

The mechanism for legal regulation of business entities' tortious obligations in Ukraine



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Abstract This study seeks to build a theoretical concept of the mechanism for the legal regulation of business entities' tortious obligations in Ukraine. To achieve the objective of the study described below, the following scientific cognition methods have been used: analysis, analogy, deduction, induction, synthesis, legal and historical, systematic and functional methods. The mechanism for legal regulation of business entities' tortious obligations constitutes a set of legal tools (civil law means, ways and forms), the coordinated interaction of which can regulate relations in tort. The mechanism for legal regulation of business entities' tortious obligations includes tort law provisions, jural facts, business entities' tortious obligations, exercising subjective rights and fulfilling obligations by business entities liable for torts. Based on the analysed Ukrainian legislation, the following types of business entities' tortious obligations have been distinguished: the obligation to reimburse the affected party for damages caused by the source of major hazard; the obligation of an individual and legal entity (business entity) to reimburse the affected party for damages caused by their/its employee; the obligation of a business entity to reimburse its employee for damages caused to their life and health; and the obligation to reimburse the affected party for damages caused by defective goods and services.

Keywords: business entities, law, legal mechanism, noncontractual obligations, tortious obligations

1. Introduction

The Ukrainian law, which protects the rights and interests of both individual entrepreneurs and legal entities, prescribes to reimburse the affected party for damages caused by the failure to fulfil or improper fulfilment of contractual obligations as well as in cases when there are no contractual relations between and among the parties.

The study seeks to build up a theoretical concept of the mechanism for the legal regulation of business entities' tortious obligations in Ukraine.

The relevance of the chosen problem is undeniable, as the extent to which the subject has been explored does not meet the needs of the hour. T. Kivalova described the obligations to reimburse the affected party for damages as set forth in the civil legislation of Ukraine (Kivalova 2008). The Doctor's dissertation of Science of Law "Mechanism for Civil Law Regulation of Tortious Obligations" by O. Otradnova did not seek to achieve the foregoing objective of the study (Otradnova 2014). V. Prymak covered theoretical problems arising from reimbursement to the affected party for moral damage based on justice, reasonableness, and good faith in the civil law of Ukraine (Prymak, 2015). A. Yanchuk comprehensively described reimbursement to the affected party for damages as a way to defend civil rights and interests (Yanchuk 2011). S. Grynko described natural persons as subjects of tort liability in Roman private law (Grynko 2015). I. Burlaka focused on the obligations to reimburse the affected party for damages caused for no fault (Burlaka 2016). O. Onyshchenko dedicated its study to reimbursement to the affected party for moral damage under tortious obligations (Onyshchenko 2017.) O. Chernilevska explored the obligations to reimburse the affected party for damages caused jointly by several persons (Chernilevska 2017). V. Olshanchenko described civil-legal liability of the state Ukraine to entrepreneurs: essence, functions, types (Olshanchenko 2019). Characterized capitalization of payments as a way to compensate damage to life and health of an individual in case of a legal entity's bankruptcy (Yavor et al 2019). Described approaches to compensation for damage caused by unconstitutional law in eastern Europe (Berestova et al 2020). Described peculiarities of the compensation for damage caused by military actions: new realities of international judicial practice (Gramatsky et al 2022). O. Panchenko described the case law from the ECHR regarding compensation for moral damage to employees (Panchenko 2022). However, the comprehensive studies of these Ukrainian scholars do not cover the mechanism for the legal regulation of business entities' tortious obligations in Ukraine. This means that a phenomenon such as the "mechanism for legal regulation of business entities' tortious obligations" is a hot topic to be presented on the pages of modern civics studies.

To achieve the objective of the study, the following tasks should be completed: first, to define the notion of the mechanism for legal regulation of business entities' tortious obligations and to describe its structure; second, to specify particular elements of the mechanism for legal regulation of business entities' tortious obligations.



2. Materials and Methods

To achieve the foregoing objective of the study, the following scientific cognition methods have been used: analysis, analogy, deduction, induction, synthesis, legal and historical, systematic and functional methods.

The regulatory basis of the study of the mechanism for legal regulation of business entities' tortious obligations is represented by Ukrainian civil law acts.

The respective judicial acts serve as the empirical fundament for studying the mechanism for legal regulation of business entities' tortious obligations in Ukraine. Additionally, used Plenum of the Higher Specialized Court of Ukraine for Civil and Criminal Cases "Application of Legislation by Court when Settling Disputes on Reimbursement to Affected Party for Damages Caused by Source of Major Hazard" of 01 March 2013.

3. Notion and structure of mechanisms for the legal regulation of business entities' tortious obligations

Legal regulation is one type of social regulation. Its specifics arise from certain features of law as a special social phenomenon. The social relations that are subject to legal regulation constitute its subject, as some social relations cannot be regulated by the civil law means, which will be further described herein.

Legal regulation of business entities' tortious obligations has an original mechanism. However, Ukrainian science has neither defined the notion of the mechanism for the legal regulation of business entities' tortious obligations nor elaborated on the structure of this phenomenon.

Hence, it is expedient to define the mechanism for the legal regulation of business entities' tortious obligations as the set of legal tools (civil law means, ways, and forms), the coordinated interaction of which can regulate relations in tort.

The mechanism for the legal regulation of business entities' tortious obligations consists of several components, each of which has good potential. One of the features of legal regulation of business entities' tortious obligations is the available system of special civil law tools – the mechanism for legal regulation of business entities' tortious obligations, which makes it possible to differentiate between legal regulation of business entities' tortious obligations and regulation of contractual relations with businesspersons involved. The mechanism for legal regulation of business entities' tortious obligations is used to ensure the directed impact of civil law on social relations. The elements comprising the structure of the mechanism for legal regulation of business entities' tortious obligations let us achieve the foregoing objective, i.e., regulate civil relations and ensure the development of this type of noncontractual relation. After all, civil law can perform its main function only if it is effectively applied in practice, which presupposes the availability of legal tools that help impact these relations.

It is also worth mentioning that Part 3 of Article 55 of the Commercial Code of Ukraine is supplemented with the rules that actually contain the classification of business entities on which some tortious obligations are imposed, as set forth in the Law of Ukraine "On Development and State Support of Small and Medium Businesses in Ukraine" dated 22 March 2012. The law classifies them as follows: a) microbusiness entities; b) small business entities; c) big business entities; d) medium business entities. The Ukrainian lawmakers took the following criteria as the basis for the classification above: the entity is treated as small business, including microbusiness, medium business or big business entities, depending on the number of employed persons and annual income generated from any activities.

Microbusiness entities are: a) individuals registered according to the procedure established by law as individual entrepreneurs with the average number of employees in the reporting period (calendar year) not exceeding 10 persons and annual income generated from any activities not exceeding the amount equal to EUR2 million calculated at the annual average exchange rate of the National Bank of Ukraine; b) legal entities – business entities regardless their type of business and form of ownership with the average number of employees in the reporting period (calendar year) not exceeding 10 persons and annual income generated from any activities not exceeding the amount equal to EUR2 million calculated at the annual average exchange rate of the National Bank of Ukraine.

Small business entities are: a) individuals registered according to the procedure established by law as individual entrepreneurs with the average number of employees in the reporting period (calendar year) not exceeding 50 persons and annual income generated from any activities not exceeding the amount equal to EUR10 million calculated at the annual average exchange rate of the National Bank of Ukraine; b) legal entities – business entities regardless their type of business and form of ownership with the average number of employees in the reporting period (calendar year) not exceeding 50 persons and annual income generated from any activities not exceeding the amount equal to EUR10 million calculated at the annual average exchange rate of the National Bank of Ukraine.

Big business entities are legal entities – business entities regardless of their type of business and form of ownership with the average number of employees in the reporting period (calendar year) exceeding 250 persons and annual income generated from any activities exceeding the amount equal to EUR50 million calculated at the annual average exchange rate of the National Bank of Ukraine.

According to the Ukrainian legislative approach, other business entities shall be treated as medium business entities.

Considering the above, it is expedient to distinguish the following elements of the mechanism for legal regulation of business entities' tortious obligations: first, tort law provisions; second, jural facts; third, business entities' tortious obligations; and fourth, exercising subjective rights and fulfilling obligations by business entities liable for torts.

4. Distinctive features of elements comprising the mechanism for the legal regulation of business entities' tortious obligations

The first element in the mechanism for the legal regulation of business entities' tortious obligations is tort law provisions. These provisions of civil law constitute its regulatory basis. Most of these civil law provisions can be found in the Civil Code of Ukraine, and the rest of them – in special regulatory acts, some of which are mentioned herein.

Another element in the mechanism for the legal regulation of business entities' tortious obligations is jural facts. Unlike business entities' contractual obligations, business entities' tortious obligations arise not from an agreement or any other deed but from the law. In other words, these (noncontractual) obligations of business entities arise from the other jural facts if there is no agreement concluded between and among the parties. Business entities' tortious obligations arise from unlawful behaviour (tort).

The third element in the mechanism for the legal regulation of business entities' tortious obligations is business entities' tortious obligations, which constitute some civil relationships. Given that civil law science does not present the notion of business entities' tortious obligations, it is expedient to define them as the obligations involving businesspersons (business entities) and arising beyond contractual relations (obligations in tort).

In this study, we will stick to the point that it is better to use the term "reimbursement for damages" rather than "compensation for damages" within Ukrainian legislation and scientific studies, as it was fairly mentioned in one of the up-to-date publications (Cherneha et al 2022).

The analysis of Ukrainian legislation allows us to distinguish the following types of business entities' tortious obligations: first, the obligation to reimburse the affected party for damages caused by the source of major hazard; second, the obligation of an individual and legal entity (business entity) to reimburse the affected party for damages caused by their/its employee; third, the obligation of a business entity to reimburse its employee for damages caused to their life and health; and fourth, the obligation to reimburse the affected party for damages caused by defective goods and services.

One noncontractual obligation of business entities is the obligation to reimburse the affected party for damages caused by the source of a major hazard. The reimbursement rules are stipulated in Article 1187 of the Civil Code of Ukraine. The source of major hazard is the activity associated with using, holding, or maintaining vehicles, machines, and equipment, using, holding chemical, radioactive, explosive, flammable, and other substances, managing wild animals, service dogs, and fight dogs, etc., which poses a major hazard for the person who performs this activity and other persons (Part 1, Article 1187 of the abovementioned regulatory act). Given that the foregoing provision does not contain an exhaustive list of sources of major hazards (major hazard activities), the court, based on specific features of subjects, substances, and other items used when performing the activity, is also entitled to recognize the other activity as the source of major hazard. These specific features include posing a greater risk of causing damages due to the inability of a person to put them under their absolute control (Paragraph 2, Clause 5 of Resolution No. 4 of the Plenum of the Higher Specialized Court of Ukraine for Civil and Criminal Cases "Application of Legislation by Court when Settling Disputes on Reimbursement to Affected Party for Damages Caused by Source of Major Hazard" dated 01 March 2013).

According to Part 2, Article 1187 of the Civil Code of Ukraine, the damages caused by the source of major hazard shall be reimbursed by the person who, on respective legal grounds (title of ownership, other property right, contractor's agreement, lease agreement, etc.), possesses a vehicle, machine, or other item using, holding, or maintaining that poses a major hazard.

The proprietary of the item using, holding, or maintaining poses a major hazard shall be a legal entity or an individual who exploits the item because of its/their title of ownership, right to use (leasehold right), right of full economic management, operative management, or other property right to the same. The person who manages the source of major hazard acting as an employee of such a proprietary (a driver, machinist, operator, etc.) shall neither be considered the proprietary of the item using, holding, or maintaining of which poses major hazard nor be liable for damages to the affected party. Hence, the proprietary object of the item using, holding, or maintaining poses a major hazard shall be not only its owner but also the other legal entity or individual who possesses the item on respective legal grounds.

Part 3, Article 1187 of the Civil Code of Ukraine, states that the person who illegally took possession of a vehicle, machine, or other item caused damages when using, holding, or maintaining the same shall reimburse the affected party for these damages in accordance with general practices. If the other person took illegal possession of a vehicle, machine, or other item due to the negligence of the owner (proprietary) thereof, the damages caused when using, holding, or maintaining the same shall be reimbursed by both of them, in proportion determined by the court decision with the essential circumstances considered (Part 4, Article 1187 of the foregoing regulatory act).

According to Part 5, Article 1187 of the Civil Code of Ukraine, the person who performs the activity that constitutes the source of major hazard shall be liable for the caused damages unless it/they prove/prove that the damages resulted from the circumstances of insuperable force or the affected party's intent.

When considering claims for damages caused by the source of major hazard, the courts shall note that according to Article 1187 of the Civil Code of Ukraine, the damages to a person or property of a legal entity or individual shall be fully reimbursed by the affecting party. The affected party becomes obliged to reimburse the affected party for the caused damage given that its/their actions were illegal, there is a direct causal link between the damage and the actions, and the affected party is guilty. If the damage was caused by the source of a major hazard, it does not matter whether the affecting party is guilty (Clause 4 of Resolution No. 4 of the Plenum of the Higher Specialized Court of Ukraine for Civil and Criminal Cases "Application of Legislation by Court when Settling Disputes on Reimbursement to Affected Party for Damages Caused by Source of Major Hazard" dated 01 March 2013).

Another type of business entity's tortious obligation is the obligation of a legal entity or individual (business entity) to reimburse the affected party for damages caused by its/their employee. According to Part 1, Article 1172 of the Civil Code of Ukraine, the legal entity or individual shall reimburse the affected party for damages caused by its/their employee when the latter was performing their employment (official) duties. The customer shall reimburse the affected party for damages caused to the other person by its contractor if the latter acted as per the customer's order (Part 2, Article 1172 of the Civil Code of Ukraine.) Profit-oriented companies and cooperatives shall reimburse the affected party for damages caused by their members when performing business or other activities on behalf of the company or cooperative. The list of business companies was extended due to the adoption of the Law of Ukraine "On Agricultural Cooperation" and amendments to Part 1, Article 84 of the Civil Code of Ukraine, according to which profit-oriented companies may be established only as business companies (an unlimited company, limited partnership, limited or additional liability company, joint stock company) or producers' cooperatives, or agricultural cooperatives, agricultural cooperative associations operating to make a profit.

It is also worth mentioning the business entity's obligations to reimburse its employee for damages caused to their life and health. A physical or legal entity that caused damage to an individual in the form of a disability or other health impairment shall reimburse the affected party for the earnings (income) lost by them due to the full or partial occupational or general disability, as well as for additional expenses incurred due to the need for a high-calorie diet, treatment at health resorts, medicines, prostheses, nursing, etc. (Part 1, Article 1195 of the Civil Code of Ukraine).

The Ukrainian legislators establish certain rules for calculating the income lost by an individual entrepreneur due to their disability or other health impairment. According to Part 1, Article 1198 of the Civil Code of Ukraine, the reimbursable income lost by an individual entrepreneur due to their disability or other health impairment shall be calculated based on their annual income generated in the preceding business year divided into 12. If the person has received income for less than 12 months, the lost income shall be determined by calculating the total for a respective number of months. The income generated from business activities that was lost by an individual entrepreneur due to their disability or other health impairment shall be calculated based on the data from the tax office (Part 2, Article 1198 of the Civil Code of Ukraine). According to Part 3, Article 1198 of the Civil Code of Ukraine, the income lost by an individual entrepreneur due to their disability or other health impairment shall be calculated based on the income generated by the affected party before their disability or other health impairment in the amounts accrued before the deduction of taxes. The income lost by a self-employed individual (an attorney-at-law, creative worker, and others) shall be calculated as set forth in Parts 1, 2, 3, Article 1198 of the Civil Code of Ukraine.

The last element in the system of business entities' tortious obligations is the obligation to reimburse the affected party for damages caused by defective goods and services. The Ukrainian legislators stipulate the list of grounds for reimbursement to the affected party for damages caused by defective goods and works (services). The producer of the goods that constitute an immovable property, the working performer (service provider), shall reimburse a physical or legal entity for damages caused due to design, technological, compound, and other defects of goods, works (services) as well as false or incomplete information. The reimbursement does not depend on whether the producer of the goods that constitute the immovable property, the working performer (service provider), is guilty or not (Part 1, Article 1209 of the Civil Code of Ukraine). However, there are some exceptions to the universal rule. According to Part 2, Article 1209 of the abovementioned regulatory act, the producer of the goods that constitute the immovable property, the working performer (service provider), shall not reimburse the affected party for damages if they prove that these damages resulted from the circumstances of insuperable force or incompliance by the affected party with the instructions for use and storage of goods, deliverables. At the same time, it is worth noting that the grounds for the reimbursement to the affected party for damages caused by defective goods that constitute the movable property, including those with are part of the other movable or immovable property, inter alia electrical power, shall be set forth by legislation.

The civil legislation stipulates the list of persons obliged to reimburse the affected party for damages caused by defective goods, works (services). According to Article 1210 of the Civil Code of Ukraine, the damages caused by defective goods that constitute: a) immovable property - shall be reimbursed by the goods producer (Paragraph 1, Part 1, Article 1210); b) movable property, including those with are part of the other movable or immovable property, inter alia electrical power - shall be reimbursed by the goods producer or the other person referred to in the law (Paragraph 2, Part 1, Article 1210). The damage caused by defective works (services) shall be reimbursed by the work performer/service provider (Part 2, Article 1210 of the main source of legal regulation of civil relations in Ukraine). The damage caused by the failure to provide complete or true

information on properties and instructions for the use of goods that constitute immovable property shall be reimbursed as set forth in Part 1, Article 1210 of the Civil Code of Ukraine.

The Ukrainian legislators set certain periods for reimbursement to the affected party for damages caused by defective goods and works (services). The damage caused by defective goods that constitute immovable property and works (services) shall be reimbursed if it was caused during the service life period (storage life period) set for goods and deliverables. Should this period be indefinite - within 10 years from the date when goods were produced, works were performed (services were rendered) (Part 1, Article 1211 of the Civil Code of Ukraine.) Moreover, Part 2, Article 1211 of the abovementioned regulatory act stipulates that the damage caused by defective goods that constitute immovable property and works (services) shall also be reimbursed if, first, the service life period (storage life period) for goods and deliverables was not set as required by the law; second, a person was not informed of the actions to be performed after the expiration of the service life period (storage life period) and potential consequences in case of the failure to perform the same. Concerning the period prescribed for reimbursement to the affected party for damages caused by defective goods that constitute the movable property, including those that are part of the other movable or immovable property, inter alia electrical power, it shall be set by the law.

In the course of civil legislation development, Chapter 82 of the Civil Code of Ukraine was supplemented with Article 1211-1 as set forth in the Law of Ukraine "On Liability for Damages Caused by Product Defects" dated 19 May 2011, which stipulates the specifics of reimbursement to the affected party for damages caused by defective goods that constitute movable property.

Another element in the mechanism for legal regulation of business entities' tortious obligations is exercising subjective rights and fulfilling obligations by business entities liable for torts. It is the actual behaviour of business entities concerning the reimbursement to the affected party for damages caused by them.

5. Final considerations

The mechanism for legal regulation of business entities' tortious obligations constitutes a set of legal tools (civil law means, ways, and forms), the coordinated interaction of which can regulate relations in tort.

The mechanism for legal regulation of business entities' tortious obligations includes, first, tort law provisions; second, jural facts; third, business entities' tortious obligations; and fourth, exercising subjective rights and fulfilling obligations by business entities liable for torts.

Tort law provisions are the regulatory basis of the mechanism for legal regulation of business entities' tortious obligations. Most of these civil law provisions can be found in the Civil Code of Ukraine, and the rest of them are in special regulatory acts.

Another element of the mechanism for the legal regulation of business entities' tortious obligations is jural facts. These (noncontractual) obligations of business entities arise from the other jural facts if there is no agreement concluded between and among the parties.

Business entities' tortious obligations arise from unlawful behaviour (tort). The mechanism for legal regulation of business entities' tortious obligations will not work without business entities' tortious obligations, which are defined as the obligations involving businesspersons (business entities) and arising beyond contractual relations (obligations in tort). Based on the analysed Ukrainian legislation, the following types of business entities' tortious obligations have been distinguished: first, the obligation to reimburse the affected party for damages caused by the source of major hazard; second, the obligation of an individual and legal entity (business entity) to reimburse the affected party for damages caused by their/its employee; third, the obligation of a business entity to reimburse its employee for damages caused to their life and health; and fourth, the obligation to reimburse the affected party for damages caused by defective goods and services.

Exercising subjective rights and fulfilling obligations by business entities liable for torts, which is part of the mechanism for legal regulation of business entities' tortious obligations, means the actual behaviour of business entities in terms of reimbursement for damages caused.

Ethical Considerations

Not Applicable.

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Conflict of Interest

The author declares no conflict of interest.

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