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Judicial immunity of the state: the opinion of the Supreme Court of Ukraine

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A. General provisions on judicial immunity

The issue of judicial immunity of the aggressor state continues to be the focus of attention of lawyers and scientists, as each new day of the Russian Federation's war against Ukraine increases the losses of the state, business and people. This is due to the filing of claims for compensation for damage caused to the life and health of individuals on the territory of Ukraine as a result of the Russian Federation's aggression. It should be noted that until 2022 the plaintiffs faced the judicial immunity of the Russian Federation as a defendant, which made it impossible to effectively protect the violated rights. After all, the consideration of cases where the defendant was the Russian Federation was possible only with

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the consent of its competent authorities, but Russia, through its embassy in Ukraine, did not provide such consent (this is reflected in the Resolution of the Supreme Court in case No. 357/13182/18 of June 3, 2020[1], the Resolution of the Supreme Court of Ukraine in case No. 711/16/19 of June 24, 2020[2]). In particular, in these cases, the Supreme Court of Ukraine emphasized that it is not in doubt that the fact that the Russian Federation is an aggressor state in relation to Ukraine and as a result of the armed aggression of the Russian Federation, a temporary occupation of part of the territory of Ukraine takes place, however, the Russian Federation as a state enjoys judicial immunity and cannot be a party to the case in a court of general jurisdiction of the state of Ukraine without explicit or tacit consent expressed through its authorized bodies or officials.

According to the Vienna Convention on Diplomatic Relations of April 18, 1961[3], to which Ukraine is a party, judicial immunity applies to a foreign state, its diplomatic missions and consular establishments. According to the Regulation on diplomatic missions and consular establishments of foreign states in Ukraine, approved by the Decree of the President of Ukraine of June 10, 1993 No. 198/93[4], the state guarantees compliance with the provisions of the said Convention. Issues related to the legal consequences of recognizing claims against foreign states and international organizations, which manifest themselves both at the international and national levels, also become relevant. Jurisdictional immunity of a state, as L. Oppenheim argued, is a "consequence of the equality of states", the sovereignty of states; "no state is capable of exercising jurisdiction over another state"[5]. Limiting immunity will lead to the exercise by one state as a subject of international law of power over another. The sovereignty of a state is interpreted, in particular, as "the quality of an independent state, exclusive supremacy in the structure of state power and implies disobedience to the power of another state"[6]. In this regard, the impossibility of exercising power over another sovereign state due to its immunity can be considered a departure from the principle of territorial sovereignty.

The term "immunity" in Latin means exemption from something. State immunity in a broad sense is the principle according to which a state or its organs cannot be sued in a foreign court without its consent. Any state, as a sovereign, cannot be subject to the judicial jurisdiction of another sovereign (another state) except in cases where the state has voluntarily agreed to submit itself to the jurisdiction of foreign courts. In international law, this principle is formulated as "par in parem non habet imperium" - an equal over an equal has no power. This principle finds its specific reflection in the

[1] Постанова Касаційного цивільного суду Верховного Суду від 03.06.2020 р. № 357/13182/18. URL: https://reyestr.court.gov.ua/Review/89928706.
[2] Постанова Верховного Суду від 23.06.2020 р. № 711/16/19. URL: https://verdictum.ligazakon.net/document/90143663.
[3] Vienna Convention on Diplomatic Relations: International Document of April 18, 1961. URL: https://iplex360.com.ua/npa.php?code=995_048.
[4] Про Положення про дипломатичні представництва та консульські установи іноземних держав в Україні: Указ Президента України від 10.06.1993 р. № 198/93. URL: https://zakon.rada.gov.ua/laws/show/198/93#Text
[5] Oppenheim L. International Law. A Treatise. 6th ed. / ed. by H. Lauterpacht. L.; N. Y.; Toronto, 1947. P. 239.
[6] Oppenheim L. International Law. A Treatise. 6th ed. / ed. by H. Lauterpacht. L.; N. Y.; Toronto, 1947. P. 239.

Vienna Convention on the Representation of States and their Relations with International Organizations of a Universal Character of March 14, 1975[7], the Vienna Convention on Consular Relations of April 24, 1963.[8], Vienna Convention on Diplomatic Relations of 18 April 1961[9], Convention on Special Missions of 1969[10].

B. Conclusion of peace treaties on compensation for damages caused during the war

Traditionally, issues of compensation for material damages caused during the war were resolved in a peace treaty along with other issues necessary for the restoration of relations between the warring states. Usually, one state, most often the one that lost the war, undertook to pay another state a certain amount of money, from which the latter would compensate for damages to its own citizens and citizens of third countries. In addition, a peace treaty could impose on all states participating in the treaty or only on the losing party the obligation to accept for consideration complaints of citizens of another state regarding material damage suffered by them during the war and to compensate for it. But in all cases, compensation for such material damages was carried out in accordance with an interstate treaty, under which the foreign state assumed certain obligations towards these persons. Thus, in 1961, Italy and the Federal Republic of Germany (FRG) concluded two treaties dedicated to the resolution of property issues that arose during the Second World War. The first treaty was dedicated to the settlement of interstate claims. According to it, the FRG paid the Italian government compensation for damages incurred during the Second World War, and the Italian government declared all Italian claims that arose between September 1, 1939 and May 8, 1945 to be exhausted. In the second treaty, the FRG government undertook to pay 40 million German marks to Italian citizens who had suffered because of their race, faith or ideology from the actions of the National Socialist authorities. This treaty also indicated the finality of the resolution of this issue, but without prejudice to the rights of Italian citizens that may arise under the legislation of the FRG.

C. Filing claims for compensation for damage against the aggressor state of the Russian Federation

The independent exercise by private individuals of the protection of their property rights violated as a result of the unlawful actions of a foreign state was extremely complicated due to the latter's

[7] The Vienna Convention on State Representation in Relations with International Organizations of a Universal Nature dated March 14, 1975. URL: https://ips.ligazakon.net/document/MU75K12U.
[8] Vienna Convention on Consular Relations: International document dated 04/24/1963 p. URL: https://ips.ligazakon.net/document/MU63K02R.
[9] Vienna Convention on Diplomatic Communications: International document dated 04.18.61. URL: https://iplex360.com.ua/npa.php?code=995_048; Про ратифікацію Віденської конвенції про дипломатичні зносини: Указ Президії Верховної Ради Української РСР від 21.03.1964 р. № 199а. URL: https://zakon.rada.gov.ua/laws/show/199a-06#Text.
[10] Конвенція ООН про спеціальні місії: Міжнародний документ від 08.12.1969 р. URL: https://zakon.rada.gov.ua/laws/show/995_092#Text.

jurisdictional immunity. By virtue of this immunity, as already noted above, the courts of one state do not have the right to consider cases in which the defendant is another state, its bodies or officials. This is confirmed in Part 1 of Art. 79 of the Law of Ukraine "On Private International Law"[11] states that filing a claim against a foreign state, involving a foreign state in the case as a defendant or a third party, imposing an arrest on property belonging to a foreign state located on the territory of Ukraine, applying other means of securing the claim to such property, and imposing a recovery on such property may be permitted only with the consent of the competent authorities of the relevant state, unless otherwise provided for by an international treaty of Ukraine or the law of Ukraine. However, it should be noted that currently the Verkhovna Rada of Ukraine is considering the Draft Law on Amendments to Article 79 of the Law of Ukraine "On Private International Law" (regarding the non-extension of judicial immunity to cases in which the defendant is an aggressor state) No. 8165[12]. This draft law proposes to supplement Part 1 of Article 79 of the Law, providing that for the consideration of claims filed against a state recognized as an aggressor state, it is not necessary to obtain the consent of the competent authorities of the relevant state recognized as an aggressor state. The European Convention on State Immunity, adopted by the Council of Europe on May 16, 1972[13], and the United Nations Convention on Jurisdictional Immunities of States and their Property, adopted by Resolution 59/38 of the United Nations General Assembly on December 2, 2004[14], provide that a state does not have the right to invoke immunity in cases related to injury to health or life if such injury was caused in whole or in part in the territory of the forum state and if the person who caused the injury was at that time in the territory of the forum state.

It should be noted that Ukraine is not a party to the above-mentioned conventions, but they reflect the development of international law towards the recognition that there are certain limits within which a foreign state has the right to claim immunity in civil proceedings[15].

In private international law, immunity is understood as the independence of one state from the legislation and jurisdiction of another. Immunity is based on the sovereignty of states, their equality and means that none of them can exercise its power over another state, its bodies, property. This is

[11] Про міжнародне приватне право: Закон України від 23.06.2005 р. № 2709-IV/ URL: https://zakon.rada.gov.ua/laws/show/2709-15#Text.

[12] Проект Закону про внесення змін до статті 79 Закону України «Про міжнародне приватне право» (щодо непоширення судового імунітету на розгляд справ, в яких відповідачем є держава-агресор) № 8165 від 31.10.2022. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/40734.

[13] On State Immunity: European Convention of 1972 (ETS N 74). URL: https://ips.ligazakon.net/document/MU72014.

[14] On the jurisdictional immunities of states and their property: the UN Convention adopted by resolution 59/38 of the General Assembly of December 2, 2004. URL: https://ips.ligazakon.net/document/MU04277.

[15] Ступак О. Судовий імунітет держави. Юридична практика. Судовий Форум. (Київ, 15-16 вересня 2022 р.). Київ, 2022. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/2022_prezent/Prezentatsiia_15_16_09_2022_Stupak.pdf.

the principle of removing the state and its bodies from the jurisdiction of another state. *Judicial immunity consists in the non-jurisdiction of a state without its consent to the courts of another state*[16]. The UN International Law Commission, while working on the draft articles on the jurisdictional immunities of States and their property, proceeded from the fact that "the immunity of a State from the jurisdiction of another State is an established principle of international law, although some of its main aspects have been the subject of controversy and have undergone significant changes during the twentieth century[17]".

The International Court of Justice recognizes that jurisdictional immunity is an important principle of international law that protects the sovereignty of States and their ability to act without hindrance within the jurisdiction of other States. However, the Court also emphasizes that there are limitations to the application of jurisdictional immunity, especially in cases where States violate principles of international law, such as violations of human rights or international obligations. The specific decisions of the International Court of Justice on the jurisdictional immunities of States may vary depending on the circumstances of each case and the interpretation of the relevant international treaties and norms of international law. It is important to note that the relevance of the decisions of the International Court of Justice depends on whether the States participating in the judicial proceedings have adopted them, implemented them in their domestic legislation and observed them in their international relations.

Today, legal scholars give various assessments of the jurisdictional immunity of States: in their opinion, it is: a customary norm of international law; its principle; norm (principle) of national law of specific states, including laws on international law; manifestation of international comity[18].

The jurisdictional immunity of a state includes: 1) judicial immunity (immunity of a state from consideration of a claim by a court of another state); 2) immunity from preliminary measures to secure a claim; 3) immunity from the enforcement of a foreign court decision[19]. The question of its international legal principles is becoming particularly relevant today. In this regard, the absence of a universal international treaty that has entered into force, which would regulate, among other things,

[16] Постанова Верховного Суду у справі № 711/16/19 р. від 23 червня 2020 року. URL: https://verdictum.ligazakon.net/document/90143663.
[17] Watts A. The International Law Commission. 1949-1998. Vol. III: Final draft articles not yet having resulted in the conclusion of a treaty and reports other than final draft articles. Oxford, 1999. P. 1999.
[18] Sinclair I. The Law of Sovereign Immunity: Recent Developments // Dixon M, McCorquodale R.. Cases and Materials on International Law. Oxford, 2003. P. 302; Finke J. Sovereign Immunity: Rule, Comity or Something Else? // The European Journal of International Law. 2011. Vol. 21. № 4. P. 864 // URL: http://ejil.oxfordjournals.org/content/21/4/853.full.pdf+htm.
[19] Malanczuk P. Akehurst's Modern Introduction to International Law. Seventh Revised Edition. Routledge; L.; N. Y., 1997. P. 118. URL: http://www.academia.edu/2440951/Peter_Malanczuk_Akehurst_s_Modern_Introduction_to_International_Law_Seventh_edition_1997.

the issue of limiting immunity, the interpretation of the norms on immunity of states by the main judicial body of the UN requires careful analysis.

Regarding the jurisdictional immunity of a state, the *case of Germany v. Italy*: *Greece's intervention should be analyzed*[20]. Thus, on December 23, 2008, Germany brought proceedings against the Italian Republic, demanding that the Court declare that Italy had not respected the jurisdictional immunity that Germany enjoys under international law, allowing it to file civil claims against it in Italian courts, demanding compensation for damages caused by violations of international humanitarian law committed by the Third Reich during World War II. In addition, Germany asked the Court to establish that Italy had also violated Germany's immunity by taking coercive measures against the Villa Vigoni, a German state property located on Italian territory. Finally, Germany requested the Court to declare that Italy had infringed Germany's jurisdictional immunity by declaring judgments of Greek civil courts, enforceable in Italy, against Germany based on acts similar to those which gave rise to the actions brought before the Italian courts. Germany referred, in particular, to a judgment given against it concerning a massacre committed by German armed forces during their withdrawal in 1944 in the Greek village of Distomo in the Distomo… case.

As a basis for the Court's jurisdiction, Germany relied on Article 1 of the European Convention on the Peaceful Settlement of Disputes of 29 April 1957, ratified by Italy on 29 January 1960 and by Germany on 18 April 1961. The Court, in its judgment of 4 July 2011, considered it necessary to examine the decisions of the Greek courts in the Distomo case in the light of the principle of State immunity in order to rule on Germany's claim that Italy had infringed its jurisdictional immunity by declaring the decisions of the Greek courts, enforceable in Italy, to be based on violations of international humanitarian law committed by the German Reich during the Second World War. This led to the conclusion that Greece had an interest of a legal nature which could be affected by the decision in the case and that Greece could therefore be allowed to intervene in the case as a party "since that intervention is limited to the decision of the Greek courts (in the Distomo case…)". In its judgment of 3 February 2012, the Court first examined the question of whether Italy had infringed Germany's jurisdictional immunity by allowing civil actions against that State to be brought before the Italian courts. The Court noted in this regard that the question it had to decide was not whether the acts committed by the Third Reich during the Second World War were unlawful, but whether the Italian courts in civil proceedings against Germany relating to those acts were obliged to grant Germany immunity. The Court held that the Italian courts' refusal of immunity to Germany constituted a breach of Italy's international obligations. It stated in this regard that, under customary international law as it stands, a State is not deprived of immunity on the ground that it is accused of serious violations of international human rights law or the international law of armed conflict. The Court further noted that, assuming that the rules of the law of armed conflict prohibiting murder, deportation and slave labour are jus cogens, there is no

[20] Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening). URL: https://www.icj-cij.org/case/143.

contradiction between those rules and the rules on State immunity. The two sets of rules concern different issues. The rules on State immunity are limited to determining whether the courts of one State may exercise jurisdiction over another State. They do not concern the question of whether the conduct in respect of which the proceedings were brought was lawful or unlawful. Finally, the Court considered Italy's argument that the Italian courts were justified in denying Germany immunity because all other attempts to obtain compensation for the various groups of victims involved in the Italian proceedings had failed. The Court has found no basis in the relevant domestic or international practice for international law to make a State's right to immunity conditional on the existence of effective alternative means of redress.

The Court then considered whether the precautionary measure taken in respect of property belonging to Germany situated in Italian territory constituted a breach by Italy of Germany's immunity. It noted that the Villa Vigoni was used for State purposes which were entirely non-commercial; that Germany had in no way consented to the registration of the legal charge in question and had not made the Villa Vigoni available for the satisfaction of legal claims against it. Since the conditions enabling the taking of measures of enforcement in respect of property belonging to a foreign State were not met in this case, the Court concluded that Italy had breached its obligation to respect Germany's immunity from enforcement. Finally, the Court considered whether Italy had violated Germany's immunity by declaring enforceable in Italy civil judgments given by Greek courts against Germany in proceedings relating to the massacre committed in the Greek village of Distomo by the armed forces of the Third Reich in 1944. It found that the relevant judgments of the Italian courts constituted a breach by Italy of its obligation to respect Germany's jurisdictional immunity. Accordingly, the Court held that Italy must, by adopting appropriate legislation or by resorting to other methods of its choice, ensure that the judgments of its courts and of other judicial bodies which infringed the immunity enjoyed by Germany under international law ceased to have effect. Thus, the failure of a court to apply the jurisdictional immunity of a foreign State to pay compensation for serious human rights violations committed by the responsible State during an armed conflict, especially in the absence of other means of redress, does not constitute a violation of the sovereign rights of another State (*separate opinion of Judge Yusuf in the ICJ judgment in the case under review, § 50*). On the contrary, it contributes to the crystallization of an exception to the jurisdictional immunity of States based on the principles underlying human rights and humanitarian law, including the right to an effective remedy for the right violated[21].

[21] Ступак О. Судовий імунітет держави. Юридична практика. Судовий Форум. (Київ, 15-16 вересня 2022 р.). Київ, 2022. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/2022_prezent/Prezentatsiia_15_16_09_2022_Stupak.pdf.

The United Nations Convention on Jurisdictional Immunities of States and Their Property[22] enshrines a restrictive doctrine of immunity, which distinguishes between acts performed in the exercise of sovereign authority or acta de jure imperii (immunity) and acts of commercial or private law or acta de jure gestionis (non-immunity)[23]. The provisions of the Convention have been adopted as national law in States such as Japan, Spain and Sweden. States may also adopt the provisions only in part, such as the 2016 French law based on the provisions of Part IV of the Convention on measures of enforcement. Russia, which is a signatory to the Convention, has a 2015 law adopting a restrictive doctrine of immunity similar to the Convention.

The United Kingdom, a signatory, has made no attempt to amend its legislation on State immunity, but the courts have given the Convention close attention. The general approach has been to examine the Convention on a provision-by-provision basis (including the travaux préparatoires) to assess whether it reflects customary international law. In 2006, Lord Bingham *in Jones v. Ministry of the Interior of the Kingdom of Saudi Arabia*[24] referred to the Convention as evidence that there are no exceptions to State immunity from civil proceedings for violations of jus cogens norms such as torture. He noted that, "despite its infancy, the Convention is the most authoritative statement of the contemporary international understanding of the limits of State immunity in civil cases, and the absence of torture or exceptions to the jus cogens principle is entirely contrary to the claimants' contention" (paragraph 26). Lord Hoffmann also considered the Convention to be relevant, noting that "it is the result of many years of work by the International Law Commission and codifies the law of State immunity" (paragraph 47). The High Court of New Zealand, in Jones v. Saudi Arabia, stated that "the absence of torture or the jus cogens exception to State immunity in the 2004 United Nations Convention on Immunities is a strong argument against the claimants' argument. This Convention is a recent expression of the consensus of States on this subject" (Fang and Others v. Jiang and Others, 21 December 2006, § 65).
The concept of qualified immunity means that a State cannot rely on immunity if it enters into a commercial transaction or a similar act of a private law nature, is not part of Ukrainian law and is mutually exclusive with the approach of absolute immunity. The ECtHR has recognised that limitations on sovereign immunity pursue a "legitimate aim" and may in principle reasonably restrict the right to a fair trial.

As regards cases of limited jurisdictional immunity, in the judgment of 14 March 2013 in the *case of Oleinikov v. Russia*[25], the ECtHR stated that the provisions of the UN Convention apply "in accordance

[22] UN Convention on Jurisdictional Immunities of States and Their Property: International Document dated December 2, 2004.
[23] United Nations Convention on Jurisdictional Immunities of States and Their Property New York, 2 December 2004. URL: https://legal.un.org/avl/ha/cjistp/cjistp.html.
[24] Case of Jones and Others v. the United Kingdom: Solution from 02.06.2014. URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-150991%22]}.
[25] Case of Oleynikov v. Russia: 09.09.2013 № 36703/04. URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-193014%22]}.

with customary international law, even if that State has not ratified it", and the Court must take this fact into account when deciding whether the right of access to a court within the meaning of Article 6 § 1 of the Convention has been respected (§ 68, § 31). The case established that Russia had signed the UN Convention (Ukraine had not signed the UN Convention). Furthermore, the ECtHR found that, prior to signing the UN Convention, Russia had explicitly recognized qualified immunity as a principle of customary international law, as the Russian President had repeatedly affirmed that qualified immunity was a principle of customary international law and that the approach of absolute immunity was outdated (neither the President of Ukraine nor other Ukrainian officials had made such statements). The ECtHR also found that qualified immunity was applied in Russia in the light of Russian case law and legislation. It should be emphasized that the European Convention and the ECtHR case law are in fact part of Ukraine's domestic legislation. However, the Supreme Court's conclusions on the waiver of immunity by referring to an ECtHR decision with a cross-reference to customary international law are highly controversial[26].

In its judgment of 23 March 2010 in the *case of Cudak v. Lithuania*[27], the ECtHR recognised the existence of customary rules on State immunity and the dominance in international practice of the theory of limited State immunity, but stressed that the limitation must be in line with a legitimate aim and be proportionate to it. The ECtHR analysed Lithuanian law and the relevant facts in detail. In particular, it noted that the Supreme Court of Lithuania had abandoned the concept of absolute immunity in its case-law and had instructed lower courts to determine in each specific case whether the dispute was of a public or private nature. The facts of the main dispute in the Lithuanian courts also concerned an alleged private dispute over compensation for the unlawful dismissal of an employee of the Polish Embassy in Vilnius. These decisions are examples of the rejection of the concept of absolute jurisdictional immunity of another State.

D. Resolving the issue of immunity in the practice of the Supreme Court of Ukraine

Yes, the legal position set out in the Resolution of April 14, 2022 in case 308/9708/191[28], issued on the claim of a citizen of Ukraine against the Russian Federation on compensation for moral damage caused to her and her children in connection with the death of her husband as a result of the armed aggression of the Russian Federation on the territory of Ukraine, has been published on the website of the Supreme Court.

When considering the above case, the Supreme Court took into account:

[26] Droug O., Danylenko A. New Approach to State Immunity in Ukraine. 2019. URL: https://sk.ua/new-approach-to-state-immunity-in-ukraine/.
[27] Case Cudak v. Lithuania: 23.04.2019 № 77265/12. URL: file:/C:/Users /Downloads/CUDAK%20v.%20LITHUANIA.pdf.
[28] Про відшкодування моральної шкоди, завданої внаслідок збройної агресії РФ проти України: постанова Верховного Суду від 14.04.2022 р., № 308/9708/19. URL: http://iplex.com.ua/doc.php?regnum=104086064&red=100003eeb1679d17f8700ac5d2b26fdc36cbbf&d=5.

- the subject of the claim is compensation for moral damage due to the death of the children's father during the ATO;
- the place of infliction of damage is the territory of Ukraine on which hostilities took place; the fact that the damage was inflicted by the aggressor country;
- the fact that this country carried out aggressive actions against the territorial integrity of Ukraine.
- The Supreme Court concluded that "after the start of the war in Ukraine in 2014, the Ukrainian court, when considering a case where the Russian Federation is recognized as the defendant, has the right to ignore the immunity of this country and consider cases on compensation for damage caused to an individual as a result of the Russian Federation's armed aggression, based on a lawsuit filed specifically with this foreign country."

In addition, the Supreme Court also noted that in connection with the full-scale invasion of the Russian Federation into the territory of Ukraine on February 24, 2022, Ukraine severed diplomatic relations with Russia, which makes it impossible from this date to send various requests and letters to the Russian Embassy in Ukraine, in view of the termination of its work on the territory of Ukraine. The Supreme Court established grounds for concluding that, starting from 2014, there is no need to send requests to the Russian Embassy in Ukraine regarding the consent of the Russian Federation to be a defendant in cases on compensation for damage in connection with the Russian Federation's armed aggression against Ukraine and its disregard for the sovereignty and territorial integrity of the Ukrainian state. And from February 24, 2022, such sending is also impossible due to the termination of diplomatic relations between Ukraine and the Russian Federation. Thus, the Supreme Court determined that the suspension of proceedings in such cases in order to send a request to the Russian Embassy in Ukraine regarding the consent or disagreement with the consideration of the case by a Ukrainian court is groundless, since the Russian Federation does not enjoy judicial immunity in the relevant cases[29].

This decision of the Supreme Court caused some discussions in the legal community. In particular, its critics referred to the decision of the International Court of Justice of February 3, 2012 in the case “Germany v. Italy” (the case analyzed above, which concerns the violation by the Supreme Court of Italy of Germany’s immunity during the consideration of claims for compensation for damage filed with Germany).

However, the Court noted that the conclusions made in this case cannot be applied to Ukraine and the Russian Federation, since Germany has already paid reparations to Italy.

[29] Кас’яновський І.О. Обмеження юрисдикційного імунітету Росії в судовій практиці України. *Науковий вісник Ужгородського Національного Університету*. Серія ПРАВО. Випуск 80: Частина 2 2023. С. 325.

The above position of the Supreme Court was developed in the resolutions of the Supreme Court of May 18, 2022 in cases No. 428/11673/19[30] and No. 760/17232/20-ts[31] and the resolution of the Presidium of the Supreme Court of May 12, 2022 in case No. 635/6172/17[32]. *The court emphasized that the conclusions made in the resolution of the Supreme Court of April 14, 2022 in case No. 308/9708/19 allowed the courts to embark on the path of protecting the rights and interests of Ukrainians who suffered damage from the armed aggression of the Russian Federation by recovering damages from the aggressor state.*

In particular, in the Resolution of the Supreme Court of May 18, 2022 in case No. 760/17232/20, it was determined that the judicial immunity of the Russian Federation does not apply in view of customary international law codified in the UN Convention on Jurisdictional Immunities of States and Their Property (2004). Maintaining the immunity of the Russian Federation is incompatible with Ukraine's international legal obligations in the field of combating terrorism. The judicial immunity of the Russian Federation is not subject to application in view of the violation by the Russian Federation of the state sovereignty of Ukraine, and therefore, is not the exercise by the Russian Federation of its sovereign rights, which are protected by judicial immunity. The commission of acts of armed aggression by a foreign state is not the exercise of its sovereign rights, but indicates a violation of the obligation to respect the sovereignty and territorial integrity of another state - Ukraine, which is enshrined in the UN Charter[33].

The Supreme Court also noted that if the immunity of the Russian Federation is limited: maintaining the jurisdictional immunity of the Russian Federation will deprive the plaintiff of effective access to a court to protect his rights, which is incompatible with the provisions of paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Supreme Court emphasized that the plaintiff's appeal to a Ukrainian court is the only reasonably available means of protecting a right, the deprivation of which would mean the deprivation of such a right in general, that is, would deny the very essence of such a right.

In the Resolution of May 12, 2022 in case No. 635/6172/17, the Supreme Court used and applied the three-part test of the ECHR regarding the state's ability to interfere with the rights guaranteed by the

[30] Про відшкодування майнової та моральної шкоди, завданої збройною агресією Російської Федерації: Постанова Верховного Суду від 18.05.2022р. № 428/11673/19. URL: http://iplex.com.ua/doc.php?regnum=104635313&red=100003c2ce32df8619df1915f48b9a84b82137&d=5

[31] Про відшкодування моральної шкоди: Постанова Верховного Суду від 17.05.2022 р. № 760/17232/20. URL:https://verdictum.ligazakon.net/document/104635312?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03.

[32] Про відшкодування моральної шкоди, завданої смертю фізичної особи: Постанова ВП Верховного Суду від 11.05.2022 р. № 635/6172/17. URL: https://verdictum.ligazakon.net/document/104728593?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03.

[33] Ступак О. Судовий імунітет держави. Юридична практика. Судовий Форум. С. 9.

Convention for the Protection of Human Rights and Fundamental Freedoms, in particular in the context of the compliance of such interference with a legitimate aim. The ECHR has repeatedly recognized that "granting immunity to a state in the course of civil proceedings must pursue the legitimate aim of observing international law to promote civility and good relations between states through respect for the sovereignty of another state"[34].

It should be noted that after the adoption of the Supreme Court's resolutions of May 12 and 18, 2022, the courts do not have any questions regarding holding the aggressor country liable in cases of compensation for damage. However, it cannot be said that after the conclusions reached, restrictions on the judicial immunity of other countries are allowed. In addition, in today's realities, the problem of enforcing court decisions to recover damages from the Russian Federation is being hotly debated, since a decision that cannot be enforced makes no sense. It is not enough to say in a court decision that the plaintiff has the right to compensation for damage in a certain amount. If the decision cannot be executed, it will not allow to protect the rights of the individual. The citizen will not receive satisfaction for his violated rights, therefore, the issue of finding ways to ensure the execution of such decisions is relevant today.

E. Conclusion.

Thus, the guilty party for the damage caused as a result of the war is the aggressor country - the Russian Federation. It is assumed that with the end of the war, a single process of Ukraine against Russia will be initiated, as a result of which, as practice shows, funds will be forcibly collected from the latter (reparation), thanks to which the property and non-property (moral) damage caused by military actions will be compensated.

[34] Ступак О. Судовий імунітет держави. Юридична практика. Судовий Форум. С. 9.

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