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The application of the institution of subsidiary liability in bankruptcy cases

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■ **Abstract.** This study aimed to develop a comprehensive understanding of the mechanisms of subsidiary liability and identify ways to improve its regulation in bankruptcy law. The methodological framework was based on a combination of institutional and comparative legal approaches, enabling a thorough examination of subsidiary liability as a legal institution and comparing its regulation across different legal systems. The findings indicated that the Ukrainian model of subsidiary liability has evolved from a narrow to a broader interpretation of liability grounds, reflecting a global trend towards strengthening creditor protection. An analysis of European legislation and Ukrainian case law, along with selected cases in Germany (Wirecard) and the United Kingdom (BHS), revealed that the effectiveness of the European model is primarily ensured through the introduction of early problem detection systems and prompt responses to initial signs of mismanagement. This is complemented by a well-developed system of professional oversight by insolvency practitioners, auditors, and experts. It has been established that a key element of the European approach is a well-functioning system of cross-border cooperation and information exchange between different jurisdictions. The specialisation of proceedings and the clear distinction between various forms of liability contribute to more efficient case resolution and the avoidance of procedural complications. The necessity of systematically improving Ukrainian legislation has been substantiated through the expansion of insolvency practitioners' powers, the introduction of early warning mechanisms for insolvency, the creation of a national database of individuals involved in subsidiary liability cases, and the mandatory audit of enterprises experiencing a sharp increase in debt burden or changes in ownership structure. It has been proposed to supplement legislation with specialised rules governing the identification, prevention, and termination of misconduct at the pre-crisis stage, as well as to develop a clear list of risk indicators and introduce a requirement for management to notify creditors and relevant state authorities of such circumstances

■ **Keywords:** corporate insolvency; corporate governance; legal regulation; creditor protection; insolvency practitioner

■ Introduction

In the context of rapidly evolving corporate relationships and increasingly complex financial and economic interdependencies, the institution of subsidiary liability is gaining significant importance as a key mechanism for protecting creditor rights and ensuring a fair distribution of risks among participants in business relationships. The effective application of subsidiary liability in bankruptcy cases is becoming critically important for Ukraine, given the need to harmonise national legislation with EU law and the growing trend towards creating complex corporate structures. This issue is particularly relevant in the context of an increasing number of distressed companies and the need to improve mechanisms for holding

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those who actually control debtor companies accountable, especially in cross-border bankruptcies and international business transactions. According to data, in September 2024, the number of risky value-added tax payers increased by 591, and this upward trend has been continuing since September 2023 (Yuzhanina, 2024). The increase in the number of intentional bankruptcies and evasion of responsibility through complex corporate structures has become even more acute during the period of martial law (Rybalchenko & Ohrimenko, 2024). In today's economic realities, where there is a growing number of cases of intentional bankruptcies and asset stripping through complex corporate structures, the development of effective subsidiary liability mechanisms is not just a theoretical issue, but an urgent practical necessity to ensure the stability of economic relations and protect the rights of bona fide market participants. In particular, in complex corporate structures where the lines between personal and corporate assets are often blurred, subsidiary liability can become a tool to combat fraudulent schemes.

Fundamental research into the legal nature of subsidiary liability within Ukrainian law reveals a variety of approaches. I.V. Horvat (2024) conducted an analysis of the legal nature of subsidiary liability in Ukrainian civil law, closely examining its definition in Article 619 of the Civil Code of Ukraine[1] and the mechanisms for its application in the context of bankruptcy. The researcher identified subsidiary liability as an effective mechanism for protecting creditor rights but also highlighted a significant problem: the lack of clarity in the regulatory framework for identifying liable individuals, especially in complex corporate structures. O.P. Yerokhin (2024) expanded upon this research by focusing on the practical aspects of implementing subsidiary liability. This involved analysing specific mechanisms of its application in court practice and emphasising the need to improve procedures for more effective protection of creditor rights. A. Danilov (2024) conducted a study on the interaction between joint and several liability and subsidiary liability in bankruptcy cases. Based on an analysis of the Bankruptcy Code of Ukraine[2], he determined that holding officials jointly and severally liable for failing to file for bankruptcy promptly does not violate the principle of bankruptcy immunity.

Research on the evolution and transformation of bankruptcy legislation has been extensively explored by international scholars. I. Das (2020) offered a comprehensive analysis of the evolution of bankruptcy law within the context of socio-economic and political transformations. He examined the historical development of bankruptcy mechanisms and their adaptation to modern economic realities. The researcher paid particular attention to balancing the interests of various stakeholders in the formation of bankruptcy and subsidiary liability legislation. I. Kokorin (2021) conducted a comprehensive study of contemporary approaches to restructuring in European legislation, focusing on improving liability mechanisms in cross-border bankruptcies. A key contribution of this research was a detailed analysis of the "release of third parties" mechanism, which allows for the release or modification of claims against related parties in insolvency proceedings. S. Malekmohamadi & R. Eskini (2023) expanded the international context of the research by analysing the role and standards of UNCITRAL in regulating the liability of parent companies. They also investigated various approaches to determining the scope of such liability in different legal systems.

A particular area of research is dedicated to the problems of corporate responsibility and governance. O.O. Karmaza *et al.* (2019) conducted a comprehensive study of the application of the "piercing the corporate veil" doctrine in Ukrainian law. They closely analysed its elements within the existing legislation and emphasised the need to strengthen the accountability of ultimate beneficial owners. D.A. Nuryanto *et al.* (2019) and W.H. Beaver *et al.* (2024) furthered the understanding of the specific characteristics of bankruptcy within business groups and holding structures. They examined the mechanisms of intra-group support and credit risk management. R. Mares (2020) investigated the transformation of the principle of legal separation in the context of multinational corporation activities, establishing its stability over two centuries despite the challenges of globalisation.

Procedural and practical aspects of implementing subsidiary liability are revealed in a series of studies. R. Knieper & A.N. Biryukov (2019) conducted a study of legal constructs in the economic sphere of Ukraine, particularly the right of operational management. They found its inconsistency with current conditions and substantiated the need for changes to the Commercial Code of Ukraine[3]. E.J. Janger (2022) complemented this research with a detailed analysis of mechanisms for protecting creditor rights in various jurisdictions, especially regarding the application of procedural safeguards in bankruptcy. C. Beuermann (2022) analysed the formal legal reasoning in the courts of England and Wales when determining subsidiary liability. He found that the change in the type of formality after moving away from the Salomon test requires adjustments to the Supreme Court's guidelines.

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15.
[2] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[3] Commercial Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15.

Despite the substantial body of research, several critical aspects of the application of subsidiary liability in bankruptcy cases remain underexplored. In particular, further investigation is required into mechanisms for effectively proving actual control over debtor enterprises, the application of subsidiary liability in the context of economic digitalisation and emerging forms of corporate control, as well as the harmonisation of Ukrainian legislation with international standards on cross-border insolvency. Additionally, the interaction between subsidiary liability mechanisms and other institutions of corporate law in conditions of economic instability and the transformation of business models remains insufficiently studied.

This study aimed to explore subsidiary liability in bankruptcy proceedings in Ukraine and EU countries, focusing on its legal nature, regulatory framework, and practical application. The research objectives were as follows:

1) to investigate the legal nature and theoretical foundations of the institution of subsidiary liability in different legal systems, to identify the specifics of its application in Ukrainian legislation, and to conduct a comparative analysis with European regulatory models;

2) to analyse the practice of applying subsidiary liability in bankruptcy proceedings in Ukraine, to identify the main problems and obstacles in law enforcement, and to examine the current positions of the Supreme Court regarding the criteria for liability;

3) to develop scientifically grounded proposals for improving the legislative regulation of subsidiary liability in Ukraine, taking into account European standards and recommendations, aimed at increasing the effectiveness of protecting creditor rights and ensuring proper corporate governance.

Materials and Methods

This research employed a comprehensive methodological approach based on a combination of general scientific and specialised legal methods of scholarly inquiry. The system-structural method was a key tool for the comprehensive analysis of the interrelationships between various elements of the legal regulation of subsidiary liability. Its application allowed for the examination of not only individual regulatory legal acts but also the identification of systemic links between substantive and procedural norms governing liability issues in bankruptcy proceedings. Particular attention was paid to the analysis of the interaction between norms of different branches of law – civil, commercial, corporate, and criminal – which allowed for the formation of a holistic understanding of the mechanism of legal regulation of subsidiary liability. The system-structural analysis also helped to identify gaps and inconsistencies in the existing legislation, particularly in matters of coordination between different jurisdictional procedures and mechanisms for protecting creditor rights.

The formal legal method was employed in the detailed analysis of Ukraine's regulatory legal framework governing subsidiary liability. Within this method, a thorough analysis of the provisions of the Bankruptcy Code of Ukraine[1] was conducted, which establishes the basic principles and mechanisms for imposing subsidiary liability. Additionally, the Civil Code of Ukraine[2], which defines the general principles of civil liability, the Commercial Code of Ukraine[3], which regulates the specifics of liability for business entities, and the Criminal Code of Ukraine[4], regarding liability for bankruptcy-related crimes, were analysed. Particular attention was paid to the analysis of the legal constructs used by the legislator to define the grounds, conditions, and procedures for imposing subsidiary liability, as well as to the study of the terminological apparatus and the specifics of its application in various regulatory legal acts.

The comparative legal method was a fundamental tool for conducting a comparative analysis of the regulation of subsidiary liability in the legal systems of Ukraine and leading EU countries. Within the study, the legislation of France was analysed, including the provisions of the Civil Code of France[5] and the Commercial Code of France[6], which establish the basic principles of liability for company directors and owners, as well as mechanisms for protecting creditor rights. Particular attention was paid to the analysis of German legislation, including the Civil Code of Germany[7] and Law of Germany No. 323 "On Limited Liability Companies"[8], which detail corporate liability issues and "piercing the corporate veil" mechanisms. The study of the Commercial Companies Code of Poland[9] allowed for the identification of the specifics of regulating subsidiary liability in a country that has

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15.
[3] Commercial Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15.
[4] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14.
[5] Civil Code of France. (1804, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721.
[6] Commercial Code of France. (2000, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379.
[7] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/bgb.
[8] Law of Germany No. 323 "On Limited Liability Companies". (1892, April). Retrieved from https://www.gesetze-im-internet.de/gmbhg.
[9] Commercial Companies Code of Poland. (2000, September). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20000941037.

undergone a similar path of legal system transformation to Ukraine. An analysis of the Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act"[1] provided an opportunity to examine contemporary European approaches to regulating liability in corporate relations. The application of the comparative legal method made it possible not only to identify commonalities and differences in the regulation of subsidiary liability in different legal systems but also to formulate specific proposals for improving Ukrainian legislation, taking into account successful European practices.

International normative acts were an important source of research, primarily Directive of the European Parliament and of the Council No. 2019/1023[2], which establishes modern European standards for regulating bankruptcy and restructuring procedures, Regulation of the European Parliament and of the Council No. 2015/848[3], which regulates insolvency proceedings and establishes mechanisms for cross-border coordination between EU member states, and the UNCITRAL Model Law on Cross-Border Insolvency, which defines international standards for regulating cross-border bankruptcies (United Nations Commission on International Trade Law, 2019). The analysis of these documents was essential for assessing the prospects for harmonising Ukrainian legislation with European norms and determining directions for its improvement.

The empirical basis of the research consisted of a body of Ukrainian court practice, in particular, the rulings of the Supreme Court in bankruptcy and subsidiary liability cases. A detailed analysis of Resolution of the Supreme Court of Ukraine in Case No. 908/314/18[4], Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16[5], Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16[6], Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20[7], and Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21[8] allowed for tracing the evolution of court practice and identifying the main trends in the application of subsidiary liability mechanisms. Particular attention was paid to the analysis of the legal positions of the Supreme Court regarding the criteria for imposing liability, the evaluation of evidence, and the establishment of a causal link between the actions of directors or owners and the insolvency of the company.

Results and Discussion

The legal nature and theoretical foundations of the institution of subsidiary liability. Subsidiary liability in civil law relations is a specific mechanism that involves imposing an auxiliary or additional obligation on another person (the subsidiary respondent) to satisfy creditors' claims when the primary debtor is unable to fulfil their obligations in full. This form of liability differs significantly from joint and several liability, where a creditor has the right to demand full repayment of the debt from any of the co-debtors, regardless of the financial situation of the others (Supreme Court, 2021). In contrast, subsidiary liability arises only when it becomes clear that the primary debtor's assets or funds are categorically insufficient to satisfy all claims. This approach emphasises the "secondary" or "auxiliary" nature of the subsidiary respondent, who is liable only when the principal obligation cannot be properly fulfilled by the primary debtor. The logic of this legal phenomenon is closely linked to the concept of fair risk distribution: participants in commercial transactions, including directors and beneficiaries, should bear responsibility when their actions or omissions have contributed to the emergence of insolvency and thereby worsened the position of creditors.

Historically, Ukrainian legislation was predominantly focused on collective (joint and several) liability, as during the Soviet era, the legal regulation of economic activity did not significantly differentiate between forms of mutual responsibility (Babie, 2016). As noted by U.E. Monastyrsky (2020), the transition to market relations required the development of

[1] Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act". (2010, July). Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-2010-10544.

[2] Directive of the European Parliament and of the Council No. 2019/1023 "On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and On Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)". Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1023.

[3] Regulation of the European Parliament and of the Council No. 2015/848 "On Insolvency Proceedings". (2015, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2015/848/oj/eng.

[4] Resolution of the Supreme Court of Ukraine in Case No. 908/314/18. (2022, August). Retrieved from https://verdictum.ligazakon.net/document/105747984.

[5] Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16. (2020, June). Retrieved from https://verdictum.ligazakon.net/document/89910859.

[6] Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16. (2020, November). Retrieved from https://verdictum.ligazakon.net/document/92971721.

[7] Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20. (2024, June). Retrieved from https://verdictum.ligazakon.net/document/120341855.

[8] Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21. (2024, September). Retrieved from https://zakononline.com.ua/court-decisions/show/122021182.

more flexible liability mechanisms that would take into account the real influence of controlling persons on management decisions and their consequences for a company's solvency. However, with the transition to market relations and the active development of the private sector, courts and legislators recognised the expediency of imposing subsidiary liability on those participants who had a real influence on the management of the enterprise.

The legal regulation of subsidiary liability in Ukraine is enshrined in the main regulatory legal acts. In the Civil Code of Ukraine[1], the basic provisions are contained in Article 619, which stipulates that a contract or law may provide for additional (subsidiary) liability of another person alongside the liability of the debtor. The Commercial Code of Ukraine[2], in Article 176, regulates organisational and economic obligations that arise in the process of managing economic activities between a business entity and an entity with organisational and economic powers. The most detailed regulation of the mechanism of subsidiary liability in the event of insolvency is contained in the Bankruptcy Code of Ukraine[3], where Article 61 provides that in the event of a debtor's bankruptcy due to the fault of its founders, participants, shareholders, or other persons, including the debtor's director, who have the right to give binding instructions to the debtor or can otherwise determine their actions, they may be held subsidiarily liable for the debtor's obligations if their assets are insufficient.

The phenomenon of subsidiary liability is not unique to Ukrainian law, as it is also widely used in EU countries as an effective mechanism to counter abuses by company owners or directors. In Germany, there is the concept of Durchgriffshaftung ("piercing the corporate veil"), which allows controlling persons to be held liable in the event of unlawful actions, particularly if they have deliberately led the company to insolvency. This mechanism is aimed at preventing abuses of the corporate form and ensuring fairness for creditors. In the United Kingdom, similar protection of creditors' interests is provided by the doctrine of piercing the corporate veil, which is applied in exceptional cases, as well as by the rules on "wrongful trading" under the Insolvency Act of the United Kingdom[4]. Specifically, section 214 of this Act establishes the liability of directors if they knew or ought to have known that there was no realistic prospect of avoiding insolvency, but failed to take every step to minimise the potential loss to the company's creditors.

Many EU member states also have specialised corporate and bankruptcy legislation that provides mechanisms for "piercing the corporate veil". For example, France has a procedure known as action en comblement de passif, which allows liability to be imposed on directors for company debts. In Italy and Spain, similar mechanisms are applied through provisions of national bankruptcy law. Of particular importance are the rules that allow not only formal officials but also those who actually managed the company and led it to insolvency through improper management or fraudulent actions to be held liable. For instance, in the United Kingdom, there is the possibility of holding socalled de facto directors liable, and in France, dirigeants de fait, which expands the range of persons who can be held responsible for financial abuses (Gerner-Beuerle *et al.*, 2013). As M. Tamvada (2020) notes, the effective application of such liability mechanisms requires a clear theoretical justification of the relationship between the moral and legal aspects of corporate behaviour, which indicates the universality of subsidiary liability as one of the most important elements of the modern European legal space. In the international context, the theoretical basis and practical application of subsidiary liability have their own peculiarities in different legal systems (Table 1). At the same time, a common understanding of this institution as an important mechanism for protecting creditor rights and ensuring proper corporate governance remains consistent across all approaches.

Table 1. Theoretical approaches to the institution of subsidiary liability in different legal systems

Theoretical aspect	Continental legal system	Anglo-American legal system	Ukrainian legal system
Conceptual foundation	Doctrine of abuse of rights and the principle of good faith; emphasis on the objective aspect of violating corporate norms	Concept of due diligence and fiduciary duties with a focus on management's subjective attitude towards their obligations	Synthesis of the continental approach with elements of Anglo-American doctrine; balanced approach to assessing objective and subjective factors
Theoretical justification of liability	Violation of the principle of fair use of the corporate form through unjustified mixing of personal and corporate assets	Breach of the duty to act in the interests of creditors in the face of insolvency and failure to adhere to the standard of reasonable care	Violation of the principle of good faith management and abuse of rights, with an emphasis on the causal link between actions and insolvency

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15.
[2] Commercial Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15.
[3] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[4] Insolvency Act of United Kingdom. (1986, July). Retrieved from https://legislation.gov.uk/ukpga/1986/45/section/214.

Table 1. Continued

Theoretical aspect	Continental legal system	Anglo-American legal system	Ukrainian legal system
Legal nature of liability	Additional liability as a consequence of abusing the corporate form, with the possibility of completely disregarding the corporate structure	Personal liability as a breach of fiduciary duties, with an emphasis on the personal fault of the directors	Mixed model combining elements of both approaches, taking into account the specifics of national bankruptcy legislation
Theoretical limits of application	Broad interpretation of the grounds for liability, with an emphasis on protecting public order	Clearly defined limits of liability, with a focus on protecting market mechanisms and business reputation	Gradual development from a narrow to a broader interpretation of the grounds for liability, taking into account the needs of legal practice

Source: created by the author based on V. Fedorov *et al.* (2019), J. Getzler (2019), O. Khalabudenko (2020)

The comparative analysis presented in Table 1 demonstrates that the Ukrainian legal system has developed a distinctive approach to subsidiary liability, combining elements of the continental and Anglo-American legal systems. A characteristic feature of the Ukrainian approach is the balanced combination of objective criteria for assessing violations of corporate norms with an analysis of management's subjective attitude towards their obligations. This allows for more effective detection of abuses and ensures a fair balance of interests among all participants in corporate relations. It is important to note that this system of legal regulation is developing taking into account the specifics of the national corporate environment and the practical needs of the judicial system.

It is particularly noteworthy that the Ukrainian approach, in contrast to the clearly defined limits of liability in the Anglo-American system, where the doctrine of "piercing the corporate veil" is applied only in exceptional cases of abuse of the corporate form, and the broad interpretation of grounds in the continental system, where the concept of Durchgriffshaftung allows controlling persons to be held liable for unlawful actions, has chosen a flexible path of development that allows the mechanisms of subsidiary liability to be adapted to specific economic conditions and challenges. This is manifested in the combination of objective criteria for assessing violations of corporate norms with an analysis of management's subjective attitude towards their obligations, which allows for more effective detection of abuses and ensures a fair balance of interests among all participants in corporate relations. According to the second part of Article 61 of the Bankruptcy Code of Ukraine[1], subsidiary liability may be imposed on founders, participants, shareholders, or other persons, including the debtor's director, if their actions or omissions have led to its insolvency. For its application, it is necessary to establish the objective element of the offence (actions or omissions that caused the absence of property assets in the debtor) and the subjective element (the person's attitude to their actions, including intent or negligence). This particular feature of the Ukrainian approach also reflects the general trend towards the formation of more advanced mechanisms of corporate governance and liability in the context of the development of a market economy and integration into the European legal space.

The regulatory foundation of subsidiary liability in Ukraine is largely concentrated in the Bankruptcy Code of Ukraine, which offers a detailed set of provisions for identifying the circumstances under which directors, founders, or related parties bear auxiliary liability. A key condition for applying the rules on subsidiary liability is establishing a causal link between the decisions or inaction of responsible persons and the actual bringing of the enterprise to insolvency. This is confirmed by court practice, in particular, the Resolution of the Supreme Court of Ukraine in Case No. 908/314/18[2], which states that the application of subsidiary liability is possible only if a causal relationship is proven between the culpable actions or omissions of the liable party and the onset of the debtor's insolvency. If, for example, management was fully aware of the risks of entering into certain transactions or made decisions to transfer assets to third parties below market value, intending to withdraw resources from the enterprise, the court has the right to recognise such actions as unfair and impose on the guilty person the obligation to cover part of the debts within the bankruptcy procedures. This is supported by research by S. Sharma (2021), who emphasises the importance of adopting globally recognised basic procedural standards in situations of cross-border insolvency to ensure greater certainty in international trade.

In general, the purpose of subsidiary liability is to create an additional mechanism for protecting creditors and, equally importantly, to incentivise directors and beneficiaries to act more prudently and transparently. If the founders, shareholders, or directors

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Resolution of the Supreme Court of Ukraine in Case No. 908/314/18. (2022, August). Retrieved from https://verdictum.ligazakon.net/document/105747984.

of a company realise that if their intent or gross negligence in generating debts is proven, they will be forced to be liable even beyond their own shares in the capital, this will encourage them to take risks seriously. In this context, subsidiary liability performs a preventive function, preventing abuses and bad-faith actions in corporate governance. In addition, this institution, when correctly applied and with proper legal enforcement, helps to balance the interests of the parties, especially when there are strong reasons to believe that it is the founders or directors who are guilty of unlawful asset stripping or other forms of bringing the company to financial disaster. For example, in the Wirecard case in Germany, former CEO Markus Braun, along with two other top managers, were ordered to pay 140 million euros for a breach of their duties, including approving loans that were not repaid, which was one of the factors in the company's collapse in 2020. A similar approach was applied in the United Kingdom in the BHS bankruptcy case, where former directors Dominic Chappell and Lennart Henningson were found guilty of breaching their fiduciary duties and ordered to pay 110 million pounds to creditors because they continued to trade despite the company's financial insolvency. These judicial precedents demonstrate the importance of effective legal enforcement in the field of corporate liability, particularly concerning holding directors accountable for actions that lead to the financial insolvency of enterprises.

In essence, the fundamental characteristic of subsidiary liability lies not simply in having "someone else" pay the debts of a legal entity, but in establishing who is specifically at fault for the company's inability to settle with creditors, and obligating that person or group of persons to compensate for the damage. This intrinsic feature is also reflected in international research, which views subsidiary liability as a key mechanism designed to ensure an adequate level of corporate discipline and protect the rights of market participants. In particular, research by Y. Zhang (2024) demonstrates the importance of this mechanism for multinational corporations, where complex corporate structures are often used to evade liability. The author emphasises that the effective application of subsidiary liability helps to balance the interests of all stakeholders in the international business environment. In light of this, in the modern legal landscape of Ukraine, subsidiary liability is no longer an exceptional measure but is transforming into a predictable legal instrument, the application of which is gradually becoming more widespread in court practice due to the growing need for a transparent and fair bankruptcy mechanism.

The application of subsidiary liability in bankruptcy procedures: The Ukrainian context. The practice of applying subsidiary liability in Ukrainian bankruptcy procedures is primarily based on the norms of the Bankruptcy Code of Ukraine[1], which came into force on 21 October 2019, and significantly updated the approaches to regulating the insolvency of legal entities and individuals. The Code provides for the imposition of additional obligations on persons who actually influenced the management of the enterprise or made decisions that led to the debtor's inability to satisfy creditors' claims. In particular, Part 2 of Article 61 establishes that in the event of bankruptcy due to the fault of founders, participants, shareholders, or other persons, including the director, who had the right to give binding instructions or could otherwise determine the debtor's actions, they may be held subsidiarily liable for the debtor's obligations if their assets are insufficient. Furthermore, Part 3 of Article 44 obliges the asset manager to analyse the debtor's financial and economic condition and to identify signs of fictitious bankruptcy, bringing the company to bankruptcy, concealment of persistent financial insolvency, and illegal actions in the event of bankruptcy. Thus, the legislator establishes mechanisms for holding accountable persons whose actions or inactions caused the debtor's inability to satisfy creditors' claims. This aligns with the general logic of global practice: when the actions of founders or directors have contributed to asset stripping or bringing a legal entity to artificial bankruptcy, they cannot hide behind the principle of limited liability. Similar concepts partially existed in the previous Law of Ukraine No. 2343-XII "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt"[2], but it is in the current Bankruptcy Code of Ukraine that the wording has become clearer and more detailed, which has expanded the scope of application of subsidiary liability. According to this act, courts have the right to establish that a certain person (director, beneficiary, member of the company) has caused damage to creditors by making unlawful or knowingly risky decisions, which resulted in the creation of unsecured debts or the concealment of the debtor's property.

The practical application of the rules on subsidiary liability has gained particular prominence following the Supreme Court's decisions clarifying the involvement of "culpable" persons in additional liability. In particular, in the Resolution of the Supreme

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Law of Ukraine No. 2343-XII "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt". (1999, May). https://zakon.rada.gov.ua/laws/show/2343-12#Text.

Court of Ukraine in Case No. 910/21232/16[1], the court emphasised that to hold management subsidiarily liable, it is necessary to prove their direct or indirect influence in bringing the enterprise to insolvency. If, for example, an agreement was concluded as a result of which the debtor lost the ability to service its obligations, the court assesses whether the director acted in bad faith, anticipating the company's inevitable bankruptcy. Furthermore, the court noted the importance of the link between unlawful actions or omissions and the emergence of debts, stressing that the mere fact of business losses is not always a basis for imposing subsidiary liability on directors or owners. A similar approach is evident in the Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16[2], where it was determined that properly proving the absence of a relationship between management decisions and the inability to repay debts can release certain persons from subsidiary liability. These decisions shape the current practice of applying subsidiary liability in Ukraine, establishing the criteria and conditions under which directors and owners of enterprises can be held additionally liable for the company's debts.

In more recent rulings, the Supreme Court has continued to develop approaches to determining the conditions and criteria for applying subsidiary liability. For example, in the Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20[3], the court clarified that the right to claim subsidiary liability can arise even before the completion of the debtor's liquidation estate formation, as well as before the resolution of property disputes involving the debtor. This approach allows creditors to more effectively protect their interests, ensuring the possibility of holding culpable persons accountable at the early stages of the bankruptcy procedure. Similarly, in the Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21[4], considered on 4 September 2024, the Supreme Court emphasised the importance of timely filing a petition to open bankruptcy proceedings, recognising the violation of this obligation as sufficient grounds for holding company directors liable. These decisions underscore the consistent emphasis on the causal link between the actions or inactions of managers and the financial insolvency of the company. At the same time, judicial practice expands the possibilities for protecting bona fide persons who acted within their powers and made efforts to avoid crisis situations. This allows for achieving a balance between ensuring the interests of creditors and creating conditions for transparent corporate governance that meets modern European standards. Thus, Ukrainian courts continue to develop a flexible and balanced approach to the application of subsidiary liability, taking into account both international experience and national legal realities.

Judicial practice demonstrates that one of the key criteria in deciding on subsidiary liability is the detection of intentional actions, causing harm to creditors, and committing actions with gross negligence. Consideration is given to the circumstances under which a person had or should have had an understanding that entering into certain transactions or making corporate decisions would lead to the legal entity's assets being insufficient to cover debts. For example, directors sometimes deliberately transfer funds to the accounts of related companies, effectively stripping assets and depriving creditors of the opportunity to recover debts. If this is confirmed by relevant documentary evidence (contracts, payment orders, reports), courts conclude that there are grounds for subsidiary liability. At the same time, if management manages to prove that the company's losses or bankruptcy were caused by objective factors (for example, unfavourable economic conditions, military actions, a pandemic, or other force majeure circumstances), then the recovery from subsidiary respondents may be deemed unfounded. As noted in his research, I. Mevorach (2024) suggests that the level of judicial scrutiny regarding the causal link between the actions of management and a company's bankruptcy should be particularly rigorous during periods of financial crisis. At the same time, A.K. Jennings (2024) emphasises the importance of clear standards for assessing the due diligence of management, especially in relationships between parent and subsidiary companies. K. Ayotte & J.A. Ellias (2022) expand on this idea, highlighting the need for a balanced approach that prevents the unjust imposition of liability on managers who acted in good faith during periods of market instability, analysing judicial practice and the role of creditors in bankruptcy proceedings. One of the biggest challenges for participants in bankruptcy cases remains the insufficiently clear criteria for proving the guilt of a subsidiary defendant, as well as the lack of a unified mechanism for the court to assess the actual role of the manager or owner in making

[1] Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16. (2020, June). Retrieved from https://verdictum.ligazakon.net/document/89910859.
[2] Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16. (2020, November). Retrieved from https://verdictum.ligazakon.net/document/92971721.
[3] Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20. (2024, June). Retrieved from https://verdictum.ligazakon.net/document/120341855.
[4] Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21. (2024, September). Retrieved from https://zakononline.com.ua/court-decisions/show/122021182.

decisions that led to the accumulation of debt. Often, a company's documentation is kept to a minimum, real influence is exerted by "shadow" beneficiaries, and determining who exactly initiated the risky actions is quite difficult.

Judicial practice, considering the provisions of the Bankruptcy Code of Ukraine[1], is gradually developing approaches to interpreting concepts such as "bad faith conduct", "gross negligence", and "intentional actions". One possible solution is to enshrine specific criteria in legislation for assessing the role of the subsidiary respondent, applying a presumption of influence for company directors, and expanding the possibilities of forensic examination to identify actual beneficiaries. In addition, increasing the transparency of corporate governance through the mandatory recording of management decisions can help reduce abuses in the field of bankruptcy. However, there are discrepancies in the reasoning regarding subsidiary liability in the existing Supreme Court decisions. In the Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16[2], the court emphasised that to hold management liable, it is necessary to prove their direct influence in bringing the enterprise to insolvency. However, in the Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16[3], the court recognised the possibility of exemption from liability if the absence of a causal link between management decisions and the debtor's bankruptcy is proven. These differences in judicial practice indicate the absence of a unified approach to assessing subsidiary liability, which creates risks of legal uncertainty for participants in corporate legal relations and may lead to the unpredictability of court decisions in similar cases. Furthermore, research confirms that discrepancies in judicial practice are characteristic not only of Ukraine but also of EU countries, where the institution of auxiliary liability (in Anglo-American terminology, "secondary liability" or "piercing the corporate veil") also lacks a completely unified interpretation. As research by M. Pargendler (2021) demonstrates, even in the United States, where the "piercing the corporate veil" doctrine is most developed, courts apply different criteria and approaches to its implementation, and in European jurisdictions, even greater variability is observed in the interpretation of this legal institution.

Among other issues related to the implementation of subsidiary liability, the ambiguity in the interpretation of certain provisions of the current legislation is highlighted, as it does not always provide sufficiently clear definitions regarding the methods of intentionally or negligently causing harm to creditors. This issue is addressed by P. Priguza (2019), who emphasises the need to improve legislative regulation on matters of liability in bankruptcy. In some cases, law enforcement and regulatory bodies may identify violations under Articles 218[1] and 219 of the Criminal Code of Ukraine[4] related to fictitious bankruptcy or causing bankruptcy. However, the process of proving guilt in administrative or criminal law is not always consistent with the civil law criteria for subsidiary liability. All of this creates opportunities for prolonged legal disputes, which sometimes lead to delays in satisfying creditors' claims and reduce the overall level of trust in the bankruptcy process.

At the same time, analysing the effectiveness of law enforcement, it should be noted that compared to the previous version of the legislation, the current Bankruptcy Code of Ukraine has made a significant step forward by establishing a more transparent procedure for imposing subsidiary liability. The regulatory provisions emphasise the court's obligation to assess the behaviour of directors or owners through the lens of a "reasonable manager" who bears a certain standard of care and diligence in financial and economic decisions. In addition, the introduction of electronic auctions, centralised registers of court decisions, and open databases on legal entities contributes to increased transparency in detecting signs of abuse during bankruptcy. As evidenced by the practice of the Supreme Court in subsidiary liability cases considered during 2021-2023, the position of the highest judicial body is becoming increasingly unified. In fact, an approach is being formed where first instance and appellate courts must not only record the fact of the debtor's asset shortage but also thoroughly investigate whether there was intentional or excessively risky management that was the direct cause of the bankruptcy.

Thus, despite the existing complications and challenges, the Ukrainian practice of applying subsidiary liability demonstrates gradual progress. On the one hand, the legislative framework creates the conditions for more effective accountability of unscrupulous managers for harm caused to creditors. On the other hand, courts face gaps in the legal field and a lack of uniformity in the criteria for assessment and therefore continue to form their legal positions through the analysis of each case individually. As a result, the effectiveness of the subsidiary liability mechanism depends both on the quality of judicial

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16. (2020, June). Retrieved from https://verdictum.ligazakon.net/document/89910859.
[3] Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16. (2020b). Retrieved from https://verdictum.ligazakon.net/document/92971721.
[4] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14.

review and the actions of insolvency practitioners, as well as on the ability of lawmakers to address inaccuracies and adapt the legislation to contemporary challenges. At this stage, when it is crucial to strengthen trust in the judicial system and ensure a balance of interests between creditors, debtors, and business participants, the effective application of subsidiary liability to individuals whose actions have caused bankruptcy contributes to the formation of a transparent and predictable market.

Comparative legal analysis and prospects for improving subsidiary liability in Ukraine. The Ukrainian model of subsidiary liability, primarily enshrined in the Bankruptcy Code of Ukraine[1], generally aligns with European practice, according to which the principle of limited liability of business participants can be overturned in cases where it is established that the management or owners of an enterprise intentionally or through gross negligence have brought it to insolvency. Despite the commonality of underlying ideas, the regulation of subsidiary liability in EU member states has several distinctive features, due to the diversity of legal traditions and sectoral legislation. For example, in France, the provisions on subsidiary liability are regulated by the Civil Code of France[2] and the Commercial Code of France[3]. Of particular note are the rules that allow not only official directors but also de facto managers of a company, whose actions have harmed creditors, to be held liable. In Germany, subsidiary liability mechanisms are enshrined in the Civil Code of Germany[4] and the specialised Law of Germany No. 323 "On Limited Liability Companies"[5]. Here, particular emphasis is placed on abuses by officials, which may include improper management or fraudulent actions that lead to the company's inability to meet its obligations. A similar situation is observed in Italy, where the Presidency of the Council of Ministers of Italy[6] provides the opportunity to "pierce" the corporate veil to hold liable persons who engage in fraudulent management, use the company as a cover for illegal activities, or evade debt repayment.

In Spain, the institution of subsidiary liability is detailed in the Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act"[7]. The legislation focuses on cases of bad faith management, fraud, or intentional evasion of obligations to creditors. Polish law also provides for strict measures regarding such cases in the Commercial Companies Code of Poland[8], particularly for situations where company directors or owners intentionally create conditions for its insolvency. A feature of the Polish approach is the detailed analysis of the actions of persons responsible for management and the establishment of facts of abuse of their powers or improper performance of duties. All these national approaches share a common goal: creating a legal environment in which bad faith behaviour by persons managing an enterprise does not go unpunished, and creditors' rights receive proper protection. A common feature of these legal systems is the focus on identifying a causal link between unlawful (or negligent) actions of "controlling" persons and the debtor's inability to satisfy creditors' claims, while differences cover specific criteria for proving guilt, the amount of evidence required to involve "de facto" or "shadow" directors, and procedural mechanisms for detailed analysis of disputed transactions and financial documents.

In parallel with national approaches, the EU is actively harmonising legislation through supranational acts, the key one being a Directive of the European Parliament and of the Council No. 2019/1023[9] on preventive restructuring frameworks, discharge of debt and disqualifications, and measures to increase the efficiency of restructuring, insolvency and discharge procedures. Regulation of the European Parliament and of the Council No. 2015/848[10] on insolvency proceedings, which establishes mechanisms for cross-border coordination and information exchange between different jurisdictions, is also of significant importance. Following Articles 4144 of this Regulation, a system of interaction between insolvency registers has been introduced, which allows

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Civil Code of France. (1804, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721.
[3] Commercial Code of France. (2000, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379.
[4] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/bgb.
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[7] Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act". (2010, July). Retrieved from https://www.boe.es/buscar/act.php?id = BOE-A-2010-10544.
[8] Commercial Companies Code of Poland. (2000, September). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id = WDU20000941037.
[9] Directive of the European Parliament and of the Council No. 2019/1023 "On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and On Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)". Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri = CELEX:32019L1023.
[10] Regulation of the European Parliament and of the Council No. 2015/848 "On Insolvency Proceedings". (2015, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2015/848/oj/eng.

for the effective detection and countering of bad faith actions by company owners and directors through a centralised electronic access point within the European e-Justice Portal.

For comparison, the Ukrainian model, as outlined in the Bankruptcy Code of Ukraine[1], defines a fairly clear list of subjects who can be held liable (directors, significant shareholders, beneficiaries, and sometimes "shadow" organisers of bankruptcy), but in judicial practice, difficulties arise in determining the actual influence of each specific person. In the EU, on the other hand, there is a trend towards developing unified principles for investigating the causes of insolvency, where competent authorities and courts have a wide range of tools for analysing transactions, management actions, and corporate documentation. As a result, in Germany or France, the stages of proving criminal or unlawful conduct and the stages of identifying civil liability are more clearly delineated, and bankruptcy procedures often provide for separate procedural mechanisms for considering issues of personal liability of management. In Ukraine, such aspects are often considered within a single insolvency case, which can prolong proceedings and complicate the evidentiary base, especially when it comes to simultaneously investigating issues of fictitious bankruptcy or criminal cases. On the other hand, Ukrainian practice is moving towards a detailed clarification by the court of the criteria of "intent", "gross negligence", and causal link, as evidenced by the recent Supreme Court decisions analysed in the previous section. This attention to specific facts and nuances of bankruptcy brings Ukrainian approaches closer to EU standards, where the main emphasis is not only on the formal status of a person but also on their actual management activity. To systematise the analysed differences between the approaches to regulating subsidiary liability in Ukraine and European countries, their comparative characteristics are summarised in Table 2, which outlines the key aspects of this institution's regulation across different jurisdictions.

Table 2. Comparative characteristics of subsidiary liability in Ukraine and selected European countries

Criterion	Ukraine	France	Germany	Poland	EU
Main sources of regulation	Bankruptcy Code of Ukraine	Commercial Code of France	Civil Code of Germany	Commercial Companies Code of Poland	Directive of the European Parliament and of the Council No. 2019/1023
Subjects of liability	Directors, significant shareholders, beneficiaries, de facto ("shadow") organisers (Art. 61, 42)	Official and de facto directors, persons who have harmed creditors (Art. L.123-1)	Officials, official and "shadow" management that abuses rights (Art. 31)	Directors, owners who deliberately create conditions for insolvency (Art. 299)	Persons responsible for management and decisionmaking (Art. 19)
Specifics of evidence	Single proceeding in insolvency case, limited audit, difficult proof of "actual influence" (Art. 90)	Separate procedures (criminal/civil), additional audits, and in-depth document analysis (Art. L.650-1)	Clear distinction between civil and criminal liability, forensic accounting expertise (Art. 823)	In-depth analysis of directors' actions (financial and management aspects) (Art. 300)	Unified investigation principles (early warning), simplified exchange of evidence (Art. 4)
Mechanisms for detecting violations	Powers of the insolvency practitioner are limited, often initiated by creditors (Art. 21)	Wide range of tools for transaction analysis, and extrajudicial audits (Art. L.651-2)	Comprehensive analysis of operations (forensic), active role of the insolvency administrator (Art. 93)	Interaction between creditors and courts, in-depth transaction analysis (Art. 302)	Early warning system, supranational coordination mechanisms (Art. 3)
Procedural features	Often combined with criminal cases, complicating proceedings (Art. 118)	Specialised procedures for directors/owners, separate proceedings for civil and criminal liability (Art. L.653-4)	Establishment of culpable conduct in separate procedure, strict adherence to deadlines (Art. 826)	Separate liability proceedings, analysis of management decisions (Art. 303)	Unified procedures, and cross-border cooperation between courts (Art. 6)
Criteria for liability	Intent or gross negligence, bringing to insolvency, causal link (Art. 42	Causing harm to creditors, malicious actions of official/ de facto directors (Art. L.651-2)	Abuse, fraud, breach of duty of care and diligence (Art. 823)	Intentional creation of insolvency, abuse of corporate rights (Art. 304)	Intentional or negligent actions leading to crisis, consistency with EU principles (Art. 19)
Creditor protection tools	Claims within the bankruptcy case, limited preventive measures (Art. 74)	Compensation for damage to personal assets of offenders, blocking transactions (Art. L.654-3)	Challenging suspicious transactions, property restrictions, and appointment of external administration (Art. 31a)	Strict liability measures, personal financial liability (Art. 305)	Supranational mechanisms (early warning), transparent restructuring system (Art. 4)

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.

Table 2. Continued

Criterion	Ukraine	France	Germany	Poland	EU
Preventive mechanisms/ control	Not yet detailed, prospectively – expanding the role of the insolvency practitioner (Art. 110)	Developed audit, monitoring, and early intervention (Art. L.650-2)	Forensik-Audit, control at the pre-crisis stage (Art. 91)	Preventive audit, sanctions before formal declaration of bankruptcy (Art. 307)	Early warning system, obligations for member states to create clear procedures (Art. 5)

Source: created and systematised by the author

The presented comparative analysis demonstrates the comprehensive nature of the European approach to regulating subsidiary liability, which is based on a combination of preventive mechanisms, clear procedural regulations, and an effective system of oversight of business entities. The European model is primarily supported through the implementation of early problem-detection systems and rapid response to the first signs of fraudulent management. This is complemented by an advanced system of professional oversight by insolvency practitioners, auditors, and experts, who have broad powers to conduct thorough checks and analyses. In particular, a study conducted as part of the EU Project "Pravo-Justice" highlights the importance of insolvency practitioners in ensuring effective control and adherence to professional ethical standards, aligning with the best European practices (Donkov *et al.*, 2021). An essential element of the European experience is also the established system of cross-border cooperation and information exchange between different jurisdictions, which is of particular importance in the context of globalised business and the increasing number of international transactions. The specialisation of proceedings and clear differentiation of various types of liability ensure more effective case handling and avoid procedural complexities. When combined with a well-developed system of professional oversight, this creates the conditions for making informed decisions and effectively protecting the rights of all participants in the process. This indicates the need for a systematic improvement of Ukrainian legislation, taking into account the best European practices, which should cover both regulatory frameworks and practical aspects of law enforcement, creating an effective system to prevent abuse and protect the rights of creditors.

Regarding the prospects for improving legislation in the field of subsidiary liability, attention should first be drawn to the need for comprehensive modernisation of the Bankruptcy Code of Ukraine[1], taking into account progressive European standards and practices. As demonstrated by the experience of Croatia, as described by L. Šimunović & T. Konjević (2022), a key step should be the systematic implementation of the principles outlined in Directive of the European Parliament and of the Council No. 2019/1023[2], which advocates for more transparent procedures for evaluating the actions of managers and the introduction of early warning mechanisms. In practice, this could involve strengthening the role of insolvency practitioners, expanding their powers to detect "suspicious" operations and transactions, including the right to request additional financial and managerial documents, conduct comprehensive audits, and respond swiftly to signs of fraudulent management. Following the example of Luxembourg, as noted by T. Mastrullo (2024), there is a practice of mandatory audit checks when there is a sharp increase in debt levels or changes in ownership structure, and a nationwide database exists for individuals involved in subsidiary liability cases.

An important direction for the development of legislation is the expansion and specification of regulatory concepts, particularly "de facto influence" and "guilty inaction". In current judicial practice, proving the actual influence of certain individuals on the management of a company often becomes a "bottleneck", as formal signs are lacking, and de facto control may be exercised through a chain of trusted persons or informal mechanisms. As confirmed by the study by J. Schwartz (2020), the issue of establishing actual control remains relevant even in developed corporate systems, where informal mechanisms of influence via intermediaries and indirect pressure often prove to be just as effective as direct ownership of corporate rights. A clear, legally defined concept of "de facto influence" and corresponding clarification of the criteria for "guilty inaction" would allow courts to better understand what evidence confirms control over an enterprise and reduce the potential for manipulation by dishonest debtors. In European countries, it is common practice to introduce procedural presumptions that automatically clarify the role of shadow managers in cases where official management acted purely formally and actual control was exercised by other individuals.

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.

[2] Directive of the European Parliament and of the Council No. 2019/1023 "On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and On Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)". Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1023.

Particular attention needs to be paid to establishing effective interaction between civil and criminal legal processes, as cases of fictitious bankruptcy, money laundering, or other economic crimes are usually investigated within the framework of criminal proceedings, while issues of damage compensation or the imposition of subsidiary liability are addressed by commercial courts. When evidence obtained in one proceeding (for example, criminal) cannot be fully utilised in another, courts are once again forced to "recollect" materials, which delays the case review, complicates the evidence base, and significantly reduces creditors' chances of a swift restoration of their rights. Similar approaches have long been applied in Anglo-American and European judicial systems: the results of forensic accounting expertise conducted within the scope of a criminal case can be accepted as valid evidence when considering a commercial claim regarding subsidiary liability.

In EU countries such as Germany, France, the Netherlands, and Belgium, there is a so-called "early warning system", where a company is obliged to report certain indicators (such as a sharp decline in assets, increased debt, refusal of financing by banks, etc.) that may signal the risk of insolvency. This system demonstrates high effectiveness in preventing abuse and identifying problematic situations in a timely manner. Ultimately, the effectiveness of implementing legislative changes largely depends on the proper professional training of judges, insolvency practitioners, auditors, and other experts who will directly apply the improved regulations in practice. Equally important is the issue of material and technical support for the courts and agencies conducting bankruptcy procedures, to effectively detect shadow control, assess suspicious transactions, and conduct comprehensive expert assessments. Comprehensive development of the regulatory framework and institutional capacity is a necessary condition for establishing transparent rules of play, where creditors will be effectively protected from dishonest actions, and Ukrainian practices will align with the broader European trend of increasing the personal responsibility of management and owners.

■ Conclusions

The study of the legal nature and peculiarities of applying the institution of subsidiary liability in bankruptcy cases in Ukraine has demonstrated its important role as a tool for protecting the rights of creditors and ensuring proper corporate governance. The stated goal of the research was achieved through a comprehensive analysis of theoretical foundations, application practice, and a comparative analysis with European regulatory models, which allowed for the formation of a comprehensive understanding of the current state and development trends of this legal institution.

In the course of the research, a systematic analysis of the regulatory framework of subsidiary liability in Ukraine was conducted, including the provisions of the Civil Code and Commercial Code, the Bankruptcy Code, as well as relevant legislation of EU countries. The judicial practice of applying this institution was studied in detail, including key decisions of the Supreme Court that form unified approaches to interpreting the rules on subsidiary liability. Mechanisms of crossborder cooperation in bankruptcy, enshrined in EU acts, primarily in Regulation of the European Parliament and of the Council No. 2015/848 and Directive of the European Parliament and of the Council No. 2019/1023, were analysed. The study of theoretical sources made it possible to identify the main conceptual approaches to understanding subsidiary liability in different legal systems and to trace the evolution of scientific views on this institution.

The research results demonstrate that the Ukrainian model of subsidiary liability is characterised by a balanced combination of objective criteria for assessing violations of corporate norms with an analysis of the subjective attitude of management towards their duties. At the same time, several problematic aspects in law enforcement practice have been identified, including the uneven application by courts of criteria for assessing the actual influence on enterprise management, difficulties in establishing a causal link between the actions of managers and insolvency, as well as insufficient development of mechanisms for detecting and proving bad faith actions at the pre-crisis stage. The research also revealed the problem of insufficient coordination between different jurisdictional procedures, when evidence obtained in criminal proceedings cannot be effectively used in a bankruptcy case, which significantly complicates the evidentiary process and delays the consideration of cases. An important trend is the gradual expansion by courts of the grounds for holding liable and increased attention to actual, rather than just formal, control over the enterprise.

The comparative legal analysis has revealed two main approaches to regulating subsidiary liability: the Anglo-American approach, which is based on the doctrine of "piercing the corporate veil" with clearly defined limits of liability, and the continental approach, which relies on the concept of "Durchgriffshaftung" with a broad interpretation of the grounds for liability. The Ukrainian approach shows a trend towards developing its own model that takes into account the specifics of the national corporate environment and adapts the best European practices, particularly concerning systems for early detection of issues and mechanisms for cross-border cooperation.

A significant trend is also the increasing role of insolvency practitioners in detecting signs of mismanagement and expanding their capacity to conduct comprehensive audits of the debtor's activities.

Promising directions for further research include the development of a methodology for assessing the effectiveness of subsidiary liability mechanisms, studying the application of this institution in the context of the digitalisation of the economy, and analysing the impact of new forms of corporate governance on the development of the subsidiary liability system.

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Conflict of Interest

The author of this study declares no conflict of interest.

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Застосування інституту субсидіарної відповідальності у справах про банкрутство

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■ **Анотація.** Метою дослідження було формування комплексного розуміння механізмів субсидіарної відповідальності та визначення шляхів їх удосконалення в законодавстві про банкрутство. Методологічною основою дослідження стало поєднання інституційного та порівняльно-правового підходів, що надало можливість комплексно розглянути субсидіарну відповідальність як правовий інститут і порівняти особливості його регулювання в різних правових системах. За результатами проведеного дослідження встановлено, що українська модель субсидіарної відповідальності характеризується поступовою еволюцією від вузького до ширшого тлумачення підстав відповідальності, що відображає загальносвітову тенденцію посилення захисту прав кредиторів. На основі аналізу законодавства європейських країн і судової практики України, а також окремих справ у Німеччині (Wirecard) та Великій Британії (BHS) виявлено, що ефективність європейської моделі забезпечують насамперед через упровадження систем раннього виявлення проблем та оперативного реагування на перші ознаки недобросовісного управління, що доповнена розвиненою системою професійного контролю з боку арбітражних керуючих, аудиторів й експертів. Визначено, що важливим елементом європейського досвіду є налагоджена система транскордонної взаємодії та обміну інформацією між різними юрисдикціями, а спеціалізація проваджень і чітке розмежування різних видів відповідальності забезпечують ефективніший розгляд справ та уникнення процесуальних ускладнень. Обґрунтовано необхідність системного вдосконалення українського законодавства шляхом розширення повноважень арбітражних керуючих, упровадження механізмів раннього попередження неплатоспроможності, створення загальнонаціональної бази даних осіб, причетних до справ про субсидіарну відповідальність, і запровадження обов'язкової аудиторської перевірки за стрімкого нарощування боргового навантаження або зміни структури власності. Запропоновано доповнити законодавство спеціалізованими правилами, що регламентують процедури виявлення, запобігання та припинення зловживань на докризовому етапі, а також розробити чіткий перелік ознак ризику й передбачити обов'язок керівництва повідомляти кредиторів і відповідні державні органи про виникнення таких обставин

■ **Ключові слова:** неплатоспроможність підприємства; корпоративне управління; правове регулювання; захист прав кредиторів; арбітражний керуючий