Compensation for damage caused by operational-search measures: interaction of public authorities and private-law guarantees in the context of the European model of liability

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The article is devoted to the analysis of compensation for damage caused by operational-search measures as a key element of the interaction of public authorities and private-law guarantees in the European model of state liability. The normative principles of tort liability of the state in Ukraine, comparative approaches of the states of the European Union and the Council of Europe, as well as doctrinal models (classical tort, administrative, constitutional-tort) are studied. Particular attention is paid to the practice of the European Court of Human Rights in cases of secret surveillance and mass data interception and its impact on the standards of effective legal protection and "just satisfaction". The directions of integration of European standards into the national system of civil-law compensation for damage caused by operational-search activities are substantiated.

Keywords: civil law, compensation for damage, operational-search activities, State responsibility, public authority, private law guarantees, tacit measures, right to respect for private life, European Court of Human Rights.

1. Introduction

Compensation for damage caused by operational and investigative measures is today at the intersection of two key trends in European law: the expansion of state powers in the security sector and the strengthening of standards for the protection of human rights and private interests of individuals. On the one hand, the state is increasingly using the tools of operational and investigative activities (hereinafter referred to as the OIA) in response to terrorism, transnational crime and cyber threats; on the other hand, the European Court of Human Rights (hereinafter referred to as the ECHR) and pan-European approaches require that any excessive or unlawful interference in the private sphere be accompanied by effective mechanisms for compensation for damage. In these conditions, the model of state liability for the consequences of OIA becomes not only a technical institution of tort law, but also an indicator of real respect for human rights and the rule of law.

For Ukraine, this issue has a double dimension. Internally – due to the historically high level of risks of abuse by the bodies carrying out OIA, and the presence of a special but fragmented legislative regime that combines the general norms of the Civil Code with the provisions of Law No. 266/94-VR and heterogeneous judicial practice. Externally – due to the chosen European vector of development, the implementation of the Convention for the Protection of Human Rights and the practice of the ECHR, as well as the approximation to the pan-European principles of public responsibility, which require the state not only to formally recognize the right to compensation, but also to create effective procedures for its implementation. It is the combination of these two dimensions that determines the need to rethink the Ukrainian model of state responsibility for damage caused by OIA in the context of European standards.

The aim of the article is to clarify how the balance between public powers and private law guarantees is built in the mechanisms of compensation for damage caused by operational-search measures in European legal systems, and how the relevant doctrinal models and standards of the ECHR can be integrated into the national civil law of Ukraine. To achieve this goal, the following

are consistently examined: the regulatory and legal principles of state liability for damage caused during the implementation of operational-search measures in the law of Ukraine and European countries; doctrinal models of the balance of public power and private law guarantees in the light of the practice of the ECHR on secret surveillance and mass data interception; as well as possible directions for adapting Ukrainian legislation and judicial practice to the European model of state liability.

2. Methodology

The methodological basis of the study is a combination of general scientific and special-legal methods with a predominance of comparative legal and dogmatic analysis. The comparative law method was used to compare the national model of state liability for damage caused by OIA (Constitution of Ukraine, Civil Code, Law No. 266/94-VR, Supreme Court practice), with the approaches developed in the legal systems of the EU member states and the Council of Europe, as well as with the pan-European principles of public liability and the doctrine of state liability for violations of EU law. This allows us to identify common structural features and differences, as well as outline potential vectors of harmonization.

The dogmatic (formal-legal) method was used to analyze the content of the norms of the Constitution of Ukraine, the Civil Code, special legislation on compensation for damage caused by illegal actions of bodies carrying out OIA, and to reconstruct the civil law model of the state's liability as a tort debtor. A separate block is an analysis of the practice of the ECHR (the cases of Klass and Others v. Germany, Roman Zakharov v. Russia, Big Brother Watch and Others v. the United Kingdom, etc.), where the evolution of the standards of interference with private life, effective legal remedy (Article 13 of the Convention) and "just satisfaction" (Article 41 of the Convention) as guidelines for national compensation mechanisms is revealed using case studies.

In addition, elements of the systemic and functional approaches were applied. System analysis is used to conorder mechanisms for compensation for harm caused by OIA as a holistic subsystem at the intersection of public and private law, including the regulatory level, law enforcement practice and institutional guarantees (judicial control, supervisory bodies, budgetary compensation mechanisms). The functional approach allows us to assess to what extent the models of state liability currently in force in Ukraine and Europe actually provide a protective, restorative and preventive function regarding the rights of persons affected by illegal or disproportionate operational and investigative measures, and which elements of the European model should be implemented in national civil legislation.

3. Normative and legal principles of state liability for damage caused during operational and investigative activities: a comparative analysis of European approaches

In European legal systems, state liability for damage caused during OIA is formed at the intersection of constitutional guarantees of human rights, public law principles of administration activities and private law tort structures. In most member states of the Council of Europe, the starting point is the recognition of the general right of an individual to compensation for damage caused by illegal decisions, actions or inaction of public authorities, which is enshrined either directly in the constitution or in a special law on the liability of public administration [1]. This model sets the framework for specifying the regime for compensation for damage caused by operational and investigative activities, which are traditionally accompanied by a high level of interference in the private sphere and significant information asymmetry between the state and the victim.

The Ukrainian approach to the normative consolidation of state responsibility in this area is indicative for the post-Soviet space. The right to compensation for damage caused by illegal actions of bodies carrying out OIA is directly provided for by the Constitution of Ukraine [2] and is detailed in the Civil Code [3] and the Law of Ukraine “On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operational-Investigative Activities, Pre-Trial Investigation Bodies, the Prosecutor’s Office and the Court” [4]. This law establishes that damage caused, in particular, by the illegal conduct of operational-investigative measures is subject

to compensation in full at the expense of the state budget, regardless of the fault of officials of the relevant bodies, which brings the model closer to the regime of objective (no-fault) state responsibility.

The civil-law dimension of state responsibility is manifested in the qualification of such legal relations as tortious, where the state acts as a special subject - a debtor under the obligation to compensate for damage. The tortious liability of the state for illegal decisions, actions or inaction of bodies carrying out OIA has a dual nature: on the one hand, it reproduces the general civil categories of damage, causality and methods of compensation, on the other - it takes into account the specifics of public authorities and the imperative nature of the relevant powers. In this context, regulatory provisions on compensation for moral and material damage caused by illegal operational and investigative actions not only provide individual protection of the victim, but also perform a preventive and disciplinary function in relation to law enforcement agencies.

A significant feature of the Ukrainian model is the legislative combination of the general norms of the Civil Code on the tort liability of the state with the narrowly specialized regime of Law No. 266/94-VR. This regime establishes an exhaustive list of illegal actions (illegal conviction, criminal prosecution, application of preventive measures, illegal conduct of searches or other procedural actions, as well as illegal conduct of operational-search measures) [5], for which the state is liable in a simplified manner. At the same time, this approach raises problems regarding compensation for damage caused by other forms of abuse of OIA that are not covered by the list, which stimulates the doctrine and judicial practice to seek opportunities for the application of general tort norms in combination with constitutional guarantees.

Ukrainian judicial practice demonstrates that the implementation of the normatively proclaimed right to compensation largely depends on procedural mechanisms [6]. Investigating issues related to the conorderation of civil cases on compensation for damage caused by illegal decisions, actions or inaction of bodies carrying out OIA, I wanted to point out the importance of a clear delimitation of jurisdiction, determination of the proper defendant and application of simplified standards of proving the illegality of actions of government bodies. For the effectiveness of such protection, it is not enough to simply establish the state's liability in material and legal terms; accessible procedural forms are necessary that would allow a person to overcome information asymmetry and prove the fact of a violation. A comparative analysis of European approaches shows that in many EU countries and other Council of Europe countries, the basis of state liability for damage caused by OIA is the general regimes of public law or civil law liability of the administration for illegal administrative acts and actions [7]. The pan-European principles of public liability, adopted within the Council of Europe, are based on the assumption that public authorities are obliged to provide effective remedies for individuals who have suffered harm from unlawful or even lawful interferences, if they are excessive [8]. In this context, investigative measures are seen as a type of administrative activity that must meet the standards of legality, proportionality and accountability [9]. The Council of Europe Recommendations on Public Liability emphasise that the State’s obligation to compensate for damage cannot be limited to cases of proven fault on the part of a specific official. They guide member states towards the introduction of regimes in which the decisive factor is the unlawfulness of the administrative interference or the unjustified risk placed on the individual in the public interest [8]. This approach is particularly relevant for OIA, where the nature of the intervention (secret surveillance, interception of communications, covert investigative actions) makes it impossible for the victim to prove the subjective guilt of a specific official, but at the same time allows for establishing a violation of the requirements of the law or the standards of the Convention.

An important factor in harmonizing European approaches is the case law of the European Court of Human Rights on mass and targeted surveillance, interception of communications and data retention. In a number of cases, the Court has found national surveillance regimes incompatible with Article 8 of the Convention due to the lack of sufficient guarantees against abuse, opaque authorization procedures and insufficient judicial review. Although the decisions of the ECHR do not formally establish a direct civil law mechanism for compensation, they create an imperative for

member states to provide effective legal remedies, including compensation for damage caused by unlawful operational and investigative measures.

Against this background, we can speak of the formation of a "European model" of state responsibility for damage caused by OIA, which is characterized by several common features. First, this is a gradual transition from the model of subjective guilt of an official to models of objective or mixed state responsibility for unlawful interference with human rights. Second, the strengthening of the role of constitutional and conventional standards as a direct substantive legal basis for claims for compensation for damage. Third, the growing role of specialized procedural mechanisms that allow a person to challenge the legality of OIA and demand compensation without reference to the results of criminal proceedings. At the same time, European systems demonstrate significant variability in the issue of the limits of state responsibility for lawful operational and investigative measures that cause "excessive" damage. Some legal systems recognize the possibility of compensation for damage caused by lawful but disproportionate interventions, others strictly limit state liability to cases of established illegality. It is in this area that the tension between security needs and the protection of private interests is most clearly manifested, which opens up space for further development of doctrine and practice.

In the context of OIA, the question of whether the state should be liable only for formally unlawful operational and investigative actions, or also for systemic shortcomings in the regulatory framework that allow excessive or indiscriminate interference with private life, is of particular importance. The practice of the ECHR on mass surveillance indicates a gradual expansion of the focus from individual violations to structural problems of the legislation and practice of applying OIA. This, in turn, stimulates national courts and legislators to rethink the boundaries of the state's tort liability, including liability for "insufficient" guarantees in the law itself. Ukrainian experience in this area demonstrates that the formal establishment of a special regime for compensation for damage caused by unlawful OIA is only the first step towards building an effective system of state liability. Practical challenges are related to proving the unlawfulness of the intervention, access to evidence at the disposal of the bodies carrying out OIA, and the limitation of the list of grounds for compensation enshrined in a special law [5; 6]. A comparative analysis of European approaches allows us to see potential areas of improvement – from expanding the grounds for compensation to introducing more flexible procedural mechanisms and strengthening the role of conventional standards as a direct legal basis for state responsibility.

In general, the regulatory and legal principles of state responsibility for damage caused during the implementation of OIA in the European dimension can be characterized as being in a dynamic between the classical administrative-delict paradigm and human rights as a "hard" external limiter of operational-search powers. The real ability of law to ensure effective compensation for damage caused by OIA and at the same time not to paralyze the legitimate activities of security and law enforcement agencies depends on how consistently national systems integrate the pan-European principles of public responsibility and the standards of the ECHR into their civil law tools.

4. The balance of public powers and private law guarantees in mechanisms for compensation for damage: doctrinal models and case law of the ECHR

In European legal systems, the balance between public powers and private law guarantees in relations of compensation for damage caused OIA is conceptualized through the idea of "limited but responsible" state power, where tort mechanisms are closely intertwined with public law and human rights standards [11; 12]. In this context, the state, having a monopoly on coercion and special means of interference in private life in the interests of security and law and order, is obliged to compensate for damage in the event of a violation of the rights of the individual not only through criminal procedure, but also through private law (tort) mechanisms, which are conordered as an instrument of control over the discretion of public authorities [11]. It is at the junction of these two planes – public-authority and private-law – that the modern doctrine of compensation for damage caused by OIA is formed, in which the state's responsibility is understood as an extension of constitutional guarantees [12].

In the civil doctrine of Europe, at least three basic models of understanding such a balance can be distinguished. The first is the classical tort model, in which the state is responsible for damage on general principles, as a "special" subject of private law, but with certain privileges and immunities. The second is the public-law model of "administrative liability", where the emphasis is on the illegality of administrative (in the broad sense – operational-detective) intervention, and private-law categories act subOIAiary as a mechanism of monetary reparation [8]. The third is the constitutional-delict model, in which the basis for liability is the violation of fundamental rights, which directly transforms into the state's obligation to compensate for the damage, regardless of the classification of the action as administrative or private law, according to a logic close to the doctrine of the liability of EU member states for violations of Union law (Francovich, Brasserie du Pêcheur) [13].

The German tradition demonstrates a developed public-law construction of state liability (Amtshaftung), which combines elements of private and public law and at the same time corresponds to the general European trend of limiting the immunity of public authorities. The basic idea is that a violation by an official of official duties aimed at protecting third parties entails the obligation of the state to compensate the victim for the damage, and the victim faces the state as a tort debtor in the civil law sense [12]. In such a perspective, OIA is viewed as the implementation of official duties limited by the requirements of legality and proportionality, and private-law guarantees are actually "built into" the structure of the public service through the obligation to comply with procedural and substantive standards for the protection of human rights. It is the violation of procedural and substantive guarantees (permitting regimes, control, deadlines, goals) that transforms formally lawful operational-search activities into tortious ones, which opens the way to civil-law compensation. In characterizing the positive obligations of the state, it should be emphasized that the state must not only refrain from arbitrary interference, but also build sufficient guarantees to prevent abuse in the implementation of OIA; otherwise, the risks imposed on the individual are recognized as "excessive" and must be compensated. In this way, administrative discretion in the field of security is limited not only by ex ante procedures, but also by the ex post threat of tortious liability.

The French model was historically based on the distinction between "faute de service" and "faute personnelle", which determined whether the state or a specific official was responsible, and formed an autonomous system of administrative liability [11]. Gradually, however, under the influence of the ECHR and constitutional jurisprudence, the tendency to recognize a broader state responsibility for the activities of the police and security services, including operational-search measures, has intensified, especially when the violation is of a "structural" nature (deficiencies in the organization of the service, lack of proper supervision, gaps in guarantees). In this approach, the balance is achieved by recognizing the priority of public security, but with a simultaneous willingness to compensate for damage as a "civil price" for excessive burden on the individual in the interests of the collective.

In the supranational dimension, primarily through the prism of EU law, the doctrine of state responsibility for the violation of supranational obligations has developed (Francovich, Brasserie du Pêcheur), which has effectively formed a constitutional-delict model [14]. The basis is the violation of subjective rights granted by Union law, in the presence of a sufficiently serious violation; In the doctrine, this is described as a kind of "constitutional tort", where the cause of liability is the harm caused by the violation of individual rights, and the payer is the state as the bearer of public authority [13]. This logic also affects the field of OIA: if the state, while carrying out operational-search measures, violates the standards of protection of personal data, privacy or effective remedy enshrined in EU law and the Charter of Fundamental Rights, the scope for compensation expands to the level of liability for the violation of supranational law [15].

The case law of the European Court of Human Rights plays a key role in determining the balance between public powers and private law guarantees, which is increasingly seen as an instrument of tort law in the field of human rights [12]. In cases concerning secret surveillance, storage and access to data, the Court assesses not only the specific interference, but also the quality of the legislation, the availability of effective control and available remedies, including the possibility of compensation [16]. The ECtHR has held that a wide margin of discretion for security services is

not in itself incompatible with the Convention, but that it must be accompanied by "effective and foreseeable" safeguards for individuals, otherwise the positive obligation of the State to protect their rights would be violated [11].

Article 13 of the Convention (right to an effective remedy) directly links public powers to private claims for compensation, requiring that the national remedy be capable of providing both a finding of a violation and adequate reparation. The Court has consistently stressed that an effective remedy must include the possibility of challenging the lawfulness of the interference and of obtaining adequate compensation if a violation is established, with the nature of the Convention law determining to what extent this remedy should be preventive or compensatory [18]. In some cases, this means that national systems must provide not only for a declaratory finding of the unlawfulness of operational and investigative measures, but also for effective procedural means for the recovery of material and non-material damage [19].

At the same time, the ECtHR has developed an extensive case-law on "just satisfaction" under Article 41 of the Convention, which has become an important reference point for understanding the scope of private law guarantees in the context of public powers [20]. The Court distinguishes between pecuniary and non-pecuniary damage, requires a causal link between the violation and the damage, but at the same time applies the principle of equity, which allows compensation for non-pecuniary suffering even in the absence of a precise monetary measurement, which is confirmed by a quantitative analysis of the practice under Article 41 [21]. This encourages national courts to expand the practice of compensating for non-pecuniary damage for unlawful or disproportionate operational and investigative measures, focusing on the "ranges" of compensation established in the case-law of the ECtHR.

These approaches of the Court also influence doctrinal models, bringing together the public-law and private-law logics of state responsibility [12]. Where strict criteria of fault and formal illegality previously dominated, criteria of proportionality, due process guarantees and structural adequacy of national legislation, which are linked to the positive obligations of the state to prevent violations of rights, are becoming increasingly important. In essence, the ECHR "stitches together" the public-law assessment of interference (lawfulness, necessity, proportionality) with expectations regarding national compensation mechanisms, forming a minimum "European standard" of tort liability for OIA.

With the changing nature of threats (terrorism, cybercrime, mass communication in the digital environment), the state is expanding its arsenal of OIA – from classic surveillance to mass data collection and analysis, which transforms the configuration of risks for private rights [16]. This creates a qualitatively different risk for private interests: harm can arise not only as a result of targeted persecution of a specific individual, but also as a consequence of systemic interference that affects an unspecified number of individuals and creates a state of constant vulnerability and uncertainty, described as "structural harm". The case law of the ECHR in cases on mass data storage and secret surveillance demonstrates a shift in emphasis from individual culpability of authorities to systemic shortcomings in legislation and control, which require not only political but also private law (compensatory) responses [22].

In this context, the balance of public powers and private law guarantees is increasingly described as a "dynamic equilibrium", which is constantly adjusted under the influence of technological and security challenges. The state cannot fix the scope of its operational and investigative competences in advance and forever; they are expanding in response to new threats, while private law guarantees – the right to privacy, reputation, inviolability of the home, secrecy of correspondence – "catch up" with these changes through the development of doctrine and case law, which requires the adaptation of compensation mechanisms to new forms of harm, related, in particular, to data processing and digital identity [23].

Doctrinal discussions revolve around the question of whether private law mechanisms can effectively restrain the excessive expansion of public powers in the field of OIA, or whether they are only auxiliary in nature alongorde institutional guarantees [11]. Supporters of the "constitutional-tort" approach argue that it is the threat of compensation, sometimes significant, that stimulates the state

to introduce effective guarantees and avoid abuses, and the decisions of the ECHR with significant amounts of "just satisfaction" have a symbolic and disciplinary effect [20; 21]. Skeptics point out that the amount of compensation awarded both at the national level and by the ECtHR is often relatively small and does not change the underlying logic of security policy, so the emphasis should be on preventive mechanisms – oversight bodies, transparency, parliamentary control – that complement, rather than replace, private law compensation [19].

For post-Soviet legal systems, including Ukraine, rethinking the balance of public powers and private law guarantees in the light of the doctrinal models and practice of the ECtHR means a gradual departure from the idea of OIA as a "purely public" sphere closed to civil law. The integration of convention standards and pan-European principles of state responsibility encourages us to conorder each operational-search intervention not only as a manifestation of public power, but also as a potential source of private law claims that must be provided with effective means of protection and compensation at the national level. The reality of protecting individual rights in the face of growing security challenges and trust in public authorities as "limited but responsible" depend on how fully national systems are able to internalize these standards – in legislation, judicial practice, and doctrine.

5. Integration of European standards into the national system of civil compensation for damage caused by OIA: directions for adaptation and improvement of legal regulation

In the practice of the ECtHR, the issue of the balance between the state's operational-search powers and private-law guarantees arises primarily in cases of secret surveillance, interception of communications and mass surveillance, where the Court assesses both the legitimate security objective and the level of protection of individual rights. In its decisions, it emphasizes that even in the field of national security, the state is not exempt from the obligation to ensure foreseeable norms, effective independent supervision and real legal remedies for individuals whose rights may be violated [24]. In this area, the compensatory aspect acquires particular importance: the possibility of claiming compensation for damage is conordered an integral element of the guarantee against abuse of power and a component of an effective legal remedy under Article 13 of the Convention.

In Klass and Others v. Germany, the Court explicitly recognised for the first time that the very existence of a secret surveillance regime poses a risk to any person who may be subject to it and therefore constitutes an interference with the right to respect for private life and correspondence under Article 8 of the Convention. [25] At the same time, the ECtHR concluded that the German regime contained "adequate and effective safeguards" against abuses through clear procedural requirements, specific controls and possibilities for appeal, and found the interference compatible with the Convention. [25] This established a basic formula for the balance: broad operational and investigative powers are permissible only if there are sufficient "counterweights", among which private law mechanisms for appeal and compensation play an important role. This logic was further developed in the case of Roman Zakharov v. Russia, where the Court no longer limited itself to an abstract assessment of the law, but analysed in detail the practical functioning of the system of secret interception of mobile communications. The ECtHR found that the lack of effective judicial review, the uncertainty of the grounds ('triggers') for initiating surveillance and the very wide discretion of the intelligence services created an unjustified risk of abuse and were incompatible with Articles 8 and 13 of the Convention. [26] For compensation mechanisms, this meant that the very systemic defect in the legislation could open the way to claims for damages for both individual violations and structural problems of the regime of secret surveillance. When it comes to mass data interception, the balance between public and private interests becomes even more complex. In the case of Big Brother Watch and Others v. the United Kingdom, the Court found that programmes of large-scale collection of communications data and access to information obtained by foreign intelligence services violated Article 8 of the Convention due to the lack of sufficient procedural safeguards, despite the government's reference to the need to combat terrorism. The ECtHR drew attention not only to the lack of clear criteria for data selection and an independent authorization body, but also to the "chilling effect" of such regimes for journalists and civil society organizations, which directly affected the assessment of harm and the need for effective compensatory remedies [27].

Doctrinally, these decisions have led to a shift in focus from individualized tort to the concept of "structural harm," where the very architecture of the surveillance system creates a constant threat of violation of the rights of broad categories of individuals, even if specific acts of surveillance cannot be identified with respect to each applicant [26]. In such a perspective, private law mechanisms for compensation for damage should be adapted to situations where there is a proven systemic non-compliance of the regime with the standards of the Convention, but it is difficult to establish individual episodes of interference; this, in turn, stimulates the discussion of collective forms of protection, representative actions and "pilot" solutions that combine individual compensation with general measures.

An essential element of the balance is the Court's understanding that an effective remedy under Article 13 of the Convention must not only be formally available, but also practically effective in the context of secret measures. In cases of secret surveillance, the ECtHR has repeatedly stressed that the failure to inform an individual about the fact of surveillance after the operations have been completed makes it impossible to enforce compensation claims unless the legislation provides for alternative procedures that allow for challenging the legality of the measures ex post [9; 26]. Thus, the public obligation of the State to ensure transparent and accessible procedures is directly transformed into a private law guarantee of the possibility of claiming compensation.

In the doctrinal plane, this leads to a convergence of the concepts of "effective remedy" and "civil action". We believe that Articles 13 and 41 of the Convention together form a supranational minimum model of State responsibility: first, the individual must have real access to a national procedure capable of establishing the fact of a violation; second, the State is obliged to provide adequate satisfaction, including monetary compensation, if the nature of the damage so requires. National civil systems, accordingly, increasingly integrate these approaches, recognizing the violation of the Convention as an independent basis for a tort claim against the State.

The practice of the ECHR in awarding "just satisfaction" additionally influences the formation of standards for assessing damage in national courts. Article 41 of the Convention allows the Court to award both pecuniary and non-pecuniary damage, based on the principle of equity, which in empirical studies is described as a system of "ranges" of compensation depending on the type of violation [21]. For cases related to unlawful surveillance or interception of communications, the emphasis is characteristically on moral damage – a feeling of uncertainty, fear, loss of trust in the State – which is difficult to quantify precisely in monetary terms, but is recognized as requiring financial compensation.

This approach of the Court creates a kind of "reference scale" for national practice: in a number of jurisdictions, courts explicitly take into account the amounts of compensation awarded by the ECtHR in similar cases as a benchmark for determining the adequacy of domestic redress. At the same time, the ECtHR consistently emphasizes that the main burden of compensation should be borne by the national system, and its own decisions on just satisfaction are of a subordiary nature, especially when domestic law provides only "partial" reparation [20]. The balance between public powers and private law guarantees in reparation mechanisms is also reflected in the Court's attitude to preventive and structural measures. In "mass" cases, the ECtHR increasingly combines individual satisfaction with instructions to change the law, strengthen judicial control or create special supervisory bodies to reduce the risk of future violations [16; 27]. Thus, private law compensation ceases to be the only way to respond to violations and is complemented by institutional reforms designed to reduce the likelihood of repeated harm.

For national systems, including Ukraine, this practice sets a path of integration: from the formal recognition of the right to compensation for harm caused by unlawful OIA to the construction of a holistic model in which civil law mechanisms are organically combined with constitutional control, administrative supervision and special procedures for covert measures [12]. In this context, doctrinal discussions about the nature of state responsibility (tort, public law, constitutional) acquire direct practical significance, since the availability, scope and reality of compensation, as well as the degree of compliance of the national system with the standards of the Convention depend on the chosen model [11].

Ultimately, the case law of the ECtHR demonstrates the evolution from the perception of compensation as an "appendix" to the finding of a violation to its understanding as a key element of the system of protection of rights in the field of OIA. As the technological capabilities of the state grow and the boundaries of private life become increasingly transparent, it is effective mechanisms for compensation for damage – along with preventive guarantees of legality and control – that are becoming one of the main tools for maintaining the balance between public authority and private rights in the European legal order.

6. Conclusions

A comprehensive analysis of the normative principles, doctrine and practice of the ECtHR gives grounds to assert that the European model of state liability for damage caused by operational and investigative measures is formed as a combination of public law and private law elements. It is based on the recognition of the special risk that OIA creates for the private sphere, and transforms the violation of constitutional and conventional rights into an independent basis for the state's tort liability. In this context, compensation mechanisms are not conordered in isolation, but as part of a broader system of guarantees of legality, proportionality and judicial control.

The Ukrainian model, despite the presence of a special Law No. 266/94-VR and the consolidation of the state's no-fault liability for a number of unlawful decisions and actions of bodies carrying out OIA, remains fragmented and partially formalized. Its weaknesses are a limited list of grounds for compensation, procedural barriers to access to court, the complexity of proving the illegality of interference and the lack of systematic conOIAeration of the standards of Articles 8, 13 and 41 of the Convention in civil proceedings. At the same time, the practice of the Supreme Court demonstrates a gradual readiness to expand the protective potential of tort structures, including through the direct application of ECHR decisions.

European experience and ECHR practice indicate that an effective model of state liability for damage caused by OIA should include: broader recognition of the violation of Convention rights as a basis for a civil claim; flexible methods of compensation for non-pecuniary damage with an orientation towards the "ranges" of just satisfaction; procedural guarantees for overcoming information asymmetry; as well as institutional mechanisms for preventing repeated violations. For Ukraine, the key areas of adaptation are the revision of the special law towards expanding its subject matter, a clearer integration of ECHR standards into the practice of civil courts and a strengthening of the role of constitutional and administrative instruments of control over OIA.

In conclusion, compensation for damage caused by operational-search measures should be conordered as a central link in the interaction of public authorities and private law guarantees, which ensures not only individual restoration of rights, but also a general preventive and "civilizing" impact on the security policy of the state. The transition from a purely formal recognition of the right to compensation to its real, predictable and fair implementation is a necessary condition for the approximation of the Ukrainian legal order to the European model of state responsibility and strengthening trust in public authorities.

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