obligations" of the Civil Code of Ukraine. In particular, Chapter 82 of the Civil Code of Ukraine "Compensation for Damage" consists of paragraphs on General Provisions on compensation for damage, compensation for damage caused by injury, other health damage or death, and compensation for damage

inflicted due to defects of commodities or works (services). These paragraphs consist of 47 articles.

The General Provisions cover about 18 types of special torts, which have their specifics of compensation for damages. Such specifics relate primarily to different areas of application of the rules on tort, conditions of compensation for damage, its amount, and the nature of the tortfeasor's fault.

It is worth noting that the Civil Code of Ukraine does not provide detailed rules on special torts. The list of torts in the Civil Code of Ukraine does not quite correspond to the current realities of society. For example, there is a lack of regulation of artificial intelligence torts, medical torts, sports torts, etc.

Following the national tradition of rule-making, some special torts are regulated in separate legislative acts that either correspond to the national codification (in whole or in part) or go beyond the relevant classification in the Civil Code of Ukraine (D&O torts, war torts). This indicates significant gaps in the regulation of torts in Ukraine and the urgent need for its systemic reform.

§ 2. Special Legal Acts in Tort Law

The national legislation of Ukraine contains special legislative acts that outline the contours of special torts that are not reflected in the classification of the Civil Code of Ukraine. The lack of consistency in understanding the nature of the tort and determining the conditions for compensation (emergency torts, banking torts, environmental torts, D&O torts, medical torts, etc.) creates difficulties in understanding the structure of the tort elements.

In addition to the Civil Code of Ukraine, certain types of torts are set out in the Merchant Shipping Code of Ukraine dated 25 May 1995. In particular, they include the rules for compensation for losses resulting from intentional and reasonable actions to save the ship, the freight, and the cargo carried on board from a general average. This includes the conditions for compensation for damage caused by the throwing overboard of cargo or ship's accessories, as well as damage to the ship or cargo during general rescue measures, damage caused to the ship or cargo during firefighting on board, including damage from the flooding of the ship that caught fire, etc.

The Law of Ukraine No. 1023-XII "On Protection of Consumer Rights" dated 12 May 1991 establishes the conditions for compensation for non-pecuniary damage *(Article 22)* in the course of compensation for damage caused by defects of commodities, works (services), which constitutes a special tort *(Article 1209 of the Civil Code of Ukraine).* It is worth noting that compensation for damage caused by defects of commodities, works (services) applies exclusively to real estate *(Article 1209 of the Civil Code of Ukraine).* When it comes to movable property, the mechanism for compensation is established by the Law of Ukraine No. 3390-VI "On Liability for Damage Caused by a Defect in Commodities" of 19 May 2011 *(Article 4).* The grounds for compensation for damage caused by defects in commodities that are movable property, including those that are an integral part of other movable or immovable property (such as electricity), should be established by a separate law. However, as of today, no such legal act has been adopted.

Another codified act detailing the mechanism for compensation for damage caused by their employee or other person by a legal entity or an individual *(Article 1072 of the Civil Code of Ukraine)* is Chapter 9 of the Labor Code of Ukraine dated 10 December 1971.

Compensation for environmental damage is provided for in general terms in Article 69 of the Law of Ukraine No. 1264-XII "On Environmental Protection" of 25 June 1991 , while this type of tort is not established by the Civil Code of Ukraine at all. At present, the mechanism of compensation for such damage and its special conditions are unclear, which should undoubtedly be represented in the legislation of Ukraine. It is believed that the improvement of the regulation of this tort will be resolved in the process of reforming the tort law of Ukraine.

The rules for compensation for damage caused by unlawful decisions, actions, or inactions of a body conducting operational search activities, pre-trial investigation, prosecutor's office or court *(Article 1176 of the Civil Code of Ukraine)* are detailed in the Law of Ukraine No. 266/94-BP "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Search Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court" of 11 December 1994.

The Law of Ukraine No. 2121-III "On Banks and Banking Activities" dated 07 December 2000 (Article 79-1 of the Law) and the Law of Ukraine "On the Banking torts are established by the Law of Ukraine "On Banks and

Banking Activity" *(Article 58)* establish the specific features of compensation for damage caused as a result of the withdrawal of an insolvent bank from the market or liquidation of a bank based on unlawful (illegal) individual acts of the National Bank of Ukraine, the Deposit Guarantee Fund, the Ministry of Finance of Ukraine, the National Securities and Stock Market Commission, decisions of the Cabinet of Ministers of Ukraine *(Article 1173 of the Civil Code of Ukraine)*. These laws provide special conditions for the liability of a bank for its obligations and the liability of officials and related persons of a bank for their obligations. At the same time, this type of special tort is not classified in the system of torts in the Civil Code of Ukraine.

The expediency of this type of special tort is caused by systemic changes in banking regulation and bringing the banking system of Ukraine in line with the EU standards. To ensure the maximum approximation of the regulation of the financial sector of Ukraine to the EU standards and rules, the National Bank of Ukraine pays attention to the preparation of comprehensive legislative changes and improvement of the regulatory framework in the field of banking regulation and supervision, payment systems, insurance, credit cooperation, financial reporting, anti-money laundering, and the digital market following the obligations under the EU-Ukraine Association Agreement.

Nevertheless, it should be noted that professional torts are not properly regulated by the Civil Code of Ukraine. Thus, the liability of certain categories of persons providing professional fiduciary services is regulated by separate legislative acts (Articles 21, 27 of the Law of Ukraine No. 3425-XII "On Notaries" dated 02 September 1993 and Article 14 of the Law of Ukraine No. 4038-XII "On Forensic Expertise" dated 25 February 1994).

It should be noted that the regulatory framework for the liability of persons engaged in relevant professional activities is inconsistent. Despite the fact that advocacy is a professional activity, the Law of Ukraine No. 5075-VI "On the Bar and Practice of Law" of 05 July 2012 does not address the issue of tort liability, unlike the law regulating the activities of notaries.

The same applies to the tort liability of healthcare professionals, which is described in general terms in the following legal acts. Thus, the Law of Ukraine No. 5081-VI "On Emergency Medical Care" of 05 July 2012 states that compensation for moral and material damage caused by failure to provide appropriate assistance or improper performance of their professional duties by medical professionals or other persons is carried out in accordance with the law (Article 15), which is currently absent. The Law of Ukraine

No. 2801-XII "On the Fundamentals of Healthcare Legislation" of 19 November 1992 generally states that persons guilty of violating healthcare legislation shall be held civilly liable in accordance with the legislation *(Article 80)*, which is unfortunately absent.

The specifics of compensation for nuclear damage are established by law *(Article 1189 of the Civil Code of Ukraine)* and reflected in the Law of Ukraine No. 2893-III "On Civil Liability for Nuclear Damage and its Financial Support" of 13 December 2001 and the Law of Ukraine No. 39/95-BP "On the Use of Nuclear Energy and Radiation Safety" of 08 February 1995.

Compensation for damage to an individual who has suffered from a criminal offence *(Article 1177 of the Civil Code of Ukraine)* also requires a special legislative act to define the conditions for compensation. Unfortunately, to date, no such law has been adopted in Ukraine, which creates difficulties in law enforcement.

As a follow-up to Article 1177 of the Civil Code of Ukraine, compensation for damage caused by terrorism, which is only one type of criminal offense, is regulated in Article 19 of the Law of Ukraine No. 638-IV "On Combating Terrorism" of 20 March 2003. The law stipulates that compensation for damage caused to individuals by a terrorist act shall be paid from the State Budget of Ukraine under the procedure established by the Cabinet of Ministers of Ukraine, with the subsequent recovery of the amount of such compensation from the persons who caused the damage. The effectiveness of this provision is a problematic issue, as the Cabinet of Ministers of Ukraine has not adopted a relevant resolution. The case law demonstrates that the absence of a compensation mechanism becomes a ground for the formal dismissal of claims.

According to the Code of Civil Protection of Ukraine, the Cabinet of Ministers of Ukraine approved the Procedure for Providing and Determining the Amount of Financial Assistance or Compensation to Victims of Emergency Situations who Remained at the Previous Place of Residence by Resolution No. 947 dated 18 December 2013, as amended by Resolution No. 623 dated 10 July 2019. However, the Procedure does not apply to cases where the state compensates victims of damage to commercial facilities, other non-residential buildings, and structures as a result of a terrorist act. The Cabinet of Ministers of Ukraine has not established any other procedure for compensation.

Relations in the area of compulsory insurance of civil liability of owners of land vehicles are regulated by the Law of Ukraine No. 1961-IVi "On Compulsory Insurance of Civil Liability of Owners of Land Vehicles" dated 1 July 2004, which is aimed at ensuring compensation for damage caused to life, health and property of victims during the operation of land vehicles in Ukraine. Unlike other legal acts, this Law does not establish a special tort but rather a mechanism for compensation for damage caused by a particular type of high-risk source (a land vehicle). This type of special tort is defined in Article 1187 of the Civil Code of Ukraine. Thus, this legal mechanism involves determining the person who independently and voluntarily bears responsibility instead of the tortfeasor under a liability insurance contract.

Finally, compensation for damages resulting from emergencies, which is statutorily established in the Civil Protection Code of Ukraine dated 02 October 2012 *(Articles 85-86)*, should also be referred to as special torts in Ukrainian legislation. However, the Civil Code of Ukraine, which should establish this type of tort, does not contain any relevant regulation. This tort is one of those cases when a special regulatory act establishes rules that do not have a corresponding relationship with the Civil Code of Ukraine. This, in my opinion, distorts the system of tort law and creates objective difficulties in the application of legal norms.

The Law of Ukraine No. 2465-IX "On Joint Stock Companies" dated 27 July 2022 *(Articles 13, 90)* establishes separate rules for compensation for damage caused by officials of the company's bodies and its shareholders. The relevant regulation should also be recognized as insufficient, as the law does not define the conditions for such a liability. Nevertheless, these types of special torts are not reflected in the classification in the Civil Code of Ukraine.

Furthermore, special attention should be paid to the military torts, which are particularly topical for Ukraine nowadays. This type of tort is not reflected in the Civil Code of Ukraine. At the same time, the Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage caused by the armed aggression of the Russian Federation against Ukraine, and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine" of 23 February 2023 was adopted, which established the relevant compensation mechanism.

Thus, in furtherance of the provisions of this Law, the Cabinet of Ministers of Ukraine approved the Procedure for Providing Compensation for Destroyed Real Estate by Resolution No. 600 of 30 May 2023. In addition, the actual procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation since 19 February 2014 is also enshrined in the Resolution of the Cabinet of Ministers of Ukraine No. 326 of 20 March 2022.

Finally, the Law of Ukraine No. 2709-IV "On Private International Law" of 23 June 2005 should be distinguished in the system of tort legislation of Ukraine. It establishes the procedure for regulating private law relations that are connected, at least through one of their elements, with one or more legal orders other than the Ukrainian legal order. In this, according to this Law, the following elements in the structure of tort relations determine the application of special rules that, in turn, specify the legislation of what state should be applied to tort relations with the foreign elements:

- at least one party to the legal relationship is a citizen of Ukraine residing outside Ukraine, a foreigner, a stateless person, or a foreign legal entity;
- the object of legal relations is located in the territory of a foreign state;
- the legal fact that creates, changes, or terminates legal relations that took place or is taking place in the territory of a foreign state.

The Law establishes conflict-of-laws rules that determine the law of the country applicable to obligations to compensate for damage in general and the law applicable to compensation for damage caused by defects in commodities, works (services) involving one of the foreign elements.

§ 3. Soft Law in the Law of Torts of Ukraine

The analysis of the legislative framework on torts demonstrates the unsystematic nature of the national tort law of Ukraine. A significant part of special torts is enshrined in public law, which contains the relevant specific rules. This approach makes it impossible to synchronize the compensation mechanism in accordance with the principles of tort law.

At the same time, the development of society generates new challenges to which the Civil Code of Ukraine cannot provide an adequate response. Being in stagnation, its provisions do not have proper interconnection with other acts of national legislation of Ukraine. As a kind of "Constitution of

private life", the Civil Code of Ukraine is not able to provide a systemic approach to private life cases. This explains the emergence of new types of torts in the Ukrainian legal system, which are independently established either by separate regulations in this area or by other legal acts in the relevant field of activity. Such distortions in the regulatory framework create systemic gaps in the regulation of legal relations, which affects the efficiency of society's development in Ukraine.

The doctrine of tort law of Ukraine, which is more developed than the tort legislation of Ukraine, operates with modern approaches to the definition and recording of torts such as artificial intelligence torts, military torts, medical torts, conflict of laws torts, etc.

The insufficient level of development of Ukraine's tort legislation is partially compensated for through the mechanism of judicial lawmaking. It allows to move away from contradictory provisions of the legislative body towards argumentation through the completion of the law by the court and the established practice of the European Court of Human Rights. Thus, in response to a specific range of problematic issues in Ukraine, soft law, or judicial lawmaking, is actively developing, taking significant steps to bridge the existing gaps in the regulation of legal relations.

Sources of soft law do not have the force of binding law. They contain norms of a recommendatory nature or provisions of a persuasive nature. This approach is based on the fact that soft law sources integrate provisions developed by authoritative institutions. In the context of conflicting provisions of the current legislation, gaps in the law, and the presence of evaluative concepts, systematically formed positions of soft law sources become relevant, and courts can use them to provide additional arguments for their position. Case law on tax dispute resolution contains references to various sources of soft law (Smuchok, 2020, 15 -22).

The normative prerequisite for this legal phenomenon is the provisions of the procedural legislation of Ukraine, in particular the Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges" of 2 June 2016 and the Civil Procedure Code of Ukraine of 18 March 2004.

When formulating their legal position, courts often face the problem of additional arguments for such a position. In such cases, sources of soft law are applied. It is the sources of "soft law" that allow the court to formulate its position by applying wording that substantively develops the statutory provisions.

The provisions of the procedural law of Ukraine allow the court to formulate a legal position on the application of legal provisions in the course of consideration of a case. The relevant set out in the Supreme Court's rulings are binding on all public authorities. As a result, the legal positions of the Supreme Court become part of national legislation.

One of the most striking examples of the application of soft law in the context of insufficient regulation of tort law is the Resolution of the Supreme Court of 14 April 2022 in case No. 308/9708/19 and the Resolution of the Supreme Court of 18 May 2022 in case No. 428/11673/19 in the case of war torts and the deprivation of Russia's jurisdictional immunity. The Supreme Court formulated a legal position on the mechanism of compensation for damage caused by hostilities, noting that the aggressor state does not have judicial immunity in disputes over compensation for damage and must be held liable for the damage caused to a person.

In the Ruling, the Supreme Court concluded that

> "...having committed an unprovoked and full-scale act of armed aggression against the state of Ukraine, numerous acts of genocide against the Ukrainian people, the aggressor state has no right to further rely on its judicial immunity, thereby denying the jurisdiction of the Ukrainian courts to consider and resolve cases on compensation for damage caused by such acts of aggression to an individual - a citizen of Ukraine.
>
> The Supreme Court assumes that the aggressor country did not act within its sovereign right to self-defense, but rather treacherously violated all of Ukraine's sovereign rights by acting on its territory, and therefore certainly no longer enjoys its judicial immunity in this category of cases.
>
> Therefore, after the outbreak of the war in Ukraine in 2014, the Ukrainian court, when considering a case where the Russian Federation is identified as the defendant, has the right to ignore the immunity of this country and consider cases on compensation for damage caused to an individual as a result of the armed aggression of the Russian Federation, in a lawsuit filed against this particular foreign country" (Resolution of the Supreme Court, case No. 308/9708/19).

The second example of the application of the soft law doctrine is the case law on state compensation for damage in the absence of a relevant national law of Ukraine, establishing a compensation mechanism. Thus, the Resolution of the Supreme Court of 16 May 2022 in case No. 426/245/17 formulated the following legal position on compensation for damage caused by a terrorist act (Resolution of the Supreme Court, case No. 426/245/17).

> "...Part one of Article 19 of the Law of Ukraine "On Combating Terrorism" provides for a special rule according to which compensation for damage caused to citizens by a terrorist act is made at the expense of the State Budget of Ukraine in accordance with the law and with the subsequent recovery of the amount of this compensation from the persons who caused the damage by the procedure established by law".

Taking into account these provisions, the exercise of the right to receive the compensation is made dependent on the existence of a compensation mechanism to be established in a separate law. The law regulating the procedure for compensation at the expense of the State Budget of Ukraine for damage caused to the fact that non-residential real estate of citizens has not been approved by the Verkhovna Rada of Ukraine and has not been put into effect either at the time of the emergence of disputed legal relations or at the time of consideration of the case by the courts. At the same time, the legislation of Ukraine provides neither the procedure for payment of the compensation nor clear conditions necessary for filing a property claim against the state for such compensation.

Therefore, the Supreme Court agrees with the conclusion of the Court of Appeal that the right to compensation for damage in accordance with the law provided for in Article 19 of the Law of Ukraine "On Combating Terrorism" does not give rise to a legitimate expectation of receiving such compensation from the state for a damaged or destroyed non-residential building. Consequently, the plaintiff's claims for compensation for the property destroyed by a shell hit based on Article 19 of the Law of Ukraine "On Combating Terrorism" are groundless. At the same time, the Court of Appeal correctly assumed that the plaintiff was entitled to compensation from the state for its failure to fulfill its positive substantive and procedural obligation under Article 1 of Protocol No. 1 to the Convention.

The absence in the legislation of Ukraine of relevant provisions on compensation to the owner for damage caused to his or her non-residential property by a terrorist act does not prevent a person, who believes that a certain positive obligation has not been fulfilled in relation to his or her ownership of such property, from claiming compensation from the state for this failure under Article 1 of Protocol No. 1 to the Convention.

It is obvious that social regulators are essential for dynamic and progressive social development. However, some social regulators, such as laws, are not sufficiently developed to regulate social relations, leading to gaps in legislation. Thus, soft law has proven to be effective as a basic modal regulator of social relations, which the most important imperative normative

constructions can be based on. They are designed to gradually fill gaps in legislation and bring existing legal provisions into line with the requirements and standards set by international bodies and organizations. Against the background of the complication of social relations, there is reason to note that soft law will continue to develop as one of the most effective concepts of normative regulation.

SECTION II.

SPECIAL TORTS IN THE LAW OF UKRAINE

CHAPTER 1

COMPENSATION FOR DAMAGES FROM LAWFUL ACTIONS

Even though the main element of a tort is the unlawfulness of the tortfeasor's behavior, the doctrine of tort law in Ukraine proceeds from the fact that not only the unlawful behavior of a person gives rise to an obligation to compensate for damage. The rules of special torts contain reservations regarding the application of the basic principles of the tort law of Ukraine. One of such reservations is the condition of the liability for damage caused as a result of lawful actions of the tortfeasor.

It seems that this type of tort is characterized by a conflict of two legitimate interests. On the one hand, the lawfulness of the conduct of the person who caused the damage cannot be the basis for *his or her* liability. On the other hand, damage to the rights and interests of another person requires a legal response from society. Therefore, any damage must be compensated.

In this context, lawful behavior should be understood as socially necessary, desirable, and permissible behavior of individual or collective subjects from the point of view of civil society interests, which consists in observing the rights of persons protected and guaranteed by the state. Lawful behavior is based on an understanding of the fairness and usefulness of the prescriptions of legal norms and responsibility to society and the state for actions, which is an indicator of the social maturity and legal literacy of a person. Nevertheless, such behavior of a person requires a reaction of society, and the damage requires compensation if it causes damage to another person.

§ 1. Compensation for Damage Caused by a Person in the Exercise of the Right to Self-Defense

In the course of exercising their civil rights and fulfilling their duties, citizens and legal entities face possible violations of their rights by other persons. In order to eliminate the threat, the national legal order of Ukraine allows a person to use self-defense of their rights.

The purpose of self-defense is to provide a person with legal opportunities to prevent violations of his or her rights and damage that other people may try to cause by their actions.

Thus, one remedy of self-defense is to take action in a state of necessary defense, which usually does not entail any legal consequences.

The law stipulates that the remedies of self-defense shall correspond to the content of the right that has been violated, the nature of the actions that violated it, and the consequences caused by this violation. They may be chosen by a person or established by a contract or acts of civil law. These remedies will acquire legal implications only if they exceed the limits established by law.

1.1. The Concept and Remedies of Self-Defense of Rights against Unlawful Encroachments

According to Article 55 of the Constitution of Ukraine, everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law. The relevant provision of the Constitution of Ukraine is detailed in the Civil Code of Ukraine.

Article 16 of the Civil Code of Ukraine stipulates that every person shall be entitled to apply to the court for the protection of his or her private non-property or property rights and interests. The remedies to protect civil rights and interests may include the following:

1) recognition of the right;
2) recognition of a legal action as invalid;
3) termination of the action that violates the right;
4) restoration of the pre-violation situation;
5) enforcement of an obligation in-kind;
6) change of legal relations;
7) termination of legal relations;
8) compensation for losses and other means of compensation for property damage;
9) compensation for moral (non-pecuniary) damage;
10) recognition of decisions, actions, or inactions of the state authority, the authority of the Autonomous Republic of Crimea, or the local self-government body, their officials and employees as unlawful.

It is necessary to highlight self-defense among the remedies provided for in Articles 15-23 of the Civil Code of Ukraine.

Article 19 of the Civil Code of Ukraine defines self-defense as the countermeasures taken by a person that are not prohibited by law and do not contradict the moral principles of society.

By its nature, self-defense is a non-jurisdictional way of protecting a person's right, as it is exercised by a person independently, without recourse to the court.

The legislation of Ukraine does not contain an exhaustive list of remedies for self-defense. The law only stipulates that these remedies shall correspond to the content of the violated right, the nature of the actions that violated it, and the consequences caused by this violation.

In my opinion, self-defense is carried out by means of the actual actions of a person. These actions may be of a preventive nature (active protection, signaling actions) or of an active defensive nature (necessary defense).

In turn, preventive measures include, in particular, measures used by the owner to protect his or her property. The use of such means, if they cause harm to a person, shall be equated with the use of self-defense against an offense, and the proportionality of the damage and the procedure for its compensation is determined based on the general principles of self-defense *(Article 19 of the Civil Code of Ukraine)*. This means that self-defense shall comply with the substance of the violated right, the nature of actions that caused this violation, and the consequences caused by this violation.

On the other hand, self-defense is a means of *necessary defense (actions of an active defensive nature)*.

The essence of necessary defense is the lawful infliction of harm to a person who commits a socially dangerous encroachment by a person who exercises his or her right to protection against socially dangerous encroachments.

The Civil Code of Ukraine does not contain a definition of the concept of necessary defense. Article 36 of the Criminal Code of Ukraine describes its features, as it is relevant for qualifying a person's actions and deciding whether to bring him or her to criminal liability.

Thus, necessary defense is defined as actions taken to defend the legally protected rights and interests of the defending person or another person and

the public interests of the state from a socially dangerous encroachment by inflicting the harm upon the encroacher that is necessary and sufficient in a given situation to immediately prevent or stop the encroachment, provided that the limits of the necessary defense are not exceeded.

1.2. Conditions of Liability for Damage Caused by a Person Acting in Self-Defense

The Civil Code of Ukraine *(Article 19)* defines self-defense as a mechanism of independent enforcement by an authorized person of violations of his or her rights and encroachments on them. The limits of the exercise of the relevant right are set out in Article 1169 of the Civil Code of Ukraine, which provides that *"damage caused by a person in the exercise of the right to self-defense against unlawful attacks, including in a state of necessary defense shall not be compensated if its limits have not been exceeded".* If in the exercise of the right to self-defense, a person causes damage to another person, this damage shall be compensated by the person who caused it. If such a damage is caused by means of self-defense that are not prohibited by law and do not contradict the moral foundations of society, it shall be compensated by the person who committed the unlawful act.

The specifics of actions to defend oneself in the context of necessary defense is that they must be directed against the attacker. The actions of a person who, in response to the attack of one person, causes harm to other persons, such as his or her relatives or friends, cannot be recognized as a necessary defense. Finally, one of the most important conditions of defense is the inadmissibility of exceeding the limits of necessary defense.

According to the statutory definition, a lawful tort consists of the following conditions:

a) damage caused by a person in the exercise of *his or her* right to self-defense against unlawful attacks, including in a state of necessary defense shall not be compensated if the limits of such defense were not exceeded;

b) damage caused by a person in the exercise of the right to self-defense against unlawful encroachments shall be compensated in full if its limits are exceeded;

c) in case of exercising the right to self-defense, if a person causes damage to another person, this damage shall be compensated.

The person causing the damage may be obliged to compensate for the damage only insofar as he or she exceeds the limits of self-defense. These limits are as follows:

(-) the limits of self-defense in relation to the offender (self-defense is performed exclusively in relation to the offender);

(-) the limits of self-defense in relation to the nature of the violated right (self-defense must include proportionality and adequacy of counteraction to the offender).

§ 2. Compensation for Damage Caused in Extreme Necessity

Unlike the previous tort, which contains specific conditions under which the liability for damage caused by lawful acts arises, the liability for damage caused in a state of emergency by such a lawful act of a person always arises.

In other words, under common law, damage caused in the course of such a lawful act, such as self-defense, is not subject to compensation. Damage caused in a state of extreme necessity is compensated by the person who caused it. Compensation is made regardless of the legality of the person's actions.

An emergency is characterized by the fact that the elimination of danger cannot be carried out by ordinary means. The person acting in a state of emergency is forced to use methods associated with causing harm to other persons.

2.1. Causing harm in a state of extreme necessity. Limits of permissibility of harm in a state of extreme necessity

An action in a state of extreme necessity is an action aimed at eliminating a danger that directly threatens a person or the legally protected rights of that person or other persons, as well as the public interest or the interests of the state. This action must be the last resort when no other means are available, and the limits of extreme necessity must not be exceeded *(Article 39 of the Criminal Code of Ukraine).*

Extreme necessity occurs when a person, to prevent a danger that threatens his or her legitimate interests or the interests of other persons, society, and

the state, harms the interests of third parties, provided that the threatened danger could not be eliminated by other means, and the damage caused is less significant compared to the amount of damage prevented by the actions of the offender.

The source of danger that creates the state of emergency may be natural disasters (earthquakes, floods, snow storms, landslides, etc.), aggressive actions of wild and domestic animals, equipment failure, physiological and biological processes (hunger, thirst), illegal actions of third parties (arson, infliction of serious bodily harm, etc.).

In contrast to necessary defense, where the harm is inflicted on the person who commits the encroachment, in case of extreme necessity, the harm is imposed on the person whose behavior is lawful. In case of extreme necessity, the protection of the good threatened by danger is carried out by causing harm to a person who has nothing to do with the danger that has arisen (Volkov, 2008, 181 - 186).

At the same time, it is worth noting that there are several differences between actions in extreme necessity and actions that caused a general average, regarding their legal characteristics. Firstly, the characteristics of the subjects to whom harm may be caused differ. In a state of extreme necessity, damage is caused to a third party or an interest not related to the creation of the danger. In contrast, in the case of a general average, damage may be caused both to an innocent party to the maritime carriage and to the person whose fault caused the danger.

Secondly, a person cannot be considered to have acted out of extreme necessity if he or she created a dangerous situation. Additionally, it is possible to distribute general average losses even if the danger to the vessel, freight, and cargo arose due to the fault of one of the parties involved in the maritime transportation contract.

Given this circumstance, Article 1171 of the Civil Code of Ukraine imposes an obligation to compensate for the damage to the person whose behavior is lawful.

The current civil legislation of Ukraine *(Article 1171 of the Civil Code of Ukraine)* states that damage caused to a person in connection with actions aimed at eliminating a danger that threatened the civil rights or interests of another individual or legal entity if this danger could not be eliminated by other means (extreme necessity), shall be compensated by the person who caused it. Thus, the following conditions must be met:

a) damage in situations of extreme necessity is caused to eliminate the danger that threatened another individual or legal entity. The tortfeasor acts not only in his or her interests but also in the interests of third parties;

b) a person in a state of extreme necessity causes damage to eliminate a real danger, i.e. a danger that existed at the time of the emergency;

c) the danger to the interests protected by law may be created by natural phenomena, any actions or inaction of people, technical factors, physiological (biological) state of other people, animal behavior;

d) an extreme necessity exists if the danger could not be eliminated by other means under the given conditions;

e) there is no extreme necessity if the damage has already been done.

Traditionally, the law defines extreme necessity as dangerous circumstances that cannot be removed by ordinary means, and a person acting in a state of extreme necessity is forced to use means that involve causing harm. Causing harm in the course of averting danger in a state of extreme necessity is always recognized by the person and is caused intentionally. At the same time, when exceeding the limits of necessary defense, damage is caused negligently.

It can be argued that the classification of compensation conditions is based on the criterion of subjective expression of will aimed at causing damage as follows:

- causing damage as a result of extreme necessity is subject to compensation;
- damage caused in excess of the necessary defense is subject to compensation if the relevant limits are exceeded.

Thus, a person protects his or her interests and the interests of third parties, while sacrificing the interests of another person by causing damage to his or her to achieve the goal of providing protection. Accordingly, the use of extreme necessity will be considered legitimate when the damage caused is recognized as less significant compared to the amount of damage that could have been prevented. For example, when destroying wooden structures to prevent the spread of fire in rural areas, the private interests of the owner who is harmed collide with the legitimate interests of a person who protects the public interests of the territorial community by causing damage to the owner.

The limit of permissible damage is the damage that corresponds to the preventable damage caused in an extreme situation to eliminate the danger that threatens protected interests. This damage should be less significant than the prevented damage. Indeed, due to the need to maintain a balance between the interests of the injured person and the tortfeasor, it is possible to sacrifice the interests of other persons of lesser importance to eliminate the danger to other persons.

Thus, the legitimacy of human rights measures taken in a state of extreme necessity is based on the dangerous situation in the environment, which, in turn, stipulates the right to cause harm. At the same time, under the provisions of the tort law of Ukraine, defensive behavior in a state of emergency, including in favor of a third party, is a socially positive lawful act.

At the same time, it should be mentioned that if in a dangerous situation, a person causes property damage that is greater than the damage that could have been prevented, i.e. exceeds the limits of extreme necessity, such actions will be deemed unlawful. Therefore, inflicting damage in a state of extreme necessity differs from causing damage in a state of necessary defense in the following ways:

1) as a general rule, damage caused in the state of necessary defense is not compensated; on the contrary, damage caused in the state of extreme necessity is subject to compensation;

2) in the state of necessary defense, the danger always comes from a human attacker; in case of extreme necessity, the source of the danger is irrelevant;

3) in the state of necessary defense, damage is inflicted on the person from whom the danger originates; in case of extreme necessity, damage may be inflicted both to the source of the danger and other persons;

4) in case of necessary defense, the damage is compensated (if there is an obligation to compensate) by the person who caused it; in case of extreme necessity, there are a number of options for determining the person on whom the obligation to compensate damage is imposed.

2.2. Conditions of liability for damage caused in a state of extreme necessity

According to Article 1171 of the Civil Code of Ukraine, the parties to the obligation to compensate for damage caused in a state of extreme necessity are the following:

1) the person who caused the damage (the tortfeasor);

2) the person who suffered the damage (the victim);

3) a person in whose interests the actions in a state of extreme necessity were performed, in the course of which the victim suffered damage.

The person who compensated for the damage has the right to make a reciprocal claim against the person in whose interests he or she acted. Taking into account the circumstances under which the damage was caused in a state of extreme necessity, the court may impose the obligation to compensate the person in whose interests the person who caused the damage acted. The court may also obligate each of them to compensate the damage in a certain proportion or release them from compensation in part or in full.

Unlike the previous tort, where damage is directed against the attacker *(Article 1169 of the Civil Code of Ukraine)*, the victim of damage in a state of emergency may be any person or his or her property. When analyzing the conditions for compensation for damage caused in a state of emergency, the following should be borne in mind.

Pursuant to Article 39 of the Criminal Code of Ukraine, in contrast to the provisions of the Civil Code of Ukraine *(Article 1171)*, it is important to maintain a balance between the amount of damage caused and the amount of damage prevented. Violation of this balance under criminal law becomes the basis for criminal liability. In other words, under criminal law, causing damage in a state of extreme necessity entails liability only if such damage is more significant than the damage prevented *(Article 39(2) of the Criminal Code of Ukraine)*. For example, as a result of a collision, the driver and passengers of a taxi were injured, but the court found the driver's actions to be lawful, as he acted in a state of extreme necessity to prevent a more serious road traffic accident.

In contrast to criminal law, the Civil Code of Ukraine *(Article 1171)* does not provide for such a differentiation. A person who causes damage in a state of extreme necessity is always liable and obliged to compensate for the

damage. Thus, the tortfeasor may avoid criminal liability if he or she acts within the limits of extreme necessity *(Article 39 of the Criminal Code of Ukraine)*, but compensation for damage will be required in this case.

Only in case of exceeding the limits of extreme necessity due to strong emotional distress caused by the threatened danger when the person could not assess the proportionality of the damage caused to this danger, he/she is not subject to criminal liability. However, there are no corresponding restrictions on the need for compensation in the tort law of Ukraine. In other words, regardless of whether a person is held criminally liable for damage caused by an emergency, compensation for such damage remains unchanged by Article 1171 of the Civil Code of Ukraine.

On the other hand, despite the fact that the Civil Code of Ukraine *(Article 1171)* does not provide for exemption from compensation for damage caused by lawful actions, the relevant provisions are contained in special laws. Thus, the Law of Ukraine No. 160-IX "On Liability of Servicemen and Persons Equated to Them for Damage Caused to the State" dated 03 October 2019 defines the grounds and procedure for holding servicemen and certain other persons liable for damage caused to the state property, including military property, the property involved in the mobilization, and funds related to the performance of their official duties.

According to Article 9 of the Law, damage caused by military personnel in the course of their military service, as well as by officers of special purpose law enforcement agencies of the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine, the Civil Defence Forces, the State Criminal Executive Service of Ukraine, the State Bureau of Investigation, and employees of the Court Security Service of Ukraine in a state of extreme necessity excludes their liability.

It turns out that different legislative acts provide for different legal consequences for the results of the actions of a tortfeasor in a state of extreme necessity. Undoubtedly, this creates certain discrepancies that should be resolved in the process of updating the tort legislation of Ukraine. At the same time, it is possible to formulate the following provision: unless otherwise provided by the special tort legislation of Ukraine, damage caused in a state of extreme necessity must be compensated by the person who caused the damage.

Another rule of compensation can be formulated as follows: taking into account the circumstances under which the damage was caused in a state of

extreme necessity, the court may impose the obligation to compensate the person in whose interests the tortfeasors acted or oblige each of them to compensate the damage in a certain proportion or release them from compensation in part or in full.

In addition, the person who compensated the damage has the right to make a reciprocal claim against the person in whose interests he or she acted.

§ 3. Compensation for Damage Caused by the Adoption of a Legal Act on the Termination of Ownership of Certain Property. Property Torts

The right to property is guaranteed by the state *(Article 41 of the Constitution of Ukraine)*. The Constitution of Ukraine explicitly prohibits unlawful deprivation of property rights *(part four of Article 41)*. The inviolability of this right means non-interference by anyone in the exercise by the owner of his or her rights to own, use, and dispose of property, and the prohibition of any violation of the owner's rights in relation to his or her property contrary to the owner's interests and will.

In some cases, the state may interfere with a person's property rights. Such interference is carried out by depriving a person of his or her property, which leads to property damage. In view of the national legal order, interference with a person's property right may be conditioned by the need to impose a sanction on the owner for a criminal offense in the form of confiscation. In this case, the termination of the owner's property rights is a legitimate interference by the state, which does not require compensation for the damage caused.

Another case of state interference with a person's property right is the requirement of public necessity. Such a public necessity implies an existing interest of society that prevails over the interest of an individual owner in respect of the property belonging to him or her, as a result of which the state deprives the owner of the property in pursuit of the public interest.

Depriving the owner of property due to public interest is an exceptional case of state interference with property rights and is considered a lawful action. In the absence of a public purpose, the seizure of property acquires signs of illegality and the corresponding criminal qualification. Unlike in the previous case, the state's interference with a person's property right is not caused by his or her unlawful behavior, and therefore requires reasonable compensation.

The property tort establishes the state's obligation to compensate the owner of the property for damage caused as a result of the adoption of a legal act on the forced termination of property rights and seizure of property.

Despite the indicative lawfulness, the nature of the tort is coercive actions of the state to terminate a person's property right against his or her will. Therefore, it is characterized primarily by the harmfulness of the consequences for the property owner rather than the alleged illegality of the relevant entity's actions. Such harmfulness consists in depriving a person of his or her property against his or her will.

When considering the tort, it should be noted that the national legislation of Ukraine contains numerous mechanisms for the compulsory seizure of property from a person. All of them have one thing in common, i.e., the termination of property ownership under conditions of public necessity. At the same time, each of these mechanisms for terminating property ownership has different legal grounds, different subjects of termination, and different beneficiaries of such a property seizure.

3.1. Legal grounds for termination of property ownership

The termination of property rights relates primarily to property seizure cases for state and public needs. Such examples include the need to build facilities of national importance, roads, power and communication lines, pipelines, housing, social and cultural facilities, as well as in the event of a natural disaster, accident, epidemic, epizootic, and other emergency circumstances, including circumstances under martial law.

When analyzing the property tort, firstly, it should be noted that any property owned by a person is subject to compulsory seizure.

The legislation of Ukraine does not impose any restrictions on the type of property that may be seized. At the same time, the scope and characteristics of the property that may be seized shall be consistent with the public purpose pursued by such action. Thus, the seizure of a person’s personal belongings is unlikely to be possible. However, the seizure of personal transport to evacuate citizens from a disaster area is consistent with the public purpose.

It seems that the crucial factor for property seizure is not the type of property but the purpose that guides the state in making the relevant decision. Such a purpose shall be publicly necessary and useful.

Secondly, property torts have a multinormative basis in the national legislation of Ukraine.

In addition to the provisions of the Civil Code of Ukraine, compensation for the damage caused by the termination of a person's property rights is also mentioned in the provisions of the Land Code of Ukraine, the Law of Ukraine "On Transfer, Compulsory Alienation or Seizure of Property under the Legal Regime of Martial Law or the State of Emergency" of 17 May 2012, and the Law of Ukraine "On the Alienation of Privately Owned Land Plots and Other Real Estate Located Thereon for Public Needs or for Reasons of Public Necessity" of 17 November 2009.

Against the backdrop of the military confrontation between Russia and Ukraine, the Law of Ukraine "On the Basic Principles of Compulsory Seizure in Ukraine of Property of the Russian Federation and its Residents" was adopted on the 3rd of March, 2022. This law defines the legal basis for the compulsory seizure of property rights of the Russian Federation, the state that has initiated a full-scale war against Ukraine and its residents, for reasons of public necessity, including military necessity.

The defining feature of this legal act is a departure from the traditional mechanism of reasonable compensation for forced interference with a person's property rights. The law stipulates that forcible interference with the property rights of the Russia Federation and its residents shall be carried out without compensation for the value of the seized property.

At the same time, Article 4 of this law provides that the proceeds from the property seized from the Russian Federation and its residents shall be credited to the State Budget of Ukraine and directed to the Fund for the Elimination of the Consequences of Armed Aggression.

This legal technique seems to be erroneous, as it introduces complications in comprehending the legal implications of this tort. In addition, most of the mechanisms lack adequate certainty. It would be more reasonable to unify the relevant provisions of several legislative acts within the Civil Code of Ukraine and form a unified approach to the mechanism of this tort.

The compulsory termination of a person's property rights can be achieved through the following legal mechanisms:

(*) Compensation for damage caused by the adoption of a law on the termination of ownership of certain property (Article 1170 of the Civil Code of Ukraine);

(*) Purchase of land plots and other immovable property located thereon for public needs or for reasons of public necessity (Articles 350 - 351 of the Civil Code of Ukraine, Articles 146 - 147 of the Land Code of Ukraine);

(*) Requisition (Article 353 of the Civil Code of Ukraine).

Thirdly, the specific feature of property torts also lies in the fact that they contain various legal variations of public necessity as grounds for the lawful termination of property rights.

(-) Compensation for damage caused by the adoption of a law on termination of ownership of certain property (Article 1170 of the Civil Code of Ukraine) Pursuant to Article 1170 of the Civil Code of Ukraine, the general rule is that in case of adoption of a law terminating the ownership of certain property, the state shall compensate the owner of such property in full. In other words, the law is the legal basis for the termination of a person's ownership right and for obtaining reasonable compensation for damage caused by such termination. The law defines not only the property to be seized from the owner and the mechanism for reimbursement of its value but also the subject of the seizure (the state) and the beneficiary, which, in turn, will be not only the state but also local governments.

Therefore, the state can pass a law that terminates the ownership of certain property from a certain circle of persons. However, property cannot exist in the material world without an owner controlling its condition, without a person who is responsible for the property and possible negative consequences that may be caused by the property to another person. It is well known that property is not only a set of certain rights but also an obligation of the owner. That is, any termination of the property right inevitably entails the emergence of the right to the relevant property of another person.

It is expected that by adopting a law on the termination of ownership of certain property *(Article 1170 of the Civil Code of Ukraine)*, the state will not only terminate the property ownership from the person but will also determine the new owner of the seized property, which will be either the person himself or the competent state or local government body.

It is unlikely that the state will adopt a law on the termination of ownership of certain property from a person with the transfer of such right to private ownership, as the question of corruption and proportionality of such interference with the reasonable possession of the property will arise.

It is worth mentioning the provision of Article 41 of the Constitution of Ukraine, according to which the expropriation of private property may be applied only as an exception for reasons of public necessity, on the basis and following the procedure established by law, and subject to prior and full compensation of their value. In other words, in any case, the beneficiary is exclusively the state.

The mechanism of lawful interference with a person's property right provided for in Article 1170 of the Civil Code of Ukraine is the only property tort enshrined in the relevant chapter of the Code. All other known property torts are enshrined either in other legal acts or in other chapters of the Civil Code of Ukraine, which makes their legal classification difficult.

It should be noted that the national legislation of Ukraine still lacks any laws that directly terminate the ownership of certain property *(Article 1170 of the Civil Code of Ukraine)*. This formally indicates that the mechanism of this tort is ineffective in the Ukrainian legal framework.

It is also important to highlight that Article 1170 of the Civil Code of Ukraine is mainly declarative, referring to the law that will only define the mechanism of termination of property rights and compensation for damages as a result of such termination. Another gap in this tort is also the lack of proper justification of the proportionality of the interference with the reasonable enjoyment of property rights.

(-) Acquisition of land plots and other immovable property located thereon for public needs or for reasons of public necessity (Articles 350-351 of the Civil Code of Ukraine, Articles 146-147 of the Land Code of Ukraine) The second type of property tort is the acquisition of land plots and other real property located on them for public needs or for reasons of public necessity by a court decision *(Article 350 of the Civil Code of Ukraine)*.

In addition to the Civil Code of Ukraine *(Article 350)*, the Law of Ukraine "On the Alienation of Privately Owned Land Plots and Other Real Estate Located Thereon for Public Needs or for Reasons of Public Necessity" also regulates the expropriation of land in the public interest.

Formally, this type of lawful interference with a person's property right does not belong to property torts, as it is not provided for in Chapter 82 of the Civil Code of Ukraine “Compensation for Damage”, but it is such by its legal nature.

It is worth noting that this type of tort is referred to as a ground for termination of property rights *(Chapter 23 of Book III Property Rights and Other Property Rights)*. At the same time, its legal nature establishes compensatory mechanisms for compensation for damage caused by the forced termination of property rights. The basis of such a compensation mechanism is the obligation to compensate the owner for the value of the property owned by him or her. Therefore, despite the regulatory uncertainty of this tort, the tort law in Ukraine refers to it as a property tort.

Under the aforementioned legal acts, the executive authority or local self-government body that decided to alienate a land plot, in case of failure to reach an agreement with its owner on its redemption for public needs, shall file a claim for compulsory alienation exclusively for the following public purposes with an administrative court:

- national security and defense facilities;
- linear objects and objects of transport and energy infrastructure (roads, bridges, overpasses, main pipelines, power lines, airports, seaports, oil and gas terminals, power plants) and objects necessary for their operation;
- facilities related to the extraction of minerals of national importance;
- objects of the nature reserve fund;
- cemeteries.

The executive authority or local self-government body shall decide to purchase the land plot and other real estate located thereon based on the relevant proposals. Subsequently, the aforementioned body that decided to purchase the land plot and other immovable property located thereon shall notify the owner(s) thereof in writing.

In case of failure to obtain the consent of the owner of the land plot and other immovable property located on it to purchase these objects for public needs, they shall be compulsorily alienated into state or municipal ownership. To do so, an executive authority or local self-government body files a claim for the expropriation of these objects to an administrative court.

A claim for the expropriation of a land plot and other real estate located thereon shall be satisfied if the claimant proves that the construction, overhaul, or reconstruction of the facilities for which the relevant property is alienated is impossible without the termination of the previous owner's ownership of such property. If the claims are satisfied, the court decision determines the redemption price and the procedure for its payment.

Thus, the decision to redeem land plots and other immovable property located thereon for public needs or reasons of public necessity is made by an authorized state or local government body, while the termination of ownership is carried out by a decision of a competent court.

Two entities are involved in the implementation of lawful behavior aimed at the forced termination of ownership of certain property, namely:

(-) a state or local government body,

(-) administrative court.

The first one is responsible for the adoption of an individual act of redemption and requesting the owner to voluntarily alienate the property owned by his or her, which is necessary to meet certain public needs. The latter is based on the consideration of the validity of claims for compulsory deprivation of ownership of property to a person if he or she does not consent to voluntary alienation and the adoption of a relevant court decision.

The beneficiary of the redemption of land plots and other immovable property located thereon for public needs or reasons of public necessity is as follows:

(-) the state of Ukraine, represented by the relevant state authority,

(-) a territorial community, represented by a local self-government body.

The civil law of Ukraine also establishes a mechanism for the termination of ownership of immovable property in connection with the redemption of the land plot on which it is located for public needs or compulsory alienation for reasons of public necessity.

Pursuant to Article 351 of the Civil Code of Ukraine, in the event of a land plot being purchased for public needs or, by the court decision, in the event of its expropriation for reasons of public necessity with mandatory prior and full compensation of their value, ownership of a residential building, other buildings, structures, and perennial plantations is also terminated. A claim for compulsory alienation of a land plot for reasons of public necessity shall be considered together with a claim for termination of ownership of such objects.

A person whose ownership is subject to termination has the right to demand that another land plot be provided within the territory covered by the authorities of the relevant local self-government or executive authority, the

value of which is taken into account when determining the redemption price. Before the entry into force of a court decision on the expropriation of a land plot for reasons of public necessity, the owner has the right to dispose of the residential building, other buildings, structures, and perennial plantations located on such a land plot at his or her discretion.

(-) Requisition (Article 353 of the Civil Code of Ukraine) In addition to Article 1170 of the Civil Code of Ukraine, Article 353 provides for the possibility of making a decision to terminate the property right based on a legal act other than the law.

Such a legal act is an individual decision of a public authority, military command, or local self-government body. The subject of property seizure is not the state as a whole but a separate subject of the relevant authority (state authority, local self-government body, etc.).

In contrast to the previously mentioned case, where the grounds for termination of property rights are not clearly defined, Article 353 of the Civil Code of Ukraine provides that such grounds are natural disasters, accidents, epidemics, epizootics, and other extraordinary circumstances. In addition, the purpose of terminating property rights is specifically defined as a public necessity. In this case, the property may be seized from the owner on the ground and per the procedure established by the law, provided preliminary and full compensation of its value. In this case, the requisition is a type of property tort.

Pursuant to Article 353 of the Civil Code of Ukraine, the Law of Ukraine "On Transfer, Compulsory Alienation or Seizure of Property under the Legal Regime of Martial Law or the State of Emergency" defines the mechanism for transferring, alienating, or seizing property from legal entities and individuals for the state needs under the legal regime of martial law or emergency.

Conditions for the forced termination of ownership of certain property (requisition) are as follows:

Martial law is a special legal regime introduced in Ukraine or certain areas of Ukraine in the event of armed aggression, threat of attack, or threat to the state independence of Ukraine and its territorial integrity.

A state of emergency is a special legal regime that may be temporarily introduced in Ukraine or its regions in the event of human-made or natural emergencies of the national level that have resulted or may result in human

and material losses or pose a threat to the life and health of citizens. A state of emergency may also be introduced in the event of an attempt to seize state authority or change the constitutional order of Ukraine by means of violence.

Subjects of the forced termination of ownership of certain property (requisition) are as follows:

The military command is entitled to alienate or seize property during martial law, subject to the agreement with the Council of Ministers of the Autonomous Republic of Crimea, regional, district, Kyiv, or Sevastopol city state administration, or the executive body of the relevant local council.

Since requisition is applied under extraordinary circumstances that require immediate action, it is initiated by a decision of the state authorities in out-of-court procedure (administratively).

The administrative procedure for property requisition from the owner proceeds from the need of public authorities to respond to extraordinary circumstances promptly. During the requisition, there are no conditions for the execution of title documents for the property seized from the owner (Chaplyk, 2022, 214 - 218).

As per the Decree of the President of Ukraine “On the Introduction of the Legal Regime of the State of Emergency,” the executive authority, the Council of Ministers of the Autonomous Republic of Crimea, the military command, and local self-government bodies are entitled to alienate and seize property under the state of emergency.

The state of Ukraine is the beneficiary of the termination of ownership of certain property (requisition). The requisitioned property becomes the property of the state or is destroyed.

Thus, when analyzing property torts, it is essential to consider the variability of legal grounds for termination of property rights (law, individual legal act, or court decision) and the multiplicity of subjects of compensation for the relevant damage, including the state, a state authority, local self-government body, etc.

3.2. Mechanism for compensation for damage caused by property torts

A mandatory element of compensation for damage caused by a property tort is a preliminary assessment of the property subject to compulsory alienation. Such valuation is carried out in accordance with the procedure established by the legislation on the valuation of property, property rights, and professional valuation activities.

The property valuation determines the compensation to be paid to the property owner in the event of the termination of his or her property rights. The property valuation, which determined the compensation to be paid to the previous owner for the value of the alienated property, may be appealed in court.

In accordance with the terms of real torts, compensation for alienated property is paid by the body that made the relevant decision at the expense of the relevant budget (state budget, budget of a territorial community).

When the property is preserved after the termination of the conditions that gave rise to the property alienation (martial law, state of emergency, public necessity, or public interest), the person to whom it belonged has the right to demand its return in court.

If the property is returned to the person, his or her ownership is restored. At the same time, the owner is obliged to return the amount of money or things received in connection with the requisition. However, such counterpart compensation shall be made after the deduction of a reasonable fee for the use of the property during the entire period of its use.

§4. Compensation for Damage Caused by a "General Average"

The development of merchant shipping puts on the agenda the issue of not only liability for damage arising in the course of carriage of passengers or cargo but also prevention of the possibility of harmful consequences and their minimization.

The emphasis on this aspect of merchant shipping is attributed to the fact that the amount of damage arising from a ship collision may be more extensive than the range of actions aimed at their possible prevention. Thus, in the field of merchant shipping, the occurrence of human-made accidents can lead to catastrophic changes in the ecosystem of the Earth. In this case, a potential conflict of interest between the cargo owner, or carrier, who is trying to preserve his or her property, on the one hand, and society in the field of environmental protection, on the other, is resolved in favor of the latter.

Such a disposition gives legitimacy to the interference with the owner's authorities to ensure the public interest. In other words, to ensure the public interest, the destruction or damage of another's property in the field of merchant shipping is considered legitimate.

A special case is the rule that, all things being equal, actions to cause damage to the cargo owner or the owner of a ship should be considered lawful if they are potentially less vulnerable than the consequences they prevent. This is based on the principle of sacrificing a part to save the whole.

The tort law of Ukraine recognizes the lawfulness of causing damages as a result of a general average in the field of merchant shipping.

4.1. The concept of "general average" in maritime law

A general average is a consequence of a maritime accident that creates a risk of loss of the vessel, cargo, and freight (ship collision, ship fire, loss of stability, shipwreck, etc.). Thus, to prevent the loss of a vessel, the necessary measures are taken, which entail certain costs or donations. It is these losses in the form of expenses, donations, and losses that are recognized as a general average.

The essence of such actions is to sacrifice a lesser good (a certain amount of money, part of the cargo, the integrity of the ship's hull, etc.) and save a greater good, i.e., the bulk of the property involved in the carriage by sea. Such expenses and donations entail losses for the parties to the carriage for which they were made (more often for shipowners, less often for the cargo owner).

General average means losses incurred as a result of deliberate and reasonable extraordinary expenses or donations for the sake of general safety to prevent the property involved in the general maritime enterprise of

the vessel, the freight, and cargo carried by the vessel from danger (Shemonaev, 2019, 30 -34).

The regulation of relations related to the general casualties in Ukraine is governed by Articles 277-293 of the Merchant Shipping Code of Ukraine.

The specific feature of a general average is that, in order to preserve the enterprise, a part of the cargo is sacrificed or expenses are incurred to save the voyage from the danger that threatens it. In this way, a lawful act of intentional damage is carried out in the interests of each of the voyage participants to reduce or eliminate the danger common to them.

The unification of international rules governing the regulation of a general average is reflected in the York-Antwerp Rules of 1974, which are a set of codified customs and are applied by agreement of the parties.

To classify losses as a general average, the following features must be met:

1) The intentional nature of the damage, as it cannot arise from accidental acts, but only from reasonable, deliberate actions.

2) Justification of actions to cause damage in the context of general danger. The potential amount of losses is less than the preventable amount, which is evidence of the reasonableness of their infliction to prevent more significant losses.

3) The existence of a general danger to the vessel, cargo, and freight, since the occurrence of such losses, given their nature, cannot be dangerous only for the vessel, they also relate to the negative impact on the freight and cargo.

4) The inevitability of the general danger to the ship, the freight, and the cargo.

5) The extraordinary nature of the events that cause the need for damage. Extraordinary losses and expenses shall be deemed to be those that go beyond the scope of normal shipping and are of an extraordinary nature.

Such losses related to the general average include the following:

1) losses caused by throwing overboard cargo or ship's accessories, as well as losses from damage to the ship or cargo during general salvage measures, in particular, as a result of water penetration into holds through hatches or other openings made for this purpose;

2) losses caused to the ship or cargo during fire extinguishing on the ship, including losses from flooding of the ship that caught fire for this purpose;

3) losses caused by the intentional grounding of the ship and removal of such ship from the ground;

4) losses from damage to engines, other machinery, or boilers of a ship stranded on the ground caused by an attempt to remove the ship from the ground;

5) extraordinary expenses related to the transshipment of cargo, fuel, or supplies from the vessel to lighters, hiring of lighters, and reloading to the vessel, incurred in case of grounding of the vessel;

6) losses from damage or loss of cargo, fuel, or supplies caused by their movement on the ship, unloading from the ship, reloading, and stowage, as well as during storage in cases where the costs of performing these operations are recognized as a general average;

7) expenses incurred for the purpose of obtaining assistance both under and without a salvage agreement to the extent that the salvage operations were carried out to prevent danger to the ship, the freight, and the cargo;

8) losses from environmental pollution caused by the general average;

9) loss of freight caused by the loss of cargo, in cases where the loss of cargo is compensated in the order of distribution of the general average, and the freight excludes the costs that would have been made by the carrier of the cargo to obtain it but were not made as a result of the donation.

This list is not exhaustive. It merely contains indications of the most typical situations in the practice of merchant shipping and their description. In addition to these losses, the general average also includes expenses caused by the vessel being forced to call at a place of storage or return to the port of departure as a result of an accident or any other extraordinary circumstance that made such call or return necessary for the sake of general safety, expenses related to the movement of cargo, fuel or supplies at the port of departure, call or place of storage, as well as storage expenses, including reasonable insurance and wages and salaries and maintenance costs.

In contrast to the general average, the Merchant Shipping Code of Ukraine also provides conditions of tort liability for customary maritime damage and

damage caused by intentional or accidental collision of ships. As a result of damage that does not relate to the general average caused by a ship collision, the ordinary mechanisms of tort law apply. Firstly, such damage is inherently unlawful. Secondly, the tort is based on the fault of the tortfeasor. Thirdly, the amount of compensation for such damage may be limited by the customs of merchant shipping *(Articles 308-309 of the Merchant Shipping Code of Ukraine).*

In the case of a separate (non-general) average, the losses are not subject to apportionment between the vessel, cargo, and freight. They are borne by the party who suffered them or the one who is responsible for causing them *(Articles 294, 298 - 300 of the Merchant Shipping Code of Ukraine).*

4.2. Principles of distribution of general loss and compensation for damage caused by maritime tort

General losses shall be distributed between the ship, freight, and cargo in proportion to their value at the time and place of termination of the joint maritime venture. All persons whose property interests were protected by the actions that caused these losses shall participate in the coverage of general losses, and the share of participation of these persons in the coverage of general losses shall correspond to the degree of their property interests. Such persons are the shipowner, who is interested in the integrity of the cargo and the freight, and the cargo owner, whose cargo is on board the ship.

The general casualty would also be distributed if the danger that caused the extraordinary expenses or donations was due to the fault of a person having a property interest in the ship, the freight, or the cargo.

However, such a division does not deprive other participants in the general average of the right to recover the losses incurred from the responsible person, nor does it deprive that person of possible remedies.

The main documents required for registering the general average are a logbook, an engine log, a general average statement, and acts establishing the extent of the general average separately for the ship and separately for the cargo. The initial evidence of a general average is the entries in the logbook. These entries must describe the position of a ship captain with sufficient certainty regarding the expediency of actions that entail a general average. Particular attention should be paid to accurate fact registration before and immediately after the general average.

Pursuant to Article 288 of the Merchant Shipping Code of Ukraine, the existence of a general average is established, and the calculation of its adjustment is made at the request of the interested parties by the distributors.

The party claiming the general average adjustment shall be obliged to prove that the claimed losses or expenses are recognized as a general average. All materials on the basis of which the general average statement is drawn up shall be available for inspection, and the average adjuster shall, at the request of the persons concerned, provide them with certified copies of these materials at their expense.

The general average statement shall specify the loss caused by the general average (separately for the ship, cargo, and freight), as well as mutual settlements, balance, etc.

The final part of the general average statement specifies the property owners that should pay the other share (in full or in part), taking into account the expenses previously incurred by them, and those that, on the contrary, are entitled to compensation for losses incurred in excess of their share. The general average statement defines to whom and in what form payments should be made.

A fee is charged for preparing the general average statement, which is included in the general average statement and distributed among all interested parties in proportion to their shares in the general average.

As for the practical implementation of the general average, all voyage charters and bills of lading contain these terms, albeit in a simplified form.

In addition to the provisions on the general average adjustment, voyage charters and bills of lading may also contain provisions on the place of distribution of general average losses, usually the port of voyage termination.

CHAPTER 2

THIRD-PARTY INDEMNIFICATION

Normally, a person is liable only for the damage that he or she has caused (the principle of personal liability). However, in some torts, compensation for damage is imposed on a person who did not directly cause the damage, i.e., these are torts in which the tortfeasor and the person responsible for the damage are different persons.

A common feature of the obligations arising in these cases is that they are all characterized by multi-subjectivity. In each case, there are three subjects, namely:

a) the legal entity or individual responsible for the damage;
b) the direct cause of the damage;
c) the victim, i.e., the person who suffered the damage.

The transformation of the subject of tort liability is determined by the specifics of the legal status of the persons who caused damage to the victim and the nature of the legal relationship between them. Such a legal connection implies coordination and control of the activities of one entity by another, which is why the potential damage is joint.

In turn, the coordination and control of one person over the activities of another is already conditioned by its legal status. The essence of this status is the lack of legal personality of the tortfeasor, which is compensated by the controllability of his or her behavior by another person (parents who control the behavior of their children and are responsible for it).

On the other hand, the specific feature of this legal status of a person is conditioned by the direct coordination of the behavior of the legal personality of the tortfeasor and the relationship between the instructions of the responsible person on the consequences of the tortfeasor's behavior.

§ 1. Compensating the Damage Caused by the Employee or any Other Person. Employment torts

The reason for responsibility for damage caused by an employee, contractor or member of a business entity or cooperative is associated with a certain risk of negative consequences of the improper behavior of the executor of orders.

The aforementioned provisions are explained by the fact that an employee, in the performance of his or her labor, job, or official duties, acts by the will of the employer, hence the logical statement that the damage caused by the employee's actions should be considered the damage caused by the employer.

This is justified because the legal entity and individual are responsible for the damage caused by the performer of their tasks (orders). Their fault in this case lies in the proper management of the behavior of their subordinates and their attitude to taking adequate measures to prevent the behavior of an employee, contractor, or member of a business partnership or cooperative on their behalf from becoming unlawful and harmful to other persons.

The following three cases are provided for in Article 1172 of the Civil Code of Ukraine:

1) a legal entity or an individual shall compensate for damage caused by their employee in the course of his or her employment (official) duties;
2) a customer shall compensate for damage caused to another person by a contractor if the contractor acted on the customer's instructions;
3) entrepreneurial companies and cooperatives shall compensate for damage caused by their participant (member) in the course of his or her entrepreneurial or other activity on behalf of the company or co-operative.

1.1. Grounds for compensating damage caused by an employee or other person

The legal basis for the obligation of a legal entity or an individual to compensate for damage caused by their employee or other person is Article 1172 of the Civil Code of Ukraine.

Pursuant to Article 1172 of the Civil Code of Ukraine, a legal entity or an individual shall compensate for damage caused by their employee in the course of his or her employment (official) duties.

In addition, the second situation in which this type of tort may arise is when a contractor causes damage to another person if he or she acted on the instructions of the customer. In this case, the customer is responsible for compensation.

Finally, the third case is compensation for damage by a business company or cooperative caused by their participant (member) in the course of carrying out business or other activities on behalf of the company or cooperative.

Thus, this is a tort that may occur in three areas of private law relations as follows:

a) in the area of labor (employment) relations;
b) in the area of civil law contractual relations;
c) in the area of relations related to participation in a business company or membership in a relevant cooperative.

It is believed that the specifics of the obligations arising from compensation for the damage caused in these cases is that the law makes a fairly clear distinction between the person who directly caused the damage and the person who must compensate for it:

a) an employee (officer) and a legal entity or individual with whom the employee (officer) has an employment (service) relationship;

b) a contractor and a customer with whom the contractor is in a contractor agreement;

c) a participant (member) of an entrepreneurial company or cooperative and the entrepreneurial company or cooperative of which he/she is a participant (member).

As for the reasoning that justifies liability, the first exception provided for in Article 1172 of the Civil Code of Ukraine is that an employer is liable for its employee. This can be explained by a number of considerations. Thus, the employer is obviously more solvent than the employee, and therefore the victim has a better chance of receiving compensation from the employer than from the employee.

Let's imagine that a worker at a construction site, while working on the top floor of a building, inadvertently dropped a rebar and it fell on a car parked nearby. It would be more profitable for the victim to file a claim against a wealthy construction company than against an ordinary employee with a low salary. In this context, the legislator cares about the victim by providing him or her with such an opportunity.

The second argument is also economic, but the focus is not on the victim, but on the employer. Its essence is as follows: whoever makes a profit must also bear losses. Since the employer receives the profits from the employee's work, it would be fair for the employer to bear the losses from the employee's work as well.

The third argument is that if the employee has to be responsible for the damage caused by the employee during the performance of his or her labor duties, the employee will be deprived of the guarantees provided by labor legislation, which limit his or her material liability for breach of labor duties (Karnaukh, 2020, 29-33).

Given the structure of Article 1172 of the Civil Code of Ukraine, it is possible to assume that the same applies to the other two cases:

(a) the customer cannot avoid liability by referring to the absence of his or her fault in the choice of the contractor or to the impeccability of his or her behavior and non-involvement in the damage caused by the contractor;

(b) a business partnership or cooperative, moreover, cannot avoid liability by referring to the absence of his or her fault in the choice of a participant (member) or to the fact that he or she acted without the knowledge and without the consent of the other participants (members), etc.

1.2. Conditions for compensation for damage caused by an employee or other person in a legal relationship with them

In addition to the general conditions, when compensating a natural or legal person for damage caused by an employee or other person in a legal relationship with them, certain specifics arising in the course of such compensation should be considered.

This feature is seen in the unlawfulness of a tortfeasor’s behavior who has acted unlawfully while performing his or her labor (official) duties or duties under a customized contractor agreement or while representing (executing

an order of) an entrepreneurial company or cooperative in which he or she is a participant (member).

Thus, when the tortfeasor acts unlawfully but under the obligation to fulfill the instructions of his employer or customer under a contract or on behalf of a business company (cooperative), the behavior of his employer, customer, business company, or cooperative automatically acquires the signs of unlawfulness.

However, it is necessary to establish a causal link between the behavior of the damage-causer and the damage itself before imposing an obligation on an employer, customer, or a business company or cooperative to compensate for damage caused by an employee, contractor, company member, or cooperative member. After all, such an obligation does not arise if an employee was on leave during which he or she caused damage to another person. Similarly, compensation is not due if the damage was caused in circumstances unrelated to the performance of an employee's duties. For example, when an employee causes damage to another person's health during a domestic dispute, such behavior is obviously not a part of his or her employment duties. Thus, the employer is not responsible for such damage but the employee personally, even though it was caused during working hours.

In other words, compensation can only be paid in cases where the damage is caused directly during the performance of the relevant duties.

Thus, when determining the conditions for the existence of the above tort, the following circumstances must be clarified:

a) the direct cause of the damage was actually in an employment (service) relationship with the legal entity or individual at the time of the damage, or was a contractor under a duly concluded contract with the customer, or was a member of a business company or a member of a cooperative;

b) that the damage was caused while performing a tortfeasor's duties as an employee under an employment contract or as a contractor under a contractor agreement, or while exercising the representative powers on behalf of a business company or cooperative the tortfeasor is a member.

All actions of employees and other persons related to the performance of particular labor and other duties are believed to be legally equivalent to an employer's actions. Since employees and other persons act on behalf and in

the interests of employers, the fault of the direct cause of damage, who is in the relevant relationship, is recognized as the employer's fault.

Since the fault of the person responsible for the damage is in this case embodied in the improper behavior of the person who directly caused the damage (employee, contractor, etc.), the feature of this tort is the possibility of filing recourse claims in accordance with Article 1191 of the Civil Code of Ukraine. The legal essence of recourse claims is that a person who has compensated for damage caused by another person has the right of recourse (regress) against the guilty person in the amount of the compensation paid.

§ 2. Compensation for Damage Caused by a Child

One of the types of torts for which compensation is substituted by another person is damage caused by a child.

Article 6 of the Family Code of Ukraine stipulates that a person under the age of 18 enjoys the legal status of a child. The involvement of another person to compensate for damage caused by a child is conditioned by his or her legal status. This legal status means that the child is under the supervision of other persons and has limited tort capacity.

As a rule, a person's liability is related to his or her legal capacity, which means the ability of a person to understand the significance of his or her actions and to control them. A civil capacity of a natural person is defined as the ability to create civil obligations for oneself, to fulfill them independently, and to bear responsibility in case of failure to do so *(Article 30 of the Civil Code of Ukraine).*

A person who has reached the age of eighteen *(majority)* has full legal capacity.

Under the age of 18, the lack of legal capacity is compensated by the behavior of other persons (parents) who are responsible for the child's behavior.

When considering the grounds for liability of parents (other persons referred to in *Article 1178 of the Civil Code of Ukraine*) for damage caused by a child, it should be noted that the offense should be examined in two aspects.

Firstly, the offense was committed by a child, and secondly, the parents allowed their child to commit the offense. Therefore, the unlawful behavior of both parents or one of them is the improper fulfillment of their child-

rearing responsibilities in accordance with the Family Code of Ukraine. Therefore, the unlawfulness of the parents' behavior will be in the form of inaction.

Parents do not cause harm to a victim directly nor do they enter into a binding relationship with him or her regarding the harm caused. Their obligation to compensate arises not because they caused the damage but because they failed to fulfill their duty to raise and supervise their children, which resulted in the commission of an offense. In other words, the unlawfulness of a child's behavior is expressed in causing damage, and the unlawfulness of parents' behavior is expressed in failure to fulfill their duty to raise and supervise children.

2.1. Compensation for damage caused by a minor under the age of 14

Under Article 34 of the Civil Code of Ukraine, an individual who reached the age of eighteen (majority) has a full civil capacity. The scope of civil capacity of persons under the age of majority is differentiated depending on their age.

The Civil Code of Ukraine divides individuals who have not reached the age of majority into two age categories, based on the fact that they do not have the capacity for independent volitional actions and that they are gradually gaining maturity:

- natural persons under the age of fourteen (minors),
- natural persons between the ages of fourteen and eighteen (juveniles).

A natural person under the age of fourteen (minor) has the right to independently perform minor domestic transactions, as well as to exercise personal non-property rights to the results of intellectual and creative activity. At the same time, a minor is not liable for any damage caused by him or her *(Article 31 of the Civil Code of Ukraine).*

The position of the Ukrainian legislator concerning the infliction of damage by a minor and its subsequent compensation is based on the Declaration of the Rights of the Child, adopted by the UN General Assembly on 20 November 1959. The Preamble to this Declaration states that "minors, by reason of their physical and mental immaturity, need special protection and safeguarding, including appropriate legal protection".

Compensation for damage caused by a minor (a child under the age of fourteen) is reimbursed by his or her parents (adoptive parents), a guardian, or other individual who is legally responsible for the upbringing of the minor. In other words, the tort law of Ukraine establishes the following circle of liable persons who are obliged to compensate for damage caused by a minor:

(-) parents (adoptive parents),

(-) guardians or any other natural person who is legally responsible for the upbringing of a minor,

(-) an educational, healthcare, or other institution that is obliged to supervise the child.

When imposing an obligation to compensate for damage caused by a minor on parents, it is worth considering their fault for the child's unlawful behavior. Proper supervision and upbringing of the minor can prevent possible negative consequences of the child's misconduct. In addition, the fulfillment of parental responsibilities protects the child and prevents him or her from causing harm to third parties.

After all, the offense is committed by the minor, but to a certain extent, parents allow such behavior by not paying due attention to the upbringing of children and not exercising control over them. In other words, it cannot be said that parents are responsible for someone else's actions, they are responsible for the improper exercise of their parental duties, negligent upbringing and supervision of the minor.

The child's adoptive parents bear the same responsibility for the actions of the minor as the parents, as they acquire full parental rights and responsibilities after the adoption of the child. Establishing guardianship over a minor also results in the guardian's obligation to compensate for damage caused by them, as the rights and obligations of the guardian correspond to the rights and obligations of parents.

For this reason, Article 1178 of the Civil Code of Ukraine states that damage caused by a minor shall be compensated by authorized persons unless they prove that the damage is not the result of their negligent performance or improper performance of upbringing and supervision of a minor.

In case of compensation by the authorized persons of a minor for the damage caused by him or her, it is also necessary to establish a causal link between

the behavior of the minor and the damage caused. In addition, it is mandatory to establish a causal link between the behavior of the authorized person in relation to proper upbringing and the behavior of the minor that led to the damage. If the relevant authorized persons (parents, adoptive parents, etc.) did not raise and supervise the minor, it is they who created the possibility of the child causing harm.

However, this construction of Article 1178 of the Civil Code of Ukraine is imperfect. This tort may be complicated if the parents (adoptive parents), guardians, or other natural persons who legally raise a minor prove that the damage is not a result of their negligent exercise or evasion of their parental duties to raise and supervise a minor.

In this case, the question arises as to who will be liable if the minor is an incapacitated person and the authorized persons prove that the damage was not caused by their fault. It seems that no one will be responsible for compensation. However, this approach contradicts the principles of tort law.

If the minor suffered damage while under the supervision of an educational institution, healthcare institution, or other institution that is obliged to supervise him or her, as well as under the care of a person who supervises a minor on the basis of a contract, these institutions and the person are obliged to compensate for the damage unless they prove that the damage was caused through no fault of their own.

If the minor suffered damage both through the fault of the parents (adoptive parents) or the guardian and through the fault of the institutions or person who is obliged to supervise the minor, the parents (adoptive parents), the guardian, such institutions and persons are obliged to compensate for the damage in the proportion determined by the agreement between them or by a court decision.

The child reaching the age of majority does not terminate the obligation of persons to compensate for the damage caused by the minor. After reaching the age of majority, a person may be obliged by a court to partially or fully compensate for damage to the life or health of the victim caused by him or her under the age of fourteen if he or she has sufficient funds to do so.

Damage caused by joint actions of several minors shall be compensated by their parents (adoptive parents) or guardians in the proportion determined by the agreement between them or by the court decision. If at the time of the damage caused by several minors one of them was in an institution that performs the functions of the guardian by law, this institution shall

compensate for the damage in the proportion determined by the court decision.

2.2. Compensation for damage caused by a juvenile aged 14 to 18

Unlike a minor, a person between the ages of fourteen and eighteen has incomplete civil capacity.

Pursuant to Article 32 of the Civil Code of Ukraine, a person aged 14 to 18 (a juvenile) may exercise independently the rights to the outcomes of intellectual and creative activity protected by the law, dispose independently of his or her earnings, scholarship or other income, be a participant (founder) of legal entities, and enter independently into a bank deposit (account) agreement and dispose of the deposit made in his or her name (funds on the account).

In order to exercise such a scope of legal capacity, a juvenile must enter into a wider range of relationships, while his or her psycho-emotional development should provide for understanding, to a certain extent, the significance of his or her actions and the consequences of their commission. For this reason, a juvenile (aged fourteen to eighteen years) is liable for the damage caused by him or her on a general basis.

At the same time, if a juvenile does not have property sufficient to compensate for the damage caused by him or her, this damage is compensated by his or her parents (adoptive parents) or guardian in the missing part or in full.

If a juvenile was staying at the institution that legally performed the guardian functions, this institution shall be obliged to compensate the full or missing part of the damage, unless it proves that the damage was caused without its fault *(Article 1179 of the Civil Code of Ukraine).*

In other words, unlike in the previous case, authorized persons are not liable for damage caused by a minor in full, but only if the child has insufficient funds. Such liability is subsidiary (additional) in nature.

Such liability of parents (adoptive parents) and guardians arises for a certain reason not related to the damage caused by juveniles. This reason is related to the fault of the parents who did not fulfill their duties in good faith, as required by the family law.

The liability of parents and other legal representatives is not liability for someone else's fault. These persons are responsible for their negligent attitude toward their duties to properly educate children and supervise their behavior, which resulted in damage.

In other words, the grounds for parents' liability for damage caused by their children is not a civil offense (committed by a juvenile causing the damage) but a family offense of the parents, which manifested itself in the improper education of a child and lack of supervision over him or her. Thus, the responsibility of parents is additional, but the main responsibility is borne by the person who caused the damage (Logvinova, 2008, 101-107).

Damage caused by a juvenile after he or she has acquired full legal capacity is compensated by that person independently on general grounds.

The obligation of parents (adoptive parents), a guardian, or an institution that performs the functions of a guardian for a juvenile by law to compensate for damage also ceases when the person who caused the damage reaches the age of majority or when he or she becomes the owner of the property sufficient to compensate for damage before reaching the age of majority.

The damage caused by the joint action of several juveniles shall be compensated by them in the proportion determined by agreement between them or by a court decision. If, at the time of the infliction of damage by several juveniles, one of them was in an institution that performs the functions of a guardian for him or her by law, this institution shall compensate for the damage in the proportion determined by a court decision.

A general rule applies to parents who were deprived of parental rights. Such parents are obliged to compensate for the damage caused by a child within three years after the deprivation of their parental rights, unless they prove that this damage was not a result of their failure to fulfill their parental responsibilities.

§ 3. Compensation for Damage by Persons with Restricted Capacity

The legal capacity of an individual is the ability to exercise his or her rights and obligations. In other words, an individual acquires the legal capacity to create rights and obligations for himself or herself and to bear responsibility in case of failure to fulfill them. Such legal capacity (full capacity) arises in

an individual upon reaching the age of majority (18 years). The full legal capacity of an individual is characterized by a combination of the following two criteria:

- medical (mental health and the absence of a chronic, persistent mental disorder),
- legal (awareness of the significance of their actions and the ability to control them).

The absence of one of the above criteria gives grounds for the court to restrict the person's legal capacity or declare him or her incapacitated. Therefore, the procedure for compensation for tort damages is differentiated depending on the extent of an individual's legal capacity.

Pursuant to Article 37 of the Civil Code of Ukraine, the court may restrict the civil capacity of an individual if he or she suffers from a mental disorder that significantly affects his or her ability to understand the significance of his or her actions and/or to control them. The legal capacity may also be restricted if the individual abuses alcohol, drugs, toxic substances, gambling, etc., and thereby puts himself or herself or his or her family, as well as other persons whom he or she is legally obliged to support, in a difficult financial situation.

In turn, an individual may be declared incapacitated by the court if, as a result of a chronic, persistent mental disorder, he or she is unable to understand the significance of his or her actions and/or to control them *(Article 40 of the Civil Code of Ukraine).*

Such a defect in the structure of an individual's legal capacity changes the conditions of his or her liability, due to the inability to realize the significance of his or her actions and to control them, as established by the court. Given the above, the tort law of Ukraine establishes special rules of tort liability for this category of individuals.

3.1. Compensation for damage caused by an incapacitated individual

The content of legal capacity lies in the ability of an individual to realize the significance of his or her actions and to control them, as well as the ability to acquire civil rights and exercise them independently.

An individual acquires legal capacity at the age of 18. However, such a person may be declared incapacitated by the court if as a result of a chronic, persistent mental disorder, he or she is unable to understand the significance of his or her actions and/or to control them. If a person suffers from a chronic, persistent mental disorder, it prevents a person from realizing the significance of their actions and controlling them leading to the establishment of the status of an incapacitated person.

It should be mentioned that not every mental disorder is a ground for declaring a person incapacitated. Such a mental disorder must be chronic and persistent, which, in combination, prevents a person from realizing the significance of actions. On this basis, the grounds for recognizing a person as incapacitated differ from the grounds for granting a person a status of restricted capacity.

A person is declared incapacitated by a court following the procedure established by the Civil Procedure Code of Ukraine. The relevant codified acts establish the basic requirements for the relevant application, and the range of persons (family members, guardianship and trusteeship authority, mental health care institution) who have the relevant procedural right to apply to the court.

Taking into account the grounds for declaring a person incapacitated, the court shall appoint a forensic psychiatric examination to determine the person's mental state if there is sufficient evidence of a mental health disorder *(Article 298 of the Civil Procedure Code of Ukraine)*. The conclusions of the examination become the basis for the court to make the relevant decision. An individual is recognized as incapacitated from the moment the court decision enters into force.

It is worth noting that the recognition of a person as incapacitated has time limits. According to Article 300 of the Civil Procedure Code of Ukraine, the term of validity of a decision to declare an individual incapacitated is determined by the court but may not exceed two years. However, it should be noted that the relevant period may be extended by the court repeatedly in the future if the necessary prerequisites are met. Thus, a petition to extend the term of the decision to declare an individual incapacitated may be filed by a guardian or a representative of the guardianship and trusteeship authority.

Recognition of a person as incapacitated results in the appointment of a guardian, i.e., a person who will become the legal representative of the

incapacitated person. The holders of the status of the incapacitated person take a passive position, i.e., they are limited in the independent acquisition and exercise of rights and obligations.

It should be noted that the authority of the guardian appointed to the minor is narrower in scope than that of the guardian appointed to the incapacitated person. This is attributed to the fact that a minor has the right to independently perform at least minor domestic transactions, while an incapacitated person does not.

When deciding on the recognition of an individual as incapacitated, the court establishes guardianship over the individual and, upon the recommendation of the guardianship and trusteeship authority, appoints a guardian. In practice, a family member or a relative of the incapacitated person is appointed as a guardian. If the court decides that the appointment is appropriate, an outsider may be appointed as the guardian.

The Civil Code of Ukraine *(Article 64)* sets restrictions on the persons who may act as the guardian. This is a person who was deprived of parental rights if these rights were not restored, and a person whose behavior and interests are contrary to the interests of an individual in need of guardianship or custody.

From the moment the relevant court decision is made, the person is deprived of the opportunity to exercise his or her rights. Such functions are assigned to the guardian. In this case, the guardian compensates for the person's lack of ability to exercise his or her rights, perform duties, and bear responsibility for the results of his or her actions.

According to the Article 41 of the Civil Procedure Code of Ukraine, an incapacitated individual is not entitled to enter into any transaction. Transactions on behalf of an incapacitated individual and in his or her interests are performed by his or her guardian.

Hence, the incapacitated person is not liable for damage caused by his or her actions. Liability for damage caused by the incapacitated individual is borne by his or her court-appointed guardian *(Article 1184 of the Civil Code of Ukraine).*

In addition, the tort law of Ukraine assumes that, in addition to the guardian, the damage caused by the incapacitated individual is compensated by the institution that is obliged to supervise him or her unless the latter proves that the damage was not caused by his or her fault.

Another rule relating to the procedure for compensation for damage under this tort is that the court may order compensation for damage caused by an injury, other damage to health, or death of the victim at the expense of the property of the incapacitated person in part or in full.

This condition of liability is possible only in two cases. Firstly, when it comes to compensation for such damage caused by the injury, other damage to health, or death. These cases do not apply to damage to the victim's property. Secondly, if the guardian of the incapacitated person who caused the damage died or does not have property sufficient to compensate for the damage, while the incapacitated person has such property. In other cases, such a liability is imposed on the above-mentioned persons (Chernilevska, 2015, 44-46).

As noted earlier, the incapacity of an individual has time limits. The validity of the relevant court decision cannot exceed two years. The expiry of the specified period leads to the automatic restoration of the person's legal capacity, which in turn leads to the termination of guardianship over the incapacitated person *(Article 76 of the Civil Code of Ukraine).* Thus, upon the expiry of the relevant period, the general rule of liability for damage is restored.

At the same time, it is necessary to mention that the restoration of an individual's legal capacity is not retrospective. In other words, the guardian's obligation to compensate for damage caused by the incapacitated individual does not cease in the event of the restoration of his or her civil capacity. The restoration of legal capacity leads to the resumption of the possibility of exercising rights, fulfilling obligations and being responsible for one's actions only from the date of restoration of legal capacity.

3.2. Compensation for damage caused by a person with restricted legal capacity

Pursuant to Article 36 of the Civil Code of Ukraine, the court restricts the legal capacity of a person if he or she suffers from a mental disorder that significantly affects his or her ability to understand the significance of his or her actions and (or) control them.

The grounds for the court to make the relevant decision is a mental disorder that is not chronic and stable in nature and that impedes the ability to understand the significance of one’s actions and control them, which is

typical of the grounds for declaring a person incapacitated *(Article 39 of the Civil Code of Ukraine).*

Thus, the differentiation between the grounds for restricting a person's legal capacity and declaring him or her incapacitated is based on the nature of the mental disorder.

In addition to a mental disorder, the second ground for restricting a person's legal capacity is the abuse of alcohol, drugs, toxic substances, gambling, etc. by a person established by a court, whereby bringing himself or herself or his or her family as well as other persons he or she has to maintain by the law into hard circumstances.

A person whose legal capacity is limited may only enter into minor domestic transactions on their own.

Other transactions regarding the disposal of property and other transactions that go beyond minor domestic transactions are made by a person with limited legal capacity with the consent of a guardian.

This person, as well as the guardian, is appointed by the court upon the proposal of the guardianship and trusteeship authority. His or her powers include, among other things, receiving and disposing of the earnings, pensions, scholarships, and other income of a person with a restricted legal capacity.

A guardian may authorize a person with a restricted legal capacity in writing to receive and dispose of earnings, pensions, scholarships, and other income independently.

Since a person is only restricted in legal capacity under certain conditions, he or she is still aware of the significance of his or her actions and can control them. Even though a person may be restricted in making certain transactions, he or she is solely liable for the damage caused to another person.

Thus, Article 1185 of the Civil Code of Ukraine states that damage caused by a person with a restricted capacity shall be compensated by his or her on general grounds.

The above shows that the restriction of the legal capacity of a person who attained the age of 18 in terms of entering into transactions does not affect the scope of liability of such a person.

3.3. Compensation for damage caused by an individual who was unaware of the significance of his or her actions and/or could not control them.

In addition to cases of damage caused by incapacitated persons, in respect of whom the law establishes the circle of persons who bear tort liability for their actions (guardians), there are often situations of damage caused by persons who have not legally lost their legal capacity but were actually in a state of inability to understand the significance of their actions and control them at the time of causing damage.

This can be caused by a sudden loss of consciousness, a state of affect, being under hypnosis, etc. In criminal law, such a state when liability cannot be imposed is called "insanity" *(Article 19 of the Criminal Code of Ukraine).* The signs of this state (a person "could not understand the significance of their actions or control them") coincide with the signs contained in Article 39 of the Civil Code of Ukraine, which provides for the conditions for recognizing an individual as incapacitated. However, despite the coincidence of words, the law in these cases refers to two different states.

One of them is meant to be persistent, long-lasting, and associated with a mental disorder of the person declared incapacitated. The other, referred to in Article 1186 of the Civil Code of Ukraine, stems from the legal capacity and is temporary, caused by some unexpected factors (stress, atypical for that person exposure to alcohol, etc.).

Article 1186 of the Civil Code of Ukraine establishes a rule on compensation for damage caused by a person with legal capacity who is unable to understand the significance of his or her actions or control them at the time of causing damage. According to the requirements of this article, the damage caused by an individual who, at the time of causing the damage, did not understand the significance of his or her actions and/or could not control them, shall not be compensated.

The exemption from liability in this case is based on the absence of fault in the actions of the damage caused. Since the above rule applies to legally capable persons who are responsible for their actions (persons aged 14-18 and over 18), it does not apply to persons declared incapacitated or with restricted legal capacity by law.

The practical difficulty lies in the process of proving the circumstances of such a psycho-emotional state, which must also be accompanied by a

medical examination. In addition, the law does not establish the presumption of awareness or lack of awareness of the significance of one's actions under such a tort, which makes it difficult to determine the party that has the burden of proof of this circumstance.

The fault must be proved according to the general rule set out in Article 1168 of the Civil Code of Ukraine. The relevant provision establishes the rule that the person who caused the damage is exempt from compensation if he or she proves that the damage was not caused by his or her fault.

When analyzing the relevant tort, one should bear in mind that there are several exceptions to the general rule of exemption from liability.

Firstly, taking into account the victim's interests, the court may order the insane person to compensate the damage in part or in full on his or her own, taking into account the financial situation of the victim and the person who caused the damage.

Secondly, if the individual causing the damage brought himself or herself to a state in which he or she did not realize the significance of his or her actions and/or could not control them as a result of the use of alcohol, drugs, toxic substances, etc., the damage caused by such a person is compensated on a general basis.

Thirdly, if the damage was caused by a person who was insane due to a mental disorder or dementia, the court may order compensation for this damage by his or her spouse, parents, or adult children, provided the following:

- they lived together with the person;
- they knew about the person's mental disorder or dementia;
- they did not take measures to prevent the damage.

§4. Compensation for Damage Caused to Individuals by Criminals

The Constitution of Ukraine proclaims Ukraine to be a social and legal state. The state is responsible to the individual for its activities. Article 27 of the Constitution of Ukraine establishes the duty of the state to protect human life. Such obligations of the state are particularly important in the case of the most dangerous violation of human rights, i.e., the commission of a

crime. In order to implement the above provisions of the Basic Law, the legislator establishes criminal procedural mechanisms of protection.

Causing damage by a crime is the basis for the civil liability of the offender to the victim (the offender's obligation to compensate the victim for the damage caused by the crime). As a general rule, the offender is obliged to compensate the victim for the damage caused by the crime.

The exercise by the state of such functions as protection and defense of the rights and legal interests of citizens requires the creation of an effective legal mechanism for compensation for damage caused by a criminal offense.

At the same time, the state undertakes to identify the offender and bring him or her to justice, while taking measures to ensure compensation for damage. In case of failure to fulfill its obligations, the state is justifiably obliged to compensate the victim. This is precisely the purpose of the institution of state compensation for damage to a person who suffered from a crime.

4.1. Liability for damage caused to a person by criminals

The term “criminal offense” is defined in the Criminal Code of Ukraine.

Article 11 of the Criminal Code of Ukraine defines a criminal offense as “a socially dangerous culpable act (action or inaction) committed by a subject of a criminal offense.”

The Criminal Code of Ukraine also provides a classification of criminal offenses that divides them into misdemeanors and crimes *(Article 12 of the Criminal Code of Ukraine).*

A misdemeanor is defined as an unlawful act for which the main penalty is a fine of up to three thousand tax-free minimum incomes or other punishment not involving imprisonment. They do not pose a significant public danger, unlike crimes.

Crimes, in turn, are divided into minor, grave and special grave. Unlike misdemeanors, crimes are punishable by imprisonment for a term of five years to life.

Pursuant to Article 56 of the Criminal Procedure Code of Ukraine, one of the rights of a victim is the right to compensation for damage caused by a criminal offense. Thus, damage caused by a criminal offense gives rise to a civil liability of an offender to compensate a victim for the damage.

It should be borne in mind that compensation for damage caused by a criminal offense occurs despite its differentiation depending on the degree of public danger.

4.2. Terms and Conditions of State Liability for Damage Caused to a Person by Criminals

Compensation for damage caused by a criminal offense is always in the focus of social attention. The protection of victims of criminal offenses is one of the central problems of the state and the international community. Compensation for damage to victims of criminal offenses is aimed at restoring social order. According to the tort law of Ukraine, the damage caused by a criminal offense is subject to compensation in criminal proceedings.

A suspect, or an accused person, as well as any other individual or legal entity with his or her consent, has the right to compensate for the damage caused to the victim, territorial community, or the state as a result of a criminal offense at any stage of criminal proceedings *(Article 127 of the Criminal Procedure Code of Ukraine).*

At the same time, it should be borne in mind that the obligation to compensate for damage caused to an individual by a criminal may be imposed not only on the offender or a person who is civilly liable for the offender's unlawful acts by law but also on the state. The idea of compensation for damage to a person who suffered from a criminal is based on the need to restore the position of the victim regardless of the outcome of criminal proceedings and to bring the offender to criminal liability.

The implementation by the state of such functions as the protection and defense of the rights and legal interests of citizens facilitates the creation of an effective legal mechanism for compensation for damage caused by a criminal offense (Tymoshenko, 2023, 56-67). In other words, the inability of the state to identify the person who committed the crime and bring such a person to justice is a direct consequence of the acceptance of the obligation to compensate for damage by the state.

The relevant provisions are reflected in the Civil Code of Ukraine. According to Article 1177 of the Civil Code of Ukraine, the damage caused to the victim as a result of a crime shall be compensated to his or her at the expense of the State Budget of Ukraine in cases and the manner prescribed by law.

It is worth noting that despite the existing provisions on compensation, there is no relevant mechanism for compensation. Given the content of Article 1177 of the Civil Code of Ukraine, such a mechanism should be determined by a separate law, which is currently absent. This state of affairs creates certain difficulties in disputes over the application of Article 1177 of the Civil Code of Ukraine. Consequently, the provisions of civil law are not implemented in practice.

Therefore, it is urgent to adopt a law that should define the conditions for compensation for damage caused by the crime, a clear and accessible procedure for receiving payments, and the moment when the right to compensation arises.

It should be noted that the provisions of Article 1177 of the Code establish the procedure for compensation for damage caused to an individual and cannot be applied by analogy to compensation for the damage caused to a legal entity by a criminal. Thus, the state of Ukraine undertakes to compensate for the damage caused by a criminal offense to individuals, while the state of Ukraine does not have such a positive obligation with respect to legal entities.

Due to the absence of a legislative mechanism for compensation, the Supreme Court exercised its constitutional powers in the area of soft law by stating that Article 1177 of the Civil Code of Ukraine cannot be applied in cases of compensation by the state for damage caused to a legal entity as a result of a crime (paragraph 58 of the Resolution of the Grand Chamber of the Supreme Court of 03 September 2019, case No. 916/1423/17 (proceedings No. 12-208цс18) (Resolution of the Grand Chamber of the Supreme Court, case No. 916/1423/17).

The Supreme Court noted that in accordance with Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, a plaintiff may claim compensation for the damage caused by the excessive duration of criminal proceedings if he or she proves the fact of excessive duration of the pre-trial investigation and that he or she suffered material or non-pecuniary damage and substantiates its amount.

Attempts to resolve the controversial issues of this tort were partially implemented by analogy with the rule set out in Article 1207 of the Civil Code of Ukraine (the State's obligation to compensate for damage caused by the injury, other damage to health, or death as a result of a criminal offense). According to this article, the state is obliged to compensate for damage caused by the injury, other damage to health, or death as a result of

a criminal offense if the person who committed the offense has not been identified or is insolvent.

Under Article 1207 of the Civil Code of Ukraine, the following legal facts shall be additional grounds:

- the person who committed the criminal offense has not been identified,
- such a person is insolvent.

Such conditions should also include any circumstances that make it impossible to properly investigate a crime or find the person who committed it (death of the offender, the impossibility of investigating a criminal offense, etc.) since such circumstances impede the effective protection of violated subjective rights (Tymoshenko, 2023, 56-67).

However, the terms of such compensation remain unresolved. They cannot be resolved by the rule of analogy of law because the question of the person's liability shall be resolved exclusively in law.

Having examined the provisions of Article 1177 of the Civil Code of Ukraine in cases under applications No. 54904/08 and No. 3958/13, filed by victims who were not compensated by the state for damage caused as a result of a criminal offense, the European Court of Human Rights stated that compensation on the basis of these provisions is possible only if the conditions stipulated therein are met and if there is a separate law, which does not exist and which should determine the procedure for awarding and paying the relevant compensation. Therefore, the court noted that the right to state compensation to victims of a crime had never been unconditional.

> Since the applicants did not have a clearly established right of claim in law, they could not claim to have a legitimate expectation of receiving any specific amounts from the state. In view of this, the European Court of Human Rights declared the applicants' complaints of violation of Article 1 of Protocol No. 1 to the Convention incompatible with the provisions of the Convention ratione materiae *(Judgment of the European Court of Human Rights on Admissibility of 30 September 2014 in the case of Petlyovanyy v. Ukraine, application no. 54904/08* (Judgment of the European Court of Human Rights, case of Petlyovanyy v. Ukraine) *and of 16 December 2014 in the case of Zolotyuk v. Ukraine, application no. 3958/13)* (Judgment of the European Court of Human Rights, case of Zolotyuk v. Ukraine).

According to the Supreme Court, compensation based on the provisions of Article 1177 of the Civil Code of Ukraine is possible only if the conditions

stipulated therein are met and if there is a separate law, which is not available.

In the absence of a relevant law, despite the limited provisions of Article 1170 of the Civil Code of Ukraine, an injured person is not entitled to claim compensation for damages. Furthermore, an injured person cannot claim to have a legitimate expectation of receiving any specific amounts from the state.

> Under the Civil Code of Ukraine, the right to compensation for damage caused to a person by a criminal offense does not give rise to a corresponding right to receive compensation from the State of Ukraine *(paragraph 69 of the Resolution of the Grand Chamber of the Supreme Court of 4 September 2019, case No. 265/6582/16-ts (proceedings No. 14-17tss19)* (Resolution of the Grand Chamber of the Supreme Court, case No. 265/6582/16-ц).

Under Article 1 of Protocol No. 1 to the Convention, the state has negative (to refrain from unlawful interference with the right to peaceful enjoyment of property) and positive obligations.

The positive obligations may include certain measures necessary to protect property rights. Thus, the state legal system shall provide legal guarantees for exercising property rights (preventive obligations) and legal remedies by which a victim of interference with this right can protect it by claiming damages for any loss (compensatory obligations).

In the event that the state violated its positive obligations to develop compensation mechanisms for interference with the right to peaceful enjoyment of property and to conduct an objective and effective investigation of interference with this right, the Supreme Court stated that there were no grounds to conclude that such compensation should include reimbursement of the real value of the damaged (destroyed) property.

In turn, it is precisely for the violation of the negative obligation not to interfere with this right that the state may be obliged to compensate for the damage caused to the property in full *(paragraph 71 of the Resolution of the Grand Chamber of the Supreme Court of 04 September 2019, case No. 265/6582/16-ts (proceedings No. 14-17tss19).*

Nevertheless, this legal position seems to be an attempt not so much to resolve the issue of compensation for damage, which is conditioned by the state's obligation to ensure the inviolability of the person, but rather to hide from the general problem of ensuring the effective protection of its citizens.

CHAPTER 3

STRICT LIABILITY

In the theory of law, fault is understood as a mental attitude of a person to his behavior, committed in the form of intent or negligence.

In civil law, there is no such concept of fault. It is important to keep in mind that in the doctrine of civil law, this phenomenon is considered not as a subjective mental attitude of a person to his behavior but as his failure to take objectively possible measures to eliminate or prevent the negative results of his actions, dictated by the circumstances of a particular situation.

This approach is conditioned by the nature of the legal consequences of the implemented behavior of a person. In the sphere of criminal law, when assessing guilt, the subjective attitude of the offender to the committed crime is established, which affects the degree of severity and the amount of punishment.

In contrast to criminal law, in the sphere of civil law the subjective attitude of the offender to his or her action has no significance. In civil law, the degree of fault of the offender is not determined. Only the presence of an objective possibility to prevent negative consequences by his actions or not is significant.

When guilt is found, it is possible to consider the failure to take measures to eliminate or prevent negative results of their actions. In turn, when there is no guilt involved, it is about taking possible measures by a person to prevent negative results of his actions.

In this case, fault ceases to be considered as some subjective category of mental relations of a person, and is equated to the sphere of objectively possible behavior of participants in property relations. This behavior is compared to the real circumstances of the case, namely, all the duties incumbent on a particular person and the requirements of care and diligence arising from them.

This clarifies the presumption of fault of the tortfeasor. Nevertheless, there is some case law that holds that the obligation to compensate for loss is not affected by fault. The nature of such a phenomenon is caused by special examples of a person's behavior, in which the law imposes additional requirements of care and prudence on him. This is known as *strict liability.* In such situations, the legislator imposes increased responsibility on the obliged person, assuming that he is a professional engaged in a special activity requiring special knowledge and skills, which, due to its nature, implies the possibility of an unfavorable result with a higher probability than under normal conditions.

Consequently, the basis of liability in this case will not be fault, but risk as "the danger of unfavorable consequences *(of property or personal nature)*, as to which it is not known whether they will occur or not".

At the same time, the legislator assumes that the assumption of risk by the obliged person is not unlimited. Activities are supposed to be carried out under normal conditions. Failure to fulfill or improper fulfillment of an obligation due to an extraordinary event, which cannot be foreseen and subsequently overcome *(force-majeure)*, certainly entails exemption from liability. To do otherwise would be contrary to the principles of reasonableness and fairness on which the entire system of civil law is based.

§ 1. Damage Caused by a Source of Increased Danger

The term "source of increased danger" first appeared in the Civil Code of the Ukrainian SSR in 1922.

At present, civil law theories do not agree on the nature of the source of increased danger, and this issue is still under discussion.

There are several theories that have come to be known as the *«activity theory»*, the *«object theory»* and the *«moving things theory»*.

Thus, the representatives of the *«activity theory» (M. Agarchkov, B. Antimonov, O. Ioffe, etc.)* believe that the source of increased danger should be understood as an activity of an unrestricted nature that creates danger for others. For example, M. Agarchkov wrote: *«The source of increased danger... is not a thing, but an activity oriented to the use of corresponding things»*. Proponents of the «activity theory» claim that no material object can cause harm if it is in a static state.

Representatives of the *«object theory» (O. Krasavchikov, A. Belyakova, etc.)* believe that the sources of increased danger are objects of the material world whose dangerous properties cannot be fully controlled by man.

Moreover, the proponents of this theory do not consider these objects outside the sphere of human activity, limiting themselves to a number of ways of using the source: exploitation, transportation, storage, etc.

In addition to the theory of activity and object, there is the concept of *«moving things».*

The representatives of this theory *(L. Maidannik, N. Sergeyeva, etc.)* understand the source of increased danger are things, equipment, that are in the process of operation and at the same time creating *(i.e. in the process of operation)*. The process of operation increases danger for others, such as, for example, a moving train, working machine and all kinds of other agents operating with mechanical, electric and other motors (Bardymova, 2015, 79-83).

1.1 Concepts and types of sources of increased danger

In the doctrine of tort law of Ukraine, a source of increased danger is understood as an activity related to the use, storage or maintenance of vehicles, machinery and equipment, use and storage of chemical, radioactive, explosive, flammable and other substances, keeping wild animals, service dogs and fighting dogs, etc., which creates increased danger for the person carrying out this activity and to others.

In other words, this is not only the activity of a person, but also an activity that involves the use of objects that cannot be under full human control, which is why their use creates increased danger to the environment.

All domestic animals, even if they have a rebellious temperament, cannot be classified as sources of increased danger, except for service dogs and dogs of fighting breeds. However, wild animals are a source of increased danger only if they are in human possession.

The Law of Ukraine "On High Risk Facilities" additionally regulates that such facilities also include installations, storage facilities *(tanks, vessels)*, pipelines, machines, units, technological equipment, structures or a complex of structures located within a high risk facility on or under the ground, where one or more hazardous substances, categories of substances or a mixture

thereof are temporarily or permanently used, processed, manufactured, transported and stored.

Based on the statutory definition of "source of increased danger" *(Article 1187 of the Civil Code of Ukraine)*, the list of such items whose operation creates increased danger is open. Therefore, every item that meets the criteria of unpredictability in the course of its use and the inability to fully control its operation is considered a source of increased danger.

The classification of certain items as *«sources of increased danger»* depends on the presence of two features:

- *harmfulness;*
- *impossibility of full control over them by a person.*

Since the provisions of the Civil Code of Ukraine do not contain an exhaustive list of types of sources of increased danger *(types of increased dangerous activities),* the court, taking into account the special properties of objects, substances or other objects used in the course of activities, has the right to recognize other activities as a source of increased danger. These special properties should include the creation of an increased likelihood of harm due to the impossibility of full control over them by people. The issue of classification as a source of increased danger is decided in a particular case by a court with the involvement of relevant experts in the field.

For a more systematic understanding of sources of increased danger, they can be divided into:

- *physical (mechanical, electrical, thermal)*
- *physical and chemical;*
- *chemical (poisonous, explosive, flammable);*
- *biological (zoological, microbiological).*

Thus, the source of increased danger in the doctrine of tort law of Ukraine should be understood as objects of the material world that have harmful properties, are uncontrollable or not fully controlled by a person, and when operated, create the possibility of accidental harm to others, even when measures are taken to prevent it.

1.2. Conditions of liability for damage caused by a source of increased danger

The above legal regime for the use of a "source of increased danger" objectively requires the establishment of an increased level of liability of the person who operates it. Increasing the level of liability for damage caused by a source of increased danger implies the exclusion of such an element of the tort from the tort structure.

In other words, liability for damage caused by a source of increased danger arises regardless of the fault of the tortfeasor.

The grounds for compensation for damage under this tort are:

a) *the existence of damage;*
b) *the unlawful act of the tortfeasor;*
c) *the existence of a causal link between the unlawful act and the damage.*

It seems that the fault of the tortfeasor is not required.

In view of the presumption of fault of the tortfeasor *(Article 1166(2) of the Civil Code of Ukraine)*, the defendant is released from the obligation to compensate for damage *(including non-pecuniary damage)* if it proves that the damage was caused by force majeure or intent of the victim *(Article 1187(5), Article 1167(1)(2) of the Civil Code of Ukraine)*. The victim submits evidence confirming the fact that the damage was caused with the participation of the defendant, the amount of damage, as well as evidence that the defendant is the cause of the damage or a person who is obliged by law to compensate for the damage (Resolution of the Plenum of the High Specialised Court of Ukraine for Civil and Criminal, Case No. 4).

Strict liability creates conditions for additional diligence on the part of the operator, thereby reducing the risk of damage.

The obligation to compensate for damage caused by a source of increased danger is imposed on a person who, on the appropriate legal basis *(ownership, other property right, contract, lease, etc.)*, owns a vehicle, mechanism, or other object, the use, storage, or maintenance of which creates increased danger *(Article 1187(2) of the Civil Code of Ukraine)*.

Civil liability for damage caused by activities that are a source of increased danger arises in the event of its purposefulness *(for example, the use of vehicles for their intended purpose)*, as well as in the event of spontaneous manifestation of harmful properties of objects used in such activities *(for example, in the event of damage caused by spontaneous movement of a car).* In other cases, damage is compensated on the general grounds provided for in Article 1166 of the Civil Code of Ukraine by the person who caused it *(for example, when a passenger, opening the door of a car that was not moving, caused bodily harm to a person passing by).*

It should be borne in mind that the owner of a source of increased danger is not liable for damage if he proves that the source has left his possession as a result of the unlawful actions of other persons. The relevant person who has unlawfully taken possession of a vehicle, mechanism, or other object and caused damage by using, storing, or maintaining it is obliged to compensate for it on a general basis.

However, if the negligence of its owner *(possessor)* contributed to the unlawful seizure of a vehicle, mechanism or other object by another person, the damage caused by the activities related to its use, storage or maintenance shall be compensated jointly by them, in the proportion determined by a court decision, taking into account the circumstances of material importance *(Article 1187(4) of the Civil Code of Ukraine).*

It is important to note one particular quirk with this kind of special tort. When many causes of higher risk combine to create harm, the question of compensating the owners is decided by applying general standards, which include considering the tortfeasor's responsibility.

According to Article 1188 of the Civil Code of Ukraine, damage caused by the interaction of several sources of increased danger is compensated on the following general grounds:

1) damage caused to one person through the fault of another person shall be compensated by the guilty person;

2) if only the person who suffered the damage is at fault, it shall not be compensated;

3) if all the persons whose activities caused the damage are guilty, the amount of compensation is determined in the appropriate proportion depending on the circumstances that are essential.

However, if as a result of the interaction of sources of increased danger, damage was caused to other persons, the persons who jointly caused the damage are obliged to compensate for it regardless of their fault.

In case of damage caused by a source of increased danger, the person carrying out the activity that is a source of increased danger cannot be held liable for compensation if it arose as a result of force majeure or the intent of the victim *(part five of Article 1187 of the Civil Code of Ukraine)*. Force majeure means, in particular, extraordinary or unavoidable events under the given circumstances *(Article 263(1)(1) of the Civil Code)*, i.e. those of an external nature. The intent of the victim should be understood, in particular, as such unlawful behavior when the victim not only foresees, but also wishes or deliberately allows the harmful result to occur *(e.g. suicide)*.

If the victim's gross negligence contributed to the occurrence or increase of damage, then depending on the degree of the victim's fault, the amount of compensation from the person carrying out the activity that is a source of increased danger should be reduced *(but cannot be completely denied)*.

The question of whether the negligence committed by the victim is gross negligence *(part two of Article 1193 of the Civil Code of Ukraine)* must be decided in each case taking into account the actual circumstances of the case *(nature of the action, circumstances of the damage, individual characteristics of the victim, his or her condition, etc.)*

The provisions of Article 1193 of the Civil Code of Ukraine on reducing the amount of compensation based on the degree of fault of the victim also apply in other cases of damage to property and to an individual, but in each case, the grounds for this may be gross negligence of the victim *(alcohol intoxication, disregard for traffic safety rules, etc.)*, rather than simple recklessness. *Alcohol intoxication* in itself is not an example of gross negligence, unless the traffic rules were violated.

The rules of part four of Article 1193 of the Civil Code of Ukraine on the possibility of reducing the amount of compensation for damage caused by an individual depending on his or her financial situation, except in cases where the damage was caused by a crime, apply in exceptional cases if compensation in full is impossible or would put the defendant in a difficult financial situation. In addition, the liability of a person who is obliged to compensate for damage caused by injury or other damage to health may be reduced at the written request of the victim if the victim's ability to work

has increased compared to that which he or she had at the time of the decision on compensation *(Article 1204 of the Civil Code of Ukraine).*

The fault of the victim is not taken into account in the case of compensation for additional expenses provided for in part one of Article 1195 of the Civil Code of Ukraine, in the case of compensation for damage caused by the death of the breadwinner, and in the case of compensation for funeral expenses *(part three of Article 1193 of the Civil Code of Ukraine).*

In this context, it is worth paying attention to the procedure for compensation for damage caused by certain types of sources of inherent danger, which include transport means. The relevant features are established by the Law of Ukraine "On Compulsory Insurance of Civil Liability of Owners of Land Vehicles", which was mentioned in the previous section.

This Law regulates relations in the field of compulsory insurance of civil liability of owners of land vehicles and is aimed at ensuring compensation for damage caused to life, health and property of victims during the operation of land vehicles on the territory of Ukraine (Vasiuk, 2019, 104-107).

Such land vehicles are exclusively devices intended for the carriage of people and goods and authorized for road traffic.

Therefore, in the event of an insured event, which is a road traffic accident involving a secured vehicle, resulting in the liability of the person whose liability is insured for damage caused to the life, health and/or property of the victim, the relevant compensation is paid by the insurance company. The tortfeasor is liable to the injured person only to the extent of the deductible calculated in accordance with the contract.

It should be borne in mind that the deductible does not apply to compensation for damage caused to the life or health of victims, i.e. the insurance company pays the full amount of the insurance indemnity.

The peculiarity of this act is that, unlike the general rule stipulated in Article 1191 of the Civil Code of Ukraine on the right of recourse against the guilty party, in the above case, after paying the insurance indemnity, the insurer has the right of recourse only if the insured or the driver of the insured vehicle caused the traffic accident:

a) was driving the vehicle under the influence of alcohol, drugs or other intoxicants or under the influence of medicines that reduce attention and reaction time;

b) if he or she was driving a vehicle without a license to drive;

c) if, after a road traffic accident involving him or her, he or she left the scene of the accident without permission or refused to undergo a test for alcohol, drug or other intoxication or for the use of medicines in accordance with the established procedure.

d) if the road traffic accident is determined to be a direct consequence of the non-compliance of the technical condition and equipment of the vehicle with the existing requirements.

1.3. Compensation for nuclear damage

The Laws of Ukraine "On the Use of Nuclear Energy and Radiation Safety" No. 39/95-VR of 8 February 1995, "On Civil Liability for Nuclear Damage and its Financial Support" No. 2893-III of 13 December 2001, as well as a number of international legal acts ratified by the Verkhovna Rada of Ukraine, such as the Vienna Convention on Civil Liability for Nuclear Damage as amended in 1963, establish the specifics of nuclear damage compensation.

A number of other regulatory acts were also adopted to fulfill Ukraine's international obligations and to further develop Ukrainian legislation in this area. These include Resolution of the Cabinet of Ministers of Ukraine No. 953 of 23 June 2003 "On Compulsory Insurance of Civil Liability for Nuclear Damage"; Resolution of the Cabinet of Ministers of Ukraine No. 1307 of 20 August 2003 "On Approval of the Procedure for Calculating Tariffs for Compulsory Insurance of Civil Liability for Nuclear Damage".

Pursuant to Article 1 of the Law of Ukraine "On the Use of Nuclear Energy and Radiation Safety" No. 39/95-BP dated 08 February 1995, the use of nuclear energy is defined as a set of activities related to the use of nuclear technologies, nuclear materials, ionizing radiation sources in science, production, medicine and other fields, as well as the extraction and processing of uranium ores and radioactive waste management. Such activities are undoubtedly one of the types of high-risk sources.

The terms of liability and the procedure for compensation for nuclear damage do not have specific features of liability for damage caused by a source of increased danger, but have some features.

Article 1189 of the Civil Code of Ukraine states that compensation for nuclear damage is carried out in accordance with a separate law. Thus, the Civil Code of Ukraine does not establish rules for this tort.

The relevant features of compensation for nuclear damage are set out in the Law of Ukraine "On Civil Liability for Nuclear Damage and its Financial Support" of 13 December 2001 No. 2893-III.

Under this tort, liability is incurred for nuclear damage. Such nuclear damage is defined as loss of life, any damage to human health, or any loss of property, or damage to property, or any other loss or damage resulting from the hazardous properties of nuclear material at a nuclear facility or nuclear material coming from or sent to a nuclear facility, except for damage caused to the facility itself or the vehicle used for transportation *(Article 1 of the Law of Ukraine "On the Use of Nuclear Energy and Radiation Safety").*

When nuclear damage and non-nuclear damage are caused jointly by a nuclear incident and events of a different nature, non-nuclear damage, if it cannot be reasonably separated from nuclear damage, is considered nuclear damage caused by this nuclear incident.

A certain period of time has passed since the adoption and entry into force of the above-mentioned regulatory legal acts and some practice of their application and implementation has developed. In this regard, it is already possible to draw some conclusions about the existing shortcomings in the legal regulation of this area of relations and suggest possible ways to eliminate them. Let us focus on the most significant and important problems.

The general trend in the development of international law in this area is to increase the total amount of liability and expand the concept of "nuclear damage".

According to Article 1 of the Vienna Convention on Civil Liability for Nuclear Damage, "nuclear damage" means

- *death, any bodily injury or any loss of property, or any damage to property arising from or resulting from the radioactive properties or combination of radioactive properties with toxic, explosive or other dangerous properties of nuclear fuel, or radioactive products or waste at a nuclear facility, or nuclear material coming from, produced at or directed to a nuclear facility*

- *any other loss or damage arising in this way or resulting therefrom, if provided for by the law of a competent court and within the limits established by such law;*
- *if provided for by the law of the State responsible for the facility, death, any bodily injury, loss of property or any damage to property arising out of other ionizing radiation emitted by any other radiation source within the nuclear facility.*

A wider interpretation of the term 'nuclear damage' includes not only the traditional definition of damage, such as death, bodily injury, loss of property, or damage to it, but also lost income *(lost profits)*, environmental damage, and the cost of preventive measures.

Applying a wider interpretation of the term 'nuclear damage' without increasing the minimum required amount of operator liability will reduce coverage for conventional damage. Therefore, these two areas of legislative development should be interconnected.

Ukrainian legislation should be amended to establish a transition period during which the amount of operator's liability will gradually increase. This increase may cover compensation for a new type of damage.

Additionally, Ukrainian legislation has gaps and problems in the legal regulation of nuclear damage compensation. Article 76 of the Law of Ukraine 'On the Use of Nuclear Energy and Radiation Safety' allows for an unlimited limitation period for claims seeking compensation for nuclear damage caused to human life and health. However, it is important to note that the Vienna Convention, as amended in 1963, limits the period to 10 years, and in the 1997 version, it is limited to 30 years in cases of death and bodily injury. The rule established in Ukrainian legislation on the unlimited limitation period is undoubtedly more socially progressive. However, in practice, it leads to a number of difficulties, particularly when concluding insurance and reinsurance agreements for civil liability of the operator for nuclear damage.

Article 5 of the Law of Ukraine 'On Civil Liability for Nuclear Damage' states that claims for compensation for nuclear damage may be filed with a court in Ukraine at the location of the claimant, defendant, or the place of damage.

Simultaneously, one of the most significant developments in international law regarding this matter *(the 1997 amendment to the Vienna Convention)*

was the implementation of a regulation stating that a contracting party must guarantee that only one court within its jurisdiction has authority over a singular nuclear incident. It is recommended to include this rule in the legislation of Ukraine to promote stability and consistency in judicial practice.

The feature of the unlawful act is that it must be qualified as a nuclear incident. The term "nuclear incident" should be understood as any event or series of events of the same origin that cause nuclear damage. The legislator defines a radiation accident as one of the types of nuclear incidents. This is an event that results in the loss of control over a nuclear facility or ionizing radiation source and that leads or may lead to nuclear impact on people and the environment that exceeds the permissible limits established by safety regulations, rules and standards.

The operator's liability for nuclear damage under this Law is absolute, i.e., it occurs regardless of the establishment of its fault, except as provided for in part two of Article 73 of the Law of Ukraine "On the Use of Nuclear Energy and Radiation Safety" *(the operator is released from liability for nuclear damage if it is caused by a nuclear incident that arose directly as a result of an exceptional natural disaster, armed conflict, military operations, civil war or uprising).* No person other than the operator shall be liable for nuclear damage, except as provided for in this Law.

The operator's liability for nuclear damage shall arise if this damage is caused by a nuclear incident at a nuclear facility, as well as during the transportation of nuclear material to the operator's nuclear facility after the operator has accepted liability for this material from the operator of another nuclear facility or during its transportation from the operator's nuclear facility and the liability for which has not been accepted by another operator in accordance with a written agreement.

If the amount of insurance or other financial compensation is insufficient, the state shall provide compensation for damage under the claims filed.

In accordance with paragraph 5 of the Procedure and Rules for Compulsory Insurance of Civil Liability for Nuclear Damage, the insurer is the operator of a nuclear facility appointed by the state in accordance with the established procedure. Currently, there are two officially designated nuclear facility operators in Ukraine. In particular, these are the National Nuclear Energy Generating Company Energoatom in respect of Zaporizhzhya, Rivne, Khmelnytsky and South Ukrainian Nuclear Power Plants and the State

Specialized Enterprise Chornobyl Nuclear Power Plant in respect of the Chornobyl Nuclear Power Plant.

In addition, there are other nuclear facilities in operation in Ukraine *(the Institute for Nuclear Research of the National Academy of Sciences of Ukraine and the Sevastopol National Institute of Nuclear Energy and Industry of the Ministry of Energy and Coal Industry of Ukraine),* whose operating organizations (operators) have not yet been appointed. From a formal point of view, this means that there is no entity that should bear civil liability for nuclear damage in the event of a nuclear incident and, accordingly, no formal basis for such liability insurance. However, if the operators of these nuclear facilities are appointed or other types of nuclear facilities other than nuclear power plants are built in Ukraine, there will be difficulties with the application of Ukrainian legislation in the area of financial support for civil liability for nuclear damage to such operators. This situation may arise due to the fact that most of the provisions of Ukrainian legislation in this area are focused on operating organizations (operators) of nuclear power plants that produce commercial products and do not take into account the technical features and specifics of other types of nuclear facilities, including research reactors (Cases on compensation for damages in judicial practice: a study guide, 2010, 506).

If nuclear damage was caused during the transit of nuclear material through the territory of Ukraine, the operator that is the consignor or the consignee shall be liable for nuclear damage. The moment of transfer of liability is determined by an agreement between the consignor and the consignee. In the absence of a clear definition of this moment, the shipper shall be liable until the cargo is handed over to an authorized person at the border of the state to which the cargo was sent, unless otherwise provided by international treaties to which Ukraine is a party.

Where nuclear damage and non-nuclear damage are caused jointly by a nuclear incident and events of a different nature, the non-nuclear damage, if it cannot be reasonably separated from the nuclear damage, shall be deemed to be nuclear damage caused by this nuclear incident.

Any interest or costs imposed by the court in respect of claims for compensation for nuclear damage shall not be included in the amount of the operator's liability and shall be paid in addition to any amount of compensation.

The right to file a claim for compensation for nuclear damage caused to property or the environment is valid for ten years from the date of the damage.

If the nuclear damage is caused by a nuclear incident involving nuclear material that was stolen, lost, disposed of or left unattended during this nuclear incident, the period established in accordance with part two of this Article shall be calculated from the date of occurrence of this nuclear incident, but in no case shall it exceed twenty years from the date of theft, loss, disposal or leaving nuclear material unattended.

The operator shall provide insurance or other financial security for compensation for nuclear damage in the amount and on the terms determined by the Cabinet of Ministers of Ukraine.

Cases concerning claims for compensation for nuclear damage caused by a nuclear incident that occurred on the territory of Ukraine shall be considered exclusively by the courts of Ukraine, unless otherwise provided by international agreements to which Ukraine is a party.

1.3.1. Subjects of nuclear damage compensation

The topic of nuclear damage is unique in that it is acknowledged as an operating organization *(operator).* By the term "operator", the legislator means a legal entity appointed by the state that carries out activities related to site selection, design, construction, commissioning, operation, decommissioning, closure of a radioactive waste disposal facility, ensures nuclear and radiation safety and is liable for nuclear damage.

If the nuclear damage is caused by the responsibility of more than one operator, these operators bear partial responsibility. If the share of each of them in this damage cannot be reasonably determined, these operators shall be jointly and severally liable. In any case, the liability of each operator shall not exceed the equivalent of 50 million Special Drawing Rights for each nuclear incident, where Special Drawing Rights means a unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

The State has a right of recourse against an operator that fails to provide compensation for nuclear damage in an amount equivalent to 50 million Special Drawing Rights for each nuclear incident, where Special Drawing Rights means a unit of account defined by the International Monetary Fund

and used by the International Monetary Fund for its own operations and transactions.

The Operator has a right of recourse only in two cases:

- *if this right is provided for in a written agreement;*
- *against an individual who acted or did not act with the intent to cause damage if a nuclear incident occurred as a result of the action or inaction of this person.*

1.3.2. Grounds for exemption from liability for nuclear damage

If the operator proves that the nuclear damage arose fully or partially as a result of gross negligence of the person to whom the damage was caused, or as a result of an act or omission of such a person with the intent to cause damage, the operator may be released from the obligation to compensate for the damage caused to such a person in whole or in part by a court decision.

In addition, Article 7 of the Law of Ukraine "On Civil Liability for Nuclear Damage and its Financial Support" currently sets a single amount of financial coverage for civil liability for nuclear damage at UAH 50 million. Special Drawing Rights for operating organizations (operators) of all types of nuclear facilities for each nuclear incident.

It should be taken into account that the potential consequences of a nuclear incident at a nuclear power plant and, for example, at a research reactor are completely different, and the minimum mandatory amount of financial security for civil liability for nuclear damage should reflect this difference.

A similar approach to this issue is also inherent in international law.

In particular, the Vienna Convention as amended in 1997 *(Article 5, paragraph 2)* provides that the State responsible for a nuclear facility may, having regard to the nature of the nuclear facility or associated nuclear material and the possible consequences of a nuclear incident from which it is derived, establish a lower amount of liability for the operator, provided that in no case shall any amount so established be less than 5 million Special Drawing Rights.

State responsible for the installation ensures that public funds are made available up to the amount established in accordance with Article 5(1) *(either 300 million Special Drawing Rights or 100 million Special Drawing Rights for the transitional period).*

In addition, Article 7(b) of the Paris Convention on Third Party Liability in the Field of Nuclear Energy *(as amended on 12 February 2004)* provides for the possibility of establishing a lower liability amount for the transport of nuclear materials - EUR 80 million, while the minimum mandatory liability amount for other cases is EUR 700 million.

The following conditions are currently in force in Ukraine:

The operator's liability for causing death is limited to an amount equal to 2000 tax-free minimum incomes established at the time of the court decision *(conclusion of the nuclear damage compensation agreement)* for each deceased *(Article 6 of the Law of Ukraine "On Civil Liability for Nuclear Damage and its Financial Support").*

However, the operator's liability to each victim for damage to health is limited to an amount equal to 5,000 tax-free minimum incomes established at the time of the court decision *(conclusion of the nuclear damage compensation agreement)*, but not more than the amount of actual damage *(Article 6 of the Law of Ukraine "On Civil Liability for Nuclear Damage and its Financial Support").*

In turn, the operator's liability to a person for damage caused to his property is limited to an amount equal to 5000 tax-free minimum incomes established at the time of the court decision *(conclusion of the nuclear damage compensation agreement),* but not more than the amount of actual damage *(Article 6 of the Law of Ukraine "On Civil Liability for Nuclear Damage and its Financial Support").*

§ 2. Compensation for Damage Caused by a State Authority, an Authority of the Autonomous Republic of Crimea or a Local Self-Government Body in the Field of Rule-making

Rule-making activities include both the development, adoption, and cancellation of by-laws and the development of draft laws. In particular, draft laws submitted by the Cabinet of Ministers to the Verkhovna Rada as a legislative initiative are prepared by the Ministry of Justice, other central executive authorities, and the National Bank.

Establishment of new legal norms is the main purpose of rule-making, while amendment and cancellation of outdated norms facilitate approval of new

ones, and, therefore, they are included in rule-making as its auxiliary manifestations.

Pursuant to Article 8 of the Law of Ukraine "On Lawmaking" dated 24 August 2023 No. 3354-IX, a rule of law is a generally binding formally defined rule of conduct that regulates social relations, which is protected and enforced by the state.

This law defines the legal and organizational basis of lawmaking, the principles and procedure for its implementation, the participants in lawmaking, and the rules of rule-making techniques.

As a result of law-making activities, norms are adopted, which by their content may not only pose a threat to the exercise of rights and freedoms, but also cause harm to a person. Since a legal act contains generally binding rules, which creates the possibility of harming the rights and interests of a person, the doctrine of tort law establishes the rule of strict liability for this type of tort.

2.1. Types of rule-making activities and subjects of liability for rule-making torts

Thus, rule-making is a legal form of state activity with the participation of civil society *(in cases provided for by law)* related to the establishment (authorisation), amendment, and cancellation of legal norms. Rule-making is closely related to lawmaking. However, the latter is a narrower concept, as it concerns the adoption of legislative acts only.

The content of legal norms must be externally manifested in a certain way, objectified, materially fixed, i.e. expressed in certain material "sources" that serve as an official form of expression and consolidation of legal norms. This content of legal norms is reflected in the concept of "source (form) of law" - a way of external manifestation of legal norms, which certifies their state mandatory nature and guarantee (Kovalskyi, Kozintsev, 2005, 192).

The main source *(form)* of law is a legal act - a written document of a competent authority of the State *(or an authorized local self-government body)*, which sets out a formally binding rule of general conduct provided by it

Depending on the legal force of the adopted legal acts, rule-making is divided into:

1) legislative rule-making (lawmaking), i.e. activities related to the preparation and adoption of regulatory legal acts of higher legal force - legislative acts (laws of Ukraine);

2) subordinate law-making, i.e. activities related to the preparation and adoption of subordinate legal acts (Decrees of the President of Ukraine, Resolutions of the Cabinet of Ministers of Ukraine, orders of ministries and departments, acts of other state authorities containing legal norms, as well as acts of local state administrations and local self-government bodies containing legal norms) in the field of everyday life throughout the country;

3) subordinate rule-making of the authorities of the Autonomous Republic of Crimea, i.e. activities related to the preparation and adoption of subordinate legal acts containing legal provisions in the field of organization of life in the Autonomous Republic of Crimea;

4) subordinate rule-making of local self-government bodies, i.e. activities related to the preparation and adoption of subordinate acts containing legal norms in the field of organization of housing activities of the respective territorial community.

The subjects of such activities are defined in the Constitution of Ukraine, as well as in the Law of Ukraine "On Lawmaking" of 24 August 2023 No. 3354-IX.

This law provides for three types of authorities in accordance with the system of territorial structure of the state.

(1) Public authorities in Ukraine include:

The President of Ukraine;
The Verkhovna Rada of Ukraine - the state legislative body in Ukraine;
The Cabinet of Ministers of Ukraine as a state executive body in Ukraine;
Ministries;
other state authorities and other subjects of public law, which, in accordance with the law, carry out law-making activities on behalf of the state and whose jurisdiction extends over the entire territory of Ukraine;
heads of local state administrations and heads of structural units of local state administrations;

(2) Authorities of the Autonomous Republic of Crimea, which include:

The Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, and the ministries of the Autonomous Republic of Crimea;
other authorities of the Autonomous Republic of Crimea, which, in accordance with the Constitution of the Autonomous Republic of Crimea, carry out law-making activities on behalf of the Autonomous Republic of Crimea and whose jurisdiction extends to the territory of the Autonomous Republic of Crimea;

(3) Local self-government bodies, which include:

territorial community at a local referendum;
district, city, district in cities, village and settlement councils of deputies and their executive bodies, which, in accordance with the Constitution of Ukraine and the Law of Ukraine "On Local Self-Government", carry out law-making activities on behalf of the territorial community and whose jurisdiction extends to the territory of the respective community.

2.2. Conditions for compensation for damage in the field of law-making

The conditions for compensation for damage caused by a state authority, authority of the Autonomous Republic of Crimea or local self-government body in the field of ruel-making are set out in Article 1175 of the Civil Code of Ukraine.

According to Article 49 of the Law of Ukraine "On Lawmaking", a regulatory legal act comes into force in accordance with the procedure and within the time limits established by the relevant law, but not earlier than the day of its publication. A regulatory legal act starts from the moment it comes into force and ends when it is terminated.

For example, the Law of Ukraine comes into force 10 days after its official publication.

The national legal doctrine is based on the presumption of legitimacy of the activities of the relevant authorities in the field of rule-making. In other words, any legal act is lawful until its illegality or unconstitutionality is established.

It should be mentioned that the recognition of a regulatory legal act of state authorities, the authorities of the Verkhovna Rada of the Autonomous Republic of Crimea, local self-government bodies as unlawful and invalid is carried out by administrative courts in the administrative proceedings or by a higher authority.

In turn, the recognition of laws as unconstitutional is carried out by the Constitutional Court of Ukraine in the constitutional proceedings.

Recognition of a legal act or its individual elements as unlawful and invalid or unconstitutional results in the occurrence of a rule-making tort. Therefore, in order to apply the rule of Article 1175 of the Civil Code of Ukraine on compensation for damage, it is necessary to declare a normative legal act unlawful in court (Sposibo-Fateeva, 2014, 117-129).

For example, Article 56 of the Constitution of Ukraine enshrines the rule that every person has the right to compensation at the expense of the state or local self-government bodies for property and moral damage caused by unlawful decisions, actions or inaction of state authorities, local self-government bodies, their officials and employees in the exercise of their powers.

In furtherance of this provision of the Constitution of Ukraine, Article 1175 of the Civil Code of Ukraine establishes the following rule *"...damage caused to an individual or legal entity as a result of the adoption by a state authority, an authority of the Autonomous Republic of Crimea or a local self-government body of a regulatory act that has been declared illegal and canceled shall be compensated by the state, the Autonomous Republic of Crimea or a local self-government body, regardless of the fault of officials and employees of these bodies".*

It is necessary to point out that Article 1175 of the Civil Code of Ukraine does not provide for compensation for damage caused by the adoption of acts of a non-normative nature.

The terms of the special tort set out two rules.

Firstly, damage caused to an individual or legal entity by a public authority is compensated by the state, while damage caused by a public authority of the Autonomous Republic of Crimea or a local self-government body is compensated by the Autonomous Republic of Crimea or a local self-government body independently.

Such liability of the state is conditioned by the need to assume the risk for the activities of its bodies, their officials and employees, regardless of their status.

At the same time, the state is not responsible for the legality of the activities of local self-government bodies, since the relevant bodies have independence in organizing the activities of the territorial community. This principle is enshrined in the European Charter of Local Self-Government *(Strasbourg, 15 October 1995)*, which is part of the national legislation of Ukraine *(Law of Ukraine "On Ratification of the European Charter of Local Self-Government" No. 452/97-BP of 15 July 1997).*

Secondly, compensation for damage is provided regardless of the fault of officials or employees of the relevant authority.

Liability, regardless of fault, in rule-making torts is due to the fact that public authorities are empowered to regulate people's lives. They vicariously determine the limits of legitimate behavior in society.

This situation requires an increase in the level of responsibility.

§ 3. Compensation for Damage Caused by a State Authority, an Authority of the Autonomous Republic of Crimea or a Local Government Body

The right of citizens to compensation at the expense of the state or local self-government bodies for property and moral damage caused by unlawful decisions, actions or omissions of state authorities, local self-government bodies, their officials and employees in the exercise of their powers *(Article 56 of the Constitution of Ukraine)* has been specified in civil law, primarily in the Civil Code of Ukraine, which defines the legal grounds and conditions of liability for damage caused to individuals and organizations by Articles 1173 and 1174 of the Civil Code of Ukraine.

This type of liability has the general characteristics of liability for damages, but the characteristics of applying general conditions of liability to them and the presence of a number of special conditions give grounds for separating them into an independent type.

Public authorities and local self-government bodies carry out the goals and functions of public administration through management activities. In most cases, administrative decisions are legal acts that are correlated with the

competence of the relevant authority. Its role is determined by the extent to which all legal procedures and requirements are followed in its preparation, adoption and implementation, as well as by the real managerial potential it has.

Referring to the issues of settlement of tort relations with participation of the state of Ukraine, the Constitutional Court of Ukraine in its decision of 30 May 2001 in case No. 1-22/2001 on the constitutional appeal of JSC All-Ukrainian Joint Stock Bank noted the following: *"...the Constitution of Ukraine enshrines the principle of responsibility of the state to the individual for its activities, which is manifested primarily in the constitutional definition of the state's duties (Articles 3, 16, 22). Such responsibility is not limited to the political or moral responsibility of public authorities to society, but has certain features of legal responsibility of the state and its bodies for non-performance or improper performance of their duties"*. And further: *"...Article 152 of the Constitution of Ukraine obliges the state to compensate for material or moral damage caused to individuals or legal entities by acts and actions declared unconstitutional..."* (Decision of the Constitutional Court of Ukraine, 2001).

The non-contractual nature of legal relations arising between their participants, the specificity and scope of activities of the persons who caused the damage, the responsibility of the state, and not directly of the body that caused the damage, give grounds for consideration of obligations under special torts.

3.1. The concept of public administration tort. Subjects of liability for damage

The principle of legality enshrined in Article 19 of the Constitution of Ukraine provides that local self-government bodies and their officials are obliged to act only on the basis and within the limits of their powers and in the manner provided for in the Constitution and laws of Ukraine. Similar provisions are set out in Article 4 of the Law of Ukraine "On Local Self-Government in Ukraine". Violation of the principle of legality creates conditions of liability of the relevant authorities for the damage caused.

Legal liability of the authorities is one of the main ways to implement the constitutional principles, which stipulate that the state is responsible to the society for the results of its activities. On this basis, every citizen has the right to compensation at the expense of local governments of Ukraine and the authorities of the Autonomous Republic of Crimea for property and

moral damages caused by unlawful decisions, actions or inaction of these authorities, as well as officials and employees of the relevant authorities in the exercise of their powers.

The relevant regulatory provisions are disclosed in two torts *(torts of public administration)* enshrined in the Civil Code of Ukraine.

Firstly, according to Article 1173 of the Civil Code of Ukraine, damage caused to an individual or legal entity by unlawful decisions, actions or omissions of a state authority, authority of the Autonomous Republic of Crimea or local self-government body in the exercise of their powers shall be compensated by the state, the Autonomous Republic of Crimea or local self-government body, regardless of the fault of these bodies.

Secondly, damage caused to an individual or legal entity by unlawful decisions, actions or omissions of an official or employee of a state authority, authority of the Autonomous Republic of Crimea or local self-government body in the exercise of their powers is compensated by the state, the Autonomous Republic of Crimea or local self-government body, regardless of the fault of the person *(Article 1174 of the Civil Code of Ukraine).*

The analysis of the provisions of the Civil Code of Ukraine shows that the subject of damage and the subject of liability under the public administration tort are different. The above specifies this type of tort. Thus, the mentioned tort of public administration provides not only for liability regardless of the fault of the tortfeasor, but also identifies another person responsible for the tortfeasor's misconduct *(the State, the Autonomous Republic of Crimea, a local self-government body).*

The above tort, the elements of which are enshrined in two articles of the Civil Code of Ukraine, is referred to as the tort of public administration.

The tort of public administration, in contrast to the rule-making tort, relates to:

(1) unlawfulness of state authorities, local self-government bodies and authorities of the Council of the Autonomous Republic of Crimea

(2) unlawfulness of actions or omissions of officials and officers of state authorities, local self-government bodies and authorities of the Council of the Autonomous Republic of Crimea

in the exercise of their powers in the relevant area of public administration.

Therefore, its subjects of damage (tort) are:

- *A central public authority of Ukraine, namely a ministry, department, committee, agency, etc.*
- *A local public authority of Ukraine (territorial department of a ministry, department, committee, agency, etc.)*
- *Authority of the Autonomous Republic of Crimea, namely: The Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, ministries of the Autonomous Republic of Crimea, republican committees of the Autonomous Republic of Crimea, etc.*
- *Local self-government bodies (village, town, district, city, district in cities councils and their executive bodies)*

In addition, a separate subject of the above tort of public administration are also

- *officials*

and

- *public officials,*

since they also exercise their respective competences within their own powers.

According to the national legislation of Ukraine, officials are persons who permanently, temporarily or by special authority perform the functions of representatives of the government or local self-government, as well as hold positions in state authorities, local self-government bodies, state or municipal enterprises, institutions or organizations related to the performance of organizational and administrative or administrative and economic functions, or perform such functions by special authority.

In turn, heads and deputy heads of state bodies and their staff, and other civil servants who are entrusted with organizational, administrative and advisory functions by laws or other regulations are considered public officials.

The public powers of state authorities, local self-government bodies or authorities of the Autonomous Republic of Crimea are established by the

relevant legislative acts to which they refer:

The Law of Ukraine "On Local Self-Government in Ukraine" dated 21 May 1997 No. 280/97-ВП, which defines the system and guarantees of local self-government in Ukraine, the principles of organization and operation, legal status and responsibility of local self-government bodies and officials, and their powers.

The Law of Ukraine "On Central Executive Bodies" of 17 March 2011, No. 3166-VI, which establishes the legal framework for the activities of ministries and other central executive bodies in Ukraine, defines the organization, powers, competence and procedure for their activities.

Finally, the Law of Ukraine "On Approval of the Constitution of the Autonomous Republic of Crimea" of 23 December 1998, No. 350-X IV, the Law of Ukraine "On the Autonomous Republic of Crimea" of 17 March 1995, No. 95/95-VR, and the Law of Ukraine "On the Council of Ministers of the Autonomous Republic of Crimea" of 16 June 2011, No. 3530-VI, define the powers, procedure for the formation and operation of the Council of Ministers of the Autonomous Republic of Crimea and other bodies.

Due to Articles 170 - 172 of the Civil Code of Ukraine, the state, as well as the Autonomous Republic of Crimea and local self-government bodies, acquire and exercise civil rights and obligations through state authorities within their competence established by law.

Thus, regardless of the subject of the damage *(tort),* the state, the Autonomous Republic of Crimea represented by the relevant special body and the local self-government body independently bear responsibility for this tort.

Today, such a body responsible for public torts in Ukraine is the relevant State Treasury Service as the central executive body that implements the state policy in the field of treasury services for budgetary funds.

3.2. Conditions of liability for the tort of public administration

The exercise of public powers of a public authority, local self-government body or authorities of the Autonomous Republic of Crimea is ensured not only through rule-making. The competence of an authority is also exercised by adopting individual legal acts.

Individual acts of governance are unilateral, state-powerful expressions of will by specific governing bodies and their officials adopted to exercise their

respective powers. By their very nature, individual acts of governance are acts of application of legal norms in a particular life situation. It is with the adoption of individual legal acts that the functions of governance and social conflict resolution are connected. The relevant acts are adopted in connection with solving specific tasks of the daily management activities of the authority. In this case, it is about the lawful activity of the relevant state authorities, authorities of the Autonomous Republic of Crimea and local self-government bodies (Buzin, 2016, 14 - 16).

However, in everyday life, there are cases that indicate that the behavior of the above authorities in the exercise of their powers is unlawful, which becomes a condition for tort liability.

Such unlawfulness consists of

in committing *legal action,*
through the adoption and implementation of individual legal acts by a public authority or relevant decisions by an official or officer,
and *through inaction* of the relevant authorities *(failure to fulfill the powers established by law).*

When deciding on the issue of unlawfulness in cases of appealing against decisions, actions or inaction of public authorities, in accordance with Article 2(2) of the Code of Administrative Procedure of Ukraine, the administrative court shall determine whether the actions taken *(performed)*

1) on the basis, within the limits of authority and in the manner prescribed by the Constitution and laws of Ukraine;
2) using the authority for the purpose for which it was granted;
3) reasonably, i.e. taking into account all circumstances relevant to the decision (action);
4) impartially;
5) in good faith
6) rationally;
7) in compliance with the principle of equality before the law, preventing all forms of discrimination;
8) proportionally, in particular, with the necessary balance between any adverse consequences for the rights, freedoms and interests of the person and the goals to which the decision *(action)* is aimed;
9) taking into account the person's right to participate in the decision-making process;
10) in a timely manner, i.e. within a reasonable period of time".

At the same time, according to Article 77 of the Code of Administrative Procedure of Ukraine, in administrative cases on the unlawfulness of decisions, actions or omissions of a public authority, the obligation to prove the legality of its decision, action or omission is imposed on the relevant authority.

According to the traditional approach in the doctrine of tort law of Ukraine, only unlawful behavior is grounds for liability *(Article 1166 of the Civil Code of Ukraine)*. It should be borne in mind that such unlawfulness has features in relation to the tort of public administration.

Firstly, the behavior of the subjects of a public administration tort is recognized as unlawful not only in the case of committing a prohibited act, but also in the case of committing an act that is not provided for by law. Thus, the authorities act exclusively within the limits expressly provided for by the legislation of Ukraine.

Secondly, the grounds and procedure for compensation for damages differ significantly from the general rules. In particular, compensation for damages is provided regardless of fault.

§ 4. Compensation for Damage Caused by Unlawful Decisions, Actions or Inactions of a Body Conducting Operational Investigation, Pre-trial Investigation, Prosecutor's Office or Court

The public administration tort does not exhaust the conditions of liability of public authorities for actions, although within their competence, but in excess of their powers.

In contrast to the public administration torts discussed above, the doctrine of tort law of Ukraine distinguishes a certain type of tort also in the field of public administration, which, however, due to the specifics of the competence of the relevant authorities, receives an independent legal purpose and regulatory consolidation. The nature of such a tort is that it establishes the conditions for compensation for the actions and decisions of certain public authorities in criminal proceedings or administrative procedures.

Ukrainian legislation regulates the grounds, conditions, and procedure for temporary restrictions of human rights and freedoms in various areas, including in the course of operational and investigative activities, as this is a prerequisite for law enforcement agencies to fulfill their tasks.

At the same time, the conduct of operational and investigative measures is associated not only with the possibility of applying legal restrictions in certain cases, but also with the risk of harm to individuals in respect of whom such measures are carried out. Such violations are caused both by intentional actions, including abuse by law enforcement officers or abuse of their official powers, and as a result of negligence caused by a negligent attitude to compliance with the requirements of the law in conducting operational and investigative activities (Porodko, 2023, 116-120).

Article 56 of the Constitution of Ukraine stipulates that everyone has the right to compensation at the expense of the state for property and moral damage caused by unlawful decisions, actions or omissions of public authorities, their officials and employees in the exercise of their powers. Article 62 of the Constitution of Ukraine also states that in case of cancellation of a court verdict as unjust, the state shall compensate for material and moral damage caused by the unjustified conviction.

In this case, it is about such proceedings and procedures that purposefully restrict human rights as a sanction for committing criminal or administrative offenses.

In other words, these are torts that occur when the authorized bodies violate the provisions of procedural law in criminal and administrative proceedings against an offender.

These legal relations are regulated by the Law of Ukraine "On the Procedure for Compensation for Damage Caused by Unlawful Actions of Inquiries, Pre-trial Investigations, Prosecutors and Courts", the Law of Ukraine "On the National Police", the Law of Ukraine "On Operational and Investigative Activities", the Law of Ukraine "On Organizational and Legal Framework for Combating Organized Crime", the Law of Ukraine "On the Prosecutor's Office" and other regulations.

The Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Investigative Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court" defines a list of conditions under which damage caused to a citizen is subject to compensation. In particular, these include: 1) unlawful conviction, unlawful notification of suspicion: of committing a criminal offense, unlawful arrest and detention, unlawful search, seizure, unlawful seizure of property, unlawful suspension from work (position) and other procedural actions that restrict the rights of citizens; 2) unlawful application

of administrative arrest or correctional labor, unlawful confiscation of property, unlawful imposition of a fine; 3) unlawful conduct of operational and investigative measures.

4.1. Subject of a tort in the field of decision, action or inaction of a body conducting operational and investigative activities, pre-trial investigation, prosecutor's office or court. Subjects of damage and its compensation

It should be noted at the outset that the subject matter of a tort is a violation of the powers of the relevant public authorities and their officials conducting criminal proceedings or administrative proceedings against persons who have committed the relevant criminal or administrative offenses. Other actions are the subject of a tort in the field of public administration, as discussed earlier.

It should be borne in mind that damage to an individual or legal entity may also be caused by an unlawful court decision in a civil, commercial or administrative case, in the manner prescribed by the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine or the Code of Administrative Procedure of Ukraine. However, in this case, the law assumes that the issuance of the relevant court decisions is not the subject of the above tort.

It is worth noting that the Civil Code of Ukraine does not contain any special rules on such compensation at all. Therefore, it is assumed that damage caused as a result of an unlawful court decision in administrative, civil or commercial proceedings on other issues, between bringing a person to administrative or criminal liability, is compensated under the rules of the tort of public administration *(regarding the subject of liability and conditions of culpability)*, but only if the actions of the judge that influenced the issuance of the unlawful decision constitute a criminal offense under the indictment.

The criminal or administrative offenses for which a person may be held liable by a public authority are set out in the Criminal Code of Ukraine dated 05 April 2001 No. 2341-III and the Code of Ukraine on Administrative Offences dated 07 December 1984 No. 8073-X.

The relevant procedures, the observance of which is guaranteed by the Constitution of Ukraine (Article 56), are regulated by the Criminal Procedure

Code of Ukraine No. 4651-VI of 13 April 2002 and the Code of Administrative Offences of Ukraine.

These legal acts stipulate that their main task is to protect individuals, society and the state from criminal and administrative offenses, to protect the rights, freedoms and legitimate interests of participants in criminal proceedings, and to ensure a prompt, complete and impartial investigation and trial so that everyone who has committed a criminal offense is held accountable to the extent of his or her guilt, no innocent person is accused or convicted, and no person is subjected to unreasonable proceedings.

In turn, violations of the provisions of the above-mentioned codes, in particular the requirements of Article 7 *(Ensuring legality in the application of measures of influence for administrative offenses)* of the Code of Ukraine on Administrative Offences and Article 7 *(General Principles of Criminal Procedure)* of the Criminal Code of Ukraine creates a tort described in this paragraph, which results in compensation for the damage caused.

Victims of unlawful acts are citizens who have been subjected to appropriate measures; legal entities do not have this right. In the event of the victim's death, his or her heirs are entitled to compensation.

Thus, compensation is payable for damage caused to an individual as a result of:

1) *unlawful conviction;*
2) *unlawful notification of suspicion of committing a criminal offense;*
3) *unlawful apprehension and detention;*
4) *unlawful search or seizure in the course of criminal proceedings;*
5) *unlawful seizure of property;*
6) *unlawful suspension from work (position);*
7) *other procedural actions that restrict the rights of citizens;*
8) *unlawful application of administrative arrest or correctional labor; unlawful confiscation of property, unlawful imposition of a fine;*
9) *unlawful conduct of operational and investigative measures.*

However, if the criminal proceedings are closed on the basis of an amnesty law or a pardon, the right to compensation for damages does not arise.

An individual, who is in the course of a pre-trial investigation or court proceedings, by means of self-incrimination, obstructed the discovery of the truth and thereby contributed to an unlawful conviction, unlawful prosecution, unlawful application of a preventive measure, unlawful detention, unlawful

imposition of an administrative penalty in the form of arrest or correctional labor, is not entitled to compensation for damages.

The relevant actions that cause damage to a person are carried out by special authorized state authorities within the relevant procedural competence.

According to Article 17 of the Law of Ukraine "On the Judiciary and the Status of Judges" dated 02 June 2016 No. 1402-VIII, Article 7 of the Law of Ukraine "On the Prosecutor's Office" dated 14 October 2014 No. 1697-VII and Article 5 of the Law of Ukraine "On Operational and Investigative Activities" dated 18 February 1992 No. 2135-III, such bodies and their officials are

Local and appellate courts, as well as the Supreme Court,

The Office of the Prosecutor General of Ukraine, regional prosecutor's offices, district prosecutor's offices, and the Specialized Anti-Corruption Prosecutor's Office.

The National Police, the Security Service of Ukraine, the State Bureau of Investigation, the Internal Intelligence Service, the State Border Guard Service of Ukraine, the State Protection Department, penal and detention facilities of the State Criminal Executive Service of Ukraine, intelligence agencies of the Ministry of Defence of Ukraine, the National Anti-Corruption Bureau of Ukraine and the Bureau of Economic Security of Ukraine.

If the actions of the relevant authorities and their officials are found to be unlawful, the damage caused shall be compensated if such unlawfulness is confirmed:

1) a court acquittal;

2) establishment in a court verdict of guilty or other court decision of the fact of unlawful notification of suspicion of a criminal offense, unlawful apprehension and detention, unlawful search, seizure, unlawful seizure of property, unlawful suspension from work (position) and other procedural actions that restrict or violate the rights and freedoms of citizens, unlawful conduct of operational and investigative measures;

3) closure of criminal proceedings due to the absence of a criminal offense, absence of corpus delicti of a criminal offense or failure to establish sufficient evidence to prove the person's guilt in court and exhaustion of possibilities to obtain it;

4) closure of the case on administrative offense.

The circle of subjects of tort is outlined by those persons whose activities lead to a significant restriction of human rights and freedoms in the field of criminal proceedings and administrative liability.

Other activities of public authorities outside the competence of the above-mentioned areas are referred to as the tort of public administration.

It should be noted that in this case, the subject of damage does not coincide with the subject of liability.

If the subject of the damage is the bodies and their officials specified in the Law of Ukraine "On the Judiciary and the Status of Judges", the Law of Ukraine "On the Prosecutor's Office" and the Law of Ukraine "On Operational and Investigative Activities", the relevant subject of compensation for the damage is the State of Ukraine.

Since compensation for damages is paid by the state, i.e. at the expense of the state budget, it is correct to involve the State Treasury of Ukraine as a party to the case along with the relevant liable party.

4.2. Ways to compensate for damage caused by unlawful decisions, actions or inactions of the body conducting operational and investigative activities, pre-trial investigation, prosecutor's office or court

The provisions of the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Conducting Operational Investigative Activities, Pre-trial Investigation Bodies, Prosecutor's Office and Court" are a logical continuation of Article 1176 of the Civil Code of Ukraine, which establishes that damage caused to an individual as a result of his or her unlawful conviction, unlawful prosecution, unlawful application of a preventive measure, unlawful detention, unlawful imposition of an administrative penalty in the form of a fine or a penalty in the form of a criminal sentence.

The above legal act sets out not only the conditions for compensation for tort damages and the subjects of liability, but also additional compensation for a person in case of damage caused by unlawful decisions, actions or inaction of a body conducting operational and investigative activities, pre-trial investigation, prosecutor's office or court.

Damage caused by unlawful decisions, actions or omissions of an inquiry body, preliminary *(pre-trial)* investigation, prosecutor's office or court is compensated by the state regardless of the fault of officials and employees of the inquiry body, preliminary *(pre-trial)* investigation, prosecutor's office or court.

When considering this category of cases, it is important to find out whether an individual, by means of self-incrimination, has obstructed the clarification of the truth in the case in the course of inquiry, preliminary *(pre-trial)* investigation, or trial and thus contributed to an unlawful conviction, unlawful prosecution, unlawful use of custody or recognition not to leave as a preventive measure, unlawful detention, or unlawful imposition of an administrative penalty in the form of arrest or correctional labor.

If such circumstances are established, the person is deprived of the right to compensation for damages.

Thus, the following are subject to compensation:

1) *earnings and other monetary income lost as a result of illegal actions*
2) *property (including money, money deposits and interest thereon, securities and interest thereon, a share in the authorized capital of a business entity in which the citizen was a member and the profit he or she did not receive in accordance with this share, other valuables) confiscated or turned into state revenue by a court, seized by pre-trial investigation authorities, bodies conducting operational and investigative activities, as well as property seized;*
3) *fines imposed in pursuance of a court verdict, court costs and other expenses paid by a citizen;*
4) *amounts paid by a citizen in connection with the provision of legal aid;*
5) *non-pecuniary damage.*

As mentioned above, such compensation for damage is paid from the state budget. The amount of such amounts to be reimbursed shall be determined taking into account the earnings not received by the citizen during the period of suspension from work *(position)*, during the period of serving a criminal sentence or during correctional labor as an administrative penalty.

Property confiscated or turned into state revenue by a court, seized by pre-trial investigation authorities and others, as well as property seized, is

returned in kind. The cost of lost housing is reimbursed based on market prices in force at the time of the citizen's application for compensation for damage, at prices in force at the time of the decision to compensate for damage.

In case of damage to property, the damage caused shall be compensated in full.

Compensation for non-pecuniary damage is paid when unlawful actions of bodies conducting operational and investigative activities, pre-trial investigation, prosecutors and courts have caused moral loss to a citizen, led to a disruption of his or her normal life ties, and require additional efforts to organize his or her life.

Compensation for non-pecuniary damage for the period of staying under investigation or in court is based on the amount of at least one minimum wage for each month of staying under investigation or in court.

In case of the death of a citizen, the right to compensation for damage is transferred to his or her heirs.

A citizen dismissed from his or her job (position) due to an unlawful conviction or removed from office due to unlawful prosecution must be reinstated in his or her former job *(position)*, and if this is not possible *(liquidation of an enterprise, institution, organization, reduction of position, other grounds provided for by law that prevent reinstatement in the job (position))*, he/she must be provided with another suitable job by the state employment service.

The job *(position)* is provided to the citizen no later than one month after the date of the application, if it is received within three months after the acquittal or the decision *(ruling)* to close the criminal proceedings due to the absence of a criminal offense, the absence of elements of a criminal offense in the act or the failure to establish sufficient evidence to prove the person's guilt in court and the exhaustion of opportunities to obtain it.

The period of detention, the period of serving a sentence, as well as the time during which a citizen did not work due to unlawful suspension from work *(position)*, is included in the general work experience, as well as in the work experience by specialty, civil service experience, and continuous service experience.

The length of service of workers and employees, as well as the length of service of persons who worked on the basis of membership *(in a cooperative, collective farm, etc.)*, calculated with the inclusion of the periods specified in part one of this Article, shall be taken into account when granting various privileges and benefits to workers, employees, and the above persons, including when granting pensions and state social insurance benefits.

For employees, this length of service is also taken into account when granting pensions on preferential terms and for long service, when setting monthly rates *(salaries)* depending on the length of time in the profession, and when paying lump-sum remuneration or percentage bonuses for long service.

Local self-government bodies and local authorities must return the previously occupied living quarters to a citizen who has lost the right to use them as a result of an unlawful conviction within one month of receiving the application. If the dwelling has not been preserved, the citizen will be provided with an equivalent, well-equipped dwelling in the same area within six months of their application. The new dwelling will take into account the family's composition and established norms for living space.

If a citizen has been deprived of military or other ranks, as well as state awards, due to an illegal conviction, his or her ranks and awards are restored.

If a person is acquitted, if there are no elements of a criminal offense in the act, if there is a lack of evidence to prove guilt in court, or if all possibilities to obtain evidence have been exhausted, the investigator, inquirer, prosecutor or court must, upon request, notify the person's labor collective or place of work in writing within one month of their decision.

This also applies in cases of closure of a case on an administrative offense.

If information regarding the conviction or prosecution of a citizen, the use of custody as a preventive measure, or the imposition of an administrative penalty in the form of arrest or correctional labor on them was disseminated in the media, the media must, within one month, provide a report on the decision that rehabilitates the citizen upon request.

This request can be made by the citizen themselves, or in the case of their death, by their relatives or the body conducting operational and investigative activities, such as the investigator, coroner, prosecutor, or court.

§ 5. Compensation for damage caused by defects in goods, works or services

Ukraine's transition to a market economy has created new conditions for businesses. The issue of protecting consumers' rights against defective goods and services is becoming increasingly urgent. The development of a civilized market and the protection of the constitutional rights of citizens, including their rights as consumers, are driving the consumer movement worldwide.

Consumers generally lack the necessary knowledge to make informed choices among the goods, works, or services offered on the market. They also struggle to evaluate contracts for purchase, which are often in the form of a standard template, leading to potential violations of their rights.

According to the Law of Ukraine 'On Protection of Consumer Rights', a consumer is defined as an individual who purchases, orders, uses, or intends to purchase or order products for personal needs not directly related to business activities or the performance of duties as an employee. This definition implies that only natural persons, including citizens of Ukraine, foreigners, and stateless persons, can be considered consumers (Banasevych, 2018, 90-94).

To protect the rights of individuals and legal entities in non-contractual obligations to compensate for damage, a mechanism has been established to regulate relations related to damage caused by defects in goods, works, or services. The Civil Code of Ukraine *(Articles 1209-1211)* outlines the rules for determining the conditions under which compensation for damage should be provided. The rules pertaining to consumer torts are generally applicable, as the subject matter is specific and regulated by separate laws. One such law is the Law of Ukraine 'On Protection of Consumer Rights' No. 1023-XII dated 12 May 1991, which governs the relationship between consumers of goods, works, and services and their producers and sellers, and outlines the mechanism for protecting consumer rights. The Law of Ukraine "On Liability for Damage Caused by a Product Defect" dated 19 May 2011 No. 3390-VI regulates additional content of consumer torts.

The regulatory framework for consumer torts in Ukraine is driven by the need to adapt its legislation on liability for defective products to EU law *(Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States relating to liability for defective products).*

However, the regulatory framework for consumer torts is not consistent with the need to systematize legislation. This is a result of the exclusion of the several regulations related to the same topics.

5.1. Nature of consumer tort, its subject and structure

The introduction of market relations and the development of an independent state in Ukraine have made it necessary to establish an effective mechanism for protecting the rights and legitimate interests of consumers.

The aim of creating such a mechanism is to develop and adopt a national programme on consumer protection. This programme should define the political, legal, socio-economic, organizational, and structural principles of consumer protection. Article 42 of the Ukrainian Constitution states that the state is responsible for protecting consumer rights, controlling the quality and safety of products, services, and works, and facilitating the activities of organizations and consumers.

The subject matter of a consumer tort is unlawful behavior consisting of

a) in violation of the requirements for the quality of goods, works or services, i.e. as a result of constructive, technological, recipe and other defects of goods, works (services)

b) providing false or insufficient information about goods, works or services.

It is important to consider the specific features of the statutory regulation of consumer torts. The Civil Code of Ukraine *(Articles 1209-1211)* establishes both general rules of compensation for torts and special provisions for damage caused by defects in real estate, works, and services.

The specifics of compensation for damage caused by defects in goods that are movable property, including those that are an integral part of other movable or immovable property, including electricity, are set out in the Law of Ukraine "On Liability for Damage Caused by a Product Defect".

In other words, in Ukraine, the legal regulation of consumer torts is carried out in addition to the Civil Code of Ukraine by a separate law.

Such differentiation in legal regulation is established depending on the type of property whose defects cause damage.

It is important to note that the provisions of the Civil Code of Ukraine do not cover all aspects of compensation for damages. Specifically, the code only addresses damages caused to immovable property resulting from poor quality services or works. Compensation for damages caused to movable property is addressed separately in the law. However, in the context of consumer torts, there are no fundamental differences between the two types of damages. Given the special regime of immovable property, this type of asset should be regulated independently. It is important to maintain objectivity and avoid subjective evaluations when discussing legal matters.

When defining the subject matter of a consumer tort as damage that should be compensated for defects in the manufacture and sale of goods, provision of services and performance of works, it is necessary to provide their respective doctrinal definitions:

A service is an action whose result is consumed in the course of its performance. Services are activities of an individual for the benefit of another person. This is a purposeful activity, the results of which are manifested in a beneficial effect.

Thus, in accordance with Article 901 of the Civil Code of Ukraine, a service is consumed in the process of performing a certain action or carrying out certain activities in the interests of its customer.

The main result of the provision of services is an intangible result that is not embodied in any material form, but, despite the absence of a material form, has economic value and a beneficial effect for the customer of such service;

The work is an individualized, i.e. embodied *(materialized)* result of the contractor's efforts *(work)*. The result of the contractor's work is expressed in some material form. That is, as a result of the work, an independent object of the material world is created. The material result of the work is the creation of a thing, its processing, etc.

Thus, the main criterion for distinguishing work from a service, which is most often considered in commercial cases *(establishing a valid legal relationship between the parties to a dispute),* is the material result of work and the absence of such a result in a service.

A commodity is an object of the material world intended for exchange and sale, in respect of which civil rights and obligations may arise. According to the theory of civil law of Ukraine, the relevant things are divided into movable and immovable.

Immovable things, also known as real estate or real property, include land plots and objects located on them that cannot be moved without losing value or changing their purpose. Ownership and other rights related to immovable property, as well as any encumbrances on these rights, must be registered with the state *(as stated in Article 182 of the Civil Code of Ukraine).*

Movable property, in contrast to immovable property, is a commodity that can be freely moved in space without causing damage to it. Movable property also includes money, currency values, securities, property rights and obligations *(Article 2 of the Law of Ukraine "On Securing Creditors' Claims and Registration of Encumbrances").*

Electricity is energy produced at electricity facilities and is a commodity intended for sale and purchase *(Article 1 of the Law of Ukraine "On the Electricity Market" dated 13 April 2017 No. 2019-VIII).*

It is believed that in the field of activities related to the transfer of goods, performance of works and provision of services, the activities of the responsible person are associated with the risk of providing poor quality results.

A defect in a product *(work, service)* is the absence of one of its properties. The general quality of a product *(work, service)* is concretised in the concept of suitability and usefulness.

The Law of Ukraine "On Liability for Damage Caused by Defective Products" *(Article 5)* defines the concept of defective products. According to the law, a product is considered to have a defect if it does not meet the level of safety that the consumer or user has the right to expect (Banasevych, 2012, 106-119).

A product cannot be considered to have a defect only for the reason that after it was put into circulation, products of better quality were put into circulation as well

The following should be considered as defects,

Firstly, it may be due to the absence of properties that were agreed upon by the parties in the contract or that are essential to the nature of the goods, works, or services.

There are several reasons for non-conformity of goods, works, or services.

Secondly, it may be due to the absence of properties that were specified in the information provided about them.

Thirdly, it may be due to the presence of properties that hinder their use.

Finally, it may be due to the presence of properties that pose a risk to life, health, property, or the environment.

The manufacturer of goods that are immovable property, or the contractor of works *(services)*, is obliged to compensate for damage caused to an individual or legal entity as a result of constructive, technological, recipe and other defects in the goods, works *(services)*, as well as inaccurate or insufficient information about them.

Compensation for damages does not depend on the fault of the manufacturer of the real property or the contractor of the work *(services)*, nor on whether the victim was in a contractual relationship with them.

The manufacturer of goods that are immovable property and the contractor of works *(services)* are exempt from compensation if they prove that the damage was caused by force majeure or violation by the victim of the rules for the use or storage of goods or the results of works *(services)*.

With respect to movable property, as already stated in Article 4 of the Law of Ukraine "On Liability for Damage Caused by a Defect in Products", compensation for damage also does not depend on the fault of the product manufacturer, nor on whether the victim had a contractual relationship with it.

Finally, it is important to note that Council Directive 85/374/EEC limits compensation for property damage. However, the national doctrine of tort law has not accepted these limitations, and the general rule of full compensation for damage remains in force.

5.2. Subjects of liability for damage caused by defects in goods, works and services

A specific feature of consumer torts is the variability of subjects of liability for damage caused by defective goods, works or services.

It should be borne in mind that if the injured person is an individual consumer, the tortfeasor is exclusively a business entity. It is the vulnerability

of an individual that imposes enhanced liability on the tortfeasor - liability regardless of fault.

In addition, the dual legal regulation of this type of tort leads to substantive differences in the elements of consumer tort in case of damage caused by defects in movable property or immovable property, works *(services)*.

According to Article 1210 of the Civil Code of Ukraine, manufacturers of immovable property goods are liable for damages caused by defects.

The same applies to contractors who are responsible for damages caused by defects in works or services.

It is important to provide complete and accurate information regarding the properties and rules of use of real estate goods to avoid compensation claims.

Thus, under consumer torts, where damage is caused to a person as a result of defects in goods that are immovable property, as well as defects in works or services, the subject of liability is the manufacturer of the goods or the performer of works *(services)* provided to the injured person.

According to Article 7 of the Law of Ukraine "On Liability for Damage Caused by a Product Defect", the manufacturer of movable property is also liable for damage caused by defects in movable property.

At the same time, it is worth noting that, in addition to the manufacturer, any person who has imported products into the customs territory of Ukraine for the purpose of selling, renting, leasing or distributing them in any other form in the course of business activities is also liable.

If the manufacturer of the product cannot be identified, each supplier *(seller)* of the product shall be liable as the manufacturer if it fails to inform the victim of the name and location of the manufacturer or the person who supplied the product within 30 days.

Damage caused as a result of defects in goods that are immovable property, works *(services)* shall be compensated if it is caused within the established service life *(shelf life)* of the goods, results of works *(services)*, and if it is not established, within ten years from the date of manufacture of the goods, performance of work *(provision of services).*

With regard to damage caused to movable property, compensation is possible provided that it is caused within ten years from the date of putting

the product into circulation, as a result of a defect in which the damage was caused.

§ 6. Compensation for damage in the field of corporate governance. Corporate torts

During interactions between the governing bodies of a legal entity, situations may arise where participants have different or mutually exclusive goals due to polarized aspirations to realize their own corporate interests. Importantly, a legal entity's autonomy from its participants, who ensure its existence in civil transactions, may lead to possible abuses. The legal and factual consequences of a legal entity's activities depend on the actions of individuals behind its 'veil', such as its founders, shareholders, or management. It is important to note that these consequences are objective and not influenced by subjective evaluations.

Given the aforementioned, the issue of legal liability for decisions made by officers of a legal entity is constantly being reconsidered. It is evident that liability terms must be reasonably limited based on the ability to influence management decisions that directly result in harm to the corporation.

According to Article 63 of the Law of Ukraine 'On Joint Stock Companies', officials of joint stock companies are liable for damages caused to the company by their actions or inaction. In 2015, the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on Protection of Investors' Rights' amended Article 89 of the Commercial Code of Ukraine. This amendment established the liability of officials for any damage caused by their actions taken in excess or abuse of authority, actions taken in violation of the procedure for their prior approval or other decision-making procedure, and so on.

The introduction of legal liability for officials of the corporate governance body in the banking sector was mandated by the Law of Ukraine 'On Amendments to the Law of Ukraine on Banks and Banking' regarding the determination of the characteristics of corporate governance in banks. This law increased the liability of individuals associated with the bank, particularly bank managers (Articles 42 and 52 of the Law of Ukraine on Banks and Banking), when making decisions that affect the bank's financial condition.

Under these conditions, tort law of Ukraine has developed a specific type of tort known as a corporate tort. Corporate tort terms outline the liability of a

particular category of individuals for management decisions that result in harmful consequences for a legal entity.

Not everyone has the opportunity to influence management decision-making in the field of corporate governance, so the circle of tortfeasors is personalized.

6.1. Conditions of tort liability of a legal entity in business. The principle of "through the corporate veil" in the tort law of Ukraine

It is widely recognized that a key characteristic of a legal entity is its autonomy in civil transactions. Furthermore, a legal entity is independently liable for its obligations, acts in court on its own behalf, possesses property separate from its members, and has an independent will that may differ from that of other associated individuals.

The concept of limited civil liability of participants for the results of their activities is the basis of a legal entity. This position is enshrined in the current legislation of Ukraine, specifically in Article 96 of the Civil Code of Ukraine.

According to this article, a legal entity is solely responsible for its obligations with all of its property.

A legal entity's shareholder (founder) is not responsible for the entity's obligations, and vice versa, unless otherwise stated in the constituent documents or by law. The individuals who establish a legal entity are jointly and severally liable for any obligations that arise prior to its state registration.

Recently, there has been a growing concern that the principle of limited liability, which underlies the concept of a legal entity, is being misused. This raises the question of whether the theoretical provisions on the liability of corporations for their obligations need to be revised. In summary, the principle of autonomy of a legal entity compensates for the limits of the legal liability of its shareholders for the corporation's business activities.

Therefore, a shareholder has a vested interest in the legal entity they have established, its activities, the decision-making process, and the legal and factual consequences of participating in civil turnover. Simultaneously, this interest extends beyond the mere expression of will during the establishment

of a legal entity. Similarly in scope, but distinct in its legal basis for arising, a participant's interest is also realized through the activities of the legal entity they have created. This factor prompts us to consider the extent of a shareholder's involvement in the activities of a legal entity, despite being concealed behind its 'veil', and the resulting consequences.

In common law countries, the doctrine of 'removal of the corporate veil' has become widespread. This doctrine allows for the possibility of holding the members of a corporation liable for their actions that led to the adoption of management decisions that caused damage to third parties.

In summary, a shareholder of a legal entity may be held liable for its obligations if they act dishonestly, fail to exercise due care, or act against the corporation's interests, resulting in non-fulfillment or improper fulfillment of obligations to third parties.

The tort law of Ukraine is currently developing its stance on the necessity of legislative changes. The liability scope and compensation mechanism for damage caused by a legal entity depend on its organizational form.

In a general partnership, shareholders bear subsidiary liability for tort liabilities with all their property *(Articles 119 and 124 of the Civil Code of Ukraine).* Any member is responsible for the company's debts, regardless of whether they were incurred before or after their entry into the partnership.

Additionally, a member who has withdrawn from the partnership is equally liable for the company's tort liabilities that arose before their withdrawal, along with the remaining members, for three years from the approval date of the company's annual report for the year in which the withdrawal occurred.

(-) A limited partnership is structured in such a way that the general partners bear subsidiary liability for the partnership's obligations with all their property, while one or more limited partners bear the risk of losses related to the partnership's activities solely to the extent of the amounts of their contributions *(Article 133 of the Civil Code of Ukraine).*

(-) According to Article 56 of the Law of Ukraine 'On Limited and Additional Liability Companies', a member of an additional liability company is only liable for damages caused by the company up to the value of their contribution. The amount of subsidiary compensation is set in proportion to the value of their contribution.

(-) Members of a production cooperative are also held liable for the cooperative's tort obligations as established in the cooperative's charter *(Article 163 of the Civil Code of Ukraine).*

(-) State-owned enterprises, including state unitary enterprises acting as state commercial enterprises or state-owned enterprises, are only liable for their obligations with the funds available to them. According to Article 77 of the Commercial Code of Ukraine, if there are not enough funds, the state, represented by the governing body of the state-owned enterprise, is fully responsible for the enterprise's obligations.

(-) As a business entity, a military unit is responsible for its obligations with the funds received on its account under the relevant budget items *(except for protected items).* In case of insufficient funds, the Ministry of Defence of Ukraine is responsible for the obligations of the military unit, including tort liabilities *(Article 5 of the Law of Ukraine 'On Economic Activity in the Armed Forces of Ukraine').*

Thus, today, private law theory has formed a mechanism for protecting the corporate rights of a legal entity to its proper management by establishing the limits of legal liability for the corporation's obligations arising from its members' reckless or intentional actions. Such liability may be caused not only by negative behavior, but may also exist by virtue of the legal status of the member (general partnership, production cooperative) regardless of the fault of the tortfeasor.

Two legal forms are excluded from the above list: a limited liability company and a joint stock company.

The shareholders of a joint stock company are not liable for the company's obligations and bear the risk of losses related to the company's activities only to the extent of the nominal value of their shares (Article 3 of the Law of Ukraine "On Joint Stock Companies"). In turn, a shareholder in a limited liability company is liable to the extent of his or her contribution.

The above liability conditions apply to members of entrepreneurial partnerships. Concerning the terms of liability of members of non-entrepreneurial companies for their obligations, it should be noted that the current legislation of Ukraine does not specifically establish certain features of legal regulation. The general rule is set out in Article 96 of the Civil Code of Ukraine.

The banking sector is an exception to this rule. According to Article 58 of the Law of Ukraine "On Banks and Banking Activities", bank participants (shareholders, founders) are liable for the bank's obligations, although the bank is established in the form of a joint stock company.

6.2. Terms of liability in corporate governance

In this context, it is important to note that legal liability encompasses corporate governance entities whose responsibilities include exercising executive powers (administrative, economic, and organizational) for any damage caused by their actions in the relevant area. These entities include officials of the executive body of corporate governance of a legal entity (depending on the chosen model of corporate governance, this may be the Director (Management Board), Supervisory Board, etc.).

The Law of Ukraine 'On Joint Stock Companies' and the Commercial Code of Ukraine establish the liability of officials of joint stock company bodies for damages caused to the company by their actions (inaction). Article 89 of the Commercial Code of Ukraine further establishes the liability of officials for damages caused by their actions committed with abuse of authority or in violation of the procedure for their prior approval.

Article 40 of the Law of Ukraine 'On Limited Liability Companies and Additional Liability Companies' outlines the tort liability of members of a company's executive body.

According to Part 2 of Article 40, both the members of the supervisory board and the executive body are liable to the company for any losses caused by their culpable acts or omissions. A member of a company's supervisory board or executive body is exempt from liability if they can prove that the damage was not caused by their fault.

Therefore, the subject of tort liability is an official of the corporate governance body of a joint-stock company or a limited liability company.

This section establishes the general conditions of legal liability for corporate governance officials. According to doctrine and law, these conditions require both subjective and objective elements of the tort.

The unique nature of corporations in tort law of Ukraine is determined by the organizational form of the legal entity, specifically joint stock and limited liability companies.

However, the unique nature of the tort is established in relation to the tortfeasor, who are the officials of the corporate governance body of a joint stock company and a limited liability company.

Additionally, compensation for damage in a corporate tort is only made in full if the tortfeasor is found guilty.

In my opinion, this approach is unjustified and requires revision.

The fiduciary nature of the relationship between a legal entity, its founders (shareholders), and the officials of its corporate governance body is formed by vesting them with administrative, economic, and organizational powers to manage the entity and its property.

This creates another legal model for interaction between them. The principal's confidence in the integrity and goodwill of the party with whom they have a relationship based on trust does not necessarily imply that the principal expects irrational behavior from their attorney.

Due to the fiduciary relationship between the parties involved, there is an increased risk of legal abuse. Therefore, it is necessary to establish legal factors to prevent such abuse and unfriendly behavior. This includes strengthening the legal liability of officials in the corporate governance body of a legal entity without requiring fault as a condition for liability. Additionally, reasonable compensation should be provided to the injured party through the institution of compensation for damages (Kostruba, 2021, 406).

This can help balance the legal capabilities of the participants in the trust relations being studied, particularly when one participant is in a legally weak state.

The principle of civil liability should be to ensure a reasonable balance between the interests of a legal entity and the exercise of professional competence by the corporate governance body and its officials, regardless of the tortfeasor's fault.

The professional competence of a corporate governance official is based on objective compliance with business standards. Their level of competence should enable them to prevent harmful actions or decisions and predict negative consequences of their professional activities. Establishing an official's liability, regardless of fault, increases the need for care and attention towards them.

In support of the validity of the statement, the practice of the Supreme Court should be cited (Resolution of the Grand Chamber of the Supreme Court, case No. 910/20261/16). In its Resolution of 26 November, 2019 in case No. 910/20261/16, the Grand Chamber of the Supreme Court stated:

> Individuals acting on behalf of a legal entity have a duty to act not only within their powers but also in good faith and reasonably. Considering the above legal provision and the trust-based relationship between a business entity and its officials, particularly directors or general directors, an official's unlawful behavior may not only involve failing to fulfill duties explicitly established by the company's constituent documents or abusing authority when performing actions on behalf of the company, but also improperly and dishonestly performing such actions without observing normal business risk limits, with personal interest, or with malicious intent.

Therefore, an official's liability within the corporate governance body is determined by their mandatory level of competence. This assumes that the official is aware of the potential negative consequences of their actions in the field of corporate governance and requires them to take preventative measures. A person's liability for negative consequences is the result of professional incompetence, which is considered guilt. Guilt is a subjective attitude towards actions taken in the field of corporate governance and their consequences. It can lead to prejudice and foresight into possible negative phenomena due to the appropriate level of professional competence (Kostruba, 2024, 6-23).

Thus, an important feature of the activities of the officials of the corporate governance body of a legal entity is their awareness and acceptance of the risks of their activities and their controllability. Through the principle of "no-fault (objective) liability" of corporate governance body officials for damage caused in the course of making and implementing management decisions, the rights, interests, and legitimate expectations are filled with real content.

Under the above conditions, the only ground for exemption of such an official from liability is a case (causa), i.e. a circumstance that the person could not foresee by taking appropriate measures of professional care required of his or her under specific conditions.

It should be noted that, among other legal forms of entities, the liability of officials of a legal entity's governing body is limited to the scope of the labor legislation of Ukraine. This legislation provides for liability within the

limits of a person's earnings at the enterprise *(Article 130 of the Labour Code of Ukraine).*

According to Article 133 of the Labour Code of Ukraine, heads and deputies of enterprises, institutions, and organizations, as well as heads and deputies of structural units within them, are liable for damages caused by their fault. However, their liability is limited to their average monthly salary. This applies if the damage to the enterprise, institution, or organization was caused by excessive monetary payments to employees, improper accounting and storage of material, monetary or cultural values, or failure to take necessary measures to prevent damage to the enterprise, institution, organization, or to the property of the company.

It is important to note that employees cannot be held responsible for damages that fall under the category of normal industrial and economic risks or for damages caused by an employee in a state of emergency.

In order to hold an employee liable for damages, the employer must provide evidence of both the existence of damage and the employee's fault. The liability of officials of the management body of a legal entity is limited to compensation for direct damages.

6.3 Tort liability of individuals associated with the bank

Ukrainian legislation establishes the specifics of tort liability not only in relation to certain legal entities but also in the banking sector.

The doctrine of tort law in Ukraine has specific features of liability in this sector.

These features are as follows:

(-) expansion of the circle of persons who bear tort liability for the bank's obligations (to whom the so-called "bank related parties" are also referred, in addition to officials).

(-) the atypicality of the injured party, which is the state of Ukraine represented by the Deposit Guarantee Fund (in the process of liquidating of the bank).

(-) conditions for the occurrence of the tort (damage detected during the liquidation of the bank or damage caused to the bank in the course of its current activities).

The conditions of tort liability of the bank's related parties are differentiated depending on the current economic condition of the bank:

(-) causing damage in the course of its current activities.

(-) causing damage to the bank, which is established during its withdrawal from the market.

Therefore, the liability for damage caused to a bank during its current activities is subject to the same conditions as the liability for damage in the field of corporate governance of a joint-stock company. This is due to the fact that a bank is exclusively established in the form of a joint-stock company.

The only differences are related to the circle of people, which is significantly expanded.

In the banking industry, 'persons related to the bank' are included, unlike the officials of the corporate governance body of a joint-stock company.

According to Article 52 of the Law of Ukraine 'On Banks and Banking Activities', 'persons related to the bank' are defined as:

1) controllers of the bank;

2) persons who have a significant interest in the bank and persons through whom these persons indirectly hold a significant interest in the bank;

3) managers of the bank, head of the internal audit unit, chief risk manager, chief compliance officer, heads and members of committees of the bank's board and management board;

4) related and affiliated persons of the bank, including members of the banking group;

5) holders of substantial participation in the bank's related and affiliated persons;

6) any person through whom a transaction is conducted in the interests of related parties.

It is worth noting that in the event of damage to a bank in the course of its day-to-day operations, the bank itself is the injured party.

If a bank withdraws from the market due to bankruptcy, according to Article 52 of the Law of Ukraine 'On the Individual Deposit Guarantee System', the Individual Deposit Guarantee Fund represents the state of Ukraine as the injured party.

The Deposit Guarantee Fund has the authority to remove insolvent banks from the market and liquidate them, which is why it holds a special status.

The Deposit Guarantee Fund protects depositors' rights through the guarantee system and provides mandatory compensation payments of UAH 200,000 *(Article 26 of the Law of Ukraine 'On the Deposit Guarantee System')*. The law also grants the right to act as an injured party in torts related to bank management.

The Deposit Guarantee Fund has the right to file a claim for compensation for any damage caused to a bank in court, including in foreign courts. This right arises from the moment the fund discovers any decisions, actions, or omissions that caused damage to the bank. However, this right can only be exercised during the bank liquidation process.

During the bank liquidation procedure and within three years after the bank's termination as a legal entity is recorded *(special limitation period)*, the DGF has the right to file claims with courts of competent jurisdiction, including foreign courts.

Damage *(losses)* caused by decisions, actions or omissions of the respective persons shall be reimbursed if such decisions, actions *(including actions that meet the signs of risky activities)* or omissions were made or committed in violation of the law, including regulations of the National Bank of Ukraine, and if the damage arose as a result of

1) transactions (including contracts) that are void by law;

2) failure of related parties to comply with the obligation to act in the interests of the bank and its creditors in good faith and reasonably and/or not to exceed their powers;

3) violation of prohibitions and requirements established by law regarding transactions with related parties or in the interests of parties related to the bank or in favor of such parties;

4) purchase of non-government securities and/or other financial instruments in violation of the requirements established by the National Bank of Ukraine;

5) failure of the bank to control the targeted use of credit funds by borrowers;

6) changes in the debt repayment schedule (terms and amounts of principal repayment, payment of interest/fees, priority of payments) under the loan agreement and the security agreement that were made in violation of the law;

7) unreasonable reduction or exemption of the debtor from payment of interest and other remuneration accrued under active transactions;

8) unjustified termination of acceptable collateral to the bank under a transaction or its replacement with less liquid collateral;

9) transactions performed by the bank in contravention of restrictions established by the National Bank of Ukraine, including transactions with related parties.

If damage is detected at the bank, the Deposit Guarantee Fund will file a claim for reimbursement of the losses incurred by the bank against any person who is responsible for the damage, including those related to the bank.

Liability for damage caused by 'persons related to the bank' only arises if the tortfeasor is found guilty.

6.4 Tort liability of individuals in bankruptcy proceedings

Given the current global and Ukrainian events, it is pertinent to discuss bankruptcy. In considering this issue, the focus will be on the joint and several liability of those responsible for bringing the debtor into bankruptcy and recovering funds in favor of creditors.

To impose liability for the debts of a legal entity on other persons (founders, shareholders or officials) means to depart from the general principles of civil law, according to which:

(1) a legal entity is liable for its obligations independently, with all its property;

(2) a participant (founder) of a legal entity is not liable for the obligations of the legal entity.

Ukrainian bankruptcy law provides for exceptions to these principles and allows for subsidiary or joint and several liability not only for the director of the legal entity debtor, but also for its shareholders (founders) and other persons who have the right to give instructions binding on the debtor or have the ability to otherwise determine its actions.

Subsidiary liability, as defined by legal science, is the obligation of a legal entity to suffer negative consequences arising from the failure to fulfill or improper fulfillment of obligations or violation of legal provisions not by the entity itself, but by another entity that has different legal relations with the violator.

The legal basis is Article 61 of the Bankruptcy Code of Ukraine dated 18 October 2018 No. 2597-VIII, which regulates bankruptcy procedures.

Article 61 of the Code defines the following entities as subjects of subsidiary liability for bringing to bankruptcy:

Founders (participants, shareholders) or other persons;

Including the debtor's director.

The Code specifies entities that must be checked for bringing the debtor to bankruptcy, including the founders *(participants, shareholders)* and the debtor's director, as well as 'other persons' such as the owner of the property *(the body authorized to manage the property)*, etc.

The court has broad discretion to examine the evidence and determine the appropriate entities to be held liable due to the lack of an exhaustive list of entities.

Subsidiary liability of directors, shareholders *(founders)*, and other parties arises when the debtor's assets are insufficient to satisfy the claims of all creditors. This is provided that these individuals are responsible for the insolvency of the legal entity *(debtor in bankruptcy)*.

The injured person in this tort is a legal entity that has been brought to bankruptcy. On its behalf, the liquidator has the right to assert claims against third parties bearing subsidiary liability, as set out in Article 61(2) of the Bankruptcy Code of Ukraine as follows:

In the course of exercising its powers, the liquidator has the right to make claims against third parties who, in accordance with the law, bear subsidiary liability for the debtor's obligations in connection with bringing it to bankruptcy. The amount of these claims is determined by the difference between the amount of creditors' claims and the liquidation estate.

In the event of a debtor's bankruptcy, through the fault of its founders (participants, shareholders) or other persons, including through the fault of the debtor's director, who have the right to give instructions binding on the debtor or are able to otherwise determine its actions, the founders (participants, shareholders) of the debtor, a legal entity, or other persons may be held subsidiarily liable for its obligations in the event of insufficient property of the debtor.

The recovered amounts are included in the liquidation estate and may only be used to satisfy creditors' claims in the order of priority established by the Bankruptcy Code of Ukraine.

The law does not clearly define the grounds for the liquidator to file such a claim. It is about the liquidator's detection of signs of bankruptcy, which may give rise to subsidiary liability. These signs should be identified by conducting a detailed analysis of the bankrupt's financial position in conjunction with a study of the grounds for the debtor's debt to creditors in the bankruptcy case.

These signs include the following:

Failure to submit financial and tax reports to the statistical authorities and tax inspectorate in the presence of a tax debt,

concealment of company assets by the director and founders,

absence of funds on the debtor's accounts,

violation of the requirements of the company's charter regarding the need to take measures to reduce the debtor's charter capital in case of a decrease in its assets and the need to declare self liquidation and bankruptcy in cases of insolvency.

The list of signs of bankruptcy provided above is not exhaustive. It is the liquidator's responsibility to determine whether to file a relevant application with the court. Once signs of bankruptcy have been identified, it is the

liquidator's duty to prove their conclusions to the court in subsequent proceedings.

It is important to note that in its Resolution dated 20 March 2019, in case No. 5024/980/2011, the Supreme Court stated that subsidiary liability for bringing a company to bankruptcy may only be imposed to satisfy creditors' claims. Expenses incurred during the liquidation procedure are not considered as creditor claims.

Therefore, such expenses cannot be satisfied at the expense of third parties who, in accordance with the law, bear subsidiary responsibility for the debtor's obligations in connection with bringing it to bankruptcy (Resolution of the Supreme Court, case No. 5024/980/2011).

CHAPTER 4

COMPENSATION FOR DAMAGE TO HUMAN HEALTH

According to the Constitution of Ukraine *(Article 3),* a person, his or her life and health, honor and dignity, inviolability and security are the highest social values of the state. The protection and defense of these benefits is enshrined in the Constitution, as well as in laws and regulations. It should be noted that human life and health are protected by the Criminal Code of Ukraine, the Labour Code of Ukraine, etc.

The legislator pays particular attention to the consequences of causing injury to a person by mutilation, other damage to health or death. The relevant torts have a number of characteristics in comparison with the general rules of liability for damages. This case is traditionally distinguished in civil law as a special tort, which, in addition to the Civil Code of Ukraine, is also regulated by special regulations in the field of compulsory state social insurance.

Compensation for damage to health is established in three types of tort.

First, it is a tort caused by injury or other damage to health

Secondly, it is a tort caused by the death of an individual

Thirdly, medical practice torts should also be distinguished.

The aforementioned tort liability arises under the general conditions of civil liability, which in this case have certain features.

As the life and health of a person is an absolute value, any injury or other damage to health or deprivation of life is unlawful. Damage to life or health is permissible only in exceptional cases expressly provided for by law *(e.g. when damage is inflicted in a state of necessary defense).*

The issues of the practice of consideration by the courts of cases on compensation for damage caused to an individual by injury, other damage

to health or death are reflected in the Resolution of the Plenum of the Supreme Court of Ukraine of 27 March 1992 No. 6 "On the Practice of Consideration by the Courts of Civil Cases on Claims for Compensation for Damage".

The peculiarities of these torts, in turn, lie in the procedure and methods of compensation for health damage and the conditions of strict liability.

§ 1. Damages for Injury or Other Damage to Health

The Constitution defines the highest social value as a person's life, health, honor, and dignity. To uphold this principle, several legislative acts, including the Civil Code of Ukraine, have incorporated important provisions that align with and clarify the constitutional principles regarding citizens' rights, freedoms, and obligations.

Compensation for injury or damage to health is a legal mechanism that protects property and non-property rights violated by such harm. This type of tort is governed by Articles 1195-1199 of the Civil Code of Ukraine, which outline the rules for compensation. The characteristics of this type of tort is that it pertains to injury or damage to health that does not result in death.

The grounds for compensation are as follows:

An injury refers to physical damage caused by a sudden or one-time impact on the human body.

Other health damage refers to any disease or damage unrelated to an injury.

When it comes to direct compensation, the cause of the damage is irrelevant. The Civil Code of Ukraine provides general rules for cases of harm to a person that do not result in death.

1.1 The concept of damage caused by injury or other harm to health and the grounds for liability

According to Article 1195 of the Civil Code of Ukraine, an individual or legal entity that has caused injury or other damage to an individual's health is obligated to compensate the victim for lost earnings (income) resulting from the loss or reduction of professional or general ability to work. The responsible party must also reimburse additional expenses incurred due to

the need for enhanced nutrition, sanatorium treatment, the purchase of medicines and prosthetics, third-party care, and other related expenses.

The tort terms allow for compensation for harm caused to a person's health due to injury or other health damage. The relevant damage is non-pecuniary in nature, as it does not result in a direct change in the person's property status due to the tortfeasor's conduct. However, it is important to note that the restoration of a person's health, as a result of a harmful impact, can have property consequences. The restoration of a person's physiological or psycho-emotional state requires additional costs for treatment and rehabilitation. Additionally, damage to health can result in a reduction of a person's ability to work and loss of earnings.

Such damage may be expressed in the form of injury to a person, which leads to a violation of the psycho-emotional state of a person or the anatomical integrity of human tissue, organs and their functions, and arises as a result of external damaging factors. In other words, a person's injury can be of a mental or physical nature.

Damage to a person's health can result not only from the tortfeasor's active acts but also from their inaction, which can have a significant impact on a person's psycho-emotional state.

The determination of health damage is carried out through an expert examination at the medical and social examination bodies of the Ministry of Health of Ukraine. The examination assesses the degree of limitation of a person's vital activity, the cause and time of onset, disability group, and facilitates effective measures to prevent disability, rehabilitate disabled people, and adapt them to social life. This examination is conducted on individuals who have lost their health due to illness, injury, or congenital defects that limit their vital activity. The examination also assesses the person's compensatory and adaptive capabilities, which can aid in their functional, psychological, social, professional rehabilitation, and adaptation. This assessment is crucial in determining the amount of compensation.

The legislation in Ukraine does not clearly establish the criterion for determining the tortfeasor's fault in liability conditions, unlike the torts mentioned in previous chapters. Therefore, when determining liability conditions for injury or other health damage, it is necessary to follow the general provisions on compensation for property damage *(Article 1166 of the Civil Code of Ukraine)*. According to Article 1166(2) of the Code, the

individual responsible for the damage is not liable for compensation if they can prove that the damage was not caused by their fault.

1.2. Mechanism of compensation for damage. Changes in the amount of compensation

Traditional mechanisms of compensation provide that damage is subject to compensation in full by the person who caused it. Such reimbursement is made to the extent of the actual value of the lost or damaged property.

Compensation for damage caused by injury or other damage to health uses other alternative mechanisms not only to determine the amount of compensation, but also the method of compensation.

According to Article 1195 of the Civil Code of Ukraine, an individual or legal entity that causes injury or other harm to an individual's health is obligated to compensate the victim for lost earnings (income) resulting from the loss or reduction of professional or general ability to work.

They must also reimburse additional expenses incurred due to the need for enhanced nutrition, sanatorium treatment, the purchase of medicines, prosthetics, third-party care, training for another profession, the purchase of special vehicles, and other related expenses.

In this context, the income category (earnings) encompasses not only past payments during the recovery of work capacity but also future payments in the event of an inability to restore professional or general work capacity.

(Determination of the amount of compensation for employed persons)

The determination of compensation for employed persons involves calculating the percentage of average monthly earnings lost due to injury or damage to health. The determination of compensation for employed persons involves calculating the percentage of average monthly earnings lost due to injury or damage to health. This compensation is based on the degree of loss of professional ability to work, or general ability to work if professional ability is not affected.

The calculation of the victim's average monthly earnings (income) is based on the twelve or three last calendar months of work preceding the injury or disability due to injury or other health damage, upon request.

If the victim's average monthly earnings (income) are less than five times the minimum wage, the amount of lost earnings (income) is calculated based on five times the minimum wage.

The lost earnings (income)

Includes	*Excludes*
All types of remuneration under the employment contract at the place of the main job and part-time work, on which personal income tax is paid, in the amounts accrued before tax is deducted	One-off payments, compensation for unused vacation, severance pay, maternity pay, etc.

To calculate compensation for an occupational disease, the victim's average monthly earnings for the twelve or three most recent calendar months before the termination of employment due to the injury or health damage may be considered upon request.

(Determination of the amount of compensation for individual entrepreneurs and self-employed persons)

The amount of income of an individual entrepreneur or a self-employed person (lawyer, person engaged in creative activity, etc.) lost as a result of an injury or other damage to health that is subject to compensation is determined by the annual income received in the previous business year divided by twelve. If this person received income for less than twelve months, the amount of his or her lost income is determined by determining the total amount of income for the relevant number of months.

The amount of income from entrepreneurial activity lost by an individual entrepreneur as a result of injury or other damage to health is determined on the basis of data from the tax authority.

(Determination of the amount of compensation for non-working individuals)

In cases of injury or other health damage to an individual who is not employed, compensation is determined based on the current minimum wage in Ukraine.

If the victim had a job at the time of the injury, their average monthly income will be computed using their pre-dismissal income or, upon request, the going rate for a worker with their level of experience in the field.

Compensation for damage caused to an individual due to injury or other health-related issues should not take into account any pensions received in connection with the loss of health or received prior to the incident, nor any other social benefits.

(Determination of the amount of compensation in respect of a minor (under the age of 14) or a minor (between the ages of 14 and 18)

In case a minor suffers an injury or any other health damage, the responsible individual or legal entity is obligated to cover the expenses for treatment, prosthetics, ongoing care, special nutrition, and any other related costs.

After the victim reaches the age of fourteen (or eighteen for a student), the legal entity or individual responsible for the damage is also obligated to compensate the victim for any damage related to the loss or reduction of their ability to work, based on the minimum wage established by law.

If the minor had earnings at the time of the injury, compensation must be based on the amount of their earnings, but not below the statutory minimum wage.

If the victim is unable to work due to injury or other health damage suffered before reaching the age of majority and does not possess professional qualifications, they have the right to claim compensation for damages. The compensation amount should not be lower than the minimum wage established by law.

Unlike the general terms of the tort, which establish the rule that the amount of compensation cannot be changed as it is equal to the direct costs of restoring the situation that existed before the damage was caused, the tort under study contains certain reservations.

For instance, according to Article 1195(4) of the Civil Code of Ukraine, an agreement or law may increase the scope and amount of compensation for damage caused to the victim by injury or other damage to health.

Thus, when a minor or underage victim commences employment in accordance with their qualification, they have the right to demand an increase in compensation for damage related to a decrease in their professional ability to work as a result of injury or other damage to health.

This compensation should be based on the salary of employees with the same qualification, but not below the minimum wage established by law.

It is important to consider that only the victim's earnings (income) after the relevant change should be taken into account when determining the average monthly earnings (income), if their financial situation improved due to changes such as an increase in salary, a transfer to a higher-paid job, or employment after graduation.

§ 2. Compensation for Damage Caused by the Death of an Individual

In legal literature, human death is defined as the irreversible cessation of brain activity, which inevitably leads to the death of the body. This is characterized by a set of functional, instrumental, laboratory, biological, and cadaveric signs. From a civil law perspective, an individual's death is a legal fact that legal norms link to the emergence, change, and termination of civil legal relations.

Furthermore, the scope of compensation for damages remains variable. It is evident that in the case of the death of the injured party, compensation cannot be received. Therefore, unlike damages caused by injury or other health-related issues, and unlike damages caused by death, the right to compensation is granted solely to the injured party.

To trigger the obligation to compensate for damage caused by the death of an individual, two interrelated factors must be established: the death of the person and the statement that the person's death was the result of damage caused by a certain person.

According to civil law, causing the death of an individual results in a reduction of their property benefits for their dependents, creditors, insurers, etc. It is important to note that this description is purely objective and does not include any subjective evaluations. The concept of damage in the event of death includes three components: violation or termination of an intangible good (life), property damage (loss of funds for maintenance, funeral expenses), and non-pecuniary damage (Verenkiotova, 2020, 57 - 62).

Compensation for death caused by the misconduct of another entity is the primary consideration, rather than cases where death is the result of biological factors.

2.1. Subjects of compensation for damage caused by the death of a person

The death of an individual is an independent ground for termination of obligations. Thus, Article 609 of the Civil Code of Ukraine provides that an obligation is terminated by the death of the debtor or creditor if it is inextricably linked to him or her and therefore cannot be fulfilled by another person.

Compensation in tort law is not only about the need for full compensation for the damage caused. An important role is also played by the need for direct compensation of the tortfeasor for the damage caused to the injured person. In this way, the doctrine of tort law of Ukraine ensures the most complete restoration of the injured person's position, which consists not only in appropriate pecuniary compensation for damage, but also in the regulation of moral relations between the tortfeasor and the injured person.

There is no doubt that infliction of harm to a person worsens his or her psycho-emotional state, which creates a threat of counter, potentially unlawful actions against the tortfeasor. This situation intensifies the social conflict between the tortfeasor and the injured person and may lead to further negative phenomena. That is why this possibility is avoided by direct compensation of damage by the tortfeasor to the injured person, which creates an apologetic context in the existing conflict.

Unfortunately, this idea cannot be applied to the tort of causing the death of a person. At the same time, the abolition of the obligation to compensate for the damage caused by the death of a person, as provided for in Article 609 of the Civil Code, would mean increasing the confrontation between the tortfeasor and the relatives of the deceased. Such an idea goes beyond the principles of civil law. In this case, the resolution of a social conflict is achieved by changing the composition of the entities to which the damage is compensated.

In other words, the death of the injured person in the tort law of Ukraine does not lead to the termination of the obligation to compensate for damage. The death of an injured person results in substitution of the injured person's right to compensation by other persons who are related to the injured person.

In accordance with Article 1200 of the Civil Code of Ukraine, in the event of the victim's death, disabled persons who were dependent on the victim or had the right to receive maintenance from the victim on the day of his or her

death, as well as the victim's child born after the victim's death, are entitled to compensation.

The Civil Code of Ukraine determines not only the circle of persons entitled to compensation in place of the injured person in the event of his or her death, but also the duration of the compensation.

Thus, damages are compensated to:

1) a child - until the age of eighteen (a pupil or student - until the end of his or her studies, but not beyond the age of twenty-three)

2) husband, wife, parents (adoptive parents) who have reached the legal retirement age - for life

3) disabled persons - for the duration of their disability;

4) to one of the parents (adoptive parents) or the other spouse or other family member, regardless of age and ability to work, if they are unemployed and taking care of: children, brothers, sisters, grandchildren of the deceased - until they reach the age of fourteen;

5) other disabled persons who were dependent on the victim - for five years after the victim's death.

The legislator's position is that the death of a person makes it impossible for him or her to fulfill his or her social and legal obligations towards his or her family members, which he/she would have to ensure in society. These include bringing up their children, ensuring their financial well-being and creating conditions for their socialization.

However, parents' responsibilities are not limited to caring for their children. Family law in Ukraine also imposes several responsibilities on other members of a person's family, including the second spouse and parents.

Following this logic, it can be seen that causing the death of a person leads to the irreversible destruction of the reasonable expectations of the relevant social group in the field of family relations. In this way, compensation ensures the restoration of the situation of this most vulnerable group of people. Persons who were dependent on the deceased.

In the above case, the principle of full compensation in tort law is implemented through compensation for damage to a certain social category of other persons (family relations) who need it under certain conditions. And

also compensation for the damage within a reasonable period of time for the future. The period during which the deceased would have ensured the social welfare of the group of persons under other conditions.

This is an exception in the doctrine of tort law of Ukraine, when compensation is not paid for actual losses, which a person has already suffered because of the damage caused. This is the case when the compensation is paid in advance (in the future) as compensation for the lost opportunity to receive the appropriate level of financial security that the deceased person is obliged to provide to a certain social group of persons within a certain period of time.

2.2. The procedure for compensation for damage, determination of the amount of compensation

In the event of the victim's death, property losses are incurred by persons close to the victim who were fully or partially supported by the victim during his or her lifetime (as their breadwinner).

The relevant persons will be entitled to compensation in the amount of the victim's average monthly earnings (income) minus the share that was attributable to the victim and able-bodied persons who were dependent on the victim but are not entitled to compensation.

The victim's income also includes a pension, amounts due to him or her under a life care contract, and other similar payments that he or she received.

Survivors are compensated in full without regard to the pension awarded to them as a result of the loss of the breadwinner and other income.

In addition, the tortfeasor is obliged to reimburse the necessary funeral expenses and the construction of a tombstone.

The amount of compensation calculated for each of the persons entitled to compensation for damage caused by the death of the breadwinner is not subject to further recalculation, except in the following cases: the birth of a child conceived during the life of the breadwinner and born after the death of the breadwinner; appointment (termination) of compensation to persons caring for children, brothers, sisters, grandchildren of the deceased.

In contrast to the general procedure for compensation set out in Article 1192 of the Civil Code of Ukraine, there is a special compensation mechanism for this type of tort.

Thus, Article 1202 of the Code stipulates that compensation for damage caused by the death of the victim is made in monthly installments.

In the presence of circumstances that are essential and taking into account the financial situation of the individual who caused the damage, the amount of compensation may be paid in a lump sum, but not more than three years in advance.

The amount of compensation for this tort is not static.

The victim is entitled to an increase in the amount of compensation if his or her ability to work has decreased compared to that which he or she had at the time of the decision on compensation.

In addition, the person who is obliged to compensate for damage caused by injury or other damage to the victim's health has the right to demand a reduction in the amount of compensation if the victim's ability to work has increased compared to that which he or she had at the time of the decision on compensation.

In the event of termination of a legal entity obliged to compensate for damage caused by injury, other damage to health or death and the establishment of its successors, the payment of monthly payments shall be made by its successors.

In this case, claims for an increase in the amount of compensation shall be made against his or her successors.

At the request of the victim, in the event of an increase in the cost of living, the amount of compensation for damage caused by injury, other damage to health or death is subject to indexation on the basis of a court decision.

At the request of the victim, in the event of an increase in the minimum wage, the amount of compensation for damage caused by injury, other damage to health or death shall be subject to a corresponding increase on the basis of a court decision.

§ 3. Torts In Medical Practice

Almost every person is faced with the need to seek medical advice to solve a particular health problem. A patient who visits a health care institution of any kind expects to receive qualified, high-quality and appropriate care. Unfortunately, cases and situations of inappropriate medical care and

unsuccessful medical interventions are becoming increasingly common, resulting in injury or even death.

Civil liability for medical services is governed by the general rules of tort liability. Unfortunately, the national legislation of Ukraine does not contain any specifics about the legal regulation of this type of tort. Some provisions of Article 80 of the Fundamentals of the legislation of Ukraine on health care provide, in a fragmentary and general manner, the rule of liability for persons guilty of violation of health care legislation. This leads to difficulties in legal qualification. According to Article 49 of the Constitution of Ukraine, everyone has the right to health care, medical care and medical insurance.

Health care is provided through state funding of relevant socio-economic, medical, public health and preventive programs. The State creates conditions for effective and accessible medical care for all citizens. Medical care is provided free of charge in state and municipal health institutions; the existing network of such institutions cannot be reduced. Therefore, by law, medical services are provided within the system of free medical institutions (Kravchuk, 2022, 218 - 221).

In addition, the state promotes the development of medical institutions of all forms of ownership, which makes it possible to assert that medical services are also provided in accordance with the terms of the contract between the parties.

In turn, different grounds for the provision of medical services establish different conditions of liability for damage caused to an individual.

3.1. Liability of healthcare professionals for damage caused to a patient's health in the system of free healthcare institutions

The population of Ukraine is provided with medical care by a network of outpatient, inpatient and specialized institutions. All healthcare facilities in the healthcare system provide a guaranteed level of medical care. That is, the state guarantees full payment in accordance with the tariff at the expense of the State Budget of Ukraine for the provision of medical services and medicines to citizens that they need, as provided for by the medical guarantees program *(Article 3 of the Law of Ukraine "On State Financial Guarantees of Medical Care for the Population" of 19 October 2017 No. 2168-VIII).*

Under the medical guarantees programme, the state guarantees citizens, foreigners, stateless persons permanently residing in Ukraine and persons recognized as refugees or persons in need of additional protection full payment at the expense of the State Budget of Ukraine for the medical services and medicines they need in connection with the provision of:

1) *emergency medical care;*
2) *primary medical care;*
3) *specialized medical care;*
4) *palliative medical care;*
5) *rehabilitation in the field of healthcare;*
6) *medical care for children under 16 years of age;*
7) *medical care in connection with pregnancy and childbirth.*

The program of medical guarantees is developed taking into account the provisions of sectoral standards in the field of healthcare in accordance with the procedure established by the central executive body responsible for the formation of state policy in the field of healthcare, in agreement with the central executive body responsible for the formation of state financial and budgetary policy.

Pursuant to Article 9 of the above law, in case of need for medical services and medicines under the medical guarantees program, the patient *(his or her legal representative)* shall apply to a medical service provider.

The patient *(his or her legal representative)* exercises *his or her* right to choose a doctor by submitting a declaration to the healthcare provider on the choice of a doctor who provides primary health care. Medical service providers are prohibited from refusing to accept the declaration on the choice of a primary care physician and to manage the patient, in particular, on the basis of the patient's chronic disease, age, gender, social status, financial situation, etc.

Medical activities are characterized by unpredictable consequences of interventions (inability to provide a certain prognosis of the patient's reaction to medicines, surgery, etc.), as well as a high risk of invasive intervention.

Negligent or accidental harm to a patient's health or life is a characteristic feature of medical activity, which is related to such features as the possible unpredictability of the consequences of medical intervention, which may be due to the features of the biological organization of the human body. It is

worth noting that such objective reasons cannot be foreseen by a medical professional. For example, a doctor cannot predict a patient's allergic reaction or the atypical course of a particular disease.

In addition, a wrongful act in the sphere of medical activity may be caused by a medical error.

In the doctrine of tort law of Ukraine, a medical mistake is any inadequacy in the delivery of medical treatment that results from the misconduct of medical staff members or from their inaction as professionals.

When analyzing the issue of tort liability of health care professionals, national legislation is based on the general rule of compensation for damages set out in Article 1166 of the Civil Code of Ukraine.

This article provides that damages caused by injury, other damage to health, or death of a person due to force majeure shall be compensated in cases established by law. To date, such a legal prescription remains the right provided for in Articles 1195-1208 of the Civil Code of Ukraine.

It should be noted that, unlike other types of tort, this type of tort is characterized by the unlawfulness of not only the actions, but also the inaction of a medical professional.

A wrongful act occurs when a healthcare professional provides medical care to a patient in violation of healthcare standards or local regulations, resulting in harm to the patient's life or health. In turn, the inaction of a medical practitioner may consist in failure to provide medical care to a patient or failure of a medical practitioner to carry out all medical interventions necessary to restore and maintain health or save life (Kravchuk, Kotiuk, 2020, 36 - 41).

Any inaction on the part of a medical professional is considered unlawful on the basis of the requirements of Articles 37 and 78 of the Fundamentals of Legislation of Ukraine on Healthcare, which stipulate that medical professionals are obliged to provide immediately the necessary medical care in case of an emergency.

According to Article 34 of the Fundamentals of Legislation of Ukraine on Healthcare, the attending physician is obliged to provide timely and qualified examination and treatment of the patient. Article 78 of the Fundamentals also imposes an obligation on medical and pharmaceutical

professionals to provide timely and qualified medical and pharmaceutical care.

The issue of unlawfulness in the form of inaction on the part of a health care professional is of particular importance in the absence of health care standards for various nosologies and the lack of gaps in new clinical protocols, as well as the problematic implementation of these protocols in medical practice.

The conditions of liability for damage to human health have already been examined in detail.

Compensation for damage to human health is based on the existence of features such as fault, wrongfulness, damage and a causal link between the acts and the consequences. In other words, when deciding on the issue of compensation for damage to human health caused by medical intervention, the existence of general conditions of tort *(Article 1166 of the Civil Code of Ukraine)* is taken into account. The mechanism of compensation and the amount of compensation have specific features.

For example, in the case of bodily injury or other damage to the health of a person who was not working at the time of the injury, the amount of compensation is determined on the basis of the minimum wage.

The amount of earnings (income) lost by an individual as a result of an injury or other damage to health, which is subject to compensation, is determined as a percentage of the average monthly earnings (income) that the victim had before the injury or other damage to health, taking into account the degree of loss of professional ability to work and, in its absence, of general ability to work *(Article 1197 of the Civil Code of Ukraine).*

The same features apply to the injured person. In the event of the victim's death as a result of medical intervention, disabled persons who were dependent on the victim or had the right to maintenance from the victim on the day of the victim's death, as well as the victim's child born after the victim's death, are entitled to compensation *(Article. 1207 of the Civil Code of Ukraine).*

Finally, the victim is entitled to an increase in the amount of compensation if his or her ability to work has decreased in comparison with the ability to work at the time of the decision on compensation *(Article 1203 of the Civil Code of Ukraine).*

3.2. Liability of healthcare professionals for damage caused to the patient's health when the patient receives paid healthcare services on the basis of a contract

The second way of providing medical services is by receiving paid medical services on the basis of a separate contract. Such medical services do not differ from free medical services in terms of the protocol for their provision. The difference lies in the support of the medical service. Such support includes more comfortable conditions of hospitalization, use of modern diagnostic equipment, optimisation of the service provision process, i.e. no queuing, the possibility of choosing a doctor with a different qualification, additional nutrition, etc.

When concluding a contract for the provision of health care services, the parties to the legal relations in the sphere of health care services enter into contractual relations, which are regulated by the articles of Chapter 63 of the Civil Code of Ukraine, which contains general provisions on services. Additional (special) legal regulation will be based on the provisions of the Law of Ukraine "On Protection of Consumer Rights".

Contractual civil liability will arise in the event of non-performance or improper performance of the terms of a health services agreement by the parties. In other words, civil liability under the provisions of the Law of Ukraine "On Protection of Consumer Rights" arises if a medical service is provided with defects *(material defects)* - a medical error.

A medical error is defined as a type of defect that constitutes improper performance *(or non-performance)* of professional duties by a medical professional as a result of a subjective or objective error, not related to a negligent or dishonest attitude, which caused damage to the patient's health.

While the free health care system provides for the provision of medical services within a guaranteed scope that ensures a safe level of health care, the paid health care system provides medical services that go beyond the basic guarantees provided by the state system. The relevant medical services are provided on a paid basis in accordance with the service agreement.

In the above case, legal regulation is carried out by the provisions of the Law of Ukraine "On Protection of Consumer Rights", which provides for liability in accordance with the provisions of Article 1209 of the Civil Code of Ukraine *(Compensation for Damages Caused by Defective Goods, Works (Services)).*

Thus, according to the law, a service provider is obliged to compensate for damage caused to an individual or legal entity as a result of constructive, technological, recipe, or other defects in services, as well as inaccurate or insufficient information about them.

Compensation does not depend on the fault of the producer of the real estate, the service provider, or whether the victim had a contractual relationship with them.

At the same time, the service provider is exempt from compensation if he proves that the damage was caused by force majeure or by the victim's breach of the rules governing the use or storage of the results of the services.

From the above, it can be concluded that there are two independent mechanisms of compensation for medical negligence. When providing medical services within the guaranteed scope of free medical care, the tort liability of a medical professional arises under the general conditions provided for in Article 1166 of the Civil Code of Ukraine *(if the tortfeasor is guilty)*. At the same time, the damage caused to an individual in the case of medical services provided on a paid basis in accordance with a contract is the basis for compensation regardless of the fault of the perpetrator *(Article 1209 of the Civil Code of Ukraine).*

SECTION III.

EXTRAORDINARY TORTS IN THE LAW OF UKRAINE

CHAPTER 1

TORTS OF WAR

The tragic events of 2022 that began in the center of Europe have had a profound impact on the world. The corresponding changes have been felt in law, economics and politics. These changes have also affected science. Ukrainian scientists have been grappling with the legal qualification of damage caused by military operations. It is clear that this type of tort requires its own legal identification in science and practice.

A war tort (damage caused as a result of military operations) cannot be an ordinary occurrence. It is not of a domestic nature.

It is also important to note the ethical aspect of this issue. It is that war itself is an extraordinary phenomenon that has no place in the modern world. However, the existence of damage as a result of military operations cannot be avoided. Their existence is a dramatic reality. Given the general principles of tort law, such damage also requires compensation.

It is worth noting that the negative phenomena of war (from causing damage to loss of life) cannot be defined as general in the context of the doctrine of tort law. They differ in the conditions of causation and the subject of causation. Therefore, it may be advisable to establish special rules of compensation for this type of tort.

It cannot be classified that war torts are special types of torts because of the extraordinary nature of this phenomenon, which may not have a permanent presence in social life. It is uncertain whether this concept will be included in the current codification. If it is not, it can be perceived as an ordinary event.

In light of this, the author suggests that the damage caused by military operations should be classified as a war tort. In the system of tort law, a war tort is an extraordinary tort. Its extraordinary nature is determined by the interdisciplinary nature of its regulation. This implies that a war tort is defined not only at the national level, but also in international acts, particularly between countries at the conclusion of peace and after a war.

§ 1. Compensation for Damage Caused by Military Aggression of Another Country

The issue of compensation for damage caused by military actions first arose in 2014, after the annexation of Crimea from Ukraine and the outbreak of hostilities in Donbass. At that time, such damage consisted not only of destruction of or damage to civilian property as a result of hostilities, but also of large-scale confiscation of property of individuals and legal entities by the occupying authorities.

Unfortunately, Ukrainian legislation at that time did not provide for effective legal mechanisms to protect the property interests of affected Ukrainian citizens and entrepreneurs.

The general principles of compensation for property damage are set out in Article 1166 of the Civil Code of Ukraine, which stipulates that a person who has suffered damage as a result of a violation of his or her civil rights is entitled to compensation, and that damage to the property of an individual or legal entity is compensated in full by the person who caused it.

Obviously, the usual mechanisms of compensation for damage caused during war are not effective. In most cases, the victims do not know which soldier caused the damage and cannot collect evidence of his guilt. Moreover, it is difficult to determine whether the damage was caused by the enemy military or not. For example, property damage can be caused by rocket attacks by both the defense forces and the military of the aggressor country. Furthermore, even if such evidence were miraculously to be found, a civil action against the perpetrator would not ensure the restoration of the violated rights of the injured parties, because of the immunity of the State.

In addition, the legal status of the defendant in this category of disputes remains uncertain due to the limited information on the nature of the damage caused.

At the same time, the existence of loopholes in Ukrainian legislation on the above-mentioned issues cannot compensate for the principles of the rule of law and the social state. In any case, the damage caused requires compensation.

The complexity of the problem provoked a discussion on the issue of liability. Some scholars argued for the responsibility of the aggressor state, which was in line with the logic of events. However, the liability of the state is limited by the limits of judicial immunity, so that any court decision is legally null and void. Enforcement is questionable. As a result, the position

of scholars has prevailed that the issue of state responsibility should be resolved outside the ordinary judicial process. Ukraine has its own positive obligations to its citizens, including in relation to international policy.

The issue of liability for damage caused as a result of another country's military aggression should be resolved in the context of Ukraine's social responsibility to its citizens. The legal basis for this approach is laid down in Article 1177 of the Civil Code of Ukraine, which regulates the conditions for compensation for damage caused to an individual as a result of a criminal offense.

The logic of this approach is based on the fact that, in accordance with the provisions of the Criminal Code of Ukraine, harming civilians during hostilities is classified as a crime against humanity, peace, security and international law and order. Thus, the conditions of liability for compensation of damage caused as a result of military aggression of another country under Article 1177 of the Civil Code of Ukraine are relevant. In this context, the use of the analogy of the law provided for in Article 8 of the Civil Code of Ukraine, as the conditions of compensation are similar in content.

1.1 The Legal Grounds for the Liability for the Damage Caused to Ukraine by the Aggressor State

Today, legislation of Ukraine has adopted a special law regulating the procedure of compensation for damage caused by hostilities.

It is the Law of Ukraine "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and on the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine" dated 23 of February 2023, No. 2923-IX.

This law establishes the legal and organizational framework for compensation for damage to and destruction of certain categories of real property as a result of hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine as of 24 February 2022.

Article 2 of the Law defines the range of persons entitled to compensation. They are as follows

1) an individual - a citizen of Ukraine;

2). associations of co-owners of residential buildings.

The law does not provide for compensation to legal entities or individuals who are not citizens of Ukraine. The law also imposes restrictions on compensation for persons subject to personal sanctions and persons with criminal records for crimes against the national security of Ukraine.

In order to consider compensation for destroyed real estate, a local government body establishes a commission to consider compensation.

An application for compensation for destroyed property must be submitted to the Commission.

The compensation for the destroyed immovable property is provided by:

1) *providing funds by transferring them to the current account of the compensation recipient with a special regime of use to finance the construction of a manor, garden, or country house. Such an account shall be opened in the name of the beneficiary. The procedure for opening and maintaining such accounts shall be established by the National Bank of Ukraine;*

2) financing the purchase of an apartment, other residential premises, a manor house, a garden or a cottage (including financing the purchase of such premises/house to be built in the future or investment/financing its construction) using a housing certificate.

Compensation for damaged real estate is provided by:

1) carrying out construction works on the damaged real estate for its restoration (including preparation of construction project documentation, its examination and construction works) and/or purchasing construction products for such works;

2) providing funds by transferring them to the current account of the compensation recipient with a special regime of use for construction-related works at the damaged real estate for the purpose of its restoration and/or purchase of construction products for such works;

3) providing funds by transferring them to the current account of the compensation recipient for the construction products purchased by him

and/or the repair works carried out by him on the damaged real estate at his own expense.

Sources of financing compensation for damaged and destroyed property include:

1) state funds (including the Fund for Restoration of Property and Destroyed Infrastructure, the Fund for Elimination of Consequences of Armed Aggression) and local budgets;

2) funds from international financial organizations, other creditors and investors;

3) international technical and/or repayable or non-repayable financial assistance;

4) reparations or other sanctions from the Russian Federation.

The provisions of the law do not oblige the Ukrainian state to compensate all victims. They oblige the state to help only one category of victims - those who lost their homes. Thus, the issue is raised in the context of "compensation" for damage, not "restitution".

The difference between the two legal concepts lies in the amount of payment. While restitution implies the payment of the full value of the damaged property, "compensation" defines the limits of such compensation.

As a type of state social assistance, compensation involves the state paying money to a specific victim group at its own expense, in amounts and according to guidelines decided by the state.

At the same time, however, there are other separate legal provisions that provide for the possibility of compensating victims, namely Articles 84-86 of the Civil Protection Code of Ukraine, which establish the procedure for the state to provide assistance to persons who have lost their homes as a result of emergencies *(according to Article 5 of the Code, military situations are also considered emergencies).*

Pursuant to Article 86 of the Civil Protection Code of Ukraine, the state pays monetary compensation to victims for lost housing on condition that they voluntarily transfer their destroyed or damaged housing to the state, and the amount of such compensation is determined not by the actual value of the destroyed or damaged housing, but by the indirect costs of its construction in the relevant region of Ukraine.

The Resolution of the Cabinet of Ministers of Ukraine No. 947 dated 18 December 2013 "On Approval of the Procedure for Providing and Determining the Amount of Financial Assistance to Victims of Emergency Situations and the Amount of Financial Compensation to Victims Whose Residential Houses (Apartments) were Destroyed as a Result of a Military Emergency Caused by the Armed Aggression of the Russian Federation" approved the general Procedure for Providing and Determining the Amount of Financial Assistance and established the relevant mechanism.

Resolution of the Cabinet of Ministers of Ukraine No. 380 of 26 March 2022 approved the Procedure for Submitting Information Reports on Damaged and Destroyed Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Military Aggression of the Russian Federation, which provided for the possibility of submitting information reports on destroyed/damaged real estate through the Diia web portal.

Based on the results of the inspection, the commission draws up an act in accordance with the established form, which is the basis for entering information into the State Register of Damaged or Destroyed Property.

The relevant Register was established in June 2023. As of February 2024, the Register of Damaged and Destroyed Property contains information on 606,000 reports on more than 200,000 objects (about 50 million square meters destroyed).

Compensation is paid in accordance with the Methodology for Determining the Damage and Amount of Losses Caused to Enterprises, Institutions and Organisations of All Forms of Ownership as a Result of Destruction and Damage to Their Property in Connection with the Armed Aggression of the Russian Federation, as well as Loss of Profit from the Impossibility or Obstacles to Conducting Business Activities, approved by Resolution of the Cabinet of Ministers of Ukraine No. 3904/1223 of 18 October 2022.

The mechanism for obtaining compensation is therefore as follows:

1. *Submission of an information notice;*
2. *Carrying out an inspection and determining the amount of compensation;*
3. *Making a decision on compensation;*
4. *Payment of compensation to the claimant.*

Thus, as of today, the mechanism of compensation for damage in the form of payment of compensation to the injured party for the loss of real estate is established only at the expense of the state budget of Ukraine.

The current legislation in Ukraine does not provide for other mechanisms of compensation. However, the above does not exclude the possibility of bringing the relevant persons, in particular the state whose military aggression resulted in damage to an individual, to trial by the mechanism of circumvention of the state's judicial immunity.

1.2. Waiving the judicial immunity of a state

Judicial immunity means that a State is not subject to the jurisdiction of the courts of another State without its consent. The grounds for the prosecution are irrelevant. As a general rule, states cannot be sued in foreign courts unless they have voluntarily submitted to the jurisdiction of foreign courts. This applies to direct claims against foreign states and to indirect claims, such as in rem claims against a ship belonging to a foreign state (Kostruba, 2023, 166-194).

Immunity from interim measures means that no coercive measures can be taken against state property without the consent of the state. Immunity from enforcement means that, without the consent of the State, it is impossible to enforce a judgment given against it that can be enforced by a court of another State.

In addition to the above, a more general concept is used - property immunity. The question of this type of immunity may arise, for example, in connection with a specific case before a court.

The application of immunity does not imply a denial of justice. An action against a State can be brought in the courts of that State. And in the courts of another state - only with its express or implied consent. There are different ways of expressing consent. First, by authorized persons. Secondly, such consent may be expressed by States on a mutual and voluntary basis in a customary or conventional rule of international law, in particular in a multilateral or bilateral trade agreement, etc.

Domestic legislation establishes the principle of absolute legal immunity of a foreign state *(Article 79 of the Law of Ukraine "On Private International Law").*

After the start of the full-scale invasion, the Supreme Court of Ukraine issued a number of decisions that changed the approach to the issue of the jurisdictional immunity of the aggressor state. These are the decisions of the Supreme Court in cases No. 308/9708/19 of 14 April 2022 (Resolution of the Supreme Court, case No. 308/9708/19; Resolution of the Supreme Court, Case No. 760/17232/20-ц; Resolution of the Supreme Court, Case No. 760/17232/20-ц), which established the legal position of the court on the issue of jurisdictional immunity of the state. In its decision the Supreme Court stated that the aggressor state as a defendant does not enjoy jurisdictional immunity, since its actions *(armed aggression against another state)* are not an exercise of its sovereign rights and cannot be recognized as acta jure imperii (Medvedeva, 2023, 44 - 52).

In support of its position, the Supreme Court stated that the State is not entitled to invoke immunity in cases of damage to health or life if such damage was caused, in whole or in part, on the territory of the forum State and if the person who caused the damage was on the territory of the forum State at the time.

The feature of the legal status of the state as a subject of international relations is the existence of its immunity, which is based on the general principle of international law "equal power and jurisdiction over equal". However, the prerequisite for observance of this principle is mutual recognition of the sovereignty of the country, so if another state denies the sovereignty of Ukraine and wages a war of aggression against it, there is no obligation to respect and observe the sovereignty of this country (Resolution of the Supreme Court, case No. 308/9708/19).

Therefore, in the above cases, the aggressor state does not have jurisdictional immunity because:

1) upholding judicial immunity would deprive the plaintiff of effective access to a court, which is incompatible with the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

2) Russia's judicial immunity does not apply under customary international law as codified in the 1972 European Convention on the Immunity of States of the Council of Europe and the 2004 United Nations Convention on the Jurisdictional Immunities of States and Their Property;

3) maintaining the immunity of the aggressor state is incompatible with Ukraine's international legal obligations in the field of counter-terrorism;

4) the jurisdictional immunity of the aggressor state is inapplicable in view of the violation of Ukraine's state sovereignty and therefore does not constitute an exercise of its sovereign rights protected by jurisdictional immunity.

The Supreme Court took into account the following factors: the subject matter of the claim concerns compensation for non-pecuniary damage to Ukrainian citizens caused by the death of another Ukrainian citizen; the place of the damage is the territory of Ukraine; the damage was caused by agents of the Russian Federation who violated the principles enshrined in the UN Charter prohibiting military aggression against Ukraine; the commission of acts of armed aggression by a foreign state indicates a violation of the obligation to respect the sovereignty and territorial integrity of Ukraine; the national legislation of Ukraine provides for the possibility of compensation for non-pecuniary damage to Ukrainian citizens. Taking into account these circumstances, the Supreme Court recognized that judicial immunity does not apply to the aggressor country in this case (Vasylenko, Buchynska, 2023, 104-107).

It is worth noting that today, the practice of states is gradually changing in the direction of supporting the theory of functional (limited) immunity. For example, the US courts have made a number of decisions against "state sponsors of terrorism" for violations of human rights, applying the exception to immunity under the Foreign Sovereign Immunities Act. If Russia is recognized as such a state, victims of violations will be able to circumvent its sovereign immunity in American courts.

The practice of national courts of Italy (Ferrini case), Greece (Distomo case), South Korea (Comfort Women case), Brazil (Shangri-la case) indicates the limitation of jurisdictional immunities of states in connection with compensation for victims of human rights violations (Vasylenko, Buchynska, 2023, 104-107).

In turn, the International Court of Justice recognizes that jurisdictional immunity is an important principle of international law that protects the sovereignty of states and their ability to act without hindrance in the jurisdiction of other states. However, the court also emphasizes that there are limitations to the application of jurisdictional immunity, especially in cases where states violate principles of international law, such as human rights violations or international obligations.

Specific decisions of the ICJ on jurisdictional immunities of states may vary depending on the circumstances of each case and the interpretation of the relevant international treaties and rules of international law.

There are two international legal instruments governing the issue of immunity from jurisdiction:

European Convention on the Immunities of States of 16 May 1972 (ETS 74)

The UN Convention on Jurisdictional Immunities of States and their Property of 02 December 2004.

The above conventions contain the so-called "tort exception", i.e. they prohibit the State from invoking its jurisdictional immunity in the case of damage to persons or property *(Article 11 of the European Convention and Article 12 of the UN Convention)*. Neither Ukraine nor Russia is a party to either of these conventions. However, in the above case it can be argued that a customary rule of international law has been formed that ensures the application of the "tort exception" to the issues of compensation for damage caused during an armed conflict, regardless of the accession to the said international instruments. Thus, in the judgment of the European Court of Human Rights of 14 March 2013 in the case of Oleynikov v. Russia (application no. 36703/04) it was stated that the courts of Ukraine may apply the rules contained in the UN Convention, even if the country has not ratified the Convention (Judgment of the European Court of Human Rights, case of Oleynikov v. Russia). This is possible under customary international law, unless the country has objected to these rules.

In addition, the European Court of Human Rights judgment concluded that a state's "judicial immunity" cannot in itself constitute an exception to the right to a fair trial and requires a comprehensive analysis of the admissibility of a derogation from a state's "judicial immunity" in specific cases.

The granting of state immunity in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between states through respect for each other's sovereignty. The question before the court is therefore whether the restriction of the right of access to court through "judicial immunity" is proportionate to these aims. In this regard, the European Court of Human Rights has recognized the trend in both international law and practice of an increasing number of states towards limiting the application of state immunity (Judgment of the European Court of Human Rights, case of Cudak v. Lithuania).

The relevant restrictions cannot objectively relate to functions closely related to the exercise of state power. Therefore, when resolving the issue, it is necessary to prove that the dispute involving the state concerns its sovereign interests as a condition for the application of "judicial immunity". Without any understanding of the true nature of the state's participation in a dispute, the formal application of the "judicial immunity" clause is not in line with international law, which undoubtedly means that the right of an individual to access a court is restricted.

Therefore, another way to effectively protect the rights of the injured person is to apply to the judicial authorities of national jurisdiction at the place of injury, since the aggressor state concerned has limited "judicial immunity" in cases of compensation for damage caused by military operations.

CHAPTER 2

TORTS IN PRIVATE INTERNATIONAL LAW

The current level of international integration leads to the development of economic relations complicated by a foreign element in their structure. This complication affects various spheres of activity, from labor migration and trade, on the one hand, to compensation for damages, on the other.

The regulation of private legal relations, which are connected by at least one of their elements with one or more legal systems other than the Ukrainian legal system, has its own characteristics. These characteristics are connected with the necessity to determine:

1) the law to be applied, including the possibility of choosing this law on the basis of the principle of free will

2) the range of issues relating to the place of resolution of the dispute

3) the place and the court for the settlement of disputes.

Thus, although the actual mechanism of compensation for damages involving foreign elements may not have significant differences, the relevant features are enshrined in the procedural issues to be determined.

The choice of law in matters of tort leads to the determination of the law governing the grounds and limits of tort liability, commonly known as the tort statute. This law is not uniform from one country to another.

The main conflict-of-law criterion in this area is the principle of the law of the place where the damage was caused *(lex loci delicti)*. The legislation of a number of countries *(Greece, Italy, Germany, Turkey, Japan, etc.)* and the judicial practice of France and Belgium are based on this principle.

However, different countries use different criteria to define the "place where the tort was committed.

This place may be defined either as the place where the act giving rise to the claim was committed, or the place where the consequences of that act

occurred, or some combination of the two. Here are some examples of how this problem has been solved.

It is worth noting that a foreign element in a legal relationship may not only be a foreign person *(tortfeasor, injured party).*

The foreign element may be manifested in the form of a certain legal fact *(damage)* occurring in a certain place.

It is well known that the conditions for the creation of obligations to compensate for damage in private international law include the location of the court considering the dispute, as well as the subordination to foreign law of certain antecedent facts to which the right to compensation is linked *(insurance contract).*

§ 1 Tort liability governed by conflict of laws

In the field of private international law, the choice of the applicable law is of paramount importance when deciding on the question of compensation for damage. In order to determine the limitation period of a tort liability, private international law is governed by the conflict rules of tort law. They directly indicate the law of a particular country which should be applied to resolve disputed issues of tort liability in the field.

In the area of tort obligations under private international law, the main and most common binding rule, which is close to the customary rule, has a long history of practical application and is widely enshrined both at the level of national legislation and international agreements, is the binding rule of the law of the place where the tort was committed - *lex loci delicti commissi*.

The general rules of conflict of laws are the laws of:

1) *the place where the tort was committed;*
2) *the personal law of the tortfeasor;*
3) *the nationality of the victim and the tortfeasor, if the same;*
4) *the personal law of the victim;*
5) *the court.*

Traditionally, tort obligations have been governed by the law of the forum and the law of the place where the tort was committed. The concept of *"place where the tort was committed"* is defined as either the place where the harmful act was committed or the place where the harmful consequences occurred.

Locating the elements of the actual composition of the tort in different countries raises the problem of qualifying the legal categories of the tort. Modern law allows the injured party to choose the law that is most favorable to him. In addition, the presumption of "common nationality" or "common domicile" of the parties to a tortious relationship is widely used to determine the applicable law (International private law : textbook for masters, 2013, 959).

The laws of many States provide for exceptions to the generally accepted conflict rules in favor of the personal law of the parties and the law of the forum (if the parties themselves have agreed on its application). The principle that the court should choose the law of the State which best serves the interests of the victim is now widespread. The public policy clause is widely used in tort relations because of the coercive (public law) nature of such obligations.

The traditional tort obligations - the law of the place where the tort was committed and the law of the forum - are considered "rigid" in modern practice. As the law of all states now tends towards "flexible" conflict-of-law rules, it is possible to apply the law of free will, the law of persons, the law of relationships, the law most closely connected with tort obligations. Today, tort obligations are mainly regulated by flexible conflict-of-law rules.

1.1. Collision clause in general indemnity terms

Unlike other codifications, the Civil Code of Ukraine does not contain conflict-of-law rules.

The conflict of laws rules on non-contractual obligations in Ukraine are governed by Part VII (Conflict of Laws Rules on Non-Contractual Obligations) of the Law of Ukraine "On Private International Law" of 23 June 2005, No. 2709-VII.

This section contains four articles dealing with the conflict of laws rules on non-contractual obligations. According to the general rule of conflict of laws in Ukraine, tort obligations are governed by the law of the state where the act was committed *(lex loci actus).*

The special legislation of Ukraine regulating tort relations in the field of private international law *(Articles 49-50 of the Law of Ukraine "On Private International Law")* provides for the following two collision clause

1. Rights and obligations arising out of damage are governed by the law of the state in which the act or other circumstance giving rise to the claim for damages occurred.

2. Rights and obligations arising out of damage caused abroad, where the parties are domiciled or resident in the same country, shall be governed by the law of that country.

3. The law of a foreign state shall not be applied in Ukraine if the act or other circumstance giving rise to the claim for damages is not illegal under the laws of Ukraine.

Thus, Ukrainian legislation establishes a rather progressive approach, according to which the main binding law is the lex loci delicti commissi, the application of which is limited to the application of the law of the common domicile of the parties to the obligation. It is possible to derogate from this binding rule by means of the bilateral autonomy of the parties' will, but only in favor of the law of the court.

The Ukrainian legislator has taken into account modern trends in the conflict of laws regulation of tort relations and has provided for the application of the presumptions of common nationality and common domicile. The presumption of common nationality prevails

At the same time, when deciding on the choice of the law of the country to be applied for the compensation of damage with a foreign element, it is also necessary to take into account the legal status of the subject of the damage.

The legal status of a person determines its legal capacity, i.e. the status of a tortfeasor.

In this regard, it is necessary to take into account not only the provisions of Articles 48-50 of the Law of Ukraine "On Private International Law", which define the conflict of laws rules on tort. It is important to take into account the provisions of Part II of the Law of Ukraine "On Private International Law" *(Conflict of Laws Rules on the Legal Status of Individuals and Legal Entities)*, which defines the personal law of a person to be applied in the event of a tort.

According to Article 16 of the Law of Ukraine "On Private International Law", the personal law of a person is the law of the state of which he or she is a citizen. If a person is a citizen of two or more states, the law of the state

with which the person has the closest ties, in particular, the place of residence or main activity, is considered to be the personal law of the state.

The personal law of a person determines the scope of his legal capacity and, consequently, his status in a tort *(whether he is a tortfeasor or not)*. Thus, the legal capacity of a person is determined by its personal law *(Articles 18, 26 of the Law of Ukraine "On Private International Law").*

In addition, the legal capacity of an individual with respect to obligations arising from damage may also be determined by the law of the state of the place where the obligations arising from damage occur *(Article 18 of the Law).*

The Ukrainian legislator establishes a special collision clause for resolving issues of tort liability of foreigners - on the basis of the law applicable to the tort obligation or on the basis of the conflict of laws principle of personal law.

It should be noted that the legal capacity of a legal entity is determined by its personal law *(the personal law of a legal entity is the law of the state where the legal entity is located)*.

In other words, the doctrine of national tort law of Ukraine approaches the issue of conflict of laws differently: *the legal capacity of a natural person may be determined by the law of the person or by the law of the state where the event occurred, while the legal capacity of a legal person is determined solely by the personal law of the legal person.*

The grounds for liability, its limitations and exemptions, as well as the methods, scope and amount of damages, shall be determined as a general rule.

Flexible binding is used to determine the procedural rules to be applied. The parties to an obligation arising out of a loss may choose the law of the forum state at any time after the loss has occurred.

The Ukrainian court determines the content of the foreign tort law on the basis of the rules of official interpretation of foreign law *(Article 8 of Law).*

When applying the law of a foreign State, a court or other body shall determine the content of its provisions in accordance with their official interpretation, application practice and doctrine in the foreign State concerned. In order to determine the content of the foreign law, a court or

other body may, in accordance with the procedure established by law, apply to the Ministry of Justice of Ukraine or other competent authorities and institutions in Ukraine or abroad, or consult experts.

The application of the law of a foreign state includes all its provisions regulating the relevant legal relations. The refusal to apply the law of a foreign state may not be based solely on the difference between the legal, political or economic system of the foreign state in question and the legal, political or economic system of Ukraine. The law of a foreign state shall not be applied if its application leads to consequences that are manifestly incompatible with the principles of the legal (public) order of Ukraine. In such cases, the law most closely related to the legal relationship shall be applied, and if such law cannot be determined or applied, the law of Ukraine shall be applied.

1.2. Collision clause in special indemnity terms

The limitation of the principle of the *lex loci delicti commissi* in the field of liability for goods *(works, services)* by establishing special forms of attachment is explained by the specific nature of these relationships, which are becoming increasingly diverse in the context of high-tech production processes and require a differentiated approach. They are characterized, for example, by the fact that the place of production *(execution of works, provision of services)* is often not the same as the place where the consequences of defective product quality occur.

In these situations, the legislator deviates from the general principle of lex loci delicti commissi, which is the basis of the conflict-of-laws rules, and provides for forms of attachment designed to cover various cases of damage.

The Law of Ukraine "On Private International Law" *(Article 50)* establishes the following conflict-of-law rules for compensation for damage caused by defects in goods, works *(services)*.

A claim for compensation for damage caused by defects in goods, works *(services)* shall be governed, at the option of the injured party, by

1) the law of the country in which the victim has his domicile, residence or principal place of business; or

2) the law of the country in which the producer of the goods or the person performing the work (service) is domiciled or has his principal place of business; or

3) the law of the state where the victim purchased the goods or where the work (service) was performed.

Based on the comparison of Ukrainian national legislation with Article 5 "Product Liability" of the EU Regulation No. 864/2007 "On the Law Applicable to Non-Contractual Obligations", the author identifies the trends of conflict-of-law regulation in this area, which is based on a "cascading" system of rules allowing to take into account different cases of damage.

The second case of deviation from the general rule of compensation for damage in private international law (lex loci delicti commissi) is the colloquial reference to the application of the law in relation to damage caused by a ship *(Article 5 of the Merchant Shipping Code of Ukraine)* in accordance with the law of the State whose flag the ship flies.

§ 2. International conventions regulating tort liability

At present there is no single universal regulation in the field of international legal regulation of non-contractual relations. In addition to certain provisions of national legislation *(the Law of Ukraine "On Private International Law")*, the issue of compensation for damage caused by a foreign element is regulated by international legal acts *(conventions, international agreements, etc.).*

The legal nature of international legal acts is that they are part of the national legislation of Ukraine *(Art. 15, 19 of the Law of Ukraine "On International Treaties" No. 1906-IV of 29 June 2004)*. Thus, the international treaties of Ukraine in force, ratified by the Verkhovna Rada of Ukraine, are part of national legislation and are applied in the manner prescribed for the norms of national legislation. At the legislative level, Ukraine has recognized and enshrined the and enshrined the primacy of international law. However, in Ukraine to a limited extent, international treaties are recognized as part of national legislation if the Verkhovna Rada of Ukraine has agreed to be bound by them.

The process of ratification of an international treaty is a qualified legislative procedure. After the law has been signed and promulgated by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine signs the instrument of ratification, which is authenticated by the signature of the Minister of Foreign Affairs of Ukraine. If an international treaty of Ukraine, which has entered into force in accordance with the established procedure,

establishes rules different from those provided for in the relevant act of Ukrainian legislation, the rules of the international treaty shall apply.

In addition to the Law of Ukraine "On Private International Law", conflict of laws rules on tort may be established in international treaties, which, as a part of the domestic legislation of Ukraine, have priority in application over the above-mentioned Law.

2.1. Conflict of Laws in international tort law

Conventions occupy a prominent place among the sources of international law. By their very nature, a significant number of States participate in them not only by signing them but also by acceding to their provisions.

It should be noted that the conventional regulation of the rules of compensation for damages is carried out not only by conflict of laws, but also by direct rules.

In particular, the following should be noted with respect to the conflict-of-laws rules:

(-) Convention for the Unification of Certain Rules for International Carriage by Air dated 28 May 1999, Montreal (ratified by the Law of Ukraine "On Accession of Ukraine to the Convention for the Unification of Certain Rules for International Carriage by Air" dated 17 December 2008 No. 685-VI).

The collision clauses provide that, at the plaintiff's option, a claim may be brought in the territory of one of the Contracting States either before the court of the carrier's domicile, the court of the carrier's principal place of business, or the court of the commercial enterprise with which the contract was concluded, or the court of the place of destination of the carriage.

The Convention also lays down rules on limitation.

In particular, the right to compensation is lost if an action is not brought within two years from the date of arrival at the place of destination, from the date on which the aircraft should have arrived, or from the date on which the carriage was interrupted. The procedure for calculating this period is determined by the law applicable to the court in which the action is brought.

Finally, an international instrument lays down the rules for determining the limit of the carrier's liability:

(-) Convention on the Law Applicable to Road Traffic Accidents of 4 May 1971, The Hague (ratified by the Law of Ukraine "On Accession of Ukraine to the Convention on the Law Applicable to Road Traffic Accidents" of 15 June 2011 No. 3513-IV).

This Convention determines the law applicable to civil non-contractual liability arising out of road traffic accidents, regardless of the type of procedure used to enforce such liability.

The Convention applies even if the law chosen under its collision clause is the law of a country that is not a party to the Convention.

According to Article H of the Convention, the applicable law is the law of the place where the event occurred *(lex loci delicti commissi)*. However, there are several exceptions to this general rule:

In cases where only one vehicle is involved in an accident and that vehicle is registered in a State other than the State where the accident occurred, the national law of the State of registration applies to determine liability.

- In respect of the driver, the owner or any other person having control of or title to the vehicle, irrespective of their place of residence;
- *in respect of a victim who is a passenger and whose permanent place of residence is in a State other than the State in which the accident occurred;*
- *in respect of a victim who is not in the vehicle at the scene of the accident and whose permanent place of residence is in the State of registration.*

Where there are two or more victims, the applicable law shall be determined separately for each of them.

If vehicles are not registered or are registered in more than one State, the law of the State where they are habitually resident will apply. The same principle applies if neither the owner nor the person in whose possession or control the vehicle was domiciled in the State of registration at the time of the event.

2.2. Direct regulation of torts in private international law

In addition to the conflict-of-law rules governing torts in private international law, there are also conventions and international treaties which provide exclusively for direct regulation. Such a direct method of regulation implies

the absence of a rule in national law which excludes the application of the relevant conflict of laws.

Multilateral international treaties on civil liability for certain types of damage, usually caused by sources of increased risk, regulate tort relations mainly by direct rather than conflict-of-law methods, including uniform substantive rules.

Such treaties include:

(-) The International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 (notified by the Resolution of the Verkhovna Rada of Ukraine "On Ukraine's Participation in the International Convention on Intervention on the High Seas in Cases of Accidents Resulting from Oil Pollution" of 17 December 1993 ¹ 3734-XII);

In particular, the Act expressly provides that the shipowner shall not be liable for pollution damage if he proves that the damage:

a) is the result of hostile acts of war, civil war, insurrection or an exceptional, unavoidable and irresistible natural phenomenon;

(b) wholly caused by an act or omission of third parties with intent to cause damage;

(c) wholly caused by the negligence or other wrongful act of a government or other authority responsible for the maintenance of lights and other navigational aids in the performance of that function.

The owner of a ship shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his own act or omission committed either with the intent to cause such damage or in reckless disregard of the likelihood of such damage:

(-) The Athens Convention on the Carriage of Passengers and their Luggage by Sea, dated 13 December 1974, Athens (acceded to by the Law of Ukraine On Accession of Ukraine to the Athens Convention on the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol thereto of 1976, dated 15 July 1994, No. 115/94-BP).

The Athens Convention establishes the limits of liability in case of death of a passenger or damage to his health. Article 7 of the Convention lays down the amount of compensation and the limit that may not be exceeded (in the event of the death or injury of a passenger, it may not exceed 700,000 francs

for the whole of the journey, to be reimbursed in the form of periodic payments).

However, if a State is a party to the Athens Convention, it may provide in its national legislation for a higher limit of liability for each victim.

The liability of the carrier in case of loss of or damage to luggage shall not exceed 12,500 per passenger for the entire carriage, including the carriage of a motor vehicle, including all luggage - 50,000.

(-) The Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, Vienna (notified of accession by the Law of Ukraine "On Accession to the Vienna Convention on Civil Liability for Nuclear Damage" of 12 July 1996, No. 334/96-BP).

The Convention provides that the liability of the operator may be limited by the State responsible for the installation to not less than USD 5 million for each nuclear incident.

Under the Convention, the operator has unlimited liability for nuclear damage. The competent court may, if its law so permits, release the operator, in whole or in part, from its obligation to compensate the person for any damages caused by the operator if the operator can demonstrate that the nuclear damage was caused, either entirely or partially, by the person to whom the damage was caused or by an act or omission of that person with intent to cause damage.

AFTERWORD

Since gaining its independence, Ukraine has begun to build a democratic state based on the rule of law and a civil society centered on the individual, protecting his legitimate interests and meeting his needs.

The declaration of a course to build a state based on the rule of law means that Ukraine assumes the obligation not only to recognize natural human rights, but also to ensure the implementation of these rights and freedoms, which are now enshrined not only in the Constitution of Ukraine, but also in the Civil Code, which is essentially a code of civil society and private law.

An important role among the means of achieving this task is played by the obligation to compensate for damages, which occupies a special place in the civil law system.

Compensation for damages is not something unique to Ukrainian law. This category of civil law is universal. And since Roman law is the basis of the law of the continental legal system, compensation for damages exists in the law of all European countries. In addition, private (civil) law is currently being unified at the European and international level, where compensation for damages is also enshrined.

The global changes taking place in the world require a review of established theories and concepts. It is necessary to rethink the national legislation of Ukraine and adapt it to the needs of globalization of economic processes. Changing the approach of the Civil Code of Ukraine to this issue also requires revision of a number of established ideas about the concept, nature, grounds and conditions of torts.

This explains the fact that despite the fact that legal literature has been quite active in developing certain issues of obligations arising from damage, the general concept of these obligations, as well as a significant number of individual aspects of legal regulation in this area, remain unexplored, which is particularly noticeable in the context of updating the national civil legislation.

In addition, it is worth mentioning the practical importance of solving the theoretical problems of compensation obligations, given that the reality and completeness of protection of civil rights and legally protected interests of citizens and organizations - participants in civil relations - depends on the correct understanding of the concept of the Civil Code on this issue, as well as on the adequate interpretation of civil law in the relevant area.

Today, Ukraine is just beginning to modernize its tort law. Unfortunately, most of the rules do not correspond to modern trends. Moreover, it should be noted that dramatic events in the country require decisive changes in the regulation of torts. Military actions on the territory of Ukraine lead to the development of new, previously unknown types of torts, the existence of which is an extraordinary event. Such constructions require their own analysis and detailed presentation to a wide range of scientific community.

1. In this connection, the alternative opinion of the colleagues from European countries is very important. The experience and European traditions in the field of legal research are useful for borrowing from the national legal doctrine.

This monographic study is only the first step in the European scientific community. I have tried not so much to outline the range of problematic issues in the doctrine of tort law of Ukraine, as to provide comprehensive information on the understanding of tort from the perspective of Ukrainian legal consciousness and legal understanding.

The author's approach is due to the fact that European scholars are unfortunately unaware of domestic scientific developments and achievements in the field of jurisprudence. The author of this study takes the first steps to solve this problem. The main provisions of Ukrainian tort law doctrine are presented in English.

This provides an opportunity to learn more about the achievements of Ukrainian national legal thought and legislation and to offer the vision of the institutional problems of law-making and scientific development of doctrine in Ukraine at the current stage of its development.

Thus, there is an urgent need to fill the gaps in scientific research on the concept and nature of obligations to compensate for damage at the present stage, to explore the reasons for their classification and to determine the specifics of the statics and dynamics of the relevant civil-law relations.

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