

The subject of the dissertation is the non-contractual liability of the European Union (as a legal person with public authority powers) for damages caused by its institutions or by its servants in the performance of their duties under Article 340 (2) of the Treaty on the Functioning of the European Union (TFEU). The main objective of the research is to determine the extent and nature of this liability using legal constructions specific to tort law. The research focuses on the analysis of the rationale for Union liability for damages, which is reflected in the construction of the thesis. The thesis will show that the Union's liability regime for damages – as an example of liability for the exercise of public authority – is of an autonomous character, due to the objectives and specificity of the Union's order and is subject to dynamic development in the case law of the Court of Justice of the European Union (CJEU). On the one hand, this regime covers cases which traditionally do not fall within the scope of tort law. On the other hand, it is characterised by fragmentation (it is devoid of many elements of legal constructions existing in national legal systems) and excessive rigour, refusing to grant tortious protection to individuals who have suffered damage. The process of shaping this regime cannot be considered complete; as it will be demonstrated in the thesis, many issues are still unresolved in the case law. Moreover, some legal problems to be resolved in national tort systems are not relevant for the functioning of this liability regime, due to its autonomous character dictated by the objectives and specificity of the EU order.

The research perspective adopted in the thesis has led to a definition of the Union's non-contractual liability for damages as tort liability.

The achievement of the main research objective consists of numerous smaller milestones. The first of them is to determine the function and *ratio legis* of the European Union's liability for damages against the backdrop of solutions adopted in tort law schemes, as well as to determine how the specificity of the EU order influences the shape of the public authority liability. In this respect, the role of CJEU jurisprudence in shaping the premises of the Union's liability should also be determined.

The second objective is to determine the extent of the events whose occurrence will justify tort liability of the European Union. It is necessary to determine what injurious conduct by the Union's institutions or servants will make it possible to remedy the damage on the basis of Article 340 (2) TFEU.

The third objective concerns the determination of the extent of damage to be remedied and the rules for doing so, taking into account the specific elements considered when calculating the amount of damage, limitations on claims and other protective measures afforded to the injured party.



The fourth objective is to establish the nature of the causal link between the event causing the damage attributable to the Union and the damage caused. It is necessary to define the concept of causation used in the case law of the CJEU, to clarify the role of causality in the creation of the liability of the Union and to distinguish the selection criteria for events in the causal chain within the CJEU concept of legal causality.

The fifth objective is to clarify the function of the limitation period for a claim for compensation against the Union and to determine its scope, taking into account the length of the limitation period, its beginning and the possibility of its interruption and suspension.

These research objectives have influenced the structure of the work, which consists of five chapters, the core of which is the analysis of the conditions for Union liability.

The first chapter is an introduction to the detailed considerations undertaken in the thesis. First of all, it discusses issues related to the construction of a public authority's liability regime (its function and the process of its formation), which have been applied to the Union's liability regime. Next, it focuses on the specificity of the Union's liability regime, taking into account its place in the Union's system of legal remedies, its autonomy in relation to other legal remedies (actions for annulment and actions for failure to act) and differences in comparison with the Union's regime of contractual liability. This chapter also provides a general overview of the Union's non-contractual liability. An important part of this chapter is the presentation of the legal role of CJEU jurisprudence in shaping the conditions of liability for damages.

The second chapter is devoted to determining the scope of events whose occurrence justifies tort liability of the European Union. The starting point was the current position of the CJEU that the Union is liable if there is „a sufficiently serious breach of a rule of law intended to confer rights on individuals”. First of all, the status of the rule of law was determined, which was distinguished according to the criterion of superiority and its protective purpose. Then, the review of norms, whose violation is necessary for the emergence of Union's liability, are presented and those which most interestingly elaborate the Union's tort liability (the principle of good administration, the principle of restitution of unjust enrichment, the principle of protection of legitimate expectations and fundamental rights) are discussed. The analysis of CJEU jurisprudence has led to the conclusion that „the rules of law intended to confer rights on individuals” have the status of principles of Union law. This has been supported by Ronald Dworkin's concept of principles and rules, and deliberations are presented on the consequences of adopting the presented understanding of a „rule of law conferring rights on individuals”. Further consideration was given to the rationale for a sufficiently serious breach. It discusses the evolution of this premise, which in the case law of the CJEU was initially determined by



the nature of the legal act to which the infringement related. Now, following the *Bergaderm* decision, the understanding of a sufficiently serious breach depends on the extent of the discretionary power of the institution which took the contested action. The next part of the chapter focuses on analysing the factors which determine the assessment of a sufficiently serious breach. The last subchapter is devoted to the still controversial issue of the Union's liability for lawful action.

The third chapter concerns damage and compensation. It discusses the criteria of reality and certainty for damage adopted in the CJEU case law and focuses on the types of damage to be compensated: pecuniary and non-pecuniary damage. With regard to pecuniary damage, loss (*damnum emergens*) and loss of profits (*lucrum cessans*) were characterized (taking into account specific cases resolved in the CJEU case law), as well as the method of calculating the amount of compensation. As regards non-pecuniary damage, the way it is understood in the case law was presented, then the problems and limitations in the calculation of its amount and other protection measures that the injured party is entitled to in case of suffering it were discussed. The chapter also deals with specific cases of future damage, the duty to limit damage, the standard of proof, the uncertainty of damage, and interest.

The fourth chapter concerns the causal link. It discusses the factual and legal causality, which has been referred to the way the CJEU case law understands it. A large part of the discussion is devoted to explaining the concept of direct causal link used by the CJEU. It then focused on the multiple causation and analyses the impact of subsequent, competing and cumulative causes. Specific issues related to the uncertainty of the causal link were also addressed, including the possibility to claim compensation in case of loss of chance.

The last chapter concerns the limitation periods for bringing actions for damages against the Union. The discussion is devoted to determining the meaning of the notion of limitation period, the consequences of the expiry of the limitation period and the nature (procedural or substantive) of that period. It then focuses on determining the beginning of the limitation period – in particular, the importance of the injured party's knowledge of the damage caused. Problems related to the calculation of the limitation period for future and continuous damage were also resolved. The chapter also discusses the possibilities of interrupting and suspending the limitation period.

The conclusion summarises the main theses of the dissertation and presents conclusions on the general features of the European Union's non-contractual liability regime.

