

## **LIABILITY FOR CAUSING PROPERTY LOSSES IN THE COURSE OF BUSINESS ACTIVITIES**

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### **Abstract**

The relevance of the study lies in the need to improve mechanisms for compensating damages arising from breaches of civil and commercial obligations during the full-scale armed conflict in Ukraine. Existing legal provisions do not always ensure effective or consistent recovery of damages, creating risks for legal certainty and economic stability. The objective is to develop a theoretically grounded concept of a unified compensatory mechanism in Ukrainian civil and commercial law that would enhance the efficiency of damages recovery and improve law enforcement practice. The research is based on an interdisciplinary methodological approach using the dialectical method to examine the relationship between contractual and tort liability; formal legal and comparative methods to identify systemic links and conflicts in current legislation; legal modeling to formulate a unified compensation mechanism; and structural-functional analysis to determine problems and prospects for reform. The findings reveal key contradictions between the Civil Code and Economic Code of Ukraine in regulating compensation for damages. The absence of a unified approach to the correlation between "damage" and "losses," unclear boundaries of contractual and tort liability, and imperfect



mechanisms for compensating moral damages and damages caused by lawful actions of public authorities undermine the effectiveness of law enforcement. Based on structural and functional analysis, the study proposes a comprehensive system of improvements aimed at harmonizing civil and commercial law, unifying approaches to determining the composition of compensation, and creating an effective mechanism for compensating business losses in accordance with the rule of law and European standards. The proposed recommendations can enhance the efficiency of damages compensation, ensure greater coherence in judicial practice, and strengthen the systematic character of civil and commercial relations in Ukraine.

### Keywords

Compensation for damages, regulation, compensatory mechanism, law enforcement, legal aspects.

### Resumo

A relevância do estudo reside na necessidade de melhorar os mecanismos de compensação por danos decorrentes do incumprimento de obrigações civis e comerciais durante o conflito armado em grande escala na Ucrânia. As disposições legais existentes nem sempre garantem uma recuperação eficaz ou consistente dos danos, criando riscos para a segurança jurídica e a estabilidade económica. O objetivo é desenvolver um conceito teoricamente fundamentado de um mecanismo compensatório unificado no direito civil e comercial ucraniano que aumentaria a eficiência da recuperação de danos e melhoraria a prática de aplicação da lei. A investigação baseia-se numa abordagem metodológica interdisciplinar que utiliza o método dialético para examinar a relação entre a responsabilidade contratual e a responsabilidade civil; métodos jurídicos formais e comparativos para identificar ligações e conflitos sistémicos na legislação atual; modelagem jurídica para formular um mecanismo de compensação unificado; e análise estrutural-funcional para determinar problemas e perspetivas de reforma. As conclusões revelam contradições fundamentais entre o Código Civil e o Código Económico da Ucrânia na regulamentação da indemnização por danos. A ausência de uma abordagem unificada à correlação entre «danos» e «perdas», os limites pouco claros da responsabilidade contratual e extracontratual e os mecanismos imperfeitos de indemnização por danos morais e danos causados por ações legais das autoridades públicas comprometem a eficácia da aplicação da lei. Com base na análise estrutural e funcional, o estudo propõe um sistema abrangente de melhorias com o objetivo de harmonizar o direito civil e comercial, unificar as abordagens para determinar a composição da indemnização e criar um mecanismo eficaz para indemnizar as perdas comerciais, de acordo com o Estado de direito e as normas europeias. As recomendações propostas podem aumentar a eficiência da indemnização por danos, garantir uma maior coerência na prática judicial e reforçar o carácter sistemático das relações civis e comerciais na Ucrânia.

### Palavras-chave

Indemnização por danos, regulamentação, mecanismo de compensação, aplicação da lei, aspetos jurídicos.

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### **Introduction**

In today's context of socio-economic transformations and digitalization of the legal system of Ukraine, ensuring the efficient functioning of civil and economic relations is becoming a key factor of economic stability. Breach of contractual and tort obligations creates economic risks for both business entities and individuals, which necessitates the improvement of mechanisms for compensation for losses. Therefore, effective regulation of liability is of particular relevance in times of war, when legal certainty and speed of compensation procedures are increasingly important.

The theoretical and practical aspects of liability for breach of obligations have been considered by a number of domestic and foreign authors. For example, Daryaie et al. (2024) analyzed the general principles of damages and compensation mechanisms in civil law, emphasizing the importance of a systematic approach to establishing causal relationships and determining the amount of damages. Modern Ukrainian scholars draw attention to the need to integrate contractual and tort liability into a single compensatory mechanism, which allows for more effective law enforcement and reduces the number of litigations (Melnyk et al., 2023; Nishchymna& Andrushchenko, 2024; Prilensky, 2021; Zhegulyn, 2021).

At the same time, the practice of applying civil and commercial law shows that there are significant differences in determining the amount of damages, criteria for their compensation, and recovery procedures. This is due to uneven interpretation of the rules by courts, different approaches to damage assessment, and insufficient integration of modern digital technologies into the processes of proof and compensation. Such



challenges require a comprehensive scientific study aimed at developing a unified compensation mechanism capable of taking into account both contractual and tort aspects of liability, ensuring a balance of interests of the parties.

The purpose of the article is to formulate a theoretically grounded concept of a single compensation mechanism in the civil and commercial law of Ukraine, which would increase the efficiency of damage compensation and improve law enforcement practice. The objectives of the study include: systematization of the provisions of the Civil and Commercial Codes of Ukraine on liability for breach of obligations; analysis of the practice of application of these provisions by courts; identification of problematic aspects in determining the amount of damages; and development of proposals for integrating contractual and tort liability into a single compensation mechanism.

## Literature Review

There is an urgent need for a comprehensive scientific understanding of the specifics of the application of the new civil and commercial legislation of Ukraine within the framework of economic legal relations, particularly in the context of a full-scale war and deep socio-economic transformation of society, during the period of adaptation to the European standards of private law and the *acquis communautaire* of the European Union (EU). This problem has a twofold nature: on the one hand, there are significant difficulties in interpreting the latest codifications, and on the other hand, there is an obvious lack of case law on certain aspects of their application.

The discourse on the peculiarities of regulating liabilities for damages in the context of business activities is becoming particularly relevant. For example, Melnyk et al. (2023) emphasize that civil liability for damage in the field of economic activity becomes especially relevant in times of war, when labor market transformations and increased labor migration create additional risks for business. The authors point out that the legal aspects of human resources management and security of economic systems should be flexible so that businesses can maintain their viability despite material and legal changes. Thus, their conclusions confirm the need to improve legal mechanisms for compensation, introduce clear rules of liability and a systematic approach to regulating economic relations in a crisis. Thus, the traditional legal understanding perceives these relations as intra-civil, regulated by the provisions of the Civil Code of Ukraine (further – CCU). However, part 2 of Article 9 of the Civil Code of Ukraine expressly states that «peculiarities of regulation of property relations in the field of economic activity may be established by law», which opens up space for specific regulatory regulation. Thus, according to part 2 of Article 4 of the Commercial Code of Ukraine, «the peculiarities of regulation of property relations of business entities are determined by this Code» (VRU, 2025a; 2025b). Thus, these legal provisions require law enforcement authorities to carefully identify the institutional features of regulation laid down in the Commercial Code in each branch of private law used in the framework of economic activity. This need is driven by practical pragmatism: parties to commercial disputes will actively appeal to the provisions of the Commercial Code, which may either increase the scope of compensation for damages (for victims) or limit it (for the entities that caused the damage).



During the period of Soviet statehood, the institute of civil liability in commercial legal relations was not clearly distinguished in the scientific literature, but civil and commercial law researchers identified characteristic features of the application of liability in the context of production and economic legal relations as opposed to typical consumer relations. For example, Berman (1947) highlighted the specifics of civil liability rules for damage to collective farm property – in particular, he justified shortened limitation periods for disputes between socialist organizations in the interests of strengthening financial and planning discipline and stimulating the prompt exercise of property rights of such organizations. Rudden (1967) and Sirianni (2020) also noted that when a socialist organization is recognized as a victim, its freedom to choose the method of compensation is limited: compensation must be consistent with the functional goals of the organization, the nature of its property and planned tasks – today, this is consistent with the requirements of the owner or his authorized body.

In the modern foreign discourse, the issue of civil liability is addressed in different ways. For example, Van Dunné (1999) raises the complex issue of compensation for pure economic losses arising without direct physical damage to property or a person. Based on a comparative analysis of civil and common law, the author proves that in continental systems liability for such losses is generally recognized, albeit with reservations, while in common law it is traditionally rejected and allowed only in exceptional cases. The author emphasizes the political arguments («floodgates argument») and the new use of the classical categories of causation and negligence.

The expansion of the scope of liability in tort law was the subject of a separate study by Priest (1991), who showed that since the 1970s in developed economies there has been a sharp increase in the scope of liability, which has had a profound impact on the markets for goods and services. The scholar argues that modern tort law, being based mainly on non-economic principles, has led to significant dysfunctions in the insurance sector and caused serious market distortions. At the same time, he critically assesses the reform initiatives of the late twentieth century, pointing out their limited ability to eliminate the root causes of the expansion of tort liability.

Instead, in modern Ukrainian scholarship, civil liability for damage caused in the course of economic activity in Ukraine is viewed through the prism of a complex multi-level regulatory array which combines both universal provisions of private law and specialized regulatory structures focused on certain sectors of economic activity. In particular, it is noted that the key sources are the Civil Code and the Commercial Code of Ukraine, as well as a number of special laws that detail the procedure for compensation for damage in certain areas of economic activity, thereby ensuring the complexity of legal regulation (Nishchymna& Andrushchenko, 2024). This approach guarantees the protection of the rights of victims and is also intended to formulate standards of responsible business behavior in a competitive marketplace.

Within the doctrinal discourse, several key forms of liability are distinguished. For example, non-contractual (tort) liability is associated with damage caused by negligence or intentional acts, and a necessary condition for its occurrence is the presence of a causal relationship between the act and the resulting damage (Zhegulyn, 2021). Contractual liability, in turn, is caused by the breach of specific obligations arising under



civil law agreements; in scientific works, it is often illustrated by examples of transportation relations, when, for example, a passenger is liable for damage caused to the carrier (Prilensky, 2021). The issue of compensation mechanisms is essential in this regard. They include both voluntary and mandatory forms of compensation, in particular by filing a civil lawsuit in criminal proceedings or using state mechanisms for financing compensation payments, which indicates the active role of the state in ensuring the restoration of violated rights (Lapkin et al., 2019).

The issue of the effectiveness of compensation is also considered in the context of economic analysis of law. The study by Daryaie et al. (2024) emphasizes that the effectiveness of compensation mechanisms largely depends on their economic rationality and ability to minimize transaction costs. The authors conclude that it is the combination of legal and economic criteria that allows creating an optimal model for restoring the violated rights of victims and ensuring a balance of interests of all participants in economic relations.

In the context of technological transformations, liability for personal data breaches attracts special attention of scholars. Cheng (2025) argues that in the «era of big data», traditional principles of tort law are not able to fully ensure adequate protection of individual rights. He proposes a model of combining the principle of guilt and the presumption of guilt as a single system of imputation of harm, while recognizing the need to develop the compensatory and preventive-punitive function of civil liability. This approach allows to harmonize the doctrine of liability with new social and technological realities.

The question of civil liability for environmental factors that cause damage is equally important. Alwreikat and Qtaishat (2025), analyzing the experience of Jordan, Egypt, and France, argue that in the field of e-waste management, the most effective concept is the objective theory of liability, which eliminates the need to prove the guilt of the person causing the damage. This approach strengthens the legal mechanisms for environmental protection and integrates the issue of waste recycling and disposal into the broader context of achieving sustainable development goals.

In the Ukrainian regulatory space, many economic and legal mechanisms of compensatory liability are covered in the Explanation of the Supreme Arbitration Court of Ukraine «On some issues of the practice of resolving disputes related to compensation for damage» No. v\_215800-94 of 29.12.2007 (VRU, 2007c), which was subsequently clarified by the Presidium of the Supreme Economic Court of Ukraine in the Recommendations of the Presidium of the Supreme Economic Court of Ukraine «On Amendments and Additions to the Explanation of the Presidium of the Supreme Arbitration Court of Ukraine dated 01.03.1994 N 02-5/215 «On Some Issues of Practice of Dispute Resolution Related to Compensation for Damage» No. va239600-07 dated 29.12.2007) (VRU, 2007a). These documents explicitly emphasize the need to take into account the special provisions of the Commercial Code, in particular Article 249(3), Article 39(1), Article 153(1), Article 159(1), Article 162(3), Article 178(2), Article 216(2) (as an example), as well as the method of calculating damages under Article 225(6) of the Commercial Code of Ukraine (VRU, 2025b).



However, in accordance with Article 225 of the Civil Code of Ukraine as it currently exists, as amended, it includes only the following components of damages: the cost of lost, damaged or destroyed property; additional expenses (penalties, additional work, materials, etc.); lost profits; and material compensation for non-pecuniary damage, if provided for by law. It is worth noting that part 2 of this article establishes that the law may impose restrictions on civil liability for certain types of economic obligations. The price criteria for calculating damages are outlined in paragraphs 3–4, and they are contingent on the date of the claim's voluntary satisfaction or the claim's filing, with the option to consider the price on the day of the decision. Instead, paragraphs 5-7 of Article 225 of the Civil Code of Ukraine were repealed by the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the Protection of Investors' Rights» No. 289-VIII dated January 1, 2023 (VRU, 2023).

Thus, the current legal framework of Ukraine in the field of civil liability for damage caused in the course of economic activity, on the one hand, creates a fairly developed and multicomponent system of protection of victims' rights, and on the other hand, demonstrates the existence of a number of challenges in terms of practical law enforcement, especially in the area of proper compensation and the effectiveness of enforcement mechanisms. The evolution of economic relations, including in high-risk sectors, highlights the need for further reforms aimed at strengthening institutional guarantees of fair compensation and establishing the principles of good faith and legal certainty in the business sector.

## Materials and Methods

The study's methodology is founded on the fact that the issue of civil liability for damages in the realm of economic activity is interdisciplinary. These methods were used during the study:

- the dialectical method was used to identify internal contradictions in the relationship between contractual and tort liability and their development in the modern private law doctrine. This approach made it possible to reveal the evolution of the compensatory mechanism and to outline the patterns of its transformation in the context of economic turnover;
- the formal legal method was used to analyze the regulatory body of civil and commercial legislation of Ukraine (the Civil Code of Ukraine, the Commercial Code of Ukraine, special laws and regulations). It made it possible to clarify the systemic links between the norms, determine their hierarchy, and identify gaps and conflicts in legal regulation;
- the comparative legal method was used to compare the provisions of civil and commercial legislation on compensation for damages (in particular, Articles 22, 623, 1166-1194 of the Civil Code of Ukraine and Articles 174, 222, 224-226 of the Commercial Code of Ukraine). This method made it possible to identify differences in the categories of «damage» and «losses», as well as the specifics of economic tort;
- the method of legal modeling was applied to the formation of the concept of a single compensatory mechanism of private law, within the framework of which an institutionally



coordinated design integrating contractual and tort elements is proposed as the basis for law enforcement practice;

- the method of structural-functional analysis was used to identify key issues and prospects for their resolution in the area of compensation for damages in economic relations. This approach allowed the author to identify internal contradictions of the current legislation (in particular, the Civil Code and the Commercial Code of Ukraine), classify them by type and propose targeted areas of improvement which will ensure consistency of intercontractual and tort structures and practical implementation of the principle of full compensation for damage.

## Results

The issue of civil liability for damage caused within the framework of economic activity is a key one in the private law doctrine, as it combines both elements of contractual obligations and tort remedies. It is not by accident that Ukrainian court practice in the early 1990s brought attention to the necessity of a thorough process for settling disagreements pertaining to damages compensation. Thus, in the Explanation of the Supreme Arbitration Court of Ukraine «On some issues of practice of resolving disputes related to compensation for damages» No. v\_215800-94 dated 29.12.2007 (VRU, 2007c) (as further amended in the Recommendations of the Presidium of the Supreme Economic Court of Ukraine «On Amendments and Additions to the Explanation of the Presidium of the Supreme Arbitration Court of Ukraine dated 01.03.1994 N 02-5/215 «On some issues of the practice of resolving disputes related to compensation for damages» No. va239600-07 of 29.12.2007) (VRU, 2007a), it was emphasized that it is necessary to take into account special provisions of the Commercial Code of Ukraine (part. 3, Article 249, Article 39(1), Article 153(1), Article 159(5), Article 162(3), Article 178(2), Article 216(2)), as well as the methods of determining the amount of losses in the field of business provided for in Article 225(6) of the Commercial Code of Ukraine (VRU, 2025b).

These acts laid the foundation for further law enforcement practice, but left a number of open questions related to the correlation between the concepts of «loss» and «damage», as well as the limits of application of contractual and tort constructions. The modern doctrine recognizes that the institute of damages as a result of breach of obligation and the institute of damage as a tort phenomenon have different normative origins, but in practice their interaction is inevitable.

The law enforcement practice has also developed an approach according to which a clear distinction should be made between (1) the debtor's duty to pay for losses caused by not performing or performing improperly an obligation (Article 623 of the Civil Code of Ukraine) and (2) non-contractual damage, which is regulated in Chapter 82 of the Civil Code of Ukraine (Articles 1166-1194) (VRU, 2025a).



**Figure 1.** Comparative Characteristics of the Application of Civil Law and Commercial Law Regulations on Liability for Damage in the Course of Business Activities

Criterion	Civil Code of Ukraine	Commercial Code of Ukraine	Characteristics
Normative basis	Chapter 82 «Compensation for Damage» (Articles 1166-1194), Article 22	Art. 224, Art. 225, Art. 249 (3), Art. 39 (1), Art. 153 (1), Art. 159 (5), Art. 162 (3), Art. 178	The Civil Code provides general provisions, while the Commercial Code specifies them in the field of economic activity, creating a dualistic model of liability regulation
Amount of compensation	In full (according to Art. 1166, Art. 1192 of the Civil Code)	Consideration of methods for determining the amount of damages (Art. 225 of the Civil Code)	The Civil Code has the principle of full compensation, while the Commercial Code has a pragmatic approach
Contractual liability	Art. 623 of the Civil Code: the debtor shall compensate damages for non-performance/improper performance of obligations	Art. 224 of the Commercial Code: compensation for damages for breach of economic obligation	Both Codes form similar structures, but the Commercial Code takes into account the specifics of business risk
Tort liability	General rule: damage is subject to compensation regardless of fault (Article 1166 of the Civil Code)	Art. 224 of the Commercial Code: losses are possible not only from breach of obligations, but also from violation of requirements for conducting economic activity	The CC introduces the «economic tort» category
Lost profit	Included in damages (according to Article 22 of the Civil Code)	Also taken into account when determining damages (Articles 224)	In economic relations, lost profits are considered as a key element for assessing economic efficiency
Possibility to reduce the amount of liability	There is no direct rule, but judicial reduction is allowed (court practice)	Consideration of the principle of proportionality, methods and balancing of interests (Art. 225)	The Commercial Code provides more room for taking into account economic feasibility
Correlation of contractual and non-contractual	Clear distinction: contract - Art. 623, tort - Ch. 82	Possible overlap (e.g., Article 224 of the Civil Code covers both types)	The practice of commercial courts follows the path of complementarity of institutions rather than their strict separation

Source: compiled by the author on the basis of VRU (2025a; 2025b)



The importance of this matter is substantiated by the fact that Chapter 82 of the Civil Code of Ukraine contains only a general rule on compensation for damages «in full» (Article 1166), but does not define in detail either the components of compensation, the possibility of its reduction, or the procedure for compensation for lost profits. Instead, commercial law (Articles 224, 225, 249 of the Commercial Code of Ukraine) expressly establishes the possibility of compensation for damages both in case of breach of an obligation and in case of non-compliance with «established requirements for conducting business activities», which in fact covers the tort liability of business entities (VRU, 2025b).

A participant in economic relations who violates an economic obligation or established requirements for conducting economic activity must, therefore, reimburse the entity whose rights or legitimate interests have been violated for the losses resulting from the violation, as per part 1 of Article 224 of the Commercial Code of Ukraine.

This provision demonstrates an organic combination of contractual and tort elements, as damage can arise not only from the failure to fulfill a contract, but also from a violation of general business rules (VRU, 2025b). Additionally, Article 22 of the Civil Code of Ukraine defines «damages» as a universal category covering any violation of civil rights, and Article 1192 of the Civil Code provides for both compensation in kind and in monetary form (VRU, 2025a).

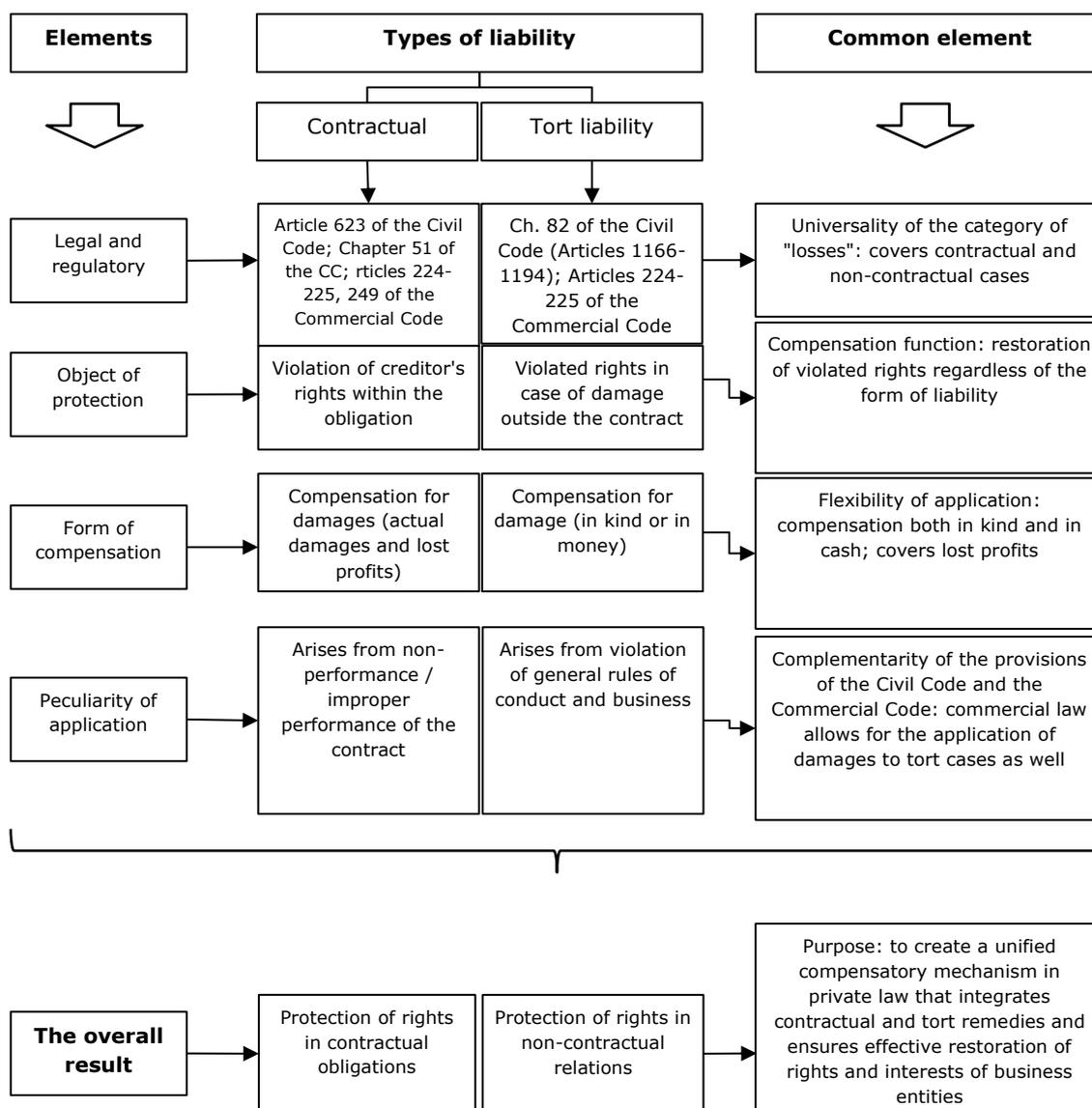
Therefore, the provisions of the Civil Code and the Commercial Code of Ukraine on recovery of damages for breach of obligations may (and should) be applied to relations for compensation for non-contractual damage in the field of business, but only to the extent that they do not contradict the provisions of Chapter 82 of the Civil Code of Ukraine (VRU, 2025a). This does not mean that contractual and tort liability are equated, instead, that private law has a single compensatory mechanism that makes it possible to fill in legal gaps and guarantees the efficient defense of business entities' rights and legitimate interests.

One of the most problematic issues in the field ofThe challenge of reflecting their sectoral specificity is among the most troublesome problems in the area of legal regulation of compensation for damage in economic relations is the problem of reflecting their sectoral specificity. The study of the The conclusions drawn from the analysis of current legislation's provisions of current legislation leads to the conclusion that there are that some reformers' proposals of some reformers regarding the abolition of to abolish the Economic Code of Ukraine as an separate law independent act and complete unification of fully unify its provisions with the provisions those of the Civil Code of Ukraine are both methodologically incorrect flawed and practically dangerous hazardous for the business sector community. Commercial legal relations, unlike purely civil ones, require the use of specialized tools focused on the professional sphere of business, which makes it impossible to identify the mechanisms of liability in civil and commercial law. Ignoring this specificity leads to the destruction of traditions established in commercial circulation, distortion of business loss compensation procedures and their replacement with general civil remedies that are formally acceptable but essentially inadequate and harmful to the business environment.



Ukrainian legislation provides for a number of Several provisions that directly indicate the special nature of Ukrainian legislation explicitly denote the unique nature of the institution of compensation for damage in the field of business. Thus, pursuant to Part 1 of Article 174 of the Commercial Code of Ukraine, an economic obligation may arise as a result of damage to a business entity or by the business entity itself. This indicates that liabilities for damages in such cases fall into the category of property and economic liabilities. At the same time, part 3 of Article 175 of the Civil Code of Ukraine explicitly states that damage caused by an individual who does not have the status of an entrepreneur cannot give rise to an economic obligation, which further confirms the autonomy and specialization of economic legal mechanisms (VRU, 2025b).

**Figure 2.** Scheme of a single compensatory mechanism in private law



Source: compiled by the author



The content and structure of such obligations indicate the existence of a separate tort institute of economic law, which, although it corresponds to civil law tort, is not identified with it. It is about a set of provisions that form the specifics of the economic law approach to determining and compensating for damage. In particular, part 1 of Article 222 of the Civil Code of Ukraine provides for the possibility of initiating a pre-trial settlement of a dispute over compensation for damage by the injured party, which reflects the economic law orientation towards discretion and balance of interests (VRU, 2025b). Compensation for non-pecuniary damage should be given special consideration. In the economic sector, it can only be considered a business entity's business reputation being violated, as opposed to the more general grounds outlined in Article 23 of the Civil Code of Ukraine (VRU, 2025a).

Another important difference is the regulation of liability of public authorities. While Article 393 of the Civil Code of Ukraine provides for compensation for damages only in case of unlawful decisions or actions, part 5 of Article 47 of the Commercial Code of Ukraine allows for recovery of damages even for lawful decisions that objectively led to negative property consequences for business entities (VRU, 2025a; 2025b). This provision clearly demonstrates the orientation of commercial legislation to protect business stability, rather than purely to formal compliance with the principle of legality.

No less significant is the expanded list of damages enshrined in Article 225 of the Commercial Code of Ukraine, which differs significantly from Article 22 of the Civil Code of Ukraine. Commercial law recognizes «lost income» as an element of damages that is calculated not in the abstract, but taking into account economic specifics: by reducing the gross income of a business entity by the amount of gross expenses and depreciation (Article 142 of the Commercial Code of Ukraine) (VRU, 2025b). In contrast to the civil law approach, which defines lost profits as income that an individual could actually receive under normal circumstances, this sets apart the economic understanding of lost profits (Article 22(2) of the Civil Code of Ukraine) (VRU, 2025a).

Additionally, part 3 of Article 226 of the Civil Code of Ukraine provides for a special ground for reducing the amount of compensation: a business entity is denied the right to compensation for losses if it was promptly informed of a potential failure to fulfill an obligation and could have prevented the adverse consequences, but failed to do so. This provision has no analogues in civil law, which confirms the separateness of economic torts.

Significant peculiarities can be traced in the methods of determining damage. Instead of the universal approach of Art. 22 of the Civil Code of Ukraine, commercial law relies on special regulations. Thus, part 6 of Art. 225 of the Commercial Code of Ukraine provides for the use of methods approved by the Cabinet of Ministers of Ukraine (further – CMU), including, in particular, the Resolution of the CMU

«On Approval of the Methodology for Determining the Amount of Damage Caused by Unauthorized Occupation of Land Plots, Use of Land Plots for Other Purposes, Removal of Soil Cover (Fertile Soil Layer) without Special Permit» No. 963 of 25.07.2007 (VRU, 2007b); «On Taxes for Calculating the Amount of Damage Caused by Violation of the Legislation on the Nature Reserve Fund of Ukraine» No. 287-93-p of 03.04.1995 (VRU, 1995); and «On Taxes for Calculating the Amount of Damage Caused to Green Areas



within Cities and Other Settlements» No. 559-99-p of 29.02.2012 (VRU, 2012a). In the absence of modern methods, the Temporary Methodology for Determining the Amount of Damage from Breach of Economic Contracts, approved by the Order of the State Property Fund of Ukraine «On Approval of the Methodology for Determining the Damage and Amount of Damage Caused to Enterprises, Institutions and Organizations 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 Economic Activity» (No. z1522-22 of 18.10.2022), may also serve as a guide. An additional element of the specialty of commercial law is the regime of double compensation for damage caused by violations of competition law, enshrined in part 2 of Article 55 of the Law of Ukraine «On Protection of Economic Competition» (VRU, 2024), which is completely alien to civil law. Thus, commercial law forms an autonomous compensatory mechanism within which compensation for damage acquires the characteristics of a special tort. This mechanism is not isolated from civil law, but it is also not reduced to its provisions, which leads to its consideration as a separate, institutionally justified form of civil liability in the field of business.

In addition, another conceptually complex problem, which is reflected in paragraph 9 of the Explanation of the Supreme Arbitration Court of Ukraine «On some issues of practice of resolving disputes related to compensation for damage» No. v\_215800-94 of 29.12.2007 (VRU, 2007c), is the issue of determining the legal nature of damage caused in the field of business as a result of non-enforcement of a court decision. This issue is of practical and methodological importance, as it affects the limits of application of both tort and obligation constructions in commercial law. Therefore, first of all, it should be emphasized that a court decision as a legal fact may be recognized as the basis for a new obligation only in exceptional situations. These are, in particular, cases of restitution under an invalid disputed contract (Article 208 of the Commercial Code of Ukraine), when the court obliges the parties to return what they received under the contract; situations of recognizing a contract as concluded by a court decision (Article 187, Article 219 of the Commercial Code of Ukraine), as well as a number of other specific cases (VRU, 2025b). In such situations, the court decision does create a new obligation that did not exist before it was made. In most cases, however, judicial acts do not create new obligations, but rather ensure their enforcement by giving them the form of an enforcement document. For example, a decision to recover damages states the fact of a violation and determines its scope and procedure for compensation, while the obligation to compensate arises on the basis of a preliminary fact of an offense. This is further supported by the fact that, even prior to the court's ruling, the debtor is entitled to voluntarily make up the damages.

Based on this, it seems methodologically incorrect to define non-enforcement of a court decision as a tort. Within the meaning of Chapter 82 of the Civil Code of Ukraine (Article 1166), tort damage results from the violation of absolute rights of a person protected by the general prohibition of harm. In the case of non-enforcement of a court decision, it is not a violation of an absolute right, but rather the improper fulfillment of a specific obligation. Therefore, the legal basis for the creditor's claims in such a situation should be sought not in tort provisions, but in the rules on liability for breach of obligations -



Articles 623 and 625 of the Civil Code of Ukraine, as well as Chapter 25 of the Commercial Code of Ukraine. In particular, the concept of «court decision as a source of tort damage» negates the principle of full compensation for damage enshrined in Article 1166 of the Civil Code of Ukraine (VRU, 2025a). After all, tort compensation provides for continuous and systematic accounting of all losses of the injured party from the moment they occur until the moment of actual compensation. The reclassification of this obligation as a «judicial» obligation breaks the unity of the compensation process by introducing an external factor - the possibility or impossibility of enforcing a court decision.

The problem is further complicated by the position reflected in paragraph 9 of the Explanation of the Supreme Arbitration Court of Ukraine on damages (VRU, 2007c), according to which the court must determine whether it was actually possible to enforce the judgment at the time it was presented for enforcement. However, this provision seems questionable given the current substantive law. Pursuant to Article 1192 of the Civil Code of Ukraine, compensation for damages may be made in two forms - in kind or in cash. If compensation is made in cash, then pursuant to Article 625 of the Civil Code of Ukraine, the debtor is not released from liability for the inability to fulfill a monetary obligation (VRU, 2025a). Thus, a court review of the «possibility of fulfillment» would be contrary to the law.

A different situation arises when it comes to a court decision on compensation for damage in the form of transferring a specific thing or performing a certain action. Here, of course, the objective impossibility of performance may be relevant. However, it does not eliminate the debtor's obligation itself, but rather affects the procedure for its realization. In such cases, procedural rules apply, in particular, Article 33 of the Law of Ukraine «On Enforcement Proceedings» (No. 1404-VIII of 10.08.2025), which allows the court or enforcement body to grant a deferral or installment plan, as well as to change the method and procedure for fulfilling the obligation (VRU, 2025c). Thus, the legal qualification of non-enforcement of a court decision as tort damage is unacceptable from a doctrinal point of view and contrary to the system of national legislation. The only correct approach seems to be to qualify such legal relations as obligatory, with the appropriate application of the provisions of the Civil Code of Ukraine, the Economic Code of Ukraine and special laws.

It is impossible to overlook one of the most contentious topics when analyzing the problems of damages compensation in the field of economic relations: compensation for losses suffered by businesses as a result of illegal decisions, actions, or inaction on the part of local self-government bodies and public authorities. Even the Clarification of the High Commercial Court of Ukraine on compensation for damages emphasizes the unlawful actions of state enforcement officers as a basis for imposing tort liability. However, this issue does not exhaust the whole range of issues. Thus, in the field of land relations, numerous offenses arise due to the adoption of unlawful decisions by local governments, which necessitates amendments to the Law of Ukraine «On Local Self-Government» (No. 280/97-VR of 08.08.2025) (VRU, 2025d).

The current stage of development of Ukrainian legislation is characterized by a comprehensive regulatory framework for the institution of liability of public authorities for damage caused to business entities. Thus, the Economic Code of Ukraine contains a



number of provisions that directly define the grounds for such liability: Article 23(7), Article 40(7), Article 47(4-5), Article 74(6), Article 88(8), Article 147(3), Article 249(3), Article 255, Article 397(5-7) (VRU, 2025b). According to the Civil Code of Ukraine, damage caused by public authorities is covered by the provisions of Article 393 and special provisions of Articles 1173-1176, which expressly establish the liability of the state, the Autonomous Republic of Crimea and local self-government bodies for unlawful decisions, actions or omissions (VRU, 2025a). Additionally, Article 77 of the Law of Ukraine «On Local Self-Government» (VRU, 2025d) and Article 13(3) of the Law of Ukraine «On the State Tax Service» (VRU, 2012b) provide for the possibility of compensation for damage caused by the relevant authorities in the course of exercising their powers.

At the same time, despite the developed regulatory framework, a number of problems remain open. First of all, it is the issue of distinguishing between lawful and unlawful actions of officials, which is crucial for the emergence of the obligation to compensate for damage. The issue of personification of public authorities as independent subjects of civil liability is no less complicated, since they traditionally act on behalf of the state or a territorial community. The issue of jurisdiction is also controversial: the division of competence between commercial and administrative courts in disputes related to compensation for damage caused by the actions of public authorities. The mechanism of actual enforcement of funds from the state or local budget remains extremely problematic, which creates a conflict between the principle of full compensation for damage and the limitations of budget legislation.

Resolving these issues is an urgent need for the state in times of war, which also proclaims the development of entrepreneurship as one of its key priorities. A qualitative enhancement of the legislative framework is necessary to guarantee adequate compensation for damage caused by unlawful actions of public authorities, as indicated in Table 1.

**Table 1.** Key problems and prospects for their solution in the field of compensation for damage in economic relations

<b>Problem</b>	<b>Essence of the problem</b>	<b>Proposed solution</b>
Correlation of the concepts of «losses» and «damage»	In the Civil Code of Ukraine (Art. 22), damage is a universal category, while the Commercial Code (Arts. 224, 225, 249) treats losses as covering both contractual and tort cases, creating uncertainty over whether these concepts coincide or differ.	Introduce a legislative definition clarifying the relationship between “losses” and “damage,” recognizing losses as a broader category that includes damage and lost profits, and amend Article 22 of the Civil Code of Ukraine to harmonize it with Article 225 of the Commercial Code of Ukraine.
Limits of application of contractual and tort structures	In practice, disputes often arise when damage is caused within existing contractual relations but outside the contract’s scope (e.g., a contractor’s negligent acts).	To codify in the Civil Code (e.g., Article 623) the presumption that the existence of a contract does not preclude tort liability where damage arises outside the performance of the contractual obligation, in line with § 280 BGB (Germany).



Lack of detail on the composition of compensation	Art. 1166 of the Civil Code contains a general rule on «full compensation», but does not detail the procedure for compensation for lost profits, the possibility of reducing compensation, etc.	Amend Chapter 82 of the Civil Code of Ukraine to provide for a structure of compensation similar to Article 225 of the Commercial Code of Ukraine: direct damage, lost profits, lost income, additional expenses, which will unify the practice.
Specifics of economic tort	In the Civil Code, tort is based on violations of absolute rights, whereas in the Commercial Code of Ukraine it centers on economic activity and professional risk, and the lack of a clear definition leads to methodological errors.	Recognize the autonomy of economic tort as a separate institution at the level of doctrine and law. To enshrine in the Civil Code the definition of «economic tort» as damage caused in the field of professional business activity, which differs from the tort of civil law.
Compensation for non-pecuniary damage in commercial law	The Civil Code of Ukraine (Article 23) recognizes a broad range of non-pecuniary losses, whereas commercial law allows them only for damage to business reputation, creating legal conflicts.	Enshrine in the Civil Code of Ukraine (Part 1 of Article 222) a provision that clearly defines that moral damages in economic relations are limited to violation of business reputation and special compensation for loss of business image.
Compensation for damages by lawful actions of public authorities	Article 393 of the Civil Code provides for liability for unlawful acts, while part 5 of Article 47 of the Commercial Code allows for recovery of damages even for lawful acts that have caused negative consequences, including a conflict of regulations.	A special institute of «compensation for legitimate damage» should be established at the legislative level, limiting it to cases where an act of a public authority has objectively caused losses for business.
Failure to enforce court decisions	Some scholars and courts equate the failure to enforce a court decision with a tort, although in fact it is an improper fulfillment of an obligation (Articles 623, 625 of the Civil Code; Chapter 25 of the Commercial Code).	Introduce in the Civil and Commercial Codes of Ukraine the rule that failure to enforce a court decision constitutes a breach of obligation, not a tort, to eliminate doctrinal contradictions and align with procedural law (Article 33 of the Law «On Enforcement Proceedings»).
Methods of determining damage	The Civil Code (Article 22) adopts a universal approach, whereas the Commercial Code (Article 225(6)) allows special methods approved by the CMU (Resolutions No. 963/2007, No. 287/1995, No. 559/2012), and the lack of a unified standard creates legal uncertainty.	Develop a single comprehensive methodology for assessing damage that combines civil and commercial approaches. Introduce mandatory forensic examination in cases where damage is determined by special methods.
Lack of a clear mechanism for recovering damages from the budget	Although the Civil Code (Articles 1173–1176) and the Commercial Code (Articles 23, 40, 47, 88, 147, 249, 255, 397) regulate state and local government liability, enforcement is often hindered by budget legislation.	Introduce a special procedure for enforcing compensation from the budget by creating a state fund to guarantee damages from authorities, in line with the rule of law and ECHR practice (Article 6 of the Convention).

Source: compiled by the author based on VRU (2021; 2025a; 2025b)



## Discussion

This construction, as the analysis of legislation and its application practice shows, is not accidental, but is driven by the needs of economic circulation, where compensation for damage cannot be reduced to purely civil law instruments.

In this context, a paradox is revealed: attempts to unify civil and commercial regulation (through proposals to eliminate the Civil Code of Ukraine) come into conflict with the actual needs of economic circulation, where damage arises not only in the field of relations of obligation but also as a result of violation of general business rules. Unlike general civil torts, in commercial relations, the priority is to compensate for business losses, restore business reputation and maintain commercial stability. In fact, as the practice of other legal orders demonstrates (Van Dunné, 1999; Priest, 1991), ignoring the specifics of the economic context leads either to an excessive expansion of tort liability with undesirable market effects or to an excessive narrowing of compensation opportunities (the case of pure economic loss in common law).

The results of the study confirm the conclusion that there is a «single compensatory mechanism» in private law of Ukraine, which combines civil and commercial structures of compensation for damage. However, unlike the universal model of the Civil Code, commercial law instruments provide for an expanded range of damages, including lost income and special forms of non-pecuniary damage (in the context of business reputation), and allow for compensation even for lawful actions of public authorities. This situation significantly brings the Ukrainian model closer to the concept of «objective responsibility» that modern science is actively developing in the field of environmental risks and high-tech challenges (Alwreikat&Qtaishat, 2025; Cheng, 2025).

Comparing the results with foreign approaches reveals several important patterns. First, the effectiveness of compensation mechanisms is determined not so much by the degree of their formal universality as by their adaptability to the specifics of the market environment (Daryaie et al., 2024). Secondly, in the current environment, economic activity covers high-risk areas - from the digital economy to waste management - where the classical tort principles (fault, causation, full compensation) are insufficient. That is why the expansion of the limits of liability, which Priest (1991) noted in Western systems, takes on a new meaning in Ukraine: not as an «overload» of the legal order, but as a need for an adequate response to the complication of economic processes. Thirdly, the Ukrainian model of compensation for damages in commercial legal relations combines traditional tort elements with commercial legal functionality, creating a unique structure that can serve as a model for legal systems with similar socio-economic challenges. This is also confirmed by the analysis of law enforcement: the practice clearly distinguishes between cases of damages for failure to fulfill obligations and tort situations, but at the same time applies the same compensatory criteria (Articles 224, 225 of the Civil Code of Ukraine). This approach is consistent with the concept of «hybrid» obligations, which is increasingly seen in the doctrine as an adequate response to the current challenges of private law.

Thus, the discussion around civil liability in the field of economic activity demonstrates that the key challenge is not so much to find the boundaries between civil and commercial law as to develop a balanced compensation mechanism capable of ensuring legal



certainty, economic efficiency and fairness of compensation. In this sense, Ukraine's experience may be conceptually important for other transitional legal orders facing similar problems – fragmented regulation, lack of established practice, and rapidly changing economic and technological conditions.

## Conclusions

This study demonstrates that the mechanisms of civil liability in Ukrainian commercial law form a single compensatory complex that combines contractual and tort remedies for damages. Such a system provides legal certainty, protects economic stability and is aimed at compensating both direct damage and lost profits arising from the breach of obligations.

In order to apply the provisions of the Ukrainian Civil and Commercial Codes, it is necessary to further harmonize methods for calculating damages and to more clearly regulate the relationship between contractual and tort liability, according to an analysis of the current legislation. The study notes that there is a need to improve the procedures for assessing damages, unify judicial practice, and adapt legal instruments to modern socio-economic and technological challenges, including digitalization and new forms of business activity.

The results obtained confirm that a unified compensation mechanism contributes to improving the efficiency of legal regulation, minimizing risks for business structures and making certain that the parties' interests are balanced. The practical significance of the study lies in the development of scientifically based recommendations for legislative initiatives and the development of law enforcement practice aimed at improving the system of compensation for losses and strengthening the legal security of commercial relations in Ukraine.

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