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Master's Thesis

Compensation of damages for breach of contract

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ABSTRACT AND KEY WORDS

This master's thesis defines the theoretical principles and principles of compensation for damages for breach of contract. Analysed. The types of damages for breach of contract terms are defined. Ukrainian standards for compensation for breach of contract and global standards are compared.

Key words: damage, CISG, PECL, UNIDROIT principles, compensation, damage compensation for damages for breach of contract, injured party, non-performers party, party, debtor, creditor.

INTRODUCTION

In contemporary times of cross-border commercial relations and globalization, the importance of compensation for damages for breach of contract terms is becoming almost the most important part prescribed in the contract, national legislation in the binding part and rules of the *lex mercatoria*. Compensation for damages for breach of contract is not only about protecting the injured party and putting it in the position it should have been in if the contract had been properly executed. It is also about observing commercial discipline and ensuring the fulfilment of the terms of the contract. Execution of the contract in accordance with the law and its requirements contributes to the stability and development of the business environment of international trade and economic growth.

The relevance of the study stems from the constant evolution of legal norms and the practice of their application in international business. The need to study the theoretical foundations of compensation for damages, analysis of different types of damages and their classification, as well as understanding the application of soft law in the field of compensation for damages is a necessity for a deep understanding of this complex legal category. An indispensable aspect of this inquiry is the critical examination of the United Nations Convention on Contracts for the International Sale of Goods (CISG), which has ascended to a cornerstone legal instrument governing the rectification of losses within the ambit of international commerce. This Convention encapsulates pivotal provisions that underpin the remediation of contractual breaches by stipulating standardized directives for the adjudication and computation of damages, thereby serving as an authoritative framework for cross-border trade transactions.

In the contemporary era characterized by the relentless march of economic globalization, the intensification of international integration, and the harmonization of contractual norms, it is imperative to undertake a rigorous examination of the international benchmarks for compensatory redress. Specifically, the UNIDROIT Principles of International Commercial Contracts, the European Contract Law Principles, and the Draft Common Frame of Reference (DCFR) demand meticulous scrutiny as foundational texts to dissect the jurisprudential nuances of damage compensation across disparate legal regimes. These documents, emblematic of the quest for a cohesive legal framework, provide the critical lens through which the doctrines of reparation are to be viewed, evaluated, and potentially unified within the broader context of international legal practice.

In this context, a comparative analysis of compensation standards for breach of contract standards of Ukraine and global standards is of particular interest, which opens up

the field for recommendations on improving domestic legislation in the field of compensation for damages.

The purpose of the study is a comprehensive analysis of the legal aspects of remedy damages for breach of contract, with an emphasis on international standards and a comparative analysis of national jurisdiction, in particular Ukraine Law.

Tasks of the study:

1. To study the theoretical basis of damages for breach of contract.

2. Classify the types of damages arising as a result of breach of contract.

3. To analyse the application of soft law in the context of compensation for damages.

4. To study global standards for compensation for damages for breach of contract.

5. Compare approaches to compensation for damages with an emphasis global standards and Ukraine.

Methods of research

The method of primary analysis – used in the analysis of articles of the Ukrainian Civil Code and articles of global standards.

Secondary research method – This method is used in the analysis of court practice, arbitration practice, and in the analysis of publications and works of other scientists.

Comparative method – This method is used when comparing Ukrainian standards for compensation for damages for breach of contract and global standards. With the aim of disclosing Ukrainian standards for compensation for damages for breach of contract terms and their status.

The object of the study is legal relations that arise in the context of compensation for damages for breach of contractual obligations.

The subject of the research is regulatory legal acts, international conventions, doctrinal materials and judicial practice, which regulate damages for breach of contract.

The novelty of the study lies in the pioneering analysis of the interaction of international and national legal standards in the context of compensation for damages, with a special emphasis on a comparative study of approaches in Ukraine.

The main aspects of the novelty of the research:

1. An in-depth study of the application of “soft law” in the field of damages compensation, which will provide a new understanding of its influence on the formation and development of contractual relations at the international level.

2. Systematization of international standards for compensation of damages, including the principles of UNIDROIT and European principles of contract law, with an emphasis on their application.

3. To determine the compliance of the part of the Ukrainian legislation that is responsible for the violation of the terms of the contract with European Union standards with the help of comparison with PECL and UNIDRIOT principles.

4. To determine the extent to which Ukrainian standards protect compensation for damages for breach of contract terms in comparison with Vienna Convention on the International Sale of Goods PECL and UNIDRIOT principles.

The structure of the work: the work consists of an introduction, three chapters, conclusions, and a list of used sources. The first chapter "Theoretical principles of compensation for damages for breach of contract" is devoted to the analysis of the concept and basic principles of compensation for damages, types of damages for breach of contract, the application of soft law in the context of compensation for damages.

The second chapter "Global Standards of Damages for Breach of Contract" covers the United Nations Convention on Contracts for the International Sale of Goods, UNIDROIT Principles of International Commercial Contracts, the European Principles of Contract Law and the DCFR as a basis for analysing the legal aspects of damages for breach of contract in different jurisdictions and international standards.

The third section "Analysis of Breach of Contract Damages Jurisdictions" includes an analysis of the Ukrainian legal system and its approaches to damages, a comparison of Ukrainian jurisdiction with global standards, and the main similarities and differences between global standards.

The conclusions present the main conclusions and recommendations arising from the study. The list of used sources includes all normative acts, international documents, scientific literature, and other resources that were used during the writing of the work.

Rationale for the selection of jurisdiction for comparison:

Choice of jurisdiction.

Since today Ukraine is on the verge of joining the European Union, and its accession to the EU is only a matter of time.

Therefore, it is necessary to study Ukrainian standards for compensation for damages for breach of contract. And compare them with the global standards of law and give reasons for the conformity of the law of Ukraine. This element is one of the most important guarantees that ensure the performance of the contract and give confidence to the parties to the contract that if, as a result of the violation of the terms of the contract, one of

the parties will suffer losses, miss out on benefits emotional stress, internship. The party that violated the conditions will compensate it.

Also, taking into account the fact that hostilities are currently taking place on the territory of Ukraine and there is a need for its post-war reconstruction with the involvement of foreign companies, it is necessary to clarify how protected the parties will be in the event of a violation of the terms of the contract when using the Ukrainian legislator.

And taking into account the above-mentioned standards of compensation for damages for violation of the terms of the contract is an important element of law for the economic development of the state, which is now important for Ukraine.

Main sources:

United Nations Convention on Contracts for the International Sale of Goods (CISG)

The UNIDROIT Principles of International Commercial Contracts and the Harmonisation of International Sales Law.

Principles of European of contract law.

Civil code of Ukraine.

UNILEX Founder and Editor Michael Joachim Bonell and others – Contains the full text of the UNIDROIT Convention and Principles with commentary thereon. Contains commentary on each article of the UNIDROIT Principles.

UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods.

Djakhonir Saidov "The Law of Damages in International Sale of Goods the CISG and other Instrumentals" year of publication 2008 – In this work, the author has researched methods of compensation for damages with a focus on the international instruments of contract law, the Vienna Convention on the International Sale of Goods, international commercial contracts of UNIDROIT and the European principles of contract law. The book deals with the following questions: principles of compensation, classification of damages, their amounts, mitigation of damages, methods of calculating damages, etc (Djakhonir S.,2008, preface)

Works on this topic that are worth mentioning.

Solen Rowan. Remedies for Breach of Contract: A Comparative Analysis of the Protection of Performance year of publication 2012 – This work examines the question of the tendency of English law to enforce the contract. Legal remedies such as termination of the contract, compensation for breach of contract, punitive damages, etc. are considered. The work also identified certain proposals for strengthening the protection of the contract against violation of its terms. The latest scientific discussions on this topic are highlighted.

The research is mostly carried out by the comparative method of French and English law (Solen Rowan, 2012, abstract).

Andrew Burrows Remedies for Torts, Breach of Contract, and Equitable Wrongs year of publication 2019 – The fourth volume of Andrew Burroughs' seminal work, the first volume was published in 2004. This part contains modern means of legal protection, as well as an analysis of case law on private international law. The difference between the previous part and this one is the updating of legislation and court practice. In addition to the applied analysis of laws and court practice, the book also contains an interesting academic text (Andrew Burrows, 2019, abstract).

Adam Kramer The Law of Contract Damages year of publication 2014 – The work is focused exclusively on compensation for damages for breach of contract, this issue is considered in detail. The peculiarity of the book is that, for easier understanding, it is organized by type of complaint, that is, starting from non-provision of services and ending with the loss of property that was taken for temporary use (Adam K.,2014, description).

CHAPTER I – THEORETICAL FUNDAMENTALS OF COMPENSATION FOR DAMAGES FOR BREACH OF CONTRACT.

1.1 Concept and basic principles of compensation for damages

A contract is a certain action of an individual or a legal entity, a corporation or another of the many possible types of legal forms of associations, which is aimed at changing the acquisition or termination of certain rights and obligations. According to professor Conrad Johnson, "to be under a legal obligation is to be under a requirement that is ... a *moral* obligation'" (Tareq Al-Tawil, 2013, p 351). It is hard not to agree with his words, because when concluding any contract, before performing actions that will testify to reaching an agreement and receiving an acceptance of the offer, there will first be a moral obligation. This aspect in business discipline is quite important, but unfortunately, there is an inexhaustible number of situations when the terms of the contract are violated not only because of the bad faith of one of the parties, but sometimes it can be caused by certain circumstances. However, the party whose rights are violated also expects the occurrence of certain circumstances in accordance with the contract and may suffer, losses and suffering due to the non-fulfilment of the terms of the contract by the other party. The moral side of the issue has been relevant in international private law for a long time, since the goods and services that are delivered must travel a long distance and contracts can be concluded between persons who have never seen each other in person, so all of the above does not contribute to the primary element mentioned by Professor Conrad Johnson about moral the side of obligations and the statement of Professor Samuel Stoljar, according to whose opinion, before flowing into the legal plane, the obligation arises in the moral plane(Tareq Al-Tawil, 2013, p 351). And, unfortunately, not everyone who concludes a contract is ready to fulfil their and legal obligations, and then the question of compensation for the damage caused for violation of the terms of the contract arises.

The task of concept of compensation for damages caused by the illegal behaviour of the other party, as is clear from their name, is compensation for damages to the party that suffered losses that were caused by a violation of the conditions stipulated in the contract. Due to the illegal behaviour of the other party (Clare Connellan, Elizabeth Oger Gross, Angélica André, 2018, p7). However, in no case should we forget about others important values of compensation for damages for breach of contract terms. Professor Djakhonir Saidov in one of his works, the also highlighted that "First, remedies in general, and damages in particular, have been said to serve the goal of keeping peace through the prevention of private wars. It has been suggested that if there were no remedies available, the injured parties could 'seek justice' by starting private wars against the parties in

breach.”(Djakhonir Saidov,2008, p17). Considering the fact that today some forms of ownership are known as corporations. They have no less and sometimes greater finances and resources than some states. Nowadays, if such players of the world market will begin to solve the problems of compensation for damages for breach of contract terms by the methods of “private wars”, then this can lead to catastrophic consequences for the world economy in general international legal order. Therefore, the professor's opinion is quite correct. And indeed, the provision of compensation for the wrongful behaviour of the other party in the performance of the obligations assumed under the contract. It must be implemented by legal means with the help of arbitrations, national courts, and compensation for breach of contract terms must be fixed not only in the contract itself concluded by the individuals, but also in the national legislation that the parties can use when concluding the contract, it is so important that the compensation is enshrined in international conventions and elements of soft law. Also, in his work, the Professor Djakhonir Saidov defines the following theses of the importance of the basic principles of compensation for breach of contract terms. Also, in his work, the professor, relying also on the works of other scientists, defines the following second thesis of the importance of the basic principles of compensation for breach of contract terms: “Second, it seems clear that the existence of remedies, and in particular damages, is vital for the effective operation of contract law and if no legal remedies were available, the market economy and international trade which the contract law aims to support would be substantially undermined.”(Djakhonir Saidov,2008, p18). Since it is impossible to deny the fact that the economic system is based on the principles of free enterprise, that is, the market economy is the most successful and efficient system of economies as of the 21st century. She needs help to regulate domestic relations at the expense of contract law. Compensation for damages for non-fulfilment of the terms of the contract is precisely the element that additionally ensures the percentage of successful performance of the contract by both parties. Also, in the case of the behaviour of one of the parties, which caused damage to the other party by its actions or inaction, it is possible to receive compensation. Therefore, based on the analysis of the professor's thesis, we conclude that the concept of compensation for damages for breach of contract is one of the fundamental parts of law, which in turn helps the market economy to function smoothly. The third thesis of the professor on the concept of compensation for breach of contract is that “Third, in the light of a general need for security in commercial transactions and the instruments’ values of *pacta sunt servanda* (contract must be performed) and *favour contractus* (keeping the con- tract in existence as long as possible) the goal of deterring the parties from breaching their contracts is undoubtedly a valuable

one." (Djakhonir Saidov,2008, p18) In the third thesis, the professor, relying on the standard of soft law and on one of the oldest principles of law as commercial and international public law, proves that the concept of compensation is also important for ensuring the implementation of contracts. The conclusion after the analysis is that the concept of compensation damages breach terms of the contract is that first of all, when concluding a contract, moral obligations are imposed on all parties to the contract to fulfil it. Also, the main tasks of the concept are, first, to prevent so-called private wars between the parties. Although this is not the main task of compensation, it is worth mentioning when viewing this topic. The second obligation of the concept is to maintain the market economy is the task of contract law. The third part of the concept and the main is the need to support the approval of the *pacta sunt servanda* (treaties/contracts must be established).

After conducting an analysis of the main instruments of *lex mercatoria*, such as the Principe's of UNIDROIT Chapter 7 section 4, European principles of contract law Chapter 9 and the Vienna Convention on the International Sale of Goods 1980 Chapter 5, it was concluded that the main principles of compensation for damage due to breach of contract are:

1) The main purpose of compensating for damages for breach of contract is to put the injured party in the position it would have been in if the contract had been properly performed.
2) Compensation for damages for breach of contract cannot be used as a way of obtaining additional benefits.
3) Non-fulfilment of accepted obligations by one of the parties, their improper fulfilment or delay is considered a breach of obligations.
4) The victim has the right to compensation for the damage caused. Damages are compensated in full including lost profits.
5) Termination of the contract does not relieve the party that has not fulfilled its obligations from compensation for damages in accordance with the law.
6) The party demanding compensation for the damage caused to it must, in turn, do everything in its power to reduce further damage.
7) The right to replace an improperly performed obligation.
8) To put the party that suffered damage due to the non-fulfillment of the terms of the contract in such a position that it should have been in the case when the terms of the contract would have been properly fulfilled (b. John Y. Gotanda, 2007).

The essence of the above is summarized, the main thing in the concept of indemnification for violation of the terms of the contract is to ensure its implementation by

all parties and the security of the party whose rights have been violated. This is that in the event of damage suffered due to the unfair behaviour of another sides, the party that complied with the right and the contract to receive compensation for all possible types of damage.

1.2. Types of damages for breach of contract

Damages for breach of contract terms are losses suffered by a party due to breach of these terms by the other party to the contract. Such damages are provided for in various articles of the CISG, UNIDROIT Principles, and PECL. Damages can be direct or indirect.

Direct damages

Direct damage is that which results from a direct breach of an obligation. It is expected in case of violation of such an obligation. This type of damage is the most common and predictable. Direct damages are provided for in Article 74 of the Vienna Sales Convention. As an example, a situation where company A had to supply C with concrete for construction, but they delayed it for 3 days. For exactly 3 days, company C had a simple loss, which they recognized as a simple and direct damage.

Consequential damages

This type of damage is not a direct consequence of the violation, but a continuation, for example, when the party that suffered damage takes measures to reduce its size but incurs costs because of it. As stipulated in the articles of the UNIDROIT Principles 7.4.8., principles of PECL 9:503 and Article 77 of the Vienna Convention Sales of Goods.

Loss of profit

This type of compensation reduces the assets of the injured party. The lost benefit is the benefit that the injured party would have received if the contract had been properly performed (UNILEX, official comment, comment to article 7.4.2. of UNIDRIOT principles 2016). As an example, it can be when the cargo carrier did not deliver the goods on time, so the consignee could not sell them or use them in time, as a result of which he missed his possible future profit. In general, based on the logical analysis of the provisions on the lost benefit, this benefit which was not provided for in the contract.

Punitive damages

This type of damage, also known as liquidated damages, is not only a type of compensation for the damage suffered, but also a way to ensure the performance of the contract. Punitive damages may be provided for by national law or a contract. It should also be noted that the amount of such payment may be reduced in the event that it would exceed the limits of reasonableness in the principles of UNIDRUA, this type of damage is provided for in Article 7.4.13., PECL 9:509 in the national legislation, such damage is called a fine or penalty. Unfortunately, this type of damage is absent in the CISG. There is a significant difference between the penalty in national law and the amount for breach of contract established in accordance with the principles of UNIDROIT and PECL. In the *lex mercatoria*, the amount for non-performance must be stipulated in the contract, and in order

for it not to be used under national law, its non-use must be stipulated in the contract if it is not prohibited by law.

Physical suffering or emotional distress

This type of damage is provided by the principles of UNIDROIT and PECL, it provides that in the event that a person has suffered physical, emotional or mental suffering due to a breach of contract, the party that violated the terms of the contract must pay compensation for this. Proving this type of damage falls entirely on the shoulders of the injured party, there is no calculation here, as, for example, in articles on replacement operations. This type of damage is not covered by the CISG.

It is important that all possible types of damage are provided for in the CISG and *lex mercatoria* instruments because then the parties will have to additionally prescribe them in the contract or the injured party will have to prove them in arbitration and court, which will not have a positive effect on the development of international trade and economic prosperity. Therefore, it is important to remember that law is a living organism and in order to be effective must develop and expand as well as the types of compensation for damage.

1.3. Application of soft law regarding damages

Soft law are quasi-legal instruments, they are not binding in contrast to the civil code and other laws of the states on the territory of which the company or other property subject carries out its activities. However, soft law in the case of its application to trade, i.e., *lex mercatoria*, can be used when concluding a contract. It is also used in courts and alternative methods of resolving disputes in arbitration and mediation. *Lex mercatoria* is a convenient tool because it is based on commercial customs and is uniform and will be more convenient for both parties to the agreement when they are in different jurisdictions. Also, the courts of different countries refer to various instruments of soft law when making decisions regarding compensation in contractual cases. For example, in a case in the case that was considered in the Supreme Court of Lithuania under no 3K-3-63/2015. Two parties in Lithuania concluded a construction contract. The contract stipulated that the contractor had to make a monetary deposit, which would serve as a guarantee of proper performance of the contract by the contractor. Also, the contract, as always, provided for a penalty for each party for untimely fulfilment of its obligations. The contractor delayed the completion of the construction, but the customer accepted the work, paid the cost of the work without deducting the penalty for the delay, and kept the deposit. The Supreme Court of the Republic Lithuania established that according to the contract, the cash deposit served as a guarantee of the final performance of the contract, to compensate for the losses that arose due to the delay, the penalty served as a fine. That is, the owner had the right to charge a fine in proportion to the amount of the contractor's delay. And keeping the cash deposit contradicted principle 6.158 of the Civil Code of Lithuania and article 1.7. Moreover, the owner did not prove that he suffered any losses because the contractor's delay (Supreme Court of the Republic of Lithuania, 2005). That is, based on this decision, the court supplemented the civil code of the state with the UNIDROIT principle, which is one of the tools of soft law.

Also, soft law can be applied in international contracts of purchase, sale, or provision of services as the law governing the contract. For this, it is necessary to fulfil the requirements specified in the instruments themselves. As stated in the main instruments of soft law, for their application it is necessary to fulfil the conditions provided for their use. In defined in the preamble of the UNIDROIT principles, they can be applied when the parties have fulfilled several requirements, namely: “They shall be applied when the parties have agreed that their contract be governed by them. They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like.

They may be applied when the parties have not chosen any law to govern their contract." (UNIDROIT principles, 2016, preamble). Therefore, based on the preamble of the UNIDROIT principles, for their application it is necessary to indicate their application or the application of other principles of soft law, and that it is no less important not to use other national law when concluding a contract. To apply European principles of contract law, it is necessary to fulfil the following requirements provided for in clause (3) article 1:101: application of the principles section 1 scope of the principles chapter 1 general provisions "(3) These Principles may be applied when the parties:

(a) have agreed that their contract is to be governed by "general principles of law", the "*lex mercatoria* " or the like; or (b) have not chosen any system or rules of law to govern their contract." (PECL,2002, article 1:101). So, after analysing the parts that are responsible for the application of soft law instruments. It becomes clear that the key elements in order for the contract to be governed by soft law are to specify it in the contract as the right governed by the contract. It is also possible to simply not mention any of the national laws and then already during the case review choose the instrument of soft law under which the dispute will be settled. It is also important not to forget that if there is an arbitration clause in the contract, then in the event of a dispute between the parties, and especially as to damages, the dispute will be considered by arbitration. Arbitral tribunals usually refer to soft law in cases where the law under which the dispute must be considered was not specified in the contract. The Milan National and International Arbitration Chamber ruled in a case between an Italian and an American company regarding compensation for damages for illegal termination of the contract. There was no choice of law in the contract between the companies. However, both sides agreed on the UNIDROIT principles for settling the dispute. The principal prematurely terminated the contract due to the fact that, in his opinion, the agent did not fulfil his obligations. The agent initiated the arbitration. Since there was no choice of law clause in the contract, the arbitrator offered the parties to choose the principles of UNIDROIT to resolve their dispute, which the parties agreed to. While considering the case, the Arbitration Court referred to Article 1.3 regarding the binding character of the original agreement of the parties, as well as to Articles 4.1 and 4.2 for the interpretation of the written statements of the parties as a notice of termination. 7.3.5 to confirm the validity of the terms of the contract in case of termination of which the principal had the right to the materials and in turn the agent had the right to the commission for the orders received up to that time. 7.41 and .7.4.2 were applied by the Arbitration Court to confirm the right of the party that suffered damage due to the breach of the terms of the contract by the other party to full compensation for the damage suffered by the injured

party. But with the exception of compensation for emotional stress, moral damage and damage to health, etc. due to the fact that a legal entity suffered damage. The court also applied Article 7.4.13 due to late payment of debts (Arbitral Award, Camera Arbitrale Nazionale ed Internazionale di Milano, 1996).

Therefore, as can be seen from the analysis of court and arbitration practice. Soft law can be applied by arbitration if the parties did not choose the law of one of the states in the contract and agreed to one of the soft law instruments. Also, soft law can be applied by national courts in addition to the national one. Also, soft law instruments can be applied in cases where the parties to the contract chose it as the main law of the contract, or did not choose any law and, having an arbitration clause in the contract, already during the consideration of the case in arbitration agreed to one of the soft law instruments for consideration of the dispute.

CHAPTER II – GLOBAL STANDARDS FOR DAMAGES FOR BREACH OF CONTRACT

2.1. Analysis of the Vienna Convention on the International Sale of Goods

Vienna Convention on the International Sale of Goods also known as CISG is a multilateral uniform international sales treaty. CISG this is a project United Nations Commission on International Trade Law (UNCITRAL), the convention is recognized as the most successful attempt to unify the field of commercial law at the international level. The convention is available in the following languages English, French, Spanish, Chinese, Arabic and Russian (Fedynyak G.S, Fedenyak L.S, 2017,p 212). This convention is the result of a long and complex process of unification of international private law, the history of this convention dates back to the beginning of the movement for the unification of international trade law. In 1930, the United Nations prepared a law on the international purchase and sale of goods, as a result, it was reached in 1964 in the form of two conventions: the law on the conclusion of contracts for the international sale of goods (ULF) and the Convention on the Uniform Law on the International Sale of Goods (ULIS) (Harry M. Fletcher,2009). The ULF and ULIS Convention was ratified at the Hague Conference. However, these conventions could not be widely used, in the opinion of Candidates of Legal Sciences Fedyniak G. and Fedyniak L. this was because "These conventions were not widely used because in 1980, the mentioned Vienna Convention of 1980 was proposed for signing by the Commission on International Trade Law (UNCITRAL)" (Fedynyak G.S, Fedenyak L.S, 2017, p 211). It is important to note that such countries as Great Britain, Gambia and San Marina are participating in the Hague Convention. According to the Candidates of Legal Sciences Fedyniak G. and Fedyniak L., the previous conventions were less successful and were chosen higher only by these few states "In these conventions, unlike the Vienna Convention of 1980, preference is given more to the legal traditions of the continental states of Western Europe, which became the reason for their narrow application" (Fedynyak G.S, Fedenyak L.S, 2017, p 212). The Convention entered into force on January 1, 1988. At the time of writing this master thesis, 97 contracting countries are parties to the convention include Lithuania, Ukraine, United States, China and others.

The Chapter I "SPHERE OF APPLICATION" of the CISG according to the articles of this chapter, it is clear that convention is applied when the contract of purchase and sale is concluded between two parties located in different states, and that even the national law of the contracting states is not taken into account when applying the convention. Article 2, provides for cases when the convention cannot be applied "This Convention does not apply to sales: of goods bought for personal, family or household use, unless the seller, at any

time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use:

(b) by auction;

I on execution or otherwise by authority of law;

(d) of stocks, shares, investment securities, negotiable instruments or money;

(e) of ships, vessels, hovercraft or aircraft;

(f) of electricity" (CISG, 1980, article 2).

The main elements regulated by the convention are Article 11 requirements for concluding a contract Article 8, interpretation of the contract Articles 26 and 29, issues of contract modification and termination, Section 5, consequences of contract termination, Articles 25-52, 61-65 remedies, Articles 74-80, provisions on damages and interest.

Before analysing the articles that provide compensation for damages for breach of contract, it should be considered that Article 81 clearly and clearly stipulates that the termination of the contract leaves the right of the parties to demand compensation for damages and does not change the provisions of the contract regarding legal remedies.

Section 2 of Part 5 of the Convention "Damage" provides for all possible types of damage that may be caused and the rights of the injured party.

Article 74 of the Convention states that damages for breach of the terms of the contract consist of an amount equal to the losses, including the lost profit. Also, the damages cannot exceed the amounts that the party that violated the terms of the contract could or should have foreseen. That is, in Article 74 of the Convention, a general formulation of the understanding of damages is established, and what is important in court or arbitration proceedings is prescribed lost profit. This means that the parties do not need to specify the lost profit in the contract in order to obtain the right to its compensation in court or arbitration. Also, the article is important in that it contains a formula for calculating damages, the right to claim compensation is set forth in Articles 45 and 61 of the Convention. The formula of the specified article can be used for violation of obligations under the Convention and for violation of the provisions of the purchase and sale agreement. The amount of compensation is limited to those damages that the offending party anticipated or could have anticipated. This formula for calculating odds applies to both affected sellers and buyers (UNCITRAL,2016, p.334).

Article 75 of the Convention applies in cases where the contract is terminated and the injured party enters into a replacement agreement (UNCITRAL,2016, p.335). The main elements that should be taken into account by the injured party are a reasonable method and a reasonable time. If the contract was terminated, but within a reasonable time the seller

was able to sell the goods and the buyer bought a new one from the injured party, the injured party has the right to receive the difference between the contractual price and the price that was in exchange for the contract, this also does not deprive the injured party of the right to demand compensation for the damage specified in Article 74 .

Article 76 the article stipulates that damages that appear between the price specified in the contract and the current price of the goods in the event that the injured party failed to conclude a replacement agreement for the one that was violated, the injured party receives the right to demand compensation for the difference in the price of the goods, and compensation for the price of the goods does not deprive the victim the party entitled to compensation for additional damages provided for in Article 74 (UNCITRAL,2016, p.352).

Article 77 This article stipulates that the party that has suffered losses in turn must do everything possible to reduce them, in the event that such measures are not taken, the party that violated the terms of the contract will have the right to reduce the losses by the amount by which they could be reduced.

In Article 78 Interest provides for the payment of interest for untimely payment on the amount that should have been paid. However, it should be noted that this does not deprive a person of the right to compensation provided for in Article 74. Also, this provision cannot be applied if the seller has to compensate the buyer for the purchase price after termination of the contract, then Article 84 will be applicable (UNCITRAL,2016, p.364).

To conclude the analysis of Vienna Convention on the International Sale of Goods, damages for breach of contract are intended to put the party whose rights have been violated in the same position as it would have been if the contract had been properly performed (b. John Y. Gotanda, 2007). Termination of the contract does not release the parties from liability. Also, the payment of interest does not deprive the injured party of the right to compensation for lost profits and full compensation for damages.

The convention provides for compensation formulas for breach of contract terms, which also enable or even oblige the injured party to take measures to reduce the damage and receive compensation at the same time. But in this way, she got into the position in which she had to be, as if the terms of the contract were properly fulfilled.

However, not looking at the positive results at first glance of the conducted analysis. Recently, arbitrations and courts increasingly refer to the principles of UNIDROIT and PECL even when the contract is governed by the CISG. In his work, John Gotanda uses a quote from one of the creators of this convention, namely Mr. Holland “a breach of contract can occur in an almost infinite variety of circumstances [and thus] no statute can specify detailed rules for measuring damages in all possible cases.” (a. John Y. Gotanda, 2007,

p.2). According to John Gotanda, this is not a positive trend, because it leads to many court and arbitration decisions with a result that is not clear at first glance (a. John Y. Gotanda, 2007, p.3). In summary, it is not correct that the principles of UNIDROIT are used to fill the gaps in the Convention, however they play a certain role in resolving issues not covered by the convention. John Gotanda hopes that in the future, with the help of dialogue, in the future there will be unambiguous, non-objectionable court and arbitration decisions (a. John Y. Gotanda, 2007, p.26).

2.2. Principles of international commercial contracts of UNIDROIT

The UNIDROIT Principles are a set of norms of international commercial treaties and a source of soft law. 4 editions of the principles of the edition of 1994, 2004, 2010 were adopted, the principles of 2016 are the last edition. Their goal "is to establish a balanced set of rules designed for use throughout the world irrespective of the legal traditions and the economic and political conditions of the countries in which they are to be applied" (John Y. Gotanda, 2007, p.4).The head of the development of the principles is M. Bonel.

The principles were developed by experts in international contract law and can be applied by both national courts and international commercial arbitrations. To apply the principles in the contract of purchase sale, or provision of services, it is only necessary to fulfil the requirements specified in their preamble.

The main section on compensation for damages for breach of the terms of the contract in the principles UNIDROIT is found in section 4 chapter 7.

Certain types of damages are also highlighted before the section.

Article 3.2.1 (Damage) The article provides for the compensation of losses by the party that knew about the grounds for terminating the contract. The party that claimed such grounds must compensate the damage caused to the other party, regardless of whether the contract was terminated or not. The difference between this article and the articles from chapter 7 of section 4 is that the offending party must put the injured party in such a position that it would have had it not concluded the contract (UNILEX, official comment to Article 3.2.1 of UNIDRIOT propels 2016).

The part that regulates the main principles of compensation for damages for breach of contract in the principles of UNIDROIT is chapter 7, section 4. The main principles of compensation for damages for breach of contract terms to UNIDROIT principles are provided for in this part.

The party whose contractual rights have been violated is entitled to full compensation, including moral damages and compensation for lost profits. To compensate for the damage, it is only necessary to prove the fact of the breach of the terms of the contract by the other party, it is not necessary to prove that the breach of the terms of the contract was not the fault of the victim. If the amount of damages cannot be established with a reasonable degree of certainty then it must be decided by a court or arbitration. These main principles of compensation are enshrined in the following articles of Principles 7.4.1, 7.4.2, 7.4.3.

The injured party is obliged to take all possible measures within reasonable limits to minimize the damage. Expenses incurred to minimize the damage are also subject to

compensation. However, since the victim did not take measures to minimize the damage, the guilty party is not responsible for the damage that the victim could have reduced. The injured party has the right to replace the agreement, i.e., in the event that the seller was able to sell the product or the buyer bought another one to replace the broken agreement, then the injured party who was able to conclude a replacement agreement has the right to compensation for the difference in price. The loss can be calculated both with the help of the difference in the replaced contract and at the expense of the price of the goods when such a price was stipulated by the contract. In this case, the damage will be calculated by the price difference that was at the time of the contract. The current price is the price that is available in the place where the goods were to be delivered or services were to be provided. In the absence of such a price, the price in the other place can be used. Articles 7.4.6, 7.4.8 and 7.4.5 provides for these measures.

Interest is charged for late payment. The payment of interest can be stipulated by the contract and its amount or timing can be changed. In accordance with the principles, interest is accrued from the moment the payment is overdue. The amount of interest is calculated using the average bank rate according to the place of payment. The currency must also be chosen according to the place of payment, as long as the parties have not changed it in the contract. Also, if untimely payment has caused collateral damage, the injured party has the right to compensation, the payment of interest does not exempt from full compensation. These compensation measures are provided for in articles 7.4.9, 7.4.10.

The currency of damage payment must be the currency in which the damage was caused, or the currency provided for in the contract. The damage, which will be paid in instalments, is subject to indexation. This is stated in Article 7.4.11.

The breaching party must compensate only for foreseeable damage. These principles are provided for in Articles 7.4.4.

When some actions of the injured party contributed to the occurrence of damage in proportion to the extent to which the actions of the injured party influenced the occurrence of damage. Such packaging is provided for in Article 7.4.7.

The grounds for release from liability are circumstances that have developed in accordance with the provisions established by the principles in articles 7.1.6 condition, 7.1.7 force majeure.

Therefore, after conducting an analysis of the conditions of compensation damages for breach of contract, principles UNIDRIOT and their part that indicates a violation of the terms can be summarized. The principles of UNIDRIOT are perfectly spelled out with almost no gaps. They have provisions for all possible types of damage and compensation

for it. They are simple to apply and can be chosen for application during the arbitration proceedings unless otherwise provided by national law. They are used to fill the gaps in the CISG Convention and to supplement and clarify national legislation, which makes the conclusions about the practicality and elegance of the UNIDRIOT principles when considering cases related to the violation of the terms of the contract are indisputable.

2.3. Principles of European of contract law

European principles of contract law (PECL) are an instrument of *lex mercatoria*. They were developed by the European commission on contract law under the leadership of the now deceased Ole Lando. They can be applied if the parties have not chosen any national law, have chosen these PECL as the law governing the contract or other instruments of the *lex mercatoria*, as if no legal system has been chosen in the contract, or as the chosen legal system cannot resolve the issue (PECL, 2002, article 1:101).

In the future, respectively in thus sub-chapter, the terms will be used in accordance with the PECL.

The aggrieved party – the party that suffered damage from the violation of the terms of the contract. Non-performing party – the party that violated the terms of the contract.

Compensation in case of invalid contract. The party has the right to compensation if the contract has lost its validity due to the fault of the other party. Such cases are provided for in Chapter 4 of the Act. Such are unequal conditions, concealment of certain facts, excessive benefit of one of the parties, fraudulent errors in the provision of facts. Actions. There are even more serious grounds for such termination, such as the contract being concluded due to threats from the other party. The difference between this compensation and the compensation calculated in accordance with section 5 is that the Chapter 4 compensation must bring the injured party as close as possible to the position in which it would have been without entering into the contract.

Section governing damages have number 5 Damage and Interests.

According to the provisions specified in the PECL in this section, the main task of compensation is to put the aggrieved part in such a position that it should have been in if the contract had been properly performed by both parties.

The first fundamental right of the aggrieved party is to terminate the contract in the event that the breach is material. For example, if it is a manufacturing company that needs raw materials for a certain number, but the supplier is delayed because of which it cannot proceed with the execution of another order, then it has the right to terminate the contract in connection with the violation of the essential terms of the contract. Termination releases the parties from the obligation to perform the contract, however, it does not cancel part of the agreement regarding the resolution of disputes and does not release from compensation for damages for violation of the terms of the contract.

The PECL provide for compensation for moral as well as for lost profits. In these principles, the formula for calculating damages is as follows. The amount of compensation

in accordance with the PECL must correspond to the benefit that the injured party would have received even if the violation of the terms of the contract had not occurred.

Also, the PECL provide for a dispositive provision that allows the parties to specify a certain amount in the contract that the non-performing party will be obliged to pay in case of violation of the terms of the contract. Considering the damages, such an amount will go beyond reasonable limits, then the amount will have to be reduced.

The non-perform party must also compensate for all costs incurred by the aggrieved party when taking measures to minimize the damage. However, the non-performing party is not responsible for the damage that the aggrieved party could reduce or contributed to the damage.

If the aggrieved party managed to conclude another contract to replace the breached one, the party that non-performed party to fulfil its obligations must compensate for damages in accordance with the difference between the breached contract and the replacement contract.

Also, one of the main principles of PECL is the foreseeability of losses, the non-performing to perform is responsible for those losses that it could have foreseen at the time of the conclusion of the contract. Exceptions are cases when the contract was violated intentionally or due to gross negligence. In cases where the aggrieved party has the opportunity to reduce the losses, but has not done so, the defaulting party is released from compensation for such losses.

The PECL determine the right of the aggrieved party who has delayed payment to interest on the delayed amount. Also, receiving this amount does not deprive the aggrieved party of the right to demand compensation for further losses caused by such a delay.

In PECL The following conditions for exemption from liability are provided. The non-performing party can be exempted from liability as the breach of obligations occurred due to an obstacle that was beyond the control of that party and this obstacle was impossible to predict or overcome. Since the obstacle is temporary, then the exemption from responsibility is also temporary, but in the case codes due to the fact that the essential terms of the contract are violated due to the temporary obstacle, the creditor has the right to act accordingly. It is important to note that the party that is unable to fulfil its obligations due to an obstacle, in such a case, the non-performing party is obliged to notify the other party immediately. In the event that the notification was not received due to the non-performing party's fault, then the aggrieved party has the right to compensation for losses caused by the non-receipt of the notification.

2.4 Draft Common Frame of Reference as a basis for analysing legal aspects of compensation for breach of contract in different jurisdictions and international standards

Studying the Draft Common Frame of Reference, a logical conclusion was made that this is a grandiose project of researchers and scientists from lawyers of the European School of Law, created with the help of the European Commission and the European Parliament. Based on the logical analysis of its general part, the project pursues the following goals: to become a source for changes and solutions in the field of private law; reforms in the European Union in the field of private law both at the level of member states and at the level of the community. It is also clearly stated in the general part of the DCFR "The DCFR is an academic text" (DCFR,2009, p.7).

In their scientific work, doctor, professor of legal sciences Kharitonov Yevhen Olegovych, and Kharitonova Olena Ivanivna based on the comments of the developers came to the conclusion that the main goal of the project is "... the aim was to conduct research of a comparative legal nature. And this is confirmed by the authors of the DCFR - K. von Bar, E. Cleve and P. Varul, who note that the DCFR should contribute to the study and understanding of private law in countries - EU members.....The task of the DCFR is to clearly prove the fact of the existence of European private law (actually it is about the concept of European private law)...." (Kharitonov Evgen Olegovuch ta Kharitonova Olena Ivanivna,2015, p.166).

Let's consider the analysis of this project by a teacher from the Edinburgh Law School, Lorna Richardson. In her analysis, she considered all 10 books of the DCFR. Draft Common Frame of Reference has 10 books that cover various aspects of private law, contracts of sale, and other contracts for the provision of services, as well as other legal acts. Contracts, compensation for breach of contract terms, etc. are placed in the second book. Obligations and other rules regarding them are in book 3. Rules regarding commercial representation, distribution, loan franchise are in book 4. Tort obligations arising from non-contractual damage and liability for it are in book 6. Unjust enrichment is in book 7. Rights regarding of movable property are found simultaneously in two books in book 8 and 9. Rules regarding monopolized forms of associations, i.e. trusts, are found in book 10 (Lorna Richardson, 2014).

Summarizing the completion of the analysis of the project and the opinions of the scientists who studied this project, we can come to the logical conclusion that the DCFR is a great scientific work. It was created with the aim of researching the private law of the member states of the European Union and becoming a law enforcement agency. To date, the DCFR is used by lawyers and scientists as a guide to European private law.

Therefore, the DCFR is the best tool for comparing the civil law jurisdictions of EU member states with non-member countries in the field of contractual obligations and compensation for their violation.

CHAPTER III – ANALYSIS OF JURISDICTION REGARDING DAMAGES FOR BREACH OF CONTRACT

3.1. Legal system in Ukrainian and approaches to damages

In Ukrainian legislation, the emergence of obligations, the conclusion of a contract, its changes, termination of a contract and compensation for damages for its violation are regulated by the Civil Code and Commercial Code of Ukraine. Therefore, the existence of these two codes that duplicate each other is followed by the dualism of law. The judicial process is regulated by the Civil procedural and Commercial procedural codes of Ukraine. Also, Ukraine is a member of the UN Convention on Contracts for the International Sale of Goods, but it is important to note that Ukraine has a reservation regarding the use of the convention authorized by Article 96.

As the main normative legal act in the field of obligations, Article 526 of the Civil Code of Ukraine stipulates that obligations must be fulfilled in accordance with the requirements of the contract and the requirements of the Civil Code of Ukraine and other normative legal acts of civil legislation. In the absence of the aforementioned obligation, it must be fulfilled in accordance with the business practice. Part one of Article 510 of the Civil Code of Ukraine establishes that there are two parties to an obligation: the creditor and the debtor. Clause one of Article 509 defines the following meaning for these terms, "…… (the debtor) is obliged to perform a certain action for the benefit of the other party (the creditor) (transfer property, perform work, provide a service, pay money, etc.) or refrain from performing a certain action (negative obligation), and the creditor has the right to demand from the debtor performance of his duty" (Civil code of Ukraine, article 509 2003 redaction 2023). After analysing these articles, it is clear that the debtor is the party that is the obligated party. And the creditor is the party that has the right to demand the fulfilment of obligations under the contract from the debtor, that is, the creditor is the authorized party (Yurist consultant,2023, comment to article 510).

Compensation for breach of contract terms, types of damage and compensation procedure, rights and obligations of the parties are defined in Book Five of the Civil Code of Ukraine, Chapter 51.

To understand this or that issue regarding compensation for damages for breach of contract in Ukraine, it is necessary to consider the articles of this section of the Civil Code of Ukraine. In accordance with Article 611 of the Civil Code of Ukraine, in case of violation of the obligation, the following legal consequences occur: the first of which is the right to terminate the contract is important for considering that this right is granted in the event that the essential conditions of the contract in article 651 are violated, the damage caused is a violation that deprives the other party of the majority of what it expected at the conclusion

of the contract unilateral refusal to further fulfil the obligation of the party, the rights of which are violated. Changing the terms of obligations, paying penalties, and, of course, compensation for damage and moral damage. In the event that the debtor violated his negative obligation, that is, he had to refrain from certain actions in favour of the creditor, but did not do so, the payment of the penalty for damages and moral damage does not deprive the creditor of the right to demand from the debtor the cessation of such action. Article 612 defines the legal consequences of default, according to it, default is the case when the debtor has not started to fulfil obligations or has not fulfilled them on time, for such a delay, the debtor is responsible to the creditor for the damages caused by the delay and for the impossibility of performance, but only in the case that that the impossibility has arisen due to the delay, the creditor may also refuse to accept the obligation as it has lost interest for him due to the delay, then the creditor has the right to demand compensation from the debtor for breach of contract. However, the debtor is released from responsibility in the event that the delay occurred due to the fault of the creditor. If the creditor refuses to accept a properly fulfilled obligation, he will be considered to have delayed the fulfilment of the obligation, not the debtor, or in the event that the creditor did not perform actions without which the debtor could not fulfil his obligation, the debtor is exempt from paying interest for the time of delay in his obligations due to the fault of the creditor , the creditor himself is free from compensation for damages for breach of contract in the event that he proves that it was not his fault but due to, for example, force majeure, these provisions are specified in Article 613 of the Civil Code of Ukraine. Guilt is the basis for liability for breach of obligations. The fault of the person is the intention or carelessness due to which the obligation was not fulfilled or fulfilled but not properly, the person who is suspected of breaching the obligations must prove his innocence. In the event that the person whose rights were violated terminates the contract unilaterally, this will still not release the guilty person from responsibility for breaching the terms of the contract and compensation for the damages caused. Article 616 obligates the court in an imperative form to reduce the degree of responsibility of the debtor as if it had occurred due to the fault of the creditor, however, full release from liability for breach of obligations is still left to the consideration of the court. The basis of the grounds for release from obligations is that the breach occurred due to force majeure or in the resulting case, however, it is not considered an accident: the lack of necessary goods on hand, the debtor's counterparty failing to fulfil its obligations, the debtor's lack of necessary funds, Article 617. According to Articles 618 and 528, in the event that the party who is the debtor has delegated his duties to someone and this is not prohibited by the contract or the law, for example, in Article 1005 of the Civil Code of

Ukraine, the attorney is obliged to fulfil the power of attorney given to him personally, the debtor is still responsible for the final fulfilment of the obligation. The creditor can fulfil the obligations of the debtor personally or entrust this fulfilment to a third party and demand payment from the debtor for these actions referring to Article 621 of the Civil Code. Compensation for damages for breach of obligations is determined by Article 623. In accordance with this Article, the breaching party must compensate the damages caused to the other party, the injured party must prove the damages caused to him. “Damages are determined taking into account the market prices that existed on the day the debtor voluntarily satisfied the creditor's claim in the place where the obligation must be fulfilled, and if the claim was not satisfied voluntarily - on the day of filing the claim, unless otherwise established by the contract or law” (Civil Code of Ukraine, Article 623,2003, redaction,2023). The court may satisfy the claim for damages, taking into account the market prices that existed on the day of the decision. Article 624 regulates the issue of damages and penalties, as the fact that the guilty party has paid the penalty does not exempt it from compensation for damages.

In the case of sole liability, there is one debtor in the obligation who violated the terms of the contract and will be responsible for it in accordance with the contract and the law. Subsidiary liability established in Article 619 of the Civil Code of Ukraine may be stipulated in the contract. That is, in the event that the main debtor refused to satisfy the creditor's claim, then the creditor can present a claim in full to the person who bears subsidiary responsibility within a reasonable period of time. As an example, the debtor violated the obligation secured by the guarantee, in this case the guarantor will be obliged to pay the creditor a sum of money in accordance with the terms of the part guarantee, Article 1, Article 563 of the Civil Code of Ukraine. The joint and several liability provided for in the first part of Article 541 of the Civil Code of Ukraine can also be called a joint duty or a joint claim. This type of obligation arises in cases stipulated by the contract or established by law. A joint and several obligation can be terminated by one of the debtors individually and then have the right to a counterclaim from the other debtors. That is, the debtor who has almost all or all of the debt for damages personally has the right to apply to other joint debtors with a demand for compensation with the deduction of the share that falls to him, unless, of course, otherwise established by law.

Since the Civil Code of Ukraine regulates the entire field of civil obligations, it is important to note that in the future only those types of damages that correspond to the topic of this work will be considered. Only those damages that can be caused only if the parties have contractual obligations will be considered.

Main types of damages provided by legislation of Ukraine.

Real Damages/ Direct damages

According to the Clause 1 of Article 22 of the Civil Code of Ukraine, real damages are the actual expenses incurred by the person whose rights were violated. As the acting lawyer Evgeny Morozov notes, commenting on and supplementing Article 22 of the Civil Code of Ukraine, "Real damages are losses that a person has suffered in connection with the destruction or damage of a thing, as well as losses that a person has made or must make in order to restore his violated right" (Evgen Morozov, 2018).

For example, company A concluded a contract with company C for the purchase of a car, but it was of inadequate quality, so company A repaired it at its own expense and invoiced company C.

Loss of profit

Loss of profit is income that a person should have received, but due to a violation of the terms of the contract, the other party did not receive it. The plaintiff is obliged to prove, justify the amount of damages, cause-and-effect relationship and the amount of compensation. One of the most important elements of proving the existence of a lost profit is proving a causal connection between the illegal behaviour of the other party and the lost profit (Evgen Morozov, 2018).

Material compensation for moral damage

In the civil doctrine of Ukrainian legislation, the issue of compensation for moral damages for violation of the terms of the contract has an honourable place. Article 611 of the Civil Code stipulates that compensation for moral damage is also included in the consequences of breach of obligations. The Grand Chamber of the Supreme Court of Ukraine in resolution no

courts should take into account that moral damages for breach of a civil law contract as a means of protection № 216/3521/16-ц decided: "...subjective civil law can be compensated even if it is not expressly provided for by law or one or another contract and is subject to recovery on the basis of Articles 16 and 23 of the Civil Code of Ukraine..." (Grand Chamber of the Supreme Court of Ukraine,2020). Based on the analysis of the resolution, this means that in the event of a violation of the terms of the contract, the Ukrainian court will refer to Article 23 of the Civil Code on compensation for moral damage, where Article 16 provides for the protection of civil rights and interests by the court. Therefore, it is possible to receive compensation for non-pecuniary damage in Ukraine even without specifying this in the contract.

Consider such an element of compensation for damage for breach of contract terms in Ukrainian law as a penalty.

Penalty in the contract law of Ukraine. Penalty (fine, interest) in accordance with Article 549 of the Civil Code of Ukraine, a penalty is a certain amount of money that the violator of the contract is obliged to pay in case of breach of obligations to the creditor. Paragraph two of Article 549 fine is a penalty calculated as a percentage of the amount of the unfulfilled obligation. Penalty is provided for by paragraph three of the above-mentioned article, it is the same penalty with the difference that it is calculated as a percentage of the amount of the unfulfilled or improperly fulfilled obligation.

Article 550 specifies the grounds for the occurrence of a penalty: this right arises regardless of whether the creditor suffered losses due to the debtor's failure to fulfil his obligations or not interest on the penalty is not accrued the creditor does not have the right to a penalty as the debtor is not responsible for the breach of obligations, this means that the debtor is exempt from the penalty as he has taken all measures to fulfill the obligation as an example force majeure may serve in this case the debtor is free from paying the penalty. Also, the payment of a penalty does not release the debtor from fulfilling his obligations under the contract. Article 551 defines the subject of a penalty, it can be both a monetary amount and movable and immovable property. Article 552 states that the payment of a penalty does not release the debtor from fulfilling his obligations under the obligation, and allows the creditor to demand compensation for damages caused to him due to the debtor's improper performance or non-fulfilment of the contract.

Also, a penalty is not only an element of compensation for damage caused by a violation of the terms of the contract, but also an element of ensuring the performance of the contract.

3.2 Jurisdiction of Ukrainian compared to global standards

The comparative method is one of the most important research methods in legal since. The comparative legal method of research is carried out by comparing the legal systems of different states. In this subsection, a comparison of international and Ukrainian legal standards regarding damages for breach of contract will be made.

In this sub-chapter, under the term global standards, the instruments of the *lex mercatoria* as UNIDROIT principles, European principles of contract law and the Vienna Convention on the International Sale of Goods.

Multiple parties

In Ukrainian civil code allowed UNIDROIT, PECL and the Civil Code of Ukraine chapter 51 is that the Civil Code of Ukraine and the Principles provide for several debtors and several creditors. That is, in the principles and in the Civil Code, debtors are jointly and subsidiary liability to the creditor. Chapter 11 Article 11.1.1 (Definitions) “When several obligors are bound by the same obligation towards an oblige…” (UNDRIOT Principles,2016) provides for this in the principles of UNIDROIT, in Civil Code of Ukraine this provides by article 619 “Subsidiary liability” (Civil Code of Ukraine article 619, 2003, redaction 2023).

Foreseeability of harm

The global standards state that the breaching party is liable only for the damage that it could reasonably have foreseen at the time of the conclusion of the contract. In the CISG it is Article 74 the last sentence, in the principles of UNIDROIT it is Article 7.4.4., in PECL it is Article 9:503. There is no such provision in the Ukrainian Civil Code. That is, the party that violated the terms of the contract is responsible for all the damage caused to the injured party. Irrespective of whether it was reasonably foreseeable and expected at the time of the conclusion of the contract.

Unilateral termination of the contract due to its violation

Unilateral termination of the contract due to its violation. The main similarity between the Ukrainian standards of liability for breach of contract terms and global standards is the admissibility of unilateral termination of the contract in case of breach. In the Civil Code of Ukraine, as well as in global standards, unilateral termination of the contract by the party that suffered losses is permissible. In the Civil Code of Ukraine, such termination is permissible in part or in full, in cases where the terms of the contract have been violated. According to the Civil Code of Ukraine, termination of the contract does not release the guilty party from obligations, as in global standards. The main common feature

of unilateral termination of contract terms due to violation of the Civil Code and global standards is that for unilateral termination of the contract, the violation must be substantial.

Replacement agreement.

In accordance with the principles of global standards, a replacement agreement is provided, that is, if the injured party terminates the contract and is able to conclude a new agreement to replace the breached one, then compensation for damage will be calculated according to the price difference in the contracts. This is provided for in article 75 in CISG, article 7.4.5., in PECL it is provided for in 9:506. In the Civil Code of Ukraine, the principle of replacement operation is provided for in Article 621, however, there is a certain difference, this article provides for the full performance of the work at the expense of the worshiper. The creditor can fulfil the obligations of the debtor independently or conclude an agreement with another executor in case of violation and collect the full price of works and goods from the debtor. In this provision, in contrast to global standards, the presumption comes into force even when the replacement of the agreement was performed personally by the injured party or another contractor of the injured party, the Civil Code of Ukraine allows to carry out work or other measures independently and to demand full compensation for this and further compensation lost profit. In global standards, this type of compensation does not provide for personal performance of work by the injured party. Also, in the Civil Code of Ukraine, this is of a general nature and applies to all types of civil relations. The provision is not mandatory and can be changed in the contract.

Interest and the amount is set for violation of the terms of the contract

Global standards provide for charging interest for late payment or late transfer of any funds. Also, in accordance with the provisions of global standards, the payment of interest does not exempt from compensation for other losses that were caused by the delay in the transfer of funds. The global standards also allowed to establish a certain amount that must be paid by the party that violated the terms of the contract. Interest and fixed amount are different articles in global standards. The amount of this can be reduced, but usually cannot be increased. The reduction can be made to a reasonable amount if the amount of damage is significantly less than the amount stipulated in the contract.

In the Ukrainian legislation, two such actions are regulated by articles on penalty collection. Also, they are both an element of compensation and an element of ensuring the performance of the contract. As the penalty is established by contract or law, it is subject to recovery without prejudice to the claim of any subsequent losses caused by the delay.

Reduction of damages and compensation

Global standards provide for the reduction of damages for breach of contract terms as if the injured party was involved in the circumstances that caused the damage. And also that the party that suffered damage must take all measures to reduce it. The legislation of Ukraine also provides for such provisions. They are specified in Article 616.

Proof of damage

In global standards, there are certain formulas for proving damages, for example, proving damages using the difference in the price of the product. Or if the transaction was replaced, then the damage will be calculated using the price difference in the contracts. In the legislation of Ukraine, proof of damage is the responsibility of the injured party. Damages are calculated with the help of market prices that had to be paid on the day of voluntary fulfilment of the terms of the contract by the debtor. The lost of profit is calculated by the future measures that the injured party would have to take to obtain a profit. The calculation is regulated by Article 623 of the Civil Code.

The principles of CISG, PECL, UNIDRIOT provide that the main purpose of damages for breach of contract is to put the party in the position in which it should have been as if the contract had been properly performed. However, in some cases, as the contract was concluded under threats or fraud, or one party knows about the reason for terminating the contract but keeps silent about this fact, then the injured party is put in a position in which they should have been regardless of the contract.

Considering how detailed the above-mentioned documents are, it becomes clear that the party that has suffered damage as a result of the breach of the terms of the contract can easily receive adequate compensation for all possible types of damage. However, to the extent that they protect the injured party, they also do not allow anyone to use these provisions as a source of additional income. The party that suffered damage must, in turn, contribute to its reduction, however, as in connection with this, it will incur additional losses, they will still be compensated by the party that violated the terms of the contract. As the party that suffered damage was itself involved in this, then the amount of compensation to which it is entitled will be reduced in accordance with the degree of its responsibility.

Based on a comparative analysis of Ukrainian legislation in the field of compensation for damages for violation of contract terms and global standards. It was concluded that the Ukrainian legislation provides for compensation for breach of the terms of the contract up to the position in which the party would have to be if the terms of the contract were properly fulfilled. The only significant difference between Ukrainian legislation and global standards in the field of compensation for damages for breach of

contract is the absence of damage prediction. It cannot be called a significant drawback. However, in the future, the foreseeability of harm when concluding a contract can be introduced into Ukrainian legislation in the future.

Therefore, when the parties choose the legislation of Ukraine as the law that will regulate their contract in case of violation of the terms of the contract with the help of compensation for damage, they will be put in the position in which they should have been if the contract was properly executed. Similarly, as in global standards

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CONCLUSIONS

1. Nowadays, it is impossible to effectively maintain a market economy without its regulation by law, between cross-border transactions for the purchase and sale of goods and the provision of services. International legal instruments such as the Vienna Convention and *lex mercatoria* instruments enable traders to successfully conduct business without experiencing obstacles that may be imposed by different jurisdictions. Compensation for damages for breach of contract terms is one of the most important parts of the contract, the *lex mercatoria* instruments, the Vienna Convention on the sale of goods and the Civil Law in the part that regulates obligations.

2. The master's thesis defines the theoretical principles of compensation for damages for breach of contract terms. Namely, that the main principle of compensation for damages for violation of the terms of the contract is to put the injured party in the position in which it would have been if the terms of the contract had been properly fulfilled or, in some cases, in such a position in which it would have been if it had not signed the contract.

3. Classified types of damages for breach of contract.

4. Defined and studied in which cases soft law instruments are used in case of breach of contract terms.

5. Was determined that the CISG does not cover a significant part of the types of damage, which leads to unpleasant consequences in arbitration and court proceedings.

6. A comparison of Ukrainian standards with global standards of compensation for damages was made. Using the method of comparison, it was concluded that the Ukrainian legislation in the field of compensation for damages for breach of conditions meets all modern challenges and needs in order to compensate all possible types of damage to the injured party.

7. Consequently, based on the conducted research, the following results were obtained: firstly, the main task and principle of compensation for damages for breach of contractual obligations is to put the injured party in the position in which it should have been as if the contract had been properly executed.

8. Determined that modern *lex mercatoria* instruments provide for a greater number of types of compensation for breach of contract terms than the Vienna Convention on the sale of goods, therefore, for complete certainty of compensation for damages in case of breach of contract terms, it is recommended to use PECL and the principles of UNIDROIT in your contract.

9. The DCFR is defined as a scholarly text and a large legal work that can be used in researching the standards of damages for breach of contract in various jurisdictions of the European Union.

10. The legislation of Ukraine in the field of compensation for damages for breach of contract terms is studied in detail.

11 Compensation for damages for breach of contract terms and Ukrainian legislation was compared with global standards and the conclusion was drawn that in the event that the parties choose the instruments of *lex mercatoria* or Ukrainian legislation as the right governing the contract, they can count with full confidence that in case of breach of contract terms by the other party , as instruments of the *lex mercatoria* and the law of Ukraine will put them in the position in which they had to be if the contract was executed properly.

12. After conducting a comparison of global standards, namely PECL, the principles of UNIDROIT with the part of the legislation of Ukrainian law that is responsible for compensation for damages for breach of contract terms, an innovation was obtained that it can be stated the fact that in the matter of compensation for damages for breach of contract terms, Ukrainian legislation completely deviates from the European and its standards.

LIST OF SOURCES

1. Legal normative acts

1.1 International legal acts

United Nations Convention on Contracts for the International Sale of Goods 1980

1.2 National legal acts

The Civil Code of Ukraine, (2003), redaction, 2023

1.3 Soft law acts

The Principles of International Commercial Contracts 2016

The Principles of European Contract Law (2002)

2 Special literature

2.1 Boks, Articles, Working papers, Guides

a.John Y. Gotanda (2007), Using the Unidroit Principles to Fill Gaps in the CISG. Working Paper Series. Villanova University Charles Widger School of Law.p 2,4,3,26.

b.John Y. Gotanda, (2007), CISG Advisory Council Opinion No. 6 Calculation of Damages under CISG Article 74.

Djakhonir Saidov (2008) “The Law of Damages in International Sale of Goods the CISG and other Instrumentals”.Oxword and Portland Oregon, Hart publish, Preface,p18,17.

Law Harry M. Fletcher (2009) audiovisual library of international law – https://legal.un.org/avl/ha/ccisg/ccisg.html

Draft Common Frame of Reference, (2009), p.7

Solen Rowan. (2012).Remedies for Breach of Contract: A Comparative Analysis of the Protection of Performance year of publication, abstract.

Tareq Al-Tawil, (2013), Damages for breach of contract: compensation, cost of cure and vindication p.351– https://www.researchgate.net/publication/306450817_Damages_for_Breach_of_Contract_Compensation_Cost_of_Cure_and_Vindication

Adam Kramer, (2014) The Law of Contract Damages, description Oxword.– https://virtualibiblioteka.vu.lt/primo-explore/fulldisplay?docid=TN_cdi_openaire_primary_doi_dedup_54925548bd034c1058dab78a7142d8d4&context=PC&vid=VU&lang=en_US&search_scope=VU_IG_ALL&adaptor=primo_central_multiple_fe&tab=default_tab&query=any,contains,The%20Law%20of%20Contract%20Damages

Kharitonov Evgen Olegovuch ta Kharitonova Olena Ivanivna (2015) Princip DCFR: sutnist ta znachennya dla garmonizatii civilnogo zakonkonodavstva Ukrini z pravom Evropeiskogo Souzu, Odessa, chasopis civilistici, p. 166.

UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, New York (2016) p. 334, 335, 352, 364.

Fedynyak G.S, Fedenyak L.S, (2017), Kiev, Pravova eidnist, "*Miznarodne privatne pravo*" p. 211, 212.

The Guide to Damages in International Arbitration Third Edition Clare Connellan, Elizabeth Oger Gross and Angélica André.(2018) Third edition p.7.– https://www.whitecase.com/sites/whitecase/files/files/download/publications/article-compensatory-damages-principle-in-civil-and-common-law-jurisdictions.pdf

Andrew Burrows (2019). Remedies for Torts, Breach of Contract, and Equitable Wrongs. Abstract.

3. Court practice

Supreme Court of the Republic of Lithuania, Case 3K-3-63/2015, (2005), – https://www.unilex.info/principles/case/1889

Grand Chamber of the Supreme Court of Ukraine, (2020), Case № 216/3521/16-ц – https://verdictum.ligazakon.net/document/91644731?utm_source=biz.ligazakon.net&utm_medium=news&utm_content=bizpress05&_ga=2.243678213.1212594129.1702463547-

1340189499.1702041887#_gl=1*i0oaip*_gcl_au*MTYzNzk4MTg0Ni4xNzAyMDQxODg2

3.1 Arbitration practice

Arbitral Award. Number of case, (1996),(A-1795/51,) institution Camera Arbitrale Nazionale ed Internazionale di Milano – https://www.unilex.info/principles/case/622

4.Web sites

UNILEX, official comments to article 3.2.1,7.4.2 of UNIDRIOT principles (2016) – **https://www.unilex.info**

CISG ONLINE – https://cisg-online.org/home

Lorna Richardson (2014).“The DCFR anyone”. Law Society of Scotland – https://www.lawscot.org.uk/members/journal/issues/vol-59-issue-01/the-dcfr-anyone/

Yrist consultant comentar do statti 510 of Ukrainian Civil Code – https://legalexpert.in.ua/komkodeks/gk/79-gk/872-510.html

Evgen Morozov. (2018) Upushchena vigoda: sklad pravoporushennia ta taigar dokazuvannia. Lex inform yuridichni novini Ukraini – https://lexinform.com.ua/sudova-praktyka/upushhena-vygoda-sklad-pravoporushennya-ta-tyagar-dokazuvannya/

SUMMARY

The main task of this master's thesis is to investigate and study compensation for damages for breach of contract terms in private international law. Determine the theoretical principles and principles of compensation. Also, cases where the soft law of international trade is applied. In order to improve the fulfilment of the terms of the contract and to provide compensation in case of violation of such terms. Also, taking into account the geopolitical situation on the map of the European Union, it was decided to investigate the Ukrainian standards for compensation for damages for breach of contract terms with the aim of providing a conclusion on their compliance with the European Union and the ability to provide compensation to the injured party and ensure proper fulfilment of the terms of the contract, for the development of Ukraine's international trade and improvement of its economic situation.

CISG, principles of UNIDROIT, principles of European contract law and standards of Ukrainian legislation on compensation for damages for breach of contract were analysed. The judicial and arbitration practice, the judicial practice of the Supreme Court of the Republic of Lithuania and the Supreme Court of Ukraine were analysed. A comparison of global standards and Ukrainian standards for compensation for damages for breach of contract.

The following conclusions were obtained: the basic principle of compensation for damages for breach of contract terms is determined to compensate the profit that should have been received if the contract had been properly executed. The types of damage are defined. It is determined in which cases soft law is applied. The parts responsible for compensation of damage in CISG, UNIDRIOT principles, PECL were analysed. Ukrainian standards for compensation for damages for breach of contract terms were determined and compared with global ones.