

HALYNA H. HRYTSENKO^a

Grounds for Occurrence of Civil Law Obligations Involving Plurality of Person*

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Summary: 1. Introduction. 2. Materials and methods. 3. Results. 4. Discussion. 5. Conclusions.

1. Introduction

Being one of the main categories in civil law, obligations can be considered the most theoretically developed legal category. The approaches to defining the concept of this category, as well as its legal essence have been comprehensively studied in the science of law. On the other hand, given the significant dynamism in the development of civil law obligations, various doctrinal approaches to the issue of obligations involving complex parties are formed at the present stage of the development of legal science. Thus, depending on the number of creditors and debtors under a contract, there are two types of obligations: simple obligation and obligation involving a plurality of persons¹. However, one of the most difficult issues in modern law is how to deal with cases where two or more defendants are liable to the plaintiff for causing damage¹. In modern civil law literature, it is widely accepted that an obligation involving multiple persons on one or both sides is referred to as an obligation involving a plurality of persons. However, such type of obligations as obligations involving a plurality of persons is currently a legal phenomenon that has not been researched enough yet. For example, there is no consensus in theoretical debates on several issues of the emergence of civil law obligations involving a plurality of persons, which directly affects law enforcement practice.

The issues of forming the concept of “plurality of persons” in civil law, de-

^a Poltava Law Institute, Yaroslav Mudryi National Law University, Ukraine (halynahrytsenko@ukr.net)

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¹ O. HRABOVY, Multiplicity of parties to a commercial representation agreement, in *Enterprise, Economy and Law* 2 (2020) pp. 18-22.

¹ L. CHOLVY – C. GARION, Collective obligations, commitments and individual obligations: A preliminary study, In *ACLN*, 37 (2002) pp. 36-49.

fining its features, types of the plurality of persons, distinguishing the plurality of persons from similar legal phenomena, etc. are also important for scholarly comprehension. Additionally, obligations involving a plurality of persons are of significant importance in various essential aspects of societal life, such as industry, construction, trade, land lease, and the realm of compensations for direct damage. These obligations are directly linked to the protection of human rights and liberties.

The modern form of obligations involving a plurality of persons has evolved, shaped by the continuous improvement of legal frameworks in advanced legal systems of the past. This evolution has led to the development and recognition of obligations involving multiple persons in their present-day form. Such obligations were known to Roman law². However, there are difficulties in performing obligations involving a plurality of persons, which arise from the complex composition of legal relations. Enhancing the civil regulation of obligations involving multiple persons, as well as related contractual and law enforcement practices, is vital for fostering cooperation among business entities and building an optimal legal framework. In turn, L. Royackers and L. Dignum³ note that obligations involving a plurality of persons are intended to be performed by a group of persons. In addition, an obligation involving a plurality of persons arises in situations where the damage caused to the plaintiff arises from the actions of several parties⁴. In this respect, we should agree with W. Sloma⁵, who argues that there are two parties in case of an obligation involving a plurality of persons (creditor and debtor), but each party can be represented by several persons.

Thus, a plurality of persons in an obligation means the participation of two or more persons in the obligation, on the side of one or both parties. There are two main conditions for a plurality of persons in the obligation: the unity of the subject matter of the obligation and the presence of both internal relations (between co-creditors or co-debtors) and external relations (a plurality of persons with the opposite party)⁶. This study will analyse the

² D.V. TRUT, *Civil law obligations with a plurality of persons in Roman Law*, in *Bulletin of the National Technical University of Ukraine "Kyiv Polytechnic Institute". Politology. Sociology. Right*, 1 (2013) pp. 94-97.

³ L. ROYACKERS – L. DIGNUM, *No organization without obligations: How to formalize collective obligation?* in *Proceedings of 11th International Conference on Databases and Expert Systems Applications*, Berlin, 2000, pp. 302-311 ss.

⁴ R. REVESZ – L. KORNHAUSER, *Joint and several liability*, London, 1998, pp. 122-134 ss.

⁵ W. SLOMA, *Partial obligations in the doctrine of civil law*, in *Scientific Bulletin of Public and Private Law*, 1 (2018) pp. 159-162.

⁶ H. HRYTSENKO, *Obligations with a mandatory plurality of persons and obligations in which it is impossible*, in *Legal Ukraine*, 6 (2013) pp. 60-64.

general and special grounds for the emergence of civil law obligations involving a plurality of persons. The above supports the relevance of this study and the need for specific research to analyse the grounds for the emergence of civil law obligations involving a plurality of persons.

2. Materials and methods

The chosen methodology of this article aligns with its objectives, focusing on scientific research to gain insights into the emergence of civil law obligations involving a plurality of persons. The conceptual provisions regarding these obligations were developed based on the methodological foundations of current scientific development. The study employed a dialectical materialist methodology, which recognizes the relationship between theory and practice and guides the research methods employed. The methodological framework embraced a dialectical approach to comprehend the reasons behind the emergence of civil law obligations involving a plurality of persons. Furthermore, the research employed scientific tools that adhere to the principles of objectivity and pluralism, aiming to enhance knowledge of the grounds for the emergence of such obligations.

The article's methodological foundation involved employing various problem-solving methods to achieve the research objectives. The author relied on contemporary cognitive methods developed and tested in a practical application through modern science. The study incorporated both general and specialized cognitive methods and techniques. For instance, during the writing process, general scientific methods like analysis, synthesis, comparison, analogy, deduction, induction, and abstraction were utilized to acquire new knowledge. The inductive method facilitated the generalization and formulation of scientific approaches to the grounds for the emergence of civil law obligations involving a plurality of persons. The deductive method ensured the author's position was consistently rationalized. Other formal logical methods such as analysis, synthesis, generalization, and abstraction were applied to draw informed conclusions.

During the development of this article, various methods were employed to ensure a comprehensive approach to the subject matter. These methods included transitioning from theoretical and legal abstraction to branch specialization, utilizing the method of normative modelling, and employing the method of legal forecasting. The study encompassed the examination of institutions, principles, and relationships in their entirety, combining specialized methods such as structural-functional analysis, comparative law analysis, and formal law analysis.

For instance, the formal law method played a crucial role in comprehending the fundamental nature of the grounds for the emergence of civil law

obligations involving a plurality of persons, as well as establishing correlations with other types of obligations. The structural-functional method aided in the identification of specific inherent features within civil law obligations involving a plurality of persons and facilitated an examination of their place within the broader context of civil law. Additionally, the comparative law study of the grounds for the emergence of civil law obligations involving a plurality of persons contributed to the development of a comprehensive theory regarding the plurality of persons within the field of civil law.

The use of the above methods made it possible to research the issues considered in the study as deeply as possible. In addition, a study with the use of the above methods and approaches found that the issue was not only theoretical but also of great practical importance. The regulatory basis of the work was the Constitution of Ukraine⁷, the Civil Code of Ukraine⁸, and other laws and regulations. Materials of law-making, law-enforcement and interpretive practices were studied in the course of the work. In particular, the empirical basis of the study was formed by case law on the matters researched, as well as materials of research and practical conferences and seminars, reports and discussions reflecting the views of their participants on various aspects of issues in the area of civil law obligations involving a plurality of persons.

3. Results

The modern civil law of Ukraine consists of a great number of sub-branches, institutions and sub-institutions regulating various groups and types of public relations. One of the biggest sub-branches of civil law is the law of obligations. In general, an obligation creates a legal relationship in the form of mutual obligations and rights between two parties: the obligated party (the debtor) and the party having the right of the claim (the creditor). Given the fact that it is the creditor that is entitled to claim in legal relations concerning obligations, forces the debtor to take active actions for the benefit of the creditor, and it is the creditor that is an active subject, while the debtor is a passive subject. It suggests that the obligation implies the rights of the creditor and the obligations of the debtor. The relations between the creditor and the debtor are governed by the rules of law of obligations. At the same time, each party may involve in several subjects of civil law, which makes the obligation more complex. Such situations are

⁷ <https://rm.coe.int/constitution-of-ukraine/168071f58b> (Accessed 04.07.2023)

⁸ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

called civil obligations involving a plurality of persons. It should be noted that a plurality is a non-constant quantitative feature of parties to civil obligations, in the presence of which several persons represent one or two parties to the obligation. One of the biggest sub-branches of civil law is the law of obligations. An obligation was originally a form of personal interaction of one subject of law with another one. Thus, the essential aspect of the obligation is the fact that it is a legal relation. At the same time, legal relations are public relations governed by a legal provision. Legal relations arise between individuals, individual entrepreneurs, legal entities, state authorities and other participants.

In legal relations involving obligations, it is important to note that the creditor holds the right to make claims and compels the debtor to take active actions in favour of the creditor. The creditor is the active subject, while the debtor is the passive subject in these interactions. It suggests that the obligation implies the rights of the creditor and the obligations of the debtor. The relations between the creditor and the debtor are governed by the rules of law of obligations. Parties to the obligation, i.e., the debtor and the creditor, are elements of the obligation as well. The debtor is the obligated party, while the creditor is the authorized party. The subject of the obligation is made by certain actions of the debtor (e.g., transfer of money) or refraining from certain actions. An object of legal relations concerning obligations is the thing in respect of which actions are done (for example, money). Thus, a civil law obligation consists of three elements: subject, object and content of the obligation.

Any obligation involves the participation of the debtor and the creditor. However, the number of persons involved in the obligation is not limited to two participants. There can be more than one creditor or debtor on either side of the obligation. Such an obligation is called an obligation involving a plurality of persons. If other persons take part in legal relations concerning an obligation in addition to the creditor and the debtor, such obligations are called obligations involving third parties. Also, in most cases, there may be a replacement of the persons involved in the obligation during the term of the obligation⁹. Thus, an individual manifestation of complex parties to civil obligations is a plurality of its persons – that is, the participation of several persons simultaneously on the side of the creditor or debtor¹⁰.

It should also be noted that the creditor is always interested in additional

⁹ YU. RYASANSKAYA, *Solidarity obligations in Russian Civil Law*, Belgorod, 2017, pp. 32-51 ss.

¹⁰ O. CHERNILEVSKA, *The concept and characteristics of the plurality of persons in civil obligations*, in *Scientific Bulletin of Uzhhorod National University*, 21 (2013) pp. 296-299.

securities of the obligation. One such security is the presence of several debtors to whom claims can be filed. The presence of several debtors in a civil law obligation is associated in scientific and educational publications with the phenomenon of a plurality of persons in the obligation¹¹. In addition, there may be an obligation with several debtors and several creditors at the same time. This increases the number of persons but does not change the number of the parties. The participation of several persons in an obligation on a particular side complicates the obligation itself, regardless of the nature of the plurality, i.e., active or passive, joint or partial. Obligations involving a plurality of persons become complex as individuals on the same side of the obligation must coordinate their actions with one another in both legal and practical terms. This holds particularly true for joint and several obligations, where any wrongful act committed by one party on the same side of the obligation affects all other parties, regardless of their individual intentions or actions. In addition, the more complex the subject of the commitment, the higher the need for such coordination. An action of one person on either side of the obligation may be recognized as the action of all parties to the agreement under certain conditions, while it cannot be recognized as an action of a party to the agreement or recognized as such only in part in other circumstances¹². In this context, it is important to investigate the reasons for the emergence of obligations with a plurality of persons, which can be divided into general and special.

Active, passive, mixed, partial and joint and several obligations should be distinguished among the general reasons for the emergence of a plurality of persons in an obligation. The most common of them is the emergence of an obligation with a plurality of persons in the event of a breach of an obligation under an agreement, which contains an indivisible object of the obligation. If there was a plurality of persons in the obligation from the very beginning, in this case, despite the divisibility of the object of the obligation, the parties are liable jointly and severally. If there was no plurality of persons in the obligation, it may arise through the joint and several liability of the surety. In addition, obligations with a plurality of persons may arise in the case of torts against the property of several persons committed by several persons. The above grounds cause a passive plurality of persons. However, sometimes they cause an active or mixed plurality as well. Thus, in case of torts against the property of several persons, damage may be caused to jointly owned property.

¹¹ H. HRYTSENKO, *Subsidiary liability through the prism of the plurality of persons in the obligation*, in *Legal Bulletin*, 4 (2019) pp. 223-228.

¹² B.YE. KENZHEYEV, *Fulfillment of obligations with a plurality of persons*, Volgograd, 2011, pp. 121-142 ss.

For example, the Court of Appeal of the Autonomous Republic of Crimea upheld the decision of the court of first instance that granted a claim for compensation for damages caused by the flooding of an apartment and the apartment of the defendants who did not monitor the condition of their plumbing equipment¹³. V. Ignatenko¹⁴ highlights that legislation lacks specific regulations for obligations involving a plurality of persons arising from unilateral lawful actions, such as those performed by a married couple.

It should be noted that such circumstances are not common in practice, although they still should be regulated by law. Characteristic features of special grounds for the emergence of a plurality of persons in an obligation are their small number and specific nature. The special grounds on which active, passive and mixed plurality emerge should be analysed individually. After an analysis of the Ukrainian legislation and case law, it should be noted that there are no special grounds for the emergence of only a mixed plurality (and no other). Although some scientists substantiate the existence of the so-called joint and several obligations, namely they distinguish: joint and several creditors and partial debtors, and partial creditors and joint and several debtors^{15, 16}. A necessary condition for their existence is the presence of a mixed plurality of persons. Subject to their spread in practical situations, the existence of a contract will be on of the special grounds for the emergence.

On the other hand, only special grounds for the emergence of a passive plurality of persons have already been legally regulated so far. For example, according to the Civil Code of Ukraine¹⁷, these may be torts against a person. A tort against property of a person cannot be considered as a special ground for the emergence of only a passive plurality of persons as the property can be joint, while personal benefits cannot be joint. For example, the obligation to compensate for damage arises as a result of non-pecuniary damage (Articles 23 and 1167 of the Civil Code of Ukraine), including injury or other damage to health or death of the aggrieved person (Article 1168 of

¹³ <http://reyestr.court.gov.ua/Review/4579068>. (Accessed 30. 05. 2023)

¹⁴ V.N. IGNATENKO, *To the question of the plurality of persons in obligations from unilateral lawful actions*, in *Topical issues of private law: Materials of the International scientific and practical conference, awarded by 93rd anniversary of the birth of V.P. Maslov*, Kharkiv, 2015, pp. 107-110 ss.

¹⁵ R. SAVATIE, *Obligation theory: Legal and economic essay*, Moscow, 1972, pp. 98-103 ss.

¹⁶ YU.V. MITSA, *Scientific and practical commentary on articles 538-540 of the Civil Code of Ukraine*, in *Civil Code of Ukraine: Scientific and practical commentary (explanations, interpretations, recommendations using the positions of higher courts, the Ministry of Justice, scientists, experts)*, Kharkiv, 2012, pp. 141-169 ss.

¹⁷ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

the Civil Code of Ukraine)¹⁸. In this case, there may be only one aggrieved person on the creditor's side, while damage can have been caused by several persons. There may be more than two obligations in the event of non-pecuniary damage to two or more persons. It should be noted that the emergence of an active plurality is quite a rare case, and therefore it is difficult to find reasons for its emergence. Thus, as an example, we can mention nuclear damage among the grounds for its emergence. The obligation to compensate the damage in this case results in the emergence of a plurality of persons on the creditor's side. This plurality mainly consists of individuals¹⁹.

4. Discussion

It is also necessary to research the special grounds for the emergence of a severable and joint obligation with a plurality of persons. Yu. Mitsa²⁰ notes that the presumption of equal shares enshrined in Article 540 of the Civil Code of Ukraine can be changed by the parties through acts of civil law, unilateral deeds, and court decisions²¹. That is, parties can waive equal shares, as well as change the type of an obligation to joint and several obligations. The following should be noted among the reasons for the emergence of severable obligations:

- a contract (Article 986 of the Civil Code of Ukraine²², Article 286 of the Tax Code of Ukraine²³, Article 9 of the Law of Ukraine “On investment activities”²⁴, as well as contracts under which the share of one of the debtors is equal to zero);
- a tort committed jointly by several persons, where the severable nature is caused by a court decision (Article 1171 of the Civil Code of Ukraine²⁵), a statement of the aggrieved person (Article 1190 of the Civil Code of

¹⁸ <https://zakon.rada.gov.ua/laws/show/435-15#text>. (Accessed 30. 05. 2023)

¹⁹ V.I. BORISOVA – L.M. BARANOVA – M.V. DOMASHENKO – I.V. SPASIBO-FATEEVA – V.L. YAROTSKY, *Civil law of Ukraine*, Kharkiv, 2014, pp. 54-71 ss.

²⁰ YU.V. MITSA, *Scientific and practical commentary on articles 538-540 of the Civil Code of Ukraine, cit.*, pp. 141-169.

²¹ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

²² <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

²³ https://www.wto.org/english/thewto_e/acc_e/ukr_e/wtaccukr88_leg_3.pdf (Accessed 04.07.2023)

²⁴ <https://zakon.rada.gov.ua/laws/show/en/1560-12> (Accessed 04.07.2023)

²⁵ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

Ukraine²⁶), or the inability to establish the degree of guilt of the offenders (Articles 300 and 302 of the Merchant Shipping Code of Ukraine²⁷);

– non-performance of a contractual severable obligation: distribution of losses depending on the fault rather than the size of the share, while a penalty is distributed in an opposite manner, depending on the size of the share since the guilt is a condition of liability, rather than a criterion for its amount; unilateral transactions of quasi-subjective (collective) entities (rescue at sea by members of the crew of a sea vessel – Articles 214, 327, 336 of the Merchant Shipping Code of Ukraine²⁸);

– a succession of obligations with a divisible object²⁹.

Sometimes there is a mismatch between the grounds for the emergence of a plurality of persons and the grounds for the emergence of obligations with it. There also may be an increase in the number of creditors at the time of the already existing obligation.

In this regard, we can mention an example of the Decision of Yasynuvata City and District Court of 2008³⁰, which concerned the payment of certain funds by customers and contractors. In this case, the relations between the parties emerged in accordance with the contract of 1 July 2007 concluded by and between three customers and one contractor. In this case, there were multiple persons on both the customers' and the contractor's side, with the plurality arising at different stages: at the obligation's emergence for the customers and during its performance for the contractor. However, it should be noted that in the event of plurality in the vast majority of cases, the plurality and the obligation emerge simultaneously. Joint and several liability emerges in the case when the object of the obligation is indivisible³¹. The legislation of the countries, that have adopted the Civil Code of France as the basis, regulates non-severable and joint and several obligations separately, establishing severable or joint and several liability of heirs³². French scientists note that in order to avoid the division of a debt between heirs, it is still a common practice in this country to write “jointly and severally” in notarial documents. A characteristic of the states that

²⁶ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

²⁷ <http://www.sifservice.com/index.php/en/directory/official-documents/item/168-merchant-shipping-code-of-ukraine> (Accessed 04.07.2023)

²⁸ <http://www.sifservice.com/index.php/en/directory/official-documents/item/168-merchant-shipping-code-of-ukraine> (Accessed 04.07.2023)

²⁹ W. SLOMA, *Partial obligations in the doctrine of civil law, cit.*, pp. 159-162.

³⁰ <http://reyestr.court.gov.ua/Review/1676855>. (Accessed 30. 05. 2023)

³¹ R. SAVATIE, *Obligation theory: Legal and economic essay, cit.*, pp. 98-103.

³² <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000005634379/>. (Accessed 30. 05. 2023)

have adopted the German Civil Code as the basis is that the consequences of a non-severable obligation are the same as the consequences of a joint and several liability³³. Sometimes non-severability is the basis of solidarity in the legislation of such states. Such legislation is also characterized by situations when heirs are jointly and severally liable (despite the divisibility of the object of the obligation) or in the event of inheritance of debt of joint and several debtors.

It should be noted that Ukrainian legislation did not provide for joint and several liability of heirs. At the same time, it should be noted that the creditor's conditions should not deteriorate because of the death of the debtor. In this aspect, it is not appropriate to burden the creditor with the task to collect debts from all heirs as their number can change over time. (Articles 1272 and 1280 of the Civil Code of Ukraine³⁴). In this case, it is appropriate to protect the creditor at the legislative level by enshrining the following provision in Part 1 of Article 1282 of the Civil Code of Ukraine³⁵. Thus, the creditor will have the right to claim the entire amount of debt from other debtors, but the creditor will have the right to claim only the amount of their share in the inheritance from the heirs of the deceased debtor³⁶.

As noted by V. Belov³⁷, the joint nature of the actions that have given rise to the obligation is one of the criteria of legal solidarity. However, this criterion does not apply to persons who have signed warrant securities, sureties and principal debtors. However, it should be noted that they have nothing in common with solidarity except the name. In support of the approach of H. Hritsenko, it should be noted that such a ground for the emergence of legal solidarity as the indivisibility of the object of an obligation does not fall under its criterion³⁸.

Given the inconsistency of solidarity with the essence of the obligation and the established rules of civil law transactions, this suggestion was rejected. However, an exception was made for obligations of a commercial nature or the object of which is joint property, i.e., joint and several liability, unless otherwise provided for by law or contract³⁹. It should be noted that similar

³³ https://www.gesetze-im-internet.de/englisch_bgb/ (Accessed 04.07.2023)

³⁴ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

³⁵ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

³⁶ I.B. NOVITSKY, *General doctrine of commitment*, Moscow, 1950, pp. 167-188 ss.

³⁷ V.A. BELOV, *Solidarity of obligations (general teaching and some complicating moments – alternative, provision, change of persons, termination)*, in *Practice in the application of general clauses on obligations*, Moscow, 2011, pp. 52-89.

³⁸ H. HRYTSENKO, *Plurality of persons in civil liability*, Kharkiv, 2015, pp. 81-95 ss.

³⁹ V.N. IGNATENKO, *To the question of the plurality of persons in obligations from unilateral lawful actions*, pp. 107-110.

provisions are enshrined in Articles 1.1 and 1.2 of the Principles of International Commercial Agreements of the International Institute for the Unification of Private Law⁴⁰, in the commercial law of France⁴¹, in contract law of Germany⁴² in Article 322 of the Civil Code of the Russian Federation⁴³, in Article 303 of the Civil Code of Belarus⁴⁴, in Article 287 of the Civil Code of Kazakhstan⁴⁵, in Article 312 of the Civil Code of Kyrgyzstan⁴⁶, in Article 1525 of the Civil Code of Quebec⁴⁷, in Article 1431 of the Civil Code of California⁴⁸. However, the Commercial (Economic) Code of Ukraine does not provide for such an obligation⁴⁹. Given the fact that entrepreneurs are professional participants in civil law transactions and must have increased responsibility, it would be appropriate to enshrine it in the legislation⁵⁰. That is, if debtors carry out business activities, their liability must be joint and several. The first ground for the occurrence of joint and several obligations in accordance with the legislation of Ukraine is the indivisibility of the subject (object) of an obligation (Article 541 of the Civil Code of Ukraine⁵¹). The legislation of most other states contains similar provisions. For example, V. Belov⁵² believes that “indivisibility in itself does not mean solidarity.” This provision is true for states the legislation of which contains the provision that if the object of the obligation is indivisible, it results in the emergence of not a joint and several, but an indivisible or joint obligation. It is necessary to distinguish two aspects of the manifestation of the indivisibility of the object of an obligation: influence on the manner of performance of the obligation (performance in parts) and on a plurality of per-

⁴⁰ https://zakon.rada.gov.ua/laws/show/995_920?lang=uk#Text. (Accessed 30. 05. 2023)

⁴¹ <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000005634379/>. (Accessed 30. 05. 2023)

⁴² <https://www.gesetze-im-internet.de/bgb/>. (Accessed 30. 05. 2023)

⁴³ <http://www.zakonrf.info/gk>. (Accessed 30. 05. 2023)

⁴⁴ http://base.spininform.ru/show_doc.fwx?rgn=1822. (Accessed 30. 05. 2023)

⁴⁵ http://base.spininform.ru/show_doc.fwx?rgn=3634. (Accessed 30. 05. 2023)

⁴⁶ http://base.spininform.ru/show_doc.fwx?rgn=51. (Accessed 30. 05. 2023)

⁴⁷ <http://www.justice.gouv.qc.ca/english/sujets/glossaire/code-civil-a.htm>. (Accessed 30. 05. 2023)

⁴⁸ <http://leginfo.ca.gov/faces/codesTOCSelected.xhtml?toc-Code=CIV&tocTitle=+Civil+Code+-+CIV>. (Accessed 30. 05. 2023)

⁴⁹ https://www.businesslaw.org.ua/wp-content/Economic_Code%20Eng.pdf (Accessed 04.07.2023).

⁵⁰ S.V. SARBASH, *Execution of a contractual obligation by a third party*, Moscow, 2003.

⁵¹ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁵² V.A. BELOV, *Solidarity of obligations (general teaching and some complicating moments – alternative, provision, change of persons, termination)*, cit., pp. 52-89.

sons in the obligation (which is the basis of solidarity in the obligations under Article 541 of the Civil Code of Ukraine⁵³). Ukrainian and foreign researchers have often noted that it is an increase in the number of creditors and debtors that allows the indivisibility of the object to be manifested in full. The divisibility of other objects of civil rights has been neglected by the legislator and has been little researched in modern publications or covers only some cases of indivisibility of the object of obligation, such as the work by D. Trut⁵⁴. Single-object negative obligations are usually indivisible obligations. Both divisible and indivisible obligations can be single-object positive obligations for the transfer of things, performance of works and provision of services, depending on their ultimate result. In multi-object alternative obligations, the choice between objects is indivisible. Individual accessory obligations (pledges) are indivisible, although the debt itself may be divisible⁵⁵.

In a bilateral contract, the transfer of an indivisible object is governed by joint and several obligations, while the transfer of a divisible object (such as money) follows the rules of partial obligations unless stated otherwise in the contract⁵⁶. Judges of the Supreme Court of Ukraine emphasize this in their commentary⁵⁷. In addition, this is confirmed by examples of world legislation, which is similar to the legislation of Ukraine in this area. The law specifically establishes the case when a monetary obligation also becomes joint and several: according to Part 5 of Article 619 of the Civil Code of Kazakhstan⁵⁸, Part 1 of Article 707 of the Civil Code of the Russian Federation⁵⁹, several contractors are recognized as joint debtors and joint creditors in case of indivisibility of the object of an obligation (for example, a house). According to S. Sarbash⁶⁰, contractors may jointly demand payment of money, and customers are joint and several debtors in this case. Special grounds for the emergence of joint and several obligations include the indivisibility of the obligation's object, including succession in relation to indivisible obligations, as well as agreements involving quasi-subjective (collective) entities (a married couple – Article 65 of the Family Code of

⁵³ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁵⁴ D.V. TRUT, Termination of passive solidary obligations under civil law, in *Business in Law*, 1 (2013) pp. 17-20.

⁵⁵ H. HRYTSENKO, *Plurality of persons in civil liability, cit.*, pp. 81-95 ss.

⁵⁶ H. HRYTSENKO, *Plurality of persons in civil liability, cit.*, pp. 81-95 ss.

⁵⁷ A.H. YAREMA – V.YA. KARABAN – V.V. KRIVENKO – V.H. ROTAN, *Scientific and practical commentary to the Civil Legislation of Ukraine*, Sevastopol, 2004.

⁵⁸ http://base.spinform.ru/show_doc.fwx?rgn=3634. (Accessed 30. 05. 2023)

⁵⁹ <http://www.zakonrf.info/gk>. (Accessed 30. 05. 2023)

⁶⁰ S.V. SARBASH, *Execution of a contractual obligation by a third party, cit.*

Ukraine⁶¹, members of a simple partnership – Article 1138 of the Civil Code of Ukraine⁶²). All other special grounds are grounds for the emergence of joint and several liabilities. In particular, the following examples can be distinguished⁶³:

1. Contracts establishing joint and several liabilities: without regard to the will and without the knowledge of one of the debtors, but with the consent of the creditor; beyond the will of the parties under direct instructions.
2. Torts (Part 1 of Article 1190, Part 2 of Article 232 of the Civil Code of Ukraine⁶⁴) and special torts (Part 2 of Article 1188 of the Civil Code of Ukraine⁶⁵); torts in the form of action (officers of a company - Article 63 of the Law of Ukraine “On joint-stock companies”⁶⁶ and liquidator – Part 6 of Article 95 of the Law of Ukraine “On restoring the solvency of debtor or declaring it bankrupt”⁶⁷) and inaction (officers of a company) – Article 63 of the Law of Ukraine “On joint-stock companies”⁶⁸, which caused losses); torts caused by quasi-subjective entities (a group of business entities - Articles 52, 55 of the Law of Ukraine “On protection of economic competition”⁶⁹, parents – Articles 33, 1178-1183 of the Civil Code of Ukraine, members of a simple partnership – Articles 1138, 1143 of the Civil Code of Ukraine, full members of general and limited partnerships – Part 1 of Article 119, Part 1 of Article 124, Part 1 of Article 133 of the Civil Code of Ukraine⁷⁰, Parts 5, 6 of Article 80 of the Commercial Code of Ukraine⁷¹, Part 1 of Article 66 of the Law of Ukraine “On business partnerships”⁷², members of Additional Liability Companies – Part 2 of Article 151 of the Civil Code of Ukraine⁷³).
3. Legal transactions that form complexes of legal relations, the parties to

⁶¹ https://kodeksy.com.ua/simejni_kodeks_ukraini.htm. (Accessed 30. 05. 2023)

⁶² <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁶³ H. HRYTSENKO, *Plurality of persons in civil liability*, cit., pp. 81-95.

⁶⁴ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁶⁵ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁶⁶ <https://zakon.rada.gov.ua/laws/show/514-17#Text>. (Accessed 30. 05. 2023)

⁶⁷ <https://zakon.rada.gov.ua/laws/show/2343-12#Text>. (Accessed 30. 05. 2023)

⁶⁸ <https://zakon.rada.gov.ua/laws/show/514-17#Text>. (Accessed 30. 05. 2023)

⁶⁹ <https://zakon.rada.gov.ua/laws/show/2210-14#Text>. (Accessed 30. 05. 2023)

⁷⁰ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁷¹ https://www.businesslaw.org.ua/wp-content/Economic_Code%20Eng.pdf (Accessed 04.07.2023).

⁷² <https://zakon.rada.gov.ua/laws/show/1576-12#Text>. (Accessed 30. 05. 2023)

⁷³ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

which bear joint and several liabilities (indirect leasing – Part 1 of Article 808 of the Civil Code of Ukraine, commercial concession – Part 3 of Article 1119, Article 1123, issuance and endorsement of securities – Part 1 of Article 198 of the Civil Code of Ukraine⁷⁴).

4. Unilateral transaction (refusal of a legal entity to approve actions of its founders – Part 4 of Article 96, Part 3 of Article 153 of the Civil Code of Ukraine⁷⁵, Part 3 of Article 26 of the Law of Ukraine “On business partnerships”⁷⁶, Part 1 of Article 12 of the Law of Ukraine “On joint-stock companies”⁷⁷).

5. Breach of contractual joint and several obligations: damages and penalties are paid jointly and severally, regardless of who violated the obligation.

6. Succession (in case of division and separation of legal entities – Part 5 of Article 107, Part 3 of Article 109 of the Civil Code of Ukraine, Part 5 of Article 85, Part 5 of Article 86 of the Law of Ukraine “On joint-stock companies” or if it is impossible to determine the successor for sure – Part 6 of Article 107, Part 4 of Article 109 of the Civil Code of Ukraine, Part 2 of Article 82 of the Law of Ukraine “On Joint-Stock Companies”)^{78,79}.

Civil law obligations involving a plurality of persons present a research gap that necessitates further investigation. The relevance of studying this topic lies in forming an objective concept of these obligations, developing new doctrinal approaches, and enhancing our understanding of the grounds for their emergence. Through the application of various scientific methods, this article aims to contribute to the existing knowledge and provide a comprehensive examination of civil law obligations involving a plurality of persons.

5. Conclusions

Scientists distinguish such types of obligations with a plurality of persons as partial and joint and several. A partial obligation implies the right of creditors to demand its performance, and the obligation to perform this obligation by the debtor depending on the share allocated to it. Unless oth-

⁷⁴ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁷⁵ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁷⁶ <https://zakon.rada.gov.ua/laws/show/1576-12#Text>. (Accessed 30. 05. 2023).

⁷⁷ <https://zakon.rada.gov.ua/laws/show/514-17#Text>. (Accessed 30. 05. 2023).

⁷⁸ <https://zakon.rada.gov.ua/laws/show/435-15/ed20230610#Text> (Accessed 04.07.2023)

⁷⁹ <https://zakon.rada.gov.ua/laws/show/514-17#Text>. (Accessed 30. 05. 2023).

erwise agreed, all shares are considered equal. In the case of the indivisibility of the subject of the obligation, joint and several obligations are established. In case of joint and several obligations of the debtors, the creditor may require that all debtors jointly perform the obligations; that any debtor individually performs the obligation in whole or in part; that the part not received from one of the debtors is compensated by other joint and several debtors. If joint and several obligations have been performed by one debtor, it releases the other debtors from the performance of the obligation to the creditor. The debtor that has fulfilled the joint and several obligations has the right of recourse against other debtors in equal shares, less its share.

The analysis of the case law shows that the number of creditors may increase when an obligation already exists. In this aspect, there are different times of grounds for the emergence of a plurality of persons and the reasons for the emergence of obligations involving a plurality of persons. There may be general and special grounds for the emergence of obligations involving a plurality of persons. The general grounds are those grounds that give rise to any obligations with a plurality of persons, inter alia, active, passive, mixed, partial and joint and several obligations. The article also describes general grounds for the emergence of an obligation involving a plurality of persons. It should be noted that one of the reasons for the emergence of civil law obligations with a plurality of persons is indivisibility, which is provided only for things in the current Civil Code of Ukraine. Unfortunately, the issue of the divisibility of other objects of civil rights is not regulated by the legislation. That is why these aspects should be regulated at the legislative level.

Abstract: The study of civil law obligations involving a plurality of persons is relevant due to the existing research gap and the need for a comprehensive understanding of this legal phenomenon. The purpose of the study is to investigate and gain a comprehensive understanding of the grounds for the emergence of civil law obligations involving a plurality of persons. The study utilized scientific methods as such analysis, synthesis, comparison, analogy, deduction, induction, and abstraction. Methods such as structural-functional analysis, comparative law analysis, and formal law analysis were employed. The study yielded key results, including classification of obligations into partial and joint and several, study of creditor claims and debtor performance options, determination of general and special grounds for obligations involving multiple persons, highlighting the role of indivisibility, as well as recommendations for legislative regulation of severability of objects of civil rights. In conclusion, this scientific article provides valuable insights into civil law obligations involving a plurality of persons. The study categorizes these obligations into partial and joint and several obligations, delineating the rights and responsibilities of creditors and debtors. The study identifies both general and special grounds for such obligations, highlighting the importance of indivisibility as a key factor.

Keywords: Ukrainian legislation - legal phenomena - debtor; creditor - complex parties