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## SUBSIDIARY LIABILITY AND PIERCING THE CORPORATE VEIL IN GERMAN LAW

*The paper provides a comprehensive scientific and legal analysis of the institution of subsidiary liability and the doctrine of lifting the corporate veil in German law as one of the most developed and conceptually balanced mechanisms for reconciling the principle of limited liability of a legal entity with the imperative of effective protection of creditors' rights. The study focuses on the exceptional nature of these legal instruments and their role in counteracting abuses of the corporate form that undermine the foundations of civil turnover and economic stability. The paper examines the doctrinal foundations of Durchgriffshaftung as a legal response to situations where the formal separation between a company and its participants or management is used in bad faith. Particular attention is devoted to the genesis and subsequent evolution of the concept of liability for the intentional destruction of a company's economic basis (Existenzvernichtungshaftung), as developed in the case law of the German Federal Court of Justice. The research traces the gradual transformation of this concept from a quasi-corporate liability mechanism into a construction grounded in general tort law, which significantly influenced its scope and practical application. Special emphasis is placed on the analysis of landmark judicial decisions (including Autokran, Bremer Vulkan and Trihotel), which played a decisive role in shaping the limits, criteria and legal nature of subsidiary liability in German jurisprudence. It is argued that the judicial reorientation of Existenzvernichtungshaftung towards tort liability contributed to preserving the autonomy of legal entities, strengthening legal certainty and predictability, and preventing an unjustified and arbitrary expansion of liability of shareholders and corporate managers. The paper concludes that the modern German model of subsidiary liability functions as an exceptional corrective instrument applied only in cases of manifest abuse of rights and gross violation of the principle of good faith (Treu und Glauben). It is substantiated that this model represents a conceptual compromise between the formal autonomy of the corporate structure and the requirements of substantive justice and creditor protection. The expediency of adapting selected doctrinal approaches and judicial standards of German law for the improvement of Ukrainian corporate and bankruptcy legislation is justified, taking into account the specific features of national law enforcement practice.*

**Keywords:** subsidiary liability, corporate veil, limited liability, creditor protection, corporate autonomy

## INTRODUCTION

In the current context of the development of the national legal system, the adaptation and implementation of best European practices in the field of commercial, corporate, and civil law is of particular importance. One of the key categories ensuring a balance of interests between the state, business, and creditors is, as already mentioned, the institution of subsidiary liability. Its study in the law of European countries is of considerable practical and theoretical importance for Ukraine, which is in the process of harmonizing its legislation with the *acquis* of the EU and strives to form an effective legal system in the field of economic relations.

Subsidiary liability in European legal doctrine is an instrument for ensuring the principle of fairness in contractual and corporate relations. In many EU countries, including Germany, this institution is used to prevent abuse by members of business associations and their managers. Analysis of the practices of this country allows Ukraine to improve its own mechanisms for holding accountable persons who, using formal limitations of their own liability, cause damage to creditors or the state.

The importance of the study also lies in improving the protection of creditors' rights. In the context of war and economic crisis, accompanied by an increase in corporate insolvency, the issue of expanding the grounds for subsidiary liability of managers and beneficiaries becomes particularly relevant. European experience in this area demonstrates examples of the effective application of preventive and compensatory measures that restore the balance of interests between debtors and creditors.

Studying the European model is important for Ukraine's

further integration into the EU legal space. The use of the doctrine of subsidiarity and relevant legal instruments will contribute to the harmonization of national legislation with European corporate governance standards and create the conditions for a transparent and predictable business environment. This, in turn, will have a positive impact on the investment climate, which is a strategic objective of the state.

The **PURPOSE** of the paper is to comprehensively analyze the doctrinal foundations, evolutionary stages, and functional mechanisms of subsidiary liability and piercing the corporate veil in German law, as well as to identify their role in balancing the principle of limited liability with the need for effective creditor protection. The study aims to systematize judicial approaches and doctrinal concepts shaping this institution and to assess their theoretical and practical significance for the development of corporate and insolvency law, including the possibility of adapting key elements of the German model to other legal systems.

## METHODS

The study employs a complex of general scientific and special legal research methods. In particular, the dialectical method is used to analyse the evolution of subsidiary liability and piercing the corporate veil in German law in their interrelation with the development of corporate and obligations law. The formal legal method is applied to examine the norms of German corporate, civil, and tort law, as well as to interpret the provisions of the GmbHG and the BGB.

The comparative legal method makes it possible to compare different doctrinal approaches and judicial practices concerning subsidiary liability and Durchgriffshaftung and

to assess their relevance for other legal systems. By means of the systemic and structural method, subsidiary liability is considered as a complex multi-level legal mechanism combining the principles of legal entity autonomy, good faith, and creditor protection. The method of case-law analysis is used to generalize the decisions of the Federal Court of Justice of Germany (in particular, the *Autokran*, *Bremer Vulkan*, and *Trihotel* cases), which allows for identifying the main patterns and directions of the doctrinal development of this institution.

## RESULTS

An analysis of the practice of applying subsidiary liability in EU countries shows that the experience of Germany, France, and Poland is most relevant for Ukraine. These countries have developed effective models that combine the protection of creditors' rights, the promotion of transparent corporate governance, and a balance of interests between the state and business.

The German experience is of fundamental importance due to its developed doctrine of corporate law. In Germany, the institution of subsidiary liability is closely linked to the principle of "Durchgriffshaftung" (piercing the corporate veil), which allows company participants and managers to be held liable in cases of abuse of legal entity status. This approach could be useful for Ukraine, where there are widespread cases of corporate structures being used to evade obligations or withdraw assets.

In the German private and corporate law system, the institution of subsidiary liability (*subsidiäre Haftung*) occupies a special place as a mechanism for ensuring a fair balance between the principle of limited liability of legal entities and the need to protect the rights of creditors. Its development has been closely linked to the doctrine of *Durchgriffshaftung* (piercing the corporate veil), which allows the court to hold participants or managers of an enterprise liable in cases of abuse of the company's legal personality.

The theoretical basis of the German model is the concept of legal entity autonomy, enshrined in § 13 GmbHG [1], according to which the participants of the company are not liable for its debts in excess of the amount of their contribution to the authorized capital. At the same time, judicial practice and special rules provide for exceptions to this rule when limited liability becomes a tool for fraud or unfair management.

It should also be noted that when considering the institution of subsidiary liability in German law, one cannot limit oneself to its positive legal dimension. In this case, a complex multi-level structure emerges, which, on the one hand, is based on the fundamental principles of legal entity autonomy (*Trennungsprinzip*) and, on the other hand, reflects doctrinal evolution and judicial creativity that developed in response to the challenges of economic practice. In this context, it appears that subsidiary liability in German law is not only a technical legal means of protecting creditors, but above all an instrument of conceptual balance between the formal limitation of business risks and substantive justice in the field of corporate relations.

Thus, the first step towards forming the doctrine was the well-known decision of the BGH in the *Autokran* case, where the court recognized the removal of the corporate veil (*Durchgriffshaftung*) as permissible in cases of obvious mixing of the assets of the participants and the company. In this case, the Federal Supreme Court ruled that the controlling

company was liable to the lessor of the dependent companies for unpaid rent. Seven limited liability companies leased construction cranes from the plaintiff. Due to non-payment of rent, the lessor went to court and obtained a judgment in his favor for a total amount of DM 700,000, but in the course of enforcement of the judgment, he received only DM 40,000. The plaintiff went to court, demanding payment of the balance by the company that controlled the tenants. The claim was upheld. The court found that the controlling company had a significant influence on the activities of the tenants. Under the agreements, it could receive funds directly from the tenants' customers and was entitled to the profits of the dependent companies. The court ruled that, under these circumstances, the controlling company should also be liable for the tenants' debts [*Piercing the corporate veil*]. Thus, it was demonstrated that absolute adherence to the principle of legal entity separation cannot be applied where it becomes an instrument of manipulation and violates the nature of the legal order itself.

The further development of the institution is linked to the doctrine of *Existenzvernichtungshaftung* (liability for destruction of existence), conceptually formulated in the *Bremer Vulkan* case [2-3]. Here, it was not just a matter of formal mixing of assets, but of deliberately undermining the economic basis of the company's existence by withdrawing its capital without proper compensation. This doctrine enshrined in German law the idea that a participant who abuses the corporate form and destroys the company's ability to function loses the advantage of limited liability.

However, in the *Trihotel* decision [4], the Federal Court took a significant step towards systematising and doctrinally organising this practice by transferring *Existenzvernichtungshaftung* to the realm of tort liability under § 826 BGB [5]. Thus, the court departed from the doctrine of lifting the corporate veil, noting that liability for the "destruction of the existence" of a company is an internal liability, and only the administrator in insolvency proceedings, not the creditor, can file a corresponding claim with the court. In addition, the previous individual approach to resolving liability issues was replaced by a tortious one [5].

This meant a fundamental rethinking: from now on, the claim is not a direct right of the creditor, but is realized as a claim of the company itself, which significantly reduces the risk of destroying the autonomy of the legal entity and is consistent with the general logic of civil law.

From a scientific perspective, this evolution is extremely revealing. It demonstrates how judicial practice, without going beyond the limits of positive law, gradually builds a coherent structure of subsidiary liability, which at the same time limits the arbitrariness of participants and preserves the attractiveness of the corporate form for entrepreneurship. Thus, in the German legal system, subsidiary liability is not a permanent sanction, but an exceptional legal remedy that is applied only in cases of obvious abuse of rights and violation of the principle of good faith.

Thus, modern doctrine defines the limits of *Durchgriffshaftung* (piercing the corporate veil). The Federal Court clearly articulates that its use is permissible only in exceptional cases: when there is a commingling of assets, gross abuse of corporate form, or intentional evasion of obligations. Thus, German law maintains a balance between excessive rigidity and the danger of arbitrarily expanding the scope of liability.

Theoretically, this evolution marks a departure from the

idea of subsidiary liability as a “bypass rule” to its perception as an instrument of systemic harmonization. After all, Existenzvernichtungshaftung (liability for destruction of existence) is now considered not in isolation, but in conjunction with the principle of good faith (Treu und Glauben), tort law, and the general logic of creditor protection. This allows the institution to be kept within the bounds of legal certainty without turning it into a source of legal uncertainty or “casuistische Rechtsprechung” (casuistic justice).

Thus, the modern doctrine of subsidiary liability in Germany embodies the idea of limited but consistent removal of the corporate veil, applied as a last resort when other legal mechanisms prove ineffective. It reflects a mature compromise between the need to ensure the predictability of corporate law and the requirement to prevent its abuse. In a theoretical context, this doctrine is a prime example of how a legal system based on formal legal precision can incorporate corrective instruments that guarantee not only formal but also substantive justice in the sphere of corporate relations.

### CONCLUSIONS

The conducted analysis demonstrates that the German model of subsidiary liability represents a conceptually balanced and doctrinally mature mechanism for reconciling the principle of limited liability with the imperative of effective creditor protection. Its evolution, from the early judicial recognition of Durchgriffshaftung in cases of asset

commingling to the refined doctrine of Existenzvernichtungshaftung illustrates how judicial practice can gradually construct a coherent system without undermining the autonomy of the legal entity. By relocating liability for the “destruction of corporate existence” into the sphere of tort law and confining the right of action primarily to insolvency administrators, German law has succeeded in limiting arbitrary expansions of liability while preserving legal certainty and the economic attractiveness of the corporate form. Subsidiary liability thus functions not as a routine sanction, but as an exceptional corrective instrument grounded in good faith and the prevention of abuse.

From a comparative perspective, this experience is of particular relevance for Ukraine, where challenges related to asset stripping, abuse of corporate structures, and formal adherence to limited liability remain widespread. The German approach offers a methodological framework for developing a national doctrine of subsidiary liability that avoids mechanical transplantation and instead emphasizes systemic coherence, judicial restraint, and conceptual clarity. Incorporating such principles into Ukrainian law could contribute to strengthening creditor confidence, enhancing corporate governance standards, and ensuring a fair balance between entrepreneurial freedom and responsibility, thereby aligning domestic practice with advanced European legal traditions.

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## СУБСИДІАРНА ВІДПОВІДАЛЬНІСТЬ ТА ПРОНИКНЕННЯ ЗА КОРПОРАТИВНУ ЗАВІСУ В НІМЕЦЬКОМУ ПРАВІ

У статті здійснено комплексний науково-правовий аналіз інституту субсидіарної відповідальності та зняття корпоративної вуалі в німецькому праві як одного з найбільш розвинених механізмів забезпечення балансу між принципом обмеженої відповідальності юридичної особи та необхідністю ефективного захисту прав кредиторів. Досліджено доктринальні засади формування Durchgriffshaftung як виняткового засобу реагування на зловживання корпоративною формою, а також еволюцію підходів судової практики Федерального суду Німеччини до відповідальності за умисне знищення економічної основи наявності компанії (Existenzvernichtungshaftung). Особливу увагу приділено аналізу ключових судових рішень (Autokran, Bremer Vulkan, Trihotel), які відіграли визначальну роль у концептуалізації меж застосування субсидіарної відповідальності та її системному включенні до загальної логіки цивільного і деліктного права. Обґрунтовано, що трансформація Existenzvernichtungshaftung у сферу деліктної відповідальності сприяла збереженню автономії юридичної особи та підвищенню правової визначеності, одночасно обмеживши ризики надмірного та довільного розширення відповідальності учасників і менеджменту. Зроблено висновок, що сучасна німецька модель субсидіарної відповідальності має характер виняткового коригуючого інструменту, що застосовується лише у разі очевидного зловживання правом і порушення принципу добросовісності. Доведено, що такий підхід забезпечує концептуальний компроміс між формальною автономією корпоративної структури та вимогами матеріальної справедливості. Аргументовано доцільність застосування доктринальних напрацювань німецького права для вдосконалення національного корпоративного та банкрутного законодавства України з урахуванням особливостей вітчизняної правозастосовної практики.

**Ключові слова:** субсидіарна відповідальність, корпоративна завіса, обмежена відповідальність, захист кредиторів, корпоративна автономія