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CASE STUDY

Case Study

CAN TORT LAW HANDLE WAR? REFLECTIONS ON PRIVATE LITIGATION FOR WAR-RELATED DAMAGES IN UKRAINE

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ABSTRACT

Background: *Russia's full-scale invasion of Ukraine has caused widespread destruction and immense harm to civilians, prompting individuals and legal entities to seek compensation through tort litigation. The pressing question arises: can tort law offer an effective remedy for war-related damage? While international law affirms the obligation to make reparation for internationally wrongful acts, individual victims often face significant legal and practical barriers when seeking redress in domestic courts. This study examines whether private tort claims can serve as a viable path to reparation for victims of war-related harm, using the jurisprudence of Ukrainian courts as a case study.*

Methods: *This study employs a qualitative doctrinal methodology grounded in case law analysis. It examines a broad range of Ukrainian court decisions involving tort claims brought by individuals against both the Russian Federation and the Ukrainian state. The analysis distinguishes between claims filed under specific legislative provisions—such as the Law of Ukraine "On Combating Terrorism"—and those based on general tort principles. The study also traces the legal*

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evolution regarding Russia's jurisdictional immunity and explores issues related to procedural fairness, the substantiation of claims, and the enforceability of judgments.

Results and Conclusions: *The analysis reveals that private tort litigation has proven largely ineffective in practice and conceptually ill-suited to war-related claims. Although recent rulings have lifted Russia's jurisdictional immunity, serious challenges remain: judgments are consistently not enforced, evidentiary standards are inconsistently applied, and individual litigation fails to ensure equitable distribution of limited resources. Moreover, lawsuits against Ukraine under both specific statutes and general tort law have also yielded limited results due to legislative gaps and the absence of effective enforcement mechanisms. The study concludes that private tort claims, while symbolically important, cannot serve as a sustainable vehicle for post-war justice. Instead, a centralised reparations mechanism, such as the emerging International Compensation Mechanism, offers a more just and effective model for distributing reparations in a manner consistent with principles of distributive justice.*

1 INTRODUCTION

Tort law rests on a cornerstone principle: one who has unlawfully caused harm to another bears a duty to compensate for that harm. Tort liability consists of three essential elements: fault, damage, and causation. When an injured party successfully proves that she has suffered legally cognizable losses caused by wrongful acts committed against her, she is entitled to claim compensation for those losses at the wrongdoer's expense.

This logic would seem to apply in the context of full-scale war. The three elements of tort appear present: damage of enormous magnitude, the gravest of all wrongful acts, and an undeniable causal nexus between the two. Indeed, international law clearly states that a state responsible for an internationally wrongful act is obliged to make reparation for the damage it has caused.[1]

Yet no victim of Russian aggression has received compensation from the invading state.[2] What, then, is missing from this arrangement? That is the question that drives this research.

1 See: Responsibility of States for Internationally Wrongful Acts (2001) art 31 <https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf> accessed 4 August 2025.

2 See: Council of Europe, *Expert Report on Remedies and Redress Mechanisms for War-Affected Individuals in Ukraine* (Co-operation Programmes Division of the Council of Europe 2023) 62 <https://rm.coe.int/council-of-europe-expert-report-on-national-remedies-in-ukraine-2775-2/1680adebf5> accessed 4 August 2025.

2 METHODOLOGY

This article examines whether tort litigation brought by private individuals can serve as a reliable route for securing reparation for war-related damage. To address this question, the analysis focuses on Ukrainian jurisprudence, with findings limited to the context of the ongoing Russo-Ukrainian war.

The primary emphasis is placed on judicial practice in cases involving claims by private persons against the Russian Federation seeking compensation for war-related damage. Additionally, this article considers lawsuits brought by Ukrainians against the Ukrainian state itself, wherein claimants sought compensation for damage caused by Russia.

The discussion begins with claims against Ukraine (as they arose chronologically first), which are divided into two categories: claims under the Law of Ukraine No. 638-IV "On Combating Terrorism"[3] and claims based on general tort principles. The article then turns to claims against the aggressor state. In this regard, case law has undergone significant changes: prior to 2022, such claims were dismissed based on the defendant's jurisdictional immunity; however, following the onset of the full-scale invasion, courts reversed course and began hearing such claims. However, this shift did not eliminate all problems associated with suing a foreign state with which the forum state is at war.

Nevertheless, since 2022, lawsuits against Russia have become commonplace. Yet, the judgments rendered in such cases are not actually enforced. The article argues that their actual enforcement could present an even greater problem than non-enforcement, insofar as it would result in an inequitable distribution of the aggressor state's limited available assets among numerous victims. To support this argument, the final section provides an overview of current judgments against Russia in relevant cases.

3 LAWSUITS AGAINST UKRAINE

3.1. Claims Based on the Law of Ukraine "On Combating Terrorism"

In 2014, Ukraine's initial response to the military actions of Russian and pro-Russian armed groups in the eastern part of the country was the launch of the Anti-Terrorist Operation (ATO). The ATO lasted from 14 April 2014 until 30 April 2018, when it was replaced by the Joint Forces Operation.

As the actions of enemy armed groups were recognised as terrorist acts, it justified the use of the provisions of the relevant anti-terrorism legislation. In particular, Article 19 of the Law of Ukraine "On Combating Terrorism" reads as follows:

3 Law of Ukraine No 638-IV 'On Combating Terrorism' (20 March 2003) [2003] Official Gazette of Ukraine 16/697 <https://zakon.rada.gov.ua/laws/show/638-15#top> accessed 4 August 2025.

"Compensation for damage caused to citizens by a terrorist act shall be made at the expense of the State Budget of Ukraine in accordance with the law and with subsequent recovery of the amount of this compensation from the persons who caused the damage in accordance with the procedure established by law.

Compensation for damage caused to an organisation, enterprise or institution by a terrorist act shall be made in accordance with the procedure established by law."[4]

Through this provision, the State of Ukraine effectively promised its citizens that if they suffered damage at the hands of terrorists, they could expect state support in the form of compensation from the state budget. Simultaneously, the state promised to seek recovery of the relevant funds from the actual perpetrators.

The Law of Ukraine "On Combating Terrorism" was adopted in 2003, well before the war began, and the relevant compensation provision existed from its inception. For years, it remained dormant. However, with the launch of the ATO, it was time to test the effectiveness of this provision.

Persons who suffered from the actions of enemy armed forces began filing lawsuits against Ukraine, demanding that the promise enshrined in Article 19 be honoured and that damages be compensated from the state budget.[5] However, courts dismissed such claims, noting that the article contains the phrase "in accordance with the law." This wording was interpreted to mean that the provision's implementation requires the adoption of a special statute specifying the procedure for such compensation, including its substantive and procedural parameters. In the absence of such a law, the plaintiffs' claims could not be sustained.

The Grand Chamber of the Supreme Court affirmed this reasoning.[6] In doing so, it invoked the concept of "legitimate expectation" established in ECtHR jurisprudence, noting that the right to compensation is conditional upon the adoption of special legislation. Therefore, until such legislation is in place, one cannot "legitimately expect" compensation based on Article 19 alone (para. 32).

The Grand Chamber went further, however, by emphasising the state's positive obligations. While a person cannot claim compensation for real estate destroyed by terrorists in the absence of implementing legislation, they can claim compensation from the state for the

4 ibid, art 19.

5 For the analysis of these cases, see also: NRC, 'Pursuing Compensation for Properties Damaged or Destroyed as a Result of Hostilities in the Armed Conflict in Eastern Ukraine: Gaps and Opportunities, March-October 2018' (*NRC Norwegian Refugee Council*, 15 January 2019) <https://www.nrc.no/resources/reports/pursuing-compensation-for-properties-damaged-or-destroyed-as-a-result-of-hostilities-in-the-armed-conflict-in-eastern-ukraine-gaps-and-opportunities> accessed 4 August 2025.

6 Case No 265/6582/16-ц (Supreme Court of Ukraine (Grand Chamber), 4 September 2019) <https://reyestr.court.gov.ua/Review/86310215> accessed 4 August 2025.

delay in adopting the requisite law. In other words, a person is entitled to compensation for the state's failure to fulfil its positive duty to protect private property (para. 51). This duty included introducing mechanisms that would allow people to vindicate their property rights in the event of violation. No such mechanism existed for those who suffered from terrorists, and for this omission, the state owes compensation.

It must be emphasised, however, that such compensation does not equal the amount of damage caused by terrorists. For example, in the case considered by the Grand Chamber, the claimant estimated the value of destroyed real estate at UAH 888,000. The compensation awarded for the delay in adopting relevant legislation ultimately amounted to UAH 80,000.[7] Thus, a distinction must be made between compensation for real estate destroyed by terrorists (where compensation equals the property's value) and compensation for the state's delay in adopting legislation that would enable compensation for real estate destroyed by terrorists. In the latter case, compensation will be significantly less.[8] This also means that, having received compensation for the legislative delay, a person does not lose the right to subsequently claim compensation for destroyed real estate if such legislation is eventually adopted.

The ECtHR confirmed this approach in *Futornyak v. Ukraine*.[9] In this case, the applicant sought compensation from Ukraine for his car, which was destroyed in a fire caused by enemy shelling. The national courts rejected his claim based on the arguments outlined above. The ECtHR declared the application inadmissible, holding, first, that there was no firm basis for legitimate expectations in either national legislation or case law, and second, that the applicant had lost his victim status after receiving compensation for the state's delay in adopting the requisite legislation.

3.2. Claims Based on General Tort Law Principles

Regarding claims against Ukraine based on general tort principles, the central question is whether the state may be held liable for damage caused by Russia on the grounds that it failed to protect its citizens from Russian aggression.

This question builds upon the distinction between negative and positive obligations under the right to life enshrined in Article 2 of the ECHR.[10] A negative obligation requires the

7 Case No 265/6582/16-ц (Ordzhonikidze District Court of Mariupol city (Donetsk region), 27 April 2021) <https://reyestr.court.gov.ua/Review/96765879> accessed 4 August 2025.

8 The same approach was confirmed obiter dictum in the case concerning the death of the claimant's husband. See: Case No 242/2367/21 (Supreme Court of Ukraine (Civil Court of Cassation), 2 February 2024) <https://reyestr.court.gov.ua/Review/116731841> accessed 4 August 2025.

9 *Futornyak v Ukraine* App no 41678/20 (ECtHR, 4 June 2024) <https://hudoc.echr.coe.int/eng?i=001-235004> accessed 4 August 2025.

10 ECtHR, *Guide on Article 2 of the of the European Convention on Human Rights – Right to life* (Council of Europe 2025).

state to refrain from certain actions, namely, from unlawfully taking life. A positive obligation, by contrast, requires the state to take active steps to ensure that the right to life within its jurisdiction is not violated by third parties. These positive obligations contain both substantive and procedural components. The substantive component requires the state to introduce legislation prohibiting murder and to maintain effective law enforcement and other bodies to ensure such legislation's effectiveness. The procedural component requires the state to conduct timely and effective investigations into murders to establish the truth and bring perpetrators to justice.[11]

The doctrine of positive obligations under Article 2 thus permits holding a state liable for deaths caused by third parties who are not state representatives or agents. However, it would be an overextension of this doctrine to maintain that a state should be responsible for any murder committed on its territory on the basis that it failed to prevent it. As the ECtHR has emphasised, "bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities."[12]

According to ECtHR jurisprudence, a positive obligation arises only where two conditions are satisfied: (a) the authorities knew or should have known about the existence of a genuine and immediate threat to the life of a particular person or persons from the criminal acts of a third party; and (b) they failed to take measures within their power that could reasonably have prevented this threat.[13] Moreover, the obligation is one of means rather than of result.[14] Even if authorities were aware of a genuine threat and that person was subsequently killed, the state will not be held liable if it demonstrates that, given the information available at the time, it acted in a timely, competent manner, and did everything possible within its powers to prevent the murder.

Whether these conditions are met in cases where a person is killed by terrorists or in an attack by an enemy army depends on the specific circumstances of each case.

11 *Armani Da Silva v the United Kingdom* App no 5878/08 (ECtHR, 30 March 2016) para 229 <https://hudoc.echr.coe.int/eng?i=001-161975> accessed 4 August 2025.

12 *Osman v the United Kingdom* App no 87/1997/871/1083 (ECtHR, 28 October 1998) para 116 <https://hudoc.echr.coe.int/fre?i=001-58257> accessed 4 August 2025; *Choreftakis and Choreftaki v Greece*, App no 46846/08 (ECtHR, 17 January 2012) para 46 <https://hudoc.echr.coe.int/eng?i=001-108625> accessed 4 August 2025.

13 *Mastromatteo v Italy* App no 37703/97 (ECtHR, 24 October 2002) para 68 <https://hudoc.echr.coe.int/fre?i=001-60707> accessed 4 August 2025; *Paul and Audrey Edwards v the United Kingdom* App no 46477/99 (ECtHR, 14 March 2002) para 55 <https://hudoc.echr.coe.int/eng?i=001-60323> accessed 4 August 2025.

14 *Kurt v Austria* App no 62903/15 (ECtHR, 15 June 2021) para 159 <https://hudoc.echr.coe.int/eng?i=001-210463> accessed 4 August 2025.

The Grand Chamber of the Supreme Court addressed this issue in a landmark case.[15] In 2015, a woman was killed in the Donetsk region in temporarily occupied Ukrainian territory during the ATO period. The circumstances of her death were unclear. According to one version, she died when the car in which she was driving struck a mine near a checkpoint in non-government-controlled territory. According to another, she was killed when illegal armed formations of the "Donetsk People's Republic" shelled the village in which she resided. The deceased's son filed suit against the State of Ukraine seeking compensation for moral damages caused by his mother's death in a terrorist attack.

The Grand Chamber dismissed the claim, holding that the state is only liable for its own actions or omissions (para. 103). The mere fact that the applicant's mother died on Ukrainian territory was insufficient to hold Ukraine liable (para. 102). Moreover, the Court found that the territory where the applicant's mother died was temporarily occupied at the time. Consequently, the State of Ukraine did not control that part of its territory to such an extent as to prevent the applicant's mother's death, even if, under other circumstances, it could and should have done so (para. 65).[16]

4 LAWSUITS AGAINST THE RUSSIAN FEDERATION

4.1. Jurisprudence before 2022

Prior to the full-scale invasion in 2022, Ukrainian courts maintained that lawsuits against the Russian Federation were not justiciable, on the grounds that, as a sovereign state, Russia enjoyed jurisdictional immunity.[17]

15 Case No 635/6172/17 (Supreme Court of Ukraine (Grand Chamber), 12 May 2022) <https://reyestr.court.gov.ua/Review/104728593> accessed 4 August 2025.

16 ibid.

17 See: Case No 265/7703/19 (Supreme Court of Ukraine (Civil Court of Cassation), 9 June 2021) <https://reyestr.court.gov.ua/Review/97628320> accessed 4 August 2025; Case No 280/1380/19 (Supreme Court of Ukraine (Civil Court of Cassation), 4 November 2020) <https://reyestr.court.gov.ua/Review/92747065> accessed 4 August 2025; Case No 711/17/19 (Supreme Court of Ukraine (Civil Court of Cassation), 13 May 2020) <https://reyestr.court.gov.ua/Review/89509134> accessed 4 August 2025; Case No 613/924/19 (Supreme Court of Ukraine (Civil Court of Cassation), 3 November 2021) <https://reyestr.court.gov.ua/Review/101138310> accessed 4 August 2025; Case No 943/1741/19 (Supreme Court of Ukraine (Civil Court of Cassation), 22 Septembe 2021) <https://reyestr.court.gov.ua/Review/100109038> accessed 4 August 2025; Case No 712/10119/20 (Supreme Court of Ukraine (Civil Court of Cassation), 22 September 2021) <https://reyestr.court.gov.ua/Review/99926535> accessed 4 August 2025; Case No 357/13182/18 (Supreme Court of Ukraine (Civil Court of Cassation), 3 June 2020) <https://reyestr.court.gov.ua/Review/89928706> accessed 4 August 2025.

A significant reversal in judicial practice occurred shortly after the full-scale invasion, on 14 April 2022, when the Supreme Court ruled on case No. 308/9708/19.[18] This was the first case in which the Supreme Court found that the Russian Federation could not invoke jurisdictional immunity in cases involving claims for damages caused by Russian aggression. The primary justification for this conclusion was the concept of "territorial tort exception."[19]

In a subsequent judgment of 18 May 2022, in case No. 760/17232/20-ц,[20] the Supreme Court reaffirmed its earlier finding while supplementing it with additional reasoning. This time, the Court considered the issue from the perspective of the right to a fair trial (Article 6 of the ECHR). It emphasised that recognising the Russian Federation's jurisdictional immunity would restrict war victims' right of access to court.

Following these landmark rulings, jurisdictional immunity was effectively set aside, and lawsuits against the Russian Federation became commonplace. According to OpenDataBot, as of April 2025, 1,482 rulings had been issued on lawsuits against Russia.[21] While there were only 52 such lawsuits in 2022, the number rose to 405 in 2023 and to 812 in 2024.[22]

However, this emerging case law has exposed several acute problems, notably: the proper notification of the defendant state, the quantification and substantiation of claimed compensation amounts, and the (non)enforcement of judgments.

4.2. Proper Notification

The Supreme Court has held that the Russian Federation's consent is not a prerequisite for cases to be heard. However, this does not negate the other procedural rights to which the Russian Federation is entitled as a party to judicial proceedings. The right to a fair trial encompasses the principle of equality of arms, which requires that each party be given the opportunity to present its case before the court and be heard.[23] To this end, the court must first ensure that the party is duly notified of the time and place of trial. However, given the ongoing war, notification of the official authorities of the enemy state presents considerable challenges.

18 Case No 308/9708/19 (Supreme Court of Ukraine (Civil Court of Cassation), 14 April 2022) <https://reyestr.court.gov.ua/Review/104086064> accessed 4 August 2025.

19 For the detailed analysis of the Court's reasoning in this case see: Bohdan Karnaukh, 'Territorial Tort Exception? The Ukrainian Supreme Court Held that the Russian Federation Could Not Plead Immunity with regard to Tort Claims Brought by the Victims of the Russia-Ukraine War' (2022) 5(3) Access to Justice in Eastern Europe 165. doi:10.33327/AJEE-18-5.2-n000321.

20 Case No 760/17232/20-ц (Supreme Court of Ukraine (Civil Court of Cassation), 18 May 2022) <https://reyestr.court.gov.ua/Review/104635312> accessed 4 August 2025.

21 'A Ukrainian Tried to Sue Russia for 999 Quadrillion UAH in War Damages' (*OpenDataBot*, 23 April 2025) <https://opendatabot.ua/en/analytics/court-against-rf> accessed 4 August 2025.

22 ibid.

23 *Dombo Beheer BV v The Netherlands* App no. 14448/88 (ECtHR, 27 October 1993) para 33 <https://hudoc.echr.coe.int/eng?i=001-57850> accessed 4 August 2025.

On 24 February 2022, the day of the full-scale invasion, Ukraine severed diplomatic relations with the Russian Federation.[24] Consequently, notification pursuant to the procedure established by the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Convention) became impossible. Nor can reliance be placed on conventions on legal assistance, such as the Minsk Convention[25] or the Kyiv Agreement,[26] as Ukraine has withdrawn from both. Postal communication with Russia has likewise been suspended since the first days of the invasion.

In these circumstances, Ukrainian courts employ all available means to inform the Russian Federation of pending proceedings. These methods include sending emails to official email addresses of respective Russian authorities[27] and publishing announcements on the official website of the Ukrainian judiciary.[28] In some instances, plaintiffs have resorted to transmitting documents via Russian diplomatic missions in third countries,[29] while experts recommend using international delivery services still operating in the Russian Federation.[30]

24 Ministry of Foreign Affairs of Ukraine, 'Statement by the Ministry of Foreign Affairs of Ukraine Regarding the Severance of Diplomatic Relations with the Russian Federation' (*UKR Government Portal*, 24 February 2022) <https://www.kmu.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-rozrivu-diplomatichnih-vidnosin-z-rosijskoyu-federaciyeyu> accessed 4 August 2025.

25 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (22 January 1993) <https://www.unhcr.org/media/convention-legal-aid-and-legal-relations-civil-family-and-criminal-cases-adopted-minsk-22> accessed 4 August 2025.

26 Agreement on the Procedure for the Resolution of Disputes Connected with Implementation of Economic Activity (20 March 1992) <https://cis-legislation.com/document.fwx?rgn=4713> accessed 4 August 2025.

27 See: Case No 331/4791/23 (Zhovtnevyi District Court of Zaporizhzhia, 28 June 2023) <https://reyestr.court.gov.ua/Review/112549311> accessed 4 August 2025; Case No 367/3431/23 (Irpin City Court of Kyiv Region, 24 May 2023) <https://reyestr.court.gov.ua/Review/111061387> accessed 4 August 2025; Case No 331/4708/23 (Zhovtnevyi District Court of Zaporizhzhia, 28 July 2023) <https://reyestr.court.gov.ua/Review/112534331> accessed 4 August 2025.

28 See: Case No 201/5634/24 (Zhovtnevyi District Court of Dnipropetrovs'k, 21 May 2024) <https://reyestr.court.gov.ua/Review/119157942> accessed 4 August 2025; Case No 682/2464/22 (Slavuta City District Court of Khmelnytskyi Region, 14 February 2023) <https://reyestr.court.gov.ua/Review/108952782> accessed 4 August 2025; Case No 459/1532/23 (Chervonohrad City Court of Lviv Region, 15 May 2023) <https://reyestr.court.gov.ua/Review/110871711> accessed 4 August 2025.

29 See: Case No 635/7195/2 (Kharkiv District Court of Kharkiv Region, 21 August 2023) <https://reyestr.court.gov.ua/Review/112947546> accessed 4 August 2025; Case No 127/876/24 (Vinnytsia City Court of Vinnytsia Region, 5 March 2024) <https://reyestr.court.gov.ua/Review/118094841> accessed 4 August 2025; Case No 487/7568/23 (Zavodskyi District Court of Mykolaiv, 22 April 2024) <https://reyestr.court.gov.ua/Review/118569369> accessed 4 August 2025.

30 Ukrainian Arbitration Association and Institute of Legislative Ideas, *Recommendations on Ensuring Fair Trial Standards in Cases Brought Against the Russian Federation* (AVELLUM 2024) <https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/2024_prezent/Rekomend_spravedl_sud_vo.pdf> accessed 4 August 2025.

Proper notification to the Russian Federation is important not only to ensure compliance with national procedural law but also for the potential prospects for recognition and enforcement of Ukrainian court judgments abroad. This issue is particularly significant for plaintiffs (usually legal entities and entrepreneurs) who are considering the possibility of enforcing Ukrainian court decisions against Russian property in foreign jurisdictions. For such efforts to have any prospect of success, all fair trial standards must be observed during the Ukrainian court's consideration of the case.

4.3. Compensation Amounts

A second, equally pressing problem concerns the quantification and substantiation of damages in such proceedings. Plaintiffs frequently demand compensation in amounts that are, to put it mildly, insufficiently supported by evidence, and sometimes completely absurd.[31] As the competent Russian Federation authorities predictably fail to appear in proceedings, there is no opposing party to contest the sums claimed. Moreover, many courts are uncritical of claimed amounts and show a superficial approach to assessing evidence presented to substantiate claimed amounts. Combined with the lack of actual adversarial proceedings, this leads the judicial system to produce numerous judgments granting claims against the Russian Federation in circumstances where neither the amount claimed nor the very right to compensation was adequately established.

Illustrative examples underscore the gravity of the problem. In one case, the plaintiffs, citing a publication in The Washington Post,[32] argued that as a result of armed aggression, the Russian Federation effectively controls Ukrainian territories with deposits of energy resources, metals, and minerals worth approximately $36.7 trillion. Dividing this amount by the number of Ukrainian citizens, the plaintiffs arrived at a figure of $1,990,149.79, which they claimed as compensation for damages for each plaintiff. The court of first instance ruled in favour of the plaintiffs.[33] In another case, a court upheld a claim for moral damages relating to property loss and internal displacement in the amount of UAH 130 million, equivalent to approximately $3.367 million.[34] One claimant notably surpassed all others, demanding 999 quadrillion UAH; this claim was dismissed,[35] as was

31 See: 'A Ukrainian Tried to Sue Russia (n 20).

32 Anthony Faiola and Dalton Bennett, 'In the Ukraine War, a Battle for the Nation's Mineral and Energy Wealth' *The Washington Post* (Washington, 10 August 2022) <https://www.washingtonpost.com/world/2022/08/10/ukraine-russia-energy-mineral-wealth/> accessed 4 August 2025.

33 Case No 216/5656/22 (Central City District Court of Kryvyi Rih, 24 November 2023) <https://reyestr.court.gov.ua/Review/115455341> accessed 4 August 2025.

34 Case No 638/12435/23 (Dzerzhynskyi District Court of Kharkiv, 22 November 2023) <https://reyestr.court.gov.ua/Review/115160289> accessed 4 August 2025.

35 Case No 686/26564/22 (Khmelnytskyi Court of Appeal, 27 April 2023) <https://reyestr.court.gov.ua/Review/110547363> accessed 4 August 2025.

that of a claimant who sought 962 billion UAH on the basis that the destruction of Ukraine's environment had inflicted upon her "inhuman suffering."[36]

A common category of claims concerns moral damages for forced displacement.[37] Many plaintiffs appear to treat €35,000 as a "standard rate" for such claims,[38] deriving this figure from the case of *Loizidou v. Turkey*.[39] Even more controversial are cases where plaintiffs seek compensation based solely on the fact of Russian aggression,[40] without demonstrating any specific harm such as damage to health, loss of property, or forced relocation. These claimants allege that the war causes them to live under constant stress. While this assertion may be true, it is insufficient to warrant a tort claim. Courts have generally rejected such claims, reasoning that acts of aggression constitute an attack on state sovereignty and territorial integrity rather than on individual rights of every citizen. Accordingly, a person who files a claim without demonstrating how the war has directly affected their personal rights is not entitled to compensation.[41]

4.4. (Non)enforcement

Finally, the third problem in this category of cases is that court judgments against Russia are not enforced. To date, none of these judgments has been implemented in Ukraine.[42]

From a formal perspective, it can be argued that the Supreme Court lifted the Russian Federation's immunity from involvement in court cases but did not lift its immunity from

36 Case No 552/6293/22 (Kyiv District Court of Poltava, 16 January 2023) <https://reyestr.court.gov.ua/Review/108630477> accessed 4 August 2025.

37 See: Case No 344/10421/22 (Ivano-Frankivsk City Court, 5 October 2022) <https://reyestr.court.gov.ua/Review/106742828> accessed 4 August 2025; Case No 686/26852/21 (Khmelnytskyi City and District Court, 21 July 2022) <https://reyestr.court.gov.ua/Review/105448637> accessed 4 August 2025; Case No 521/18236/21 (Malynovskyi District Court of Odesa, 22 June 2022) <https://reyestr.court.gov.ua/Review/104872694> accessed 4 August 2025.

38 See: Case No 521/18236/21 (n 36); Case No 521/18230/21 (Malynovskyi District Court of Odesa, 10 November 2022) <https://reyestr.court.gov.ua/Review/107405119> accessed 4 August 2025; Case No 405/5528/22 (Leninsky District Court of Kirovohrad, 20 December 2022) <https://reyestr.court.gov.ua/Review/108230977> accessed 4 August 2025; Case No 405/5495/22 (Leninsky District Court of Kirovohrad, 20 December 2022) <https://reyestr.court.gov.ua/Review/108230978> accessed 4 August 2025.

39 *Loizidou v Turkey* App no 15318/89 (ECtHR, 18 December 1996) <https://hudoc.echr.coe.int/eng?i=001-58007> accessed 4 August 2025.

40 See: Case No 753/15426/20 (Darnytsia District Court of Kyiv, 4 October 2022) <https://reyestr.court.gov.ua/Review/106915823> accessed 4 August 2025; Case No 754/10080/19 (Kyiv Court of Appeal, 20 December 2022) <https://reyestr.court.gov.ua/Review/108091456> accessed 4 August 2025; Case No 552/6293/22 (n 35).

41 ibid.

42 'Enforcement of Court Judgments in Lawsuits Against Russia: Proposals for Solving the Problem' (*Dnistrianskyi Center*, 24 April 2025) <https://dc.org.ua/news/vykonannya-rishen-sudiv-za-pozovamy-proty-rosiyi-propozyciyi-schodo-vyrishennya-problemy> accessed 4 August 2025.

enforcement of court decisions. In other words, immunity from enforcement may still formally remain in force. Therefore, even if the Russian Federation lacks the right to object to the consideration of a court case, it still retains the right to object to the seizure of its property. This distinction reflects the idea that enforcement immunity—particularly regarding non-commercial state property—is subject to an even higher threshold for derogation than adjudicative immunity.[43] However, this view is controversial, as the arguments used by the Supreme Court to justify abolishing judicial immunity could also apply to immunity against enforcement proceedings.

There is also a practical reason why such judgments are not enforced. Enforcement would require seizing the Russian Federation's assets located on Ukrainian territory. However, no such assets exist. More precisely, even if they exist, they are subject to nationalisation under the Law of Ukraine "On the Basic Principles of Compulsory Seizure in Ukraine of Property Belonging to the Russian Federation and Its Residents." Once such property is nationalised, it becomes Ukrainian property and can no longer be seized in favour of private individuals who have obtained court decisions against Russia.

Failure to enforce court judgments against the Russian Federation is problematic, as it can undermine trust in the judiciary. Plaintiffs obtain court judgments but do not obtain actual enforcement. This is frustrating and undermines faith in the effectiveness of justice restoration. Moreover, Ukraine may face criticism regarding the systemic non-enforcement of court judgments.

However, this problem can also be viewed from another angle. Would it not be worse if these judgments were actually enforced? Consider that, to enforce the judgment in favour of the four plaintiffs in *The Washington Post* case, bailiffs would have to seize Russian railcars, aircraft, and real estate remaining on Ukrainian territory. For how many such plaintiffs would Russian assets in Ukraine suffice? And would this be fair to the hundreds and thousands of other victims who courts in different regions have awarded smaller compensation?

43 Fox and Webb observe that "in contrast to adjudicative jurisdiction, the scope of immunity from execution is still largely absolute for property serving public, non-commercial purposes, even in states otherwise committed to restrictive immunity." See: Hazel Fox and Philippa Webb, *The Law of State Immunity* (3rd edn, OUP 2015) 563-4.
Similarly, Crawford emphasises that enforcement measures "strike more directly at the dignity and independence of the foreign state" than mere adjudication, explaining the greater caution in permitting such measures under customary law. See: James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 489-90.
See also: Michael Wood, 'Immunity from Jurisdiction and Immunity from Measures of Constraint' in Roger O'Keefe and Christian J Tams (eds), *The United Nations Convention on Jurisdictional Immunities of States and Their Property: A Commentary* (Oxford Commentaries on International Law, Oxford Law Pro 2013) 13. doi:10.1093/law/9780199601837.003.0002.

The issue at stake is distributive justice.[44] It must be acknowledged that the resources available to satisfy the claims of war-affected persons are limited. For example, even if all frozen assets of the aggressor state (amounting to approximately US$ 300 billion[45]) were used to compensate for damage, it would still be insufficient to cover the damage (since, according to World Bank estimates, restoration alone will cost US$ 524 billion,[46] not counting human losses, moral damage, etc.). Thus, the key problem is how to fairly distribute limited resources (Russian assets within the reach of international law) among all those affected.

The mechanism of private lawsuits in national courts appears unsuited to achieving this goal. A more effective approach would be a mechanism that defines different categories of victims and, within each category, establishes certain values (minimum and maximum) of compensation. The UN Compensation Commission, established to consider claims for damages caused by Iraq's invasion and subsequent occupation of Kuwait, was such a mechanism.[47] A similar mechanism for Ukraine should be the International Compensation Mechanism, the first component of which—the International Register of Damage for Ukraine—has already been launched and is accepting claims.[48]

5 CONCLUSIONS

Tort law rests on the simple but powerful maxim that the party who causes harm must repair it. This principle governs liability between private actors and resonates at the level of international law, where wrongful state conduct, in theory, should trigger corresponding duties of reparation. Yet the institutional mechanisms through which this principle operates differ dramatically across these contexts. In disputes between private individuals, ordinary tort claims in national courts are usually adequate: they provide a forum for fact-

44 See: Izhak Englard, *Corrective and Distributive Justice: From Aristotle to Modern Times* (OUP 2009); Marc Loth, 'Corrective and Distributive Justice in Tort Law: On the Restoration of Autonomy and a Minimal Level of Protection of the Victim' (2015) 22(6) Maastricht Journal of European and Comparative Law 788; Adam Slavny, *Wrongs, Harms, and Compensation* (OUP 2023).

45 See: Elena Fabrichnaya and Guy Faulconbridge, 'What and Where are Russia's $300 Billion in Reserves Frozen in the West?' (*Reuters*, 28 December 2023) <https://www.reuters.com/world/europe/what-where-are-russias-300-billion-reserves-frozen-west-2023-12-28/> accessed 4 August 2025.

46 'Updated Ukraine Recovery and Reconstruction Needs Assessment Released' (*World Bank Group*, 25 February 2025) <https://www.worldbank.org/en/news/press-release/2025/02/25/updated-ukraine-recovery-and-reconstruction-needs-assessment-released> accessed 4 August 2025.

47 See: Richard Lillich (ed), *The United Nations Compensation Commission* (Brill 1995) doi:10.1163/9789004636682; Francis McGovern, 'Dispute Systems Design: The United Nations Compensation Commission' (2009) 14(171) Harvard Negotiation Law Review 171; Danio Campanelli, 'The United Nations Compensation Commission (UNCC): Reflections on its Judicial Character' (2011) 4(1) Leiden Journal of International Law 107. doi:10.1163/1571803053498871.

48 See: Council of Europe, *Register of Damage for Ukraine - RD4U* <https://www.rd4u.coe.int/en/> accessed 4 August 2025.

finding, a framework for individualised damage assessment, and an enforceable judgment that restores the injured party to something approximating their prior position.

In the context of large-scale, war-related harm, however, this model fails. The very magnitude of the damage—measured in millions of victims and hundreds of billions of dollars—renders individualised adjudication structurally incapable of achieving justice. What emerges instead is the problem of distributive justice: how to fairly allocate scarce resources fairly, ultimately traceable to the wrongdoing state, among an immense number of affected persons. Here, private lawsuits are not merely inefficient; they risk compounding injustice. Courts across different regions may adopt inconsistent methodologies for calculating damages, producing striking disparities between similarly situated victims. Awards issued in the defendant state's absence may be poorly substantiated, raising questions about their fairness and legitimacy. Even when judgments are rendered, enforcement remains uncertain at best, given the paucity of seizable assets and the persistent shield of enforcement immunity.

In short, atomised litigation disperses judicial energy, yields unequal outcomes, and does little to produce actual compensation. The symbolic value of such lawsuits should not be dismissed—they can affirm accountability, record individual losses, and maintain moral and legal pressure on the aggressor state. But as an instrument for delivering material redress, they fall short. Ukraine's experience underscores the need for a centralised mechanism capable of collecting and verifying claims, applying consistent valuation standards, and distributing compensation resources in a manner that is transparent, proportional, and sensitive to the range of harms inflicted. The United Nations Compensation Commission offers a historical precedent. For Ukraine, the emerging International Compensation Mechanism, anchored by the International Register of Damage, holds promise as a more rational and equitable means of restoring justice.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Тематичне дослідження

ЧИ МОЖЕ ДЕЛІКТНЕ ПРАВО ВПОРАТИСЯ З ВІЙНОЮ? РОЗДУМИ ПРО ПРИВАТНІ СУДОВІ ПОЗОВИ ЩОДО ВІДШКОДУВАННЯ ЗБИТКІВ, ПОВ'ЯЗАНИХ З ВІЙНОЮ В УКРАЇНІ

Богдан Карнаух

АНОТАЦІЯ

Вступ. *Повномасштабне вторгнення Росії в Україну спричинило значні руйнування та величезну шкоду цивільному населенню, що спонукало фізичних та юридичних осіб домагатися компенсації через пред'явлення деліктних позовів. У зв'язку з цим постає нагальне питання: чи може деліктне право стати ефективним механізмом залагодження збитків, пов'язаних з війною? Хоча міжнародне право підтверджує зобов'язання відшкодовувати збитки за міжнародно-протиправні дії, постраждалі часто стикаються зі значними правовими та практичними перешкодами, коли звертаються за відшкодуванням до національних судів. У цьому дослідженні на прикладі судової практики українських судів розглядається питання, чи можуть приватні деліктні позови бути дієвим засобом відшкодування збитків жертвам війни.*

Методи. *У цій статті використовується сутнісна доктринальна методологія, що ґрунтується на аналізі судової практики. У ній розглянуто широкий спектр рішень українських судів, що стосуються деліктних позовів, поданих фізичними особами як проти Російської Федерації, так і проти України. У дослідженні проводиться розмежування між позовами, що були подані відповідно до конкретних законодавчих положень, таких як Закон України «Про боротьбу з тероризмом», та тими, що ґрунтуються на загальних принципах деліктного права. У роботі також простежується розвиток підходів щодо юрисдикційного імунітету Росії та досліджуються питання, пов'язані з процесуальною справедливістю, обґрунтованістю позовних вимог та виконанням судових рішень.*

Результати та висновки. *Аналіз показує, що приватні позови про деліктні справи виявилися здебільшого неефективними на практиці та концептуально непридатними для позовів, пов'язаних з війною. Хоча нещодавні рішення скасували юрисдикційний імунітет Росії, все ж залишаються серйозні проблеми: рішення судів не виконуються, стандарти доказування застосовуються непослідовно, а індивідуальні судові позови не забезпечують справедливого розподілу обмежених ресурсів. Крім того, позови проти України – як ті, що засновані на спеціальному законі, так і ті, що засновані на загальних принципах деліктного права – також дали обмежені результати через прогалини в законодавстві та відсутність ефективних*

механізмів забезпечення виконання. У дослідженні було зроблено висновок, що приватні деліктні позови, хоча й мають символічне значення, не можуть служити дієвим засобом для післявоєнного правосуддя. Натомість, централізований механізм відшкодування, такий як новий Міжнародний компенсаційний механізм, пропонує більш справедливу та ефективну модель розподілу відшкодування відповідно до принципів розподільчої справедливості.

Ключові слова: *збитки, пов'язані з війною, деліктне право, відшкодування збитків, російсько-українська війна, юрисдикційний імунітет, право на справедливий суд, доступ до правосуддя.*