

# War Damages: the Bill for Russian Oligarchs

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## Immense Unprecedented Harm

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The horrors of the Russian invasion of Ukraine shocked the world. It is the largest war in Europe since World War II and represents not only a war against Ukraine, but against the entire civilized world. An unprovoked and unjustified war in which the aggressor commits bloody war crimes against defenceless civilians, women, the elderly, and even children, causing destruction to civilian infrastructure, hospitals, pharmacies, schools, maternity hospitals, kindergartens, apartment buildings, private cars, and evacuation convoys. Property damage aside, it has exacted a brutal death toll, which has claimed the lives of hundreds of children and tens of thousands of adults. This has created a humanitarian disaster in the previously prosperous and thriving regional centres of Ukraine, such as Mariupol, Kharkiv, Chernihiv, Sumy, and has completely destroyed dozens of small towns and villages. Every day Russian soldiers defiantly demonstrate their tolerance of increasing levels of immorality and barbarism.

The devastating effects of this war on the Ukrainian economy are shocking. Preliminary reported losses, which do not account for all types of damage, have approached 1 trillion USD so far. Beyond the raw dollar totals, it has led to huge amounts of moral damage suffered by every Ukrainian, and the war continues its bloody harvest.

This unprecedented damage from aggression requires unity, creative actions, and the decisive reaction of the whole legal community, uniting the efforts of lawyers all over the world to search for effective mechanisms of compensation. This includes focusing not only on collecting evidence of destruction, but also on establishing the widest range of potential defendants who are liable for the atrocities and discovering the most effective ways to provide compensation for the victims of this unjust war.

Such damages include compensation for any material harm (i.e., property damage as a result of destruction, including damage or seizure of property of the victims, capture of property as a result of occupation of Ukrainian territories by the Russian Federation, etc) and moral damages (compensation for non-material harm, including individual pain and suffering, injury, personal affront associated with intrusion into one's home or private life, death of relatives, forceful relocation, the loss of habitual and safe living conditions, access to work in line with one's qualifications, etc.).

Reportedly, more than 1 trillion dollars worth of assets belonging to Russia and those Russians actively involved in the war, have been frozen. In this context, the main task for all legal professionals is to determine an effective legal mechanism that would ensure fair access to such frozen funds and their use as a fair source for compensation of damages inflicted by this war.

## Collective Tort

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It is clear that within the confines of full-scale military aggression, a devastating missile strike or even its launch is only the final act comprising a complex of internally connected acts of many people and entities causing harm to specific victims. Such a chain of legal facts also includes illicit orders that were issued as well as other actions that eventually enabled such aggression. On the other hand, the nature of causing damage indicates that it was caused by several persons which, in turn, imposes on each of such persons, regardless of the degree of fault, joint responsibility for compensation.

Such oligarchs, when considering their collective infliction of military harm, have sufficiently contributed to, caused and conditioned the armed aggression of the Russian Federation against Ukraine and the infliction of property damage on the victims. This is confirmed by the following:

- Political influence: these oligarchs are a part of Putin's inner circle of friends in the economic sphere (the economic cluster of the "Putin regime"), and exercise direct and indirect influence on the policy and decision-making of the senior leaders of the Russian Federation. This includes providing the regime with financial, ideological and political support, along with receiving various financial benefits, including income and security guarantees from the regime;
- Financing aggression: the oligarchs are consciously financing the possibility of armed aggression through their direct and indirect financing of the Russian military machine. This financing includes paying billions of dollars in taxes or loans and providing business activities of strategic importance to the Russian economy;
- Occupation infrastructure: the oligarchs participate in major infrastructure projects that contribute to Russia's armed aggression, undermine the security of Ukraine, and contribute to the occupation of Ukrainian territories;
- Mobilization: being Russian major employers, the oligarchs are the biggest suppliers of human resources for the Russian army pursuant to the latest military draft announced by Putin and his government;
- Army supplies: related to this, the oligarchs directly participate in the production of military equipment and weapons; supply the Russian economy and armed forces with fuel; popularize the Russian army, and cultivate an overly pro-militaristic sentiment in Russian society;

- Propaganda: oligarchs have been consciously and deliberately developing an ideological cultivation of aggression. Putin's actions and policies have undermined Ukraine's territorial integrity, sovereignty and independence, and oligarchs have failed to properly criticize or condemn such actions. Not only have they failed to take any action, they have continued doing business in Russia and perform other actions that contribute to, and do not sufficiently prevent, Russian aggression against Ukraine;
- Undermining the Ukrainian economy: withdrawal of financial and material assets from Ukraine, or carrying out ineffective management over such assets.
- Recognition of international sanctions: existence of valid official decisions of competent foreign authorities, in particular sanctions, confirming the illegal actions of oligarchs regarding Russian aggression against Ukraine;
- Pro-Putin international front: the oligarchs have been carrying out activities to counter international sanctions and a negative global attitude towards Russia's aggression against Ukraine since 2014; including the implementation of the Russian Federation's oil policy, expansion policy on world markets and the possibility of oil and gas blackmail policy;
- other facts indicating assistance to Russia's aggression and inaction to stop or hinder it.

There is no doubt that without assistance from the oligarchs, the highest political authority of Russia, as headed by Putin, would not have dared to carry out open aggression against Ukraine, as a result of which military damage was inflicted. Consequently, the aforementioned behaviour by Russian oligarchs is causally related to the damage caused by Russian aggression.

## Cause of Action

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It is important to note that since the damage was inflicted on the territory of Ukraine, as a general rule, the governing law will be the law of Ukraine. Thus, according to part 1 of Article 49 of the Law of Ukraine *On International Private Law*, the rights and responsibilities under obligations arising from the infliction of harm are determined by the law of the state where the action or other event that served as the grounds for the claim for compensation of harm took place. Consequently, since the damage was caused on the territory of Ukraine, the law of Ukraine is applicable in this case.

Under Ukrainian law, there are various torts that can be pursued, including the infliction of harm to plaintiffs, violation of their fundamental rights to property, right to life, health, etc. This tort has several important features.

This is a collective tort that is caused by a large group of people. It is clear that within the framework of full-scale military aggression, a destructive missile strike or a missile launch is only the final act of series of circumstances that led to the infliction of harm to a particular victim. Such a legal fact also includes the criminal orders given, as well as other actions that enabled such aggression, its initiation, and the nature of its course. As

we noted above, the role of oligarchs was that they sufficiently aided, facilitated and caused the armed aggression of the Russian Federation against Ukraine and the infliction of property damage to injured persons.

As the damage was caused by several persons, it imposes on each of such persons, regardless of the degree of guilt, joint and several liability for its compensation. According to Art. 541 of the *Civil Code of Ukraine* joint liability or joint claim arises in cases established by contract or law, in particular in the event of indivisibility of the subject of the obligation. According to Part 1 of Art. 1190 of the *Civil Code of Ukraine*, the joint action of persons or inaction of which caused harm are jointly and severally liable to the victim.

This law specifies passive plurality in tort obligations, and provides for the solidarity of the obligation to compensate the harm caused to the victim. This means that the victim has the right to claim full or partial compensation as to all delinquents together and any of them separately.

According to Ukrainian case law, persons are considered to have jointly caused damage if they caused the damage by interrelated, joint actions or actions with the unity of intention.

It should be noted that in order to bring civil liability under Article 1190 of the *Civil Code of Ukraine* it is not necessary that the actions or omissions that jointly caused harm to other persons coincided in time, were identical in content, in the role of accomplice, instrumentality or degree of guilt. It is the “unity” of the illegal result – infliction of harm, indivisibility of the result of illegal actions or omissions of two or more persons, that is important. At the same time, the person who has compensated for the harm caused in full, has the right to a reverse claim (regress) to each of the other causers minus the share attributable to him under the rules of part 1 of article 544 of the *Civil Code of Ukraine*.

## **Obliging Ownership**

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Assuming a defendants’ protective mantra where they would pretend to be honest and independent businessmen who simply worked lawfully in the relevant sector of the economy, it is worth noting the following. According to Part 3 of Article 13 of the Constitution of Ukraine, ownership is binding. Property should not be used to the detriment of people and society. Part 7 of Article 41 of the Basic Law stipulates that the use of property cannot harm the rights, freedoms and dignity of citizens, public interests, worsen the ecological situation and natural qualities of the land. Articles 13, 319 of the Civil Code of Ukraine contain similar provisions imposing on the owner additional obligations to prevent any harm to any third party. Using property to finance the Russian defense machine, aware of the armed aggression against Ukraine that began in 2014, the defendants-representatives of big “business” named in the case (regardless of the presence of signs of other illegal actions within the framework of such aggression) committed a gross violation of the above-mentioned provisions of Articles 13, 41 of the

Constitution of Ukraine, Articles 13, 319 of the Civil Code of Ukraine, together with other norms, which determine the guarantees of the claimants' right to property. In this context, the practice of prosecuting German industrialists who supported the Nazi regime of Hitler's Germany during the Second World War should also be mentioned. Thus, by the verdict in the case "United States of America v. Alfred Krupp et al.", which was announced on November 17, 1947, the general director of the concern "Friedrich Krupp AG" Alfred Krupp was found guilty of active participation in the preparation of the Nazis for an aggressive war and the supply of weapons to Germany military, as a result of which property confiscation was applied to Alfred Krupp.

## **Jurisdiction**

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Since the damages were caused on the territory of Ukraine, such disputes are subject to the jurisdiction of the courts of Ukraine (subpar. 3 par 1 of Art. 76 of the Law of Ukraine "On Private International Law" and would be governed by Ukrainian law (see par.1 of the article 49 of above-mentioned law). Thus, Ukrainian jurisdiction seems to be the most convenient forum for such category of cases. However, it doesn't exclude the engagement of foreign judiciaries, especially in those countries where the defendant's assets are currently located and even have been frozen. Enforcement of Ukrainian judgments and receipt of interim (supportive) injunctions are the most obvious forms of administering justice by such foreign courts in these cases. Furthermore, Russian oligarchs could be more prospective defendants compared with the Russian Federation. On the one hand, they are not able to enjoy any kind of procedural immunity, on the other – almost all of them have been already sanctioned as Western responses to Russian aggression. The only substantial risk for such option is the potential fierce defense by Russian oligarchs, who will definitely use all possible legal and illegal means. The oligarchs will obviously fight desperately, trying to win at any cost, applying all existing tools, even forbidden and unacceptable, to influence courts and other decision makers. Therefore, for many lawyers, the moment of truth is now arriving.