VISEGRAD JOURNAL
ON HUMAN RIGHTS

№ 1,2026

VISEGRAD JOURNALON HUMAN RIGHTS
№ 1, 2026

Editorial board

Indexed in: «Index Copernicus International» (Poland);
Directory Indexing of International Research Journals (CiteFactor, USA); «Academic Resource Index» (ResearchBib, Japan);
«Polska Bibliografia Naukova» (PBN, Poland): «Directory of Research Journals Indexing» (DRJ, India)

www.vjhr-journal.sk ISSN 1339-7915

Publisher:

Uzhhorod National University
Faculty of Law
Kapituľna, 26 Uzhhorod

Public organization
«LEX PRO OMNES»
Mierová, 2529 Humenné

Public organization
«Association of International
Educational and Scientific Cooperation»
Kapituľna, 26 Uzhhorod

Contents

HUMAN AND CITIZEN RIGHTS AND FREEDOMS IN THE ADMINISTRATIVE-LAW FRAMEWORK OF UKRAINE

Andriyko Olga, Bezzubov Dmytro, Skrypniuk Oleksandr, Nagrebelny Volodymyr

DOI: https://doi.org/10.61345/1339-7915.2026.1.1

Annotation. The article provides a comprehensive doctrinal analysis of human and citizen rights and freedoms within the administrative-law framework of Ukraine, which is shaped by constitutional provisions, contemporary trends in the development of public administration, and challenges associated with martial law and transformations in the national security sector. It is established that administrative law is not merely a branch designed to organize the functioning of the executive power, but also one of the key instruments for ensuring, safeguarding, and restoring an individual's legal status under the operation of public-authority mechanisms. The philosophical, methodological, and normative dimensions of protecting individual rights in the sphere of public administration are examined, including the categories of administrative procedure, discretion, legal risk, preventive activity, and state coercion.

Special attention is devoted to shaping a balance between the human-centered nature of the constitutional order and the socio-centered needs of public authority under threats to national security. It is demonstrated that the mechanisms of administrative law ensure the integrity of this balance through procedures of legal certainty, proportionality, reasoned decision-making, accountability, and accessibility of legal protection. The role of institutions of administrative liability and judicial review as elements of guaranteeing human rights in interactions with executive authorities is analyzed.

It is generalized that modern administrative law of Ukraine forms a space in which public authority is obliged to act on the basis of law and in the interests of the individual. Under wartime conditions, this space acquires additional substance, becoming a sphere for protecting life, freedom, security, dignity, and the social resilience of citizens. The article develops an authorial concept of the administrative-law provision of rights and freedoms, combining doctrine, legislative provisions, and the practical needs of state-building.

Key words: human rights, citizen freedoms, administrative law, public administration, administrative procedure, discretion, proportionality, administrative liability, public authority, national security.

1. Introduction.

The contemporary legal system of Ukraine increasingly demonstrates that modern administrative law is ceasing to perform purely authoritative-managerial functions aimed at regulating the activity of executive authorities. It is acquiring the status of a system of public guarantees at the center of which are the rights, freedoms, and lawful interests of the individual and the citizen. This transformation results from a doctrinal shift from a state-centered to a human-centered model of legal thinking, in which public administration is viewed not as the exercise of authoritative powers but as service to the individual.

In the context of European integration and martial law, the issue of ensuring citizens' rights and freedoms in the sphere of public administration becomes particularly significant. The quality of administrative-law mechanisms determines not only the effectiveness of executive authorities, but also the level of citizens'

trust in the state, the legitimacy of its actions, and the resilience of the constitutional order. The rule of law, which is the foundation of the European legal order, requires that any state interference with human rights and freedoms occur exclusively on the basis of law, in compliance with the principles of legal certainty, proportionality, and predictability.

The relevance of the topic is reinforced by the need for a doctrinal understanding of the role of administrative law in ensuring human rights and freedoms not only as a regulatory instrument, but also as a mechanism of personal legal security. At the same time, it is important to examine how administrative procedures, administrative liability, and the system of public control can guarantee the realization of human rights and freedoms, rather than merely restricting them in the public interest.

2. Analysis of publications.

Considering the scientific positions of V.B. Averianov, O.F. Andriiko, O.V. Skrypniuk, S.V. Golovaty, Yu.S. Shemshuchenko, I.V. Lutsky and other scholars, it can be concluded that the problem of human and citizen rights and freedoms in the administrative-law framework of Ukraine.

3. The purpose of the article is to analyze administrative law as a branch that ensures the realization, safeguarding, and protection of human rights within the system of public administration, and to clarify the doctrinal, institutional, and procedural foundations of this process.

Achieving this purpose requires solving the following tasks: to analyze scholarly approaches to the correlation between administrative law and human rights; to identify mechanisms for the realization of human rights in the activities of executive authorities; to characterize guarantees of administrative appeal, oversight, and judicial protection; and to formulate directions for improving legislation in the context of European standards of good governance and the rule of law.

4. Presentation of the main material.

The Constitution of Ukraine has enshrined a basic axiom of the modern legal order: the human being, their life and dignity are recognized as the highest social value, and the activity of the state is directed toward affirming and ensuring human rights and freedoms. This provision has not only a declarative, but also a normative-programmatic meaning, as it determines the vector of development of the entire system of public administration, including administrative law as its normative legal expression. At the constitutional level, rights and freedoms acquire the status not merely of a legal object of protection, but of a fundamental category that shapes the limits and the substance of public authority activity.

According to Articles 3, 8, 19, 55, and 64 of the Constitution of Ukraine, human rights determine the content and direction of state activity, and executive authorities may act only on the basis, within the limits of their powers, and in the manner provided by the Constitution and the laws of Ukraine. This lays the foundation for the fundamental doctrine of the legal limitation of public power, which precludes arbitrary interference in the sphere of citizens' rights and freedoms. Accordingly, administrative law appears not as a system of means by which the state influences the individual, but as a mechanism for implementing constitutional guarantees and for controlling the exercise of authoritative powers. It is at the level of administrative-law regulation that the rule of law acquires practical meaning, being transformed into concrete mechanisms for protecting the person from excessive state interference.

The Concept for the Protection of Human Rights and Freedoms in Ukraine, adopted in 2019 and developing constitutional provisions, states that the state must ensure the creation of effective mechanisms of legal protection, access to justice, and equality of all before the law. The content of this Concept indicates a gradual evolution of state policy from a declarative to a functional level of guaranteeing rights, in which administrative law plays a key role. Through administrative procedures, the system of administrative justice, and bodies of oversight and appeal, the constitutional right of citizens to an effective remedy is

implemented, as provided for by Article 55 of the Constitution of Ukraine and Article 13 of the European Convention on Human Rights.

In the constitutional-law system, the rule of law is regarded not only as a formal principle of organizing power, but also as a value-based and axiological category. In this sense, administrative law should develop as an instrument for ensuring the rule of law, where the main object of regulation is not the authoritative competence of executive authorities, but the rights and freedoms of the individual in relations with the state.[1] Ukrainian legal scholars see this as the principal feature of the modern Ukrainian model of administrative law, which should be based on the unity of the rule-of-law state and the social state, where human rights become the measure of the effectiveness of public administration.

In the context of Ukraine's integration into the European legal space, the interconnection of the Constitution of Ukraine with international standards for human rights protection acquires particular importance. The European Convention on Human Rights, the case law of the European Court of Human Rights, and Council of Europe documents on the principles of good governance form a normative field for modernizing administrative-law institutions. Their influence is manifested in the development of the concept of proportionality, the certainty of administrative procedures, access to information, and the publicity of administrative decisions. Importantly, in the European legal order, human rights are treated not only as a subject of judicial protection, but also as a principle of organizing administrative activity that has direct effect at the level of every executive authority.

In this context, administrative law serves as a kind of 'bridge' between constitutional principles and the practice of public administration. It transforms constitutional provisions on dignity, freedom, equality, and justice into specific norms, procedures, and forms of activity of public authorities. It is precisely through administrative-law instruments that the state fulfills its duty to 'affirm and ensure human rights and freedoms' (Article 3 of the Constitution of Ukraine). In this sense, administrative law is not limited to the normative expression of state will but becomes a dynamic system of legal guarantees that shapes a new quality of public administration - accountable, open, and person-oriented.

Therefore, the constitutional-law foundations of ensuring human rights form the primary level at which administrative law realizes its social mission. It combines formal-legal certainty with the value dimension of law, turning the rule of law from a declaration into an effective criterion for the legality of executive authorities' actions. It is in this plane that administrative law reveals its genuine potential to be not an instrument of imperative power, but a guarantee of dignity, justice, and human security in a democratic state [2].

In national legal doctrine and international standards of democratic governance, a key idea has become established: national security is not only the protection of territories or institutions, but above all the protection of human rights, freedoms, and dignity. The Constitution of Ukraine clearly enshrined this approach in Article 3, according to which 'the human being, their life and health, honor and dignity, inviolability and security are recognized as the highest social value'. In systemic connection with the provisions of Articles 17, 29, 64, and 92 of the Basic Law, this norm is transformed into a conceptual formula: without law there is no secure life; without security there is no law.

Such an understanding causes a radical reorientation of emphases in the sphere of national security. Its aim becomes not the abstract stability of the state, but the realization and protection of constitutional rights and freedoms under real threats - both from external aggressors and from internal destructive processes. In this context, national security acquires an anthropocentric (human-centered) meaning, in which state functions are secondary to human needs [3].

National security cannot be treated as a state of isolated protection detached from the value-based and legal system of the state. Its criteria, sources of legitimacy, and the limits of the powers of security actors - all these elements must derive from the Constitution of Ukraine as the supreme legal act that determines the boundaries of what is permissible even in periods of extreme challenges. That is why security policy must have a constitutional-law vector, be not only effective, but also lawful, proportional, and controllable.

The experience of the full-scale war has shown that national security which does not rely on institutional guarantees of human rights loses not only legitimacy, but also capacity. Violations of rights, arbitrary restrictions, unjustified secrecy, and unexplained procedures do not strengthen security; on the contrary, they generate internal instability, reduce trust in the state, demoralize society, and complicate the achievement of strategic goals.

Therefore, at the current stage of shaping state policy in the field of national security, it is necessary to rethink security as a function of public law, based on such doctrinal principles as: the rule of law as a method of risk governance; the inviolability of basic rights even in periods of extraordinary circumstances; procedural certainty and accountability of security bodies' actions; and legal rehabilitation and restoration of rights after the end of an emergency regime.

All the above-mentioned principles require reflection both in law enforcement and in updating the constitutional doctrine of national security - as a phenomenon grounded in law rather than only in force.

In the constitutional model of Ukraine's national security, civil society is regarded not only as a subject of democratic control and participation in decision-making, but also as an independent object of security protection. This position is substantiated both by internal transformations of the public space under conditions of war and by external challenges related to hybrid threats, information aggression, attempts to undermine trust in institutions, and manipulations of public sentiment.

The Constitution of Ukraine does not directly use the term 'civil society'; however, through a number of articles it establishes the foundations for its functioning (Article 15 - ideological diversity; Article 34 - freedom of thought and speech; Article 36 - freedom of association; Article 38 - the right to participate in the administration of state affairs; Article 39 - the right to peaceful assembly). These provisions form a foundation of guarantees for the functioning of civil society as a sphere of free self-organization of citizens in the form of parties, associations, initiatives, media, expert structures, charitable organizations, and volunteer movements.

Under wartime conditions, there is a need to constitutionally conceptualize civil society as an object of national security in three dimensions:

1. Social resilience – civil society organizations play a critical role in maintaining social cohesion, humanitarian support, mobilizing resources, and communication between the state and the population.

2. Information security - independent media, public analytical centers, and fact-checking platforms act as a counterweight to disinformation, facilitate a rational public discourse, and help counter information attacks.

3. Preventing institutional erosion - the function of oversight over public authority, anti-corruption activity, and the protection of rights and freedoms ensures the stability of democratic institutions and the legitimacy of security decisions.

In this context, it is proposed to:

– recognize, within national security legislation, a separate section devoted to protecting civil society as a component of national security;

– identify threats directed against civil society institutions (repressive interference, discreditation, institutional exhaustion, manipulative capture);

– include representatives of civil society in consultative bodies in the field of security at the national and regional levels (in particular, within the National Security and Defense Council, regional military administrations, and strategic planning);

– introduce mechanisms for protection against disinformation influence aimed at demoralizing volunteer initiatives, humanitarian sabotage, and provocations by hostile structures;

– ensure the legal and physical protection of volunteers, civic activists, and independent journalists, including in combat zones and in de-occupied territories.

Thus, recognizing civil society not only as a subject but also as an object of national security corresponds to the spirit of the Constitution of Ukraine, the principle of human-centrism, and modern standards of democratic security. Without its preservation, resilience, and legal protection, it is impossible to realize the strategic goal of a secure, lawful, and free society even under martial law [4].

Ensuring human rights and freedoms is a defining criterion of the legitimacy of the modern state, and administrative law is its principal instrument that ensures the practical realization of these rights within the system of public administration. Through mechanisms of administrative governance, the state transforms constitutional values into real guarantees, giving the individual the possibility to effectively exercise their rights rather than merely possess them formally. In this context, standards both national, formed within the legal system of Ukraine, and international, setting global benchmarks for democratic governance - are of key importance.

National standards of administration in the sphere of human rights and freedoms are embedded in the Constitution of Ukraine; the Laws 'On Citizens' Appeals', 'On Administrative Procedure', 'On the Security Service of Ukraine', 'On the National Police', 'On the National Security of Ukraine', as well as numerous sectoral normative acts. Their common purpose is to ensure legality, equality, openness, and accountability in the activity of executive authorities. The Constitution of Ukraine (Articles 3, 8, 19, 55) enshrines a fundamental principle: human rights and freedoms determine the content and direction of state activity, and public authorities are obliged to act only on the basis, within the limits of their powers, and in the manner provided by law. This prescription forms the legal foundation of a national standard of administrative conduct of the state - the principle of legal certainty and proportionality of administrative impact [5].

An important role in the formation of a modern system of national standards was played by the adoption of the Law of Ukraine 'On Administrative Procedure' (2022), which initiated a new era of public administration. For the first time, it consolidated universal principles of the administrative process - the rule of law, officiality, impartiality, proportionality, the right to be heard, reasoned decisions, openness, and predictability. This law forms a procedural framework through which the constitutional principle of respect for human dignity is realized. Its adoption marks the transition of Ukrainian administrative law from a post-Soviet model of governance to a European model of service-oriented administration, in which the citizen is a partner rather than a subordinate of the state.

An important component of national standards is also administrative justice, which embodies the right to a fair trial and effective protection against acts of public authority. The Code of Administrative Procedure of Ukraine (2005) enshrined the principle of public responsibility of authorities, and the case law of the Supreme Court gradually shapes standards of law enforcement in cases concerning violations of human rights in the sphere of administration. Thus, national standards in Ukraine constitute a multi-level system encompassing both normative prescriptions and administrative procedures, law-enforcement practice, and judicial review.

International standards of administration in the field of human rights have a universal character while also providing a comparative dimension for the development of national law. A central place among them is occupied by documents of the United Nations, the Council of Europe, and the European Union, as well as the case law of the European Court of Human Rights. The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the European Convention on Human Rights (1950) affirm principles that became the foundations for administrative standards: legality, good governance, an effective remedy, publicity, and proportionality.

The case law of the ECHR is of particular significance for Ukrainian administrative law because it forms 'living law' - standards of good administration. Judgments in Kudla v. Poland, Klass v. Germany, Öneryildiz v. Turkey, and Hirvisaari v. Finland established that the state must ensure not only the legality of administrative decisions, but also their quality, reasonableness, and foreseeability. The judicial doctrine of good governance includes three components: the state's duty to act reasonably and in the interests of the individual; ensuring access to information and the right to be heard; and ensuring effective review of

administrative decisions by an independent body. These principles constitute the core of modern European administrative law, into which Ukraine is gradually integrating.

An important reference point for the national system is also the European Code of Good Administrative Behaviour (2001), adopted by the European Parliament. It systematically defines ethical and procedural principles of public administration: impartiality, proportionality, equality, the right to be heard, the right to a reasoned decision, good faith, and transparency. This document became the basis for establishing a unified standard of relations between the state and the citizen, where administrative action cannot be arbitrary and every public competence has a moral and legal boundary.

In addition to the European level, standards of good administration are also formed within global initiatives - particularly the UN principles of good governance (1999), which emphasize the rule of law, effectiveness, accountability, public participation, and respect for human rights. In international governance indicators (World Bank Governance Indicators, UNDP Human Development Index), the rule of law and the quality of public administration are identified as key indicators of national security and sustainable development.

It is important that Ukraine, having ratified a number of international treaties and strategic documents, has undertaken to harmonize its administrative legislation with EU standards. European integration processes imply not only the implementation of directives but also strengthening institutional capacity - creating a stable civil service, transparent decision-making procedures, and effective control and monitoring. Such harmonization does not mean copying; it presupposes the creative development of the Ukrainian model of administrative law based on European principles of the rule of law, good governance, and the primacy of the individual [6].

Thus, national and international standards of administration in the sphere of ensuring human rights and freedoms constitute a unified, multi-level system in which national legislation, international treaties, and judicial practice interact as elements of an integral legal space. This interaction creates conditions for forming a qualitatively new culture of public administration - administration based on dignity, transparency, and legal accountability. Ultimately, it is the integration of national and international standards of administration that guarantees that human rights will cease to be a declaration and will become a real, functioning mechanism of state policy [7].

The axiomatic method occupies a special place in the science of administrative law because it allows a system of legal regulation to be built not on random assumptions or situational political decisions, but on immutable values and principles that constitute the foundations of the legal order. In the sphere of ensuring human rights and freedoms, this method plays not only a gnoseological, but also a constructive function, because it is through it that the state forms legal architectonics in which rights are not proclaimed, but realized through a stable system of norms, procedures, and guarantees.

In the classical sense, an axiom is a proposition the truth of which does not require proof because it follows from the very nature of things. In law, axiomaticity is expressed through principles that are recognized as self-evident for any democratic society: human dignity, the rule of law, justice, equality, proportionality, and humanism. These principles are not the result of opportunistic lawmaking; they are metaphysical foundations of law, its natural core. Thanks to the axiomatic method, such fundamental truths are fixed in the system of positive law, transforming moral imperatives into standards of conduct for public authorities.

In the context of the legal provision of human rights and freedoms, the axiomatic method performs the function of ontological stabilization of law. When society experiences crisis periods - war, social cataclysms, economic turbulence - it is legal axioms that preserve the inviolability of legal landmarks. The person cannot be a means of policy; dignity is not subject to limitation; no expediency can justify arbitrariness. These postulates have a universal character and serve as a measure of the legality of any administrative decision. Therefore, the axiomatic method is not an abstract philosophy, but a concrete instrument for testing the actions of public authorities for compliance with the value foundations of law [8].

Applying the axiomatic approach in administrative law makes it possible to form a system of value constants that determine the character of public administration. Thus, the rule of law is not merely a legal

formula, but an axiom that precedes any normative decision. The principle of proportionality is an axiom of equilibrium between the state interest and human rights. The principle of legal certainty is an axiom of the predictability of public authority. Together they form a logical system in which every norm of administrative law must be tested for compliance with the axiomatic core a kind of 'constitution' of legal thinking.

The axiomatic method is also a means of integrating national and international law. International human rights standards enshrined in UN, Council of Europe, and EU instruments are not merely treaties; they are manifestations of universal legal axioms that operate equally in all democratic states. When Ukrainian administrative law implements these standards, it effectively reproduces the axiomatic level of law that unites different legal systems by common principles of humanism, justice, equality, and responsibility. In this way, the axiomatic method becomes a methodological bridge between national and international legal consciousness.

In contemporary administrative-law scholarship, the axiomatic approach is increasingly used as an instrument for evaluating the quality of lawmaking and law enforcement. Its essence lies in the fact that any normative act or administrative decision is checked for compliance with basic legal axioms - dignity, freedom, legality, responsibility, and equality. If a norm contradicts an axiom, it cannot be considered part of law, even if it is formally adopted by the state. Thus, the axiomatic method creates a kind of filter of legal legitimacy that separates the legal from the non-legal, the just from the merely formally lawful.

Axiomatic thinking is also a prerequisite for the ethicalization of public administration. When an official perceives law not as an instruction, but as a system of value truths, their decisions acquire a moral dimension. They act not because it is ordered, but because it is just and lawful. This type of administrative culture corresponds to modern European standards of good administration, in which the effectiveness of public administration is inseparable from moral responsibility.

Therefore, the axiomatic method is not only a scholarly tool for understanding law, but also a practical means of its development. It makes it possible to combine normative certainty and spiritual substance, legal precision and humanistic orientation. In the sphere of ensuring human rights and freedoms, the axiomatic method ensures the stability of the legal order, serving as a safeguard against arbitrariness, political pressure, and moral relativism. Through it, administrative law becomes not merely a branch of public administration, but a space of justice in which human dignity is not the goal of regulation, but its indisputable axiom.

The effectiveness of ensuring human rights and freedoms is not a quantitative indicator of the activity of state institutions, but a qualitative characteristic of the maturity of the legal system, which determines its ability to turn normative declarations into real guarantees. It reflects not only the state of legislation, but above all the level of the state's responsibility to the individual, the measure of citizens' trust in public authority, and the degree of internal coherence between law, power, and morality. In this sense, effectiveness is not only a managerial category, but first and foremost a legal and axiological one, because it is in it that the living nature of the rule of law is revealed.

In modern legal understanding, effectiveness in the sphere of human rights and freedoms manifests itself in the state's ability to create legal mechanisms that ensure three interrelated processes: preventing violations, rapid and fair restoration of violated rights, and forming a stable culture of legality. These processes form a dynamic cycle in which law functions not as a reaction to a problem, but as a system of safeguards and incentives. Such effectiveness has not only a normative, but also a moral basis: it is impossible without public authorities' sense of serving the individual.

The legal dimension of the effectiveness of ensuring human rights and freedoms lies in the combination of three elements - normative, procedural, and value-based. The normative element determines how clearly, logically, and systematically legislation fixes rights, obligations, and guarantees. The procedural element reflects the quality of administrative processes, the transparency, accessibility, and reasonableness of decisions by public authorities. The value-based element testifies to the conformity of administrative practice with humanistic principles of law dignity, justice, good faith, and proportionality. It is their unity that forms legal effectiveness in the profound sense.

It is important that, in a rule-of-law state, effectiveness is measured not only by the result, but also by how it is achieved. In the sphere of human rights and freedoms, it is unacceptable to equate effectiveness with expediency, because legal means must be morally and legally justified. Hence follows a principle that may be called the axiom of legal effectiveness: no goal can justify a violation of human rights. This postulate affirms that the effectiveness of the state cannot be the antipode of humanity. In a legal system, a result is meaningless without a legitimate, lawful, and morally acceptable way of attaining it.

Under martial law, the issue of effectiveness acquires special significance because public administration is carried out under restrictions affecting fundamental rights. However, even in such circumstances, effectiveness must rely on the principle of proportionality - that is, commensurability between the need to ensure security and the preservation of basic freedoms. A state that is capable of guaranteeing rights even in wartime demonstrates the highest level of legal maturity. This is the criterion of genuine legitimacy of public authority - its capacity to remain lawful even when circumstances test the boundaries of legality.

In the context of administrative law, the effectiveness of ensuring human rights and freedoms means the harmonious functioning of a public administration mechanism in which executive authorities not only comply with norms, but also actively form an environment of trust. It is about creating such procedures and standards that minimize the possibility of abuse of power, ensure predictability of administrative decisions, and guarantee everyone's right to be heard. This requires not only legal technique, but also a profound transformation of administrative culture - a transition from administrative coercion to administrative partnership.

A significant role in shaping effectiveness is played by the mechanism of control and supervision, which ensures the legal accountability of public authority. Control is not a restriction, but a form of feedback through which law maintains its effectiveness. Public, parliamentary, and judicial oversight create a multi-level system of guarantees that makes arbitrariness impossible. It is thanks to such oversight that administrative law fulfills its social function - to be an artery of trust between public authority and society [9].

International legal experience confirms that the effectiveness of human rights protection is simultaneously a measure of the effectiveness of the state. In numerous judgments, the ECHR emphasizes that rights must be 'practical and effective, not theoretical and illusory'. This approach directly correlates with the Ukrainian doctrine of public administration, in which human-centrism acquires not a rhetorical, but a procedural meaning. As a result, a model of law is formed that not only proclaims freedoms but embodies them in the real actions of public authorities.

Thus, the effectiveness of the legal provision of human rights and freedoms is the result of the coherence of legal norms, moral values, and administrative actions. It reflects the level of institutional resilience of the state, its ability not only to declare rights, but also to implement them through transparent procedures, accountability, and trust. In the contemporary dimension, effectiveness means not the power of coercion, but the power of trust; not the severity of the law, but its humanity; not external control, but an internal awareness of responsibility. This is the legal meaning and civilizational purpose of administrative law - to make human freedom not an object of protection, but a natural form of life in a rule-of-law state.

5. Conclusions.

Modern administrative law appears not simply as a branch of public administration, but as a universal mechanism for ensuring and protecting human rights, combining legal logic, moral responsibility, and public trust. It is increasingly transforming from an instrument of exercising state power into a form of legal partnership between the state and the citizen, in which the central content is service to law rather than the will of the governing subject.

Within Ukraine's legal system, a profound transformation of the administrative-law paradigm is taking place: from state-centrism to human-centrism and further - to socio-centrism, which combines the protection

of the individual with overarching social responsibility. This transition indicates the formation of a new model of public administration in which human rights are viewed not as constraints on the state, but as the meaning of its existence.

Ensuring rights and freedoms is impossible without the development of clear national and international standards of administration. Ukraine is gradually integrating European principles of good administration, the rule of law, proportionality, and good governance into its legal system. In this process, administrative law becomes a space for reconciling internal and external values - moral, legal, and political - into a unified system of rule-of-law statehood.

A special place in this context belongs to the axiomatic method, which performs the function of the methodological core of administrative law. Through it, immutable legal truths are fixed - dignity, justice, equality, legality, and responsibility. The axiomatic approach provides law with internal stability and makes it possible to distinguish the legal from the merely formally lawful, the morally just from the politically expedient.

The effectiveness of the legal provision of human rights and freedoms serves as the final criterion of the quality of public administration. It is expressed in the ability of law to anticipate, prevent, and respond fairly to violations, creating an atmosphere of trust between public authority and society. In the contemporary dimension, effectiveness is determined not by the force of compulsion, but by the force of trust; not by the strictness of the law, but by its humanity; not by external supervision, but by an internal awareness of responsibility.

Administrative law, in its renewed form, appears as the moral and legal framework of public administration in which the highest values of legal civilization are concentrated - dignity, freedom, justice, and security. Its development is not only a scholarly, but also a state-building task, because the quality of Ukrainian statehood depends on the level of its humanism.

Ultimately, it is through administrative law that the modern idea of a rule-of-law state is realized: not the state above the person, but the state for the person; not power as coercion, but power as service. Here lies its highest manifestation of effectiveness - the ability to protect freedom without violating its essence and to ensure order without devaluing human dignity.

References:

1. Averianov, V. B. (2004). Administrative law of Ukraine. Academic course: In 2 vols. Vol. 1: General part. Yurydychna Dumka.

2. Andriiko, O. F. (2004). Control in the sphere of executive power: Organizational and legal foundations. Naukova Dumka.

3. Skrypniuk, O. V. (2015). Constitutional foundations for ensuring human rights and freedoms in Ukraine. Naukova Dumka.

4. Shemshuchenko, Yu. S. (2020). State, law, and the human being: Interaction in the face of contemporary challenges. V. M. Koretsky Institute of State and Law, NAS of Ukraine.

5. Bezzubov, D. O., & Koval, M. V. (2024). Value dimensions of administrative law in the national security system. Bulletin of the National Academy of Legal Sciences of Ukraine, 31(4), 167–180.

6. Tsvietkov, V. V. (2021). Public administration in the field of national security: Legal mechanisms of implementation. National Academy for Public Administration under the President of Ukraine.

7. Lipkan, V. A. (2008). Theory of national security. KNT.

8. Kaminska, N. V. (2016). International information security in the context of globalization and integration. In International law: Today's challenges: Proceedings of the international scientific and practical internet conference (pp. 22–27). KNUTE.

9. Petryshyn, O. V. (2018). Legal doctrine and its role in state-building. Pravo.

Olga Andriyko,
Corresponding member of the National Academy of Sciences of Ukraine
Doctor of Law, Professor
V. M. Koretsky Institute of State and Law of
National Academy of Science of Ukraine
Department of Public Administration and Administrative Law
V. M. Koretsky Institute of State and Law, NASU
E-mail: idpnan219@gmail.com
ORCID: 0000-0002-7507-3090

Dmytro Bezzubov,
Doctor of Law, Professor
V. M. Koretsky Institute of State and Law of
National Academy of Science of Ukraine
Department of Public Administration and Administrative Law
V. M. Koretsky Institute of State and Law, NASU
E-mail: dbezzubov@ukr.net
ORCID: 0000-0001-7183-5206

Oleksandr Skrypniuk,
Candidate of Law
Senior Researcher, Department of Constitutional Law and
Local Self-Government
V. M. Koretsky Institute of State and Law of
National Academy of Science of Ukraine
E-mail: Alexander.Skrypniuk@gmail.com
ORCID: 0000-0001-5620-7762

Volodymyr Nagrebelny,
Candidate of Law,
Corresponding Member of the National Academy of Sciences of Ukraine,
Deputy Director of the V. M. Koretsky Institute of State and Law
E-mail: idpnan219@gmail.com
ORCID: 0000-0003-4201-4243

RIGHT TO MEDICAL AUTONOMY: REFUSAL OF TREATMENT AS AN ELEMENT OF PERSONAL FREEDOM

Bielova Myroslava, Byelov Oleh

DOI: https://doi.org/10.61345/1339-7915.2026.1.2

Annotation. The right to refuse medical treatment represents one of the most complex intersections of personal freedom, medical ethics, and legal regulation. This article examines the theoretical and legal foundations of the patient's right to refuse medical intervention, tracing its evolution from paternalistic medical practice to the modern autonomy-centered paradigm. Drawing on international legal instruments, including the Oviedo Convention and the Charter of Fundamental Rights of the European Union, as well as the case law of the European Court of Human Rights, notably the Grand Chamber's decision in Pindo Mulla v. Spain, the article establishes that the right to refuse treatment constitutes an independently recognized subjective right rooted in the principles of personal autonomy, bodily integrity, and human dignity.

The article analyzes the doctrine of informed consent as the legal foundation upon which the right to refuse is built, emphasizing that genuine informed refusal presupposes both awareness and voluntariness. Particular attention is paid to the limits of this right, which are determined by the patient's legal capacity, the nature of the medical situation, and the legal validity of advance directives. The study further addresses the theoretical tension between patient autonomy and the physician's duty of beneficence, arguing that these principles are not mutually exclusive: in situations involving a competent patient, autonomous will takes priority, while beneficence is realized through ensuring the quality of the decision-making process rather than overriding the patient's choice.

A comparative dimension is incorporated through analysis of regulatory approaches in France, Germany, the Netherlands, Italy, the United Kingdom, and Japan, revealing a pan-European doctrinal convergence toward recognizing informed refusal as a legally enforceable right. The article concludes that the absence of a unified legislative mechanism in Ukraine for implementing the right to refuse treatment, coupled with vague legality criteria and gaps in defining medical professionals' liability, necessitates systematic legal reform aligned with European standards.

Key words: medical autonomy, right to refuse treatment, informed consent, patient rights, bodily integrity, beneficence, European Court of Human Rights.

1. Problem statement.

The right to medical autonomy is one of the fundamental manifestations of personal freedom of a person, which organically combines constitutional guarantees of personal integrity, the right to health care and the right to free development of the personality. At the same time, the implementation of this right in the area of refusal of treatment gives rise to a number of acute legal conflicts: a clash of interests between the patient and the medical institution, competition between the principle of respect for personal autonomy and the state's obligation to protect the life and health of citizens, as well as the issue of the legal consequences of such a refusal for all participants in medical legal relations.

This problem becomes particularly acute in cases where refusal of treatment may lead to the death of the patient or serious consequences for his health, as well as when it comes to persons with limited legal

capacity, minors or patients in critical condition, unable to consciously express their will. In such situations, law enforcement practice is faced with the lack of clear legislative mechanisms that would allow balancing patient autonomy with medical, ethical and legal requirements. Despite the fact that Ukrainian legislation formally enshrines the patient's right to refuse medical intervention, the legal regulation of this institution remains fragmentary and lacking in systematization. The lack of a unified mechanism for implementing the right to refuse treatment, the vagueness of the criteria for its legality and the gaps in determining the responsibility of medical professionals necessitate a comprehensive scientific study of the above-mentioned issues.

2. Analysis of recent research and publications.

The issue of patient medical autonomy and the right to refuse treatment is at the intersection of medical law, bioethics and constitutional law, which determines the interdisciplinary nature of its study. In domestic legal science, certain aspects of the legal regulation of medical legal relations were studied by S. Stetsenko, V. Stetsenko, I. Senyuta, who considered the rights of patients in the context of the general concept of medical law of Ukraine. The issues of informed consent and its reverse side, informed refusal, were partially covered in the works of Y. Shatkovska, N. Bolotina and O. Yaroshenko within the framework of the study of civil law regulation of the provision of medical services.

In foreign doctrine, the right to medical autonomy has received much more thorough development. The conceptual foundations of patient autonomy are laid down in the works of T. Beauchamp and J. Childress ("Principles of Biomedical Ethics"), who formulated the principle of respect for autonomy as one of the four basic principles of biomedical ethics. The legal aspects of refusal of treatment are actively studied in Anglo-Saxon legal doctrine - in particular, in the works of J. Muller, R. Fayden, etc., as well as in the practice of the European Court of Human Rights, which in its decisions has repeatedly addressed the issue of the relationship between Article 2 (right to life) and Article 8 (right to respect for private life) of the Convention for the Protection of Human Rights and Fundamental Freedoms in the context of medical decisions.

3. The article aims to explore the theoretical and legal foundations of the patient's right to refuse medical intervention, determine its legal nature and place among the subjective rights of a person, and clarify the regulatory basis and limits of the implementation of this right in the light of modern approaches to the doctrine of medical law and the case law of the European Court of Human Rights.

4. Presentation of the research material.

The origins of the patient's right to refuse treatment should be sought in the formation of the concept of personal autonomy as the basis of the legal status of a person. For a long time, a paternalistic approach dominated medical practice, in which the doctor was considered the only competent subject for making decisions about treatment. This concept was based on the presumption: it is the doctor's medical knowledge that determines what is best for the patient, and therefore the patient should obey the medical decision [10, p. 1974]. The turning point occurred in the 1950s–1970s, when public attention to human rights, the Nuremberg Code, and subsequent legal reforms significantly changed the nature of the relationship between the doctor and the patient. The key doctrinal premise of the modern right to refuse was the requirement of informed consent. Kim H.W. and Lee A. note that case law, in particular common law precedents, has established the doctrine of the priority of patient autonomy over medical paternalism even when refusal of treatment may result in the patient's death [1, p. 84]. Lewis J. and Holm S. in their theoretical study emphasize that the recognition of the patient as an autonomous subject in the context of clinical decision-making sets the limits within which the patient must be protected from paternalistic medical intervention: informed consent is the standard mechanism through which the patient exercises his sovereignty over his own body [7, p. 617].

In the English common law tradition, the right to refuse treatment is conceptually based on the principle of bodily integrity. Horn R. and Kerasidou A. establish that William Blackstone introduced this principle

into legal practice as early as 1765, and modern common law establishes that, provided that the patient is properly informed, he is not obliged to give reasons for refusing treatment [9, p. 406].

A parallel evolution has taken place in the continental legal tradition. The author of a comparative study, Varahala S., notes that France legislated the patient's right to refuse treatment in 2002 through the adoption of the so-called "Kushner Law", and the Netherlands has developed one of the world's broadest concepts of patient autonomy, encompassing both advance directives and the right to euthanasia [8]. In Germany, the individual right to refuse exists alongside a strong tradition of social and state responsibility and mutual trust between doctor and patient [8].

It should be noted that the international legal dimension of the patient's right to refuse treatment was formed primarily through the 1997 Council of Europe Convention on Human Rights and Biomedicine (Oviedo Convention). Article 5 of this document enshrines the principle of autonomy of will through informed consent as one of the main rights of the patient: medical intervention may be carried out only after the person concerned has given his free and informed consent. This norm also covers the reverse side - the right to withdraw such consent at any time.

The practice of the ECHR has also significantly influenced the doctrinal understanding of this right. The Court has consistently interpreted Article 8 of the ECHR (the right to respect for private and family life) as encompassing the right to self-determination and personal autonomy, including the freedom to consent to or refuse medical interventions. As established in a study of the ECtHR's practice on informed consent, complaints related to the lack of proper consent now concern not only a possible violation of Article 8, but also Article 3 of the ECHR (prohibition of inhuman treatment), when the treatment is particularly invasive [11, p. 489].

Of particular importance is the decision of the Grand Chamber of the ECtHR in the case of Pindo Mulla v. Spain, which is considered one of the most important in this area in recent years. The applicant, a Jehovah's Witness, had drawn up an advance directive before hospitalization with a categorical refusal of blood transfusion in any medical situation, even life-threatening. However, during the surgical treatment, the doctors, having received permission from the judge on duty, carried out a blood transfusion without the patient's knowledge and against her documented will [12]. The Court analysed the conflict between Articles 2 and 8 of the ECHR, the right to life and the right to personal autonomy, and found that compulsory medical intervention contrary to the clearly expressed and legally established will of a competent person is a violation of the Convention. This decision confirms that even the protection of the right to life cannot automatically justify ignoring the patient's right to refuse treatment [12].

The Charter of Fundamental Rights of the European Union also serves as an important normative reference point, Article 3 of which guarantees the right to physical and mental integrity of the person and, in the context of medicine, the right of the person to informed consent in accordance with the conditions established by law. In fact, these provisions form a normative minimum below which no Member State may fall in regulating medical relations.

The doctrine of informed consent is the legal foundation on which the right to refuse treatment is built. This doctrine itself has undergone a long evolution: from simply informing the patient about the planned intervention to the requirement to ensure his full understanding of the risks, alternatives and consequences of treatment. Fry M. in a 2024 study emphasizes that informed consent combines the right to be sufficiently informed with the right to agree to or reject medical intervention; at the same time, the researcher identifies three key limitations to the real autonomy of the patient: the "information gap" - a situation when the patient cannot fully comprehend the medical information provided due to its complexity; limited cognitive capacity; and the tendency to over- or under-estimate the risks of treatment [14].

A comparative study of the regulation of informed consent in Italy, France, Great Britain, Scandinavian countries, Germany and Spain, conducted in 2024 and published in the Journal of Forensic and Legal Medicine, found that in all the legal systems studied, informed consent is recognized as a mandatory requirement; the common standard is clear information about treatment, therapeutic alternatives and significant risks - mostly documented in writing [15]. In fact, this conclusion indicates the formed pan-

European doctrinal convergence on issues of informed consent. The distinction between voluntary and informed consent is fundamentally important. Abraham J. A. and Abraham S. P. emphasize that although the patient may be informed about his health condition, he will not always be able to make a free decision: pressure from family, medical staff or material circumstances can hinder the realization of autonomy [5, p. 126]. Thus, true informed consent and, accordingly, informed refusal, presupposes the simultaneous observance of two conditions: awareness and voluntariness.

In a broader doctrinal context, Lewis J. and Holm S. reveal that the practice of assessing the patient's capacity has formed a specific approach to autonomy, based on cognitive indicators: the ability to understand the information provided, assess the consequences of different options and formulate and communicate one's decision [7, p. 618]. These criteria become crucial precisely in situations of refusal of treatment: when a patient refuses life-saving therapy, verification of his capacity becomes a legally binding element of a legitimate refusal.

Thus, as we see, the right to refuse treatment and the right to informed consent are two sides of the same legal phenomenon. Refusal is the exercise of the right to not consent after receiving proper information. That is why the doctrine of informed consent is not only a procedural mechanism, but also a substantive legal basis for the patient's subjective right to refuse medical intervention.

Despite the established nature of the right to refuse treatment, its implementation in practice often faces complex legal conflicts. Central among them is the issue of patient capacity: the right to refuse is recognized only for those individuals who are able to independently understand and realize the consequences of their decision.

Pirotte B. D. and Benson S. argue that the first step in any situation of refusal of medical care is to establish the patient's capacity, which they define as the ability of a person to process information and make an informed decision in accordance with their own beliefs, values and wishes [2]. At the same time, they emphasize that the four principles of medical ethics, autonomy, beneficence, non-maleficence and justice, are not equivalent in each specific situation, and their balance depends on the circumstances of the case [2].

Marshall K.D. and co-authors in a 2024 paper (The American Journal of Bioethics) insist that competent adults have the legal right to make their own medical decisions, including refusing medical care even when the outcome would be death. The forcible confinement or physical or chemical restraint of a patient who has been found to have capacity is a documented violation of the law, both in tort and criminal law [16]. This conclusion is particularly relevant in the context of refusing treatment after resuscitation measures. The issue of advance directives is a separate doctrinal layer. Andoh B. examines a case where a patient's advance directive regarding blood transfusion was found to be legally invalid due to failure to comply with formal requirements. The author argues that while the right to refuse and the advance directive are important legal instruments, both have limitations in practical application [4]. In the study by Leal-Adorna M., it is established that if the patient is capable at the time of the proposed treatment, his or her currently expressed will (regardless of a previously drawn up directive) will always have priority. If the patient is incapable, advance directives or decisions of the legal representative come to the fore [13].

A separate category is emergency medical care situations. The recommendations of the European Society of Emergency Medicine state that if a doctor in an emergency situation establishes the patient's lack of capacity, the right to refuse treatment cannot be exercised: in such a case, the law presumes that a reasonable person would agree to treatment in order to avoid serious consequences [17]. At the same time, the recommendations emphasize that informed refusal is a process, not just a signature on a form [17], and therefore, even in conditions of urgency, medical professionals are obliged to take the patient's expressed will into account as much as possible.

Thus, the right to refuse treatment is not absolute. Its limits are determined by: the patient's capacity (in the absence of which substitute mechanisms are applied - advance directives or decisions of a representative); the nature of the medical situation (emergency narrows the scope for the implementation of the refusal); as well as the rights of third parties and the public interest. However, the above restrictions are of an exceptional nature and cannot be transformed into a general rule of disregard for the patient's will.

It should be noted that the central theoretical conflict of medical law is the confrontation between the patient's right to autonomy and the doctor's duty to act in the patient's best interests (the principle of beneficence). This tension has deep doctrinal roots and is often manifested in the practice of clinical decision-making. Conceptually, patient autonomy is often contrasted with doctor's beneficence in such a way that they seem to exclude each other: if the doctor is guided by beneficence, he "knows best" and can override the patient's decision; if autonomy dominates, the doctor is obliged to carry out the patient's will, even if he considers it harmful. However, such a binary construction is an oversimplification. Lewis J. and Holm S. in the study we have already cited advocate a phenomenological approach, according to which autonomy is not only a cognitive phenomenon, but includes the patient's practical identity - his values, cultural context and way of interacting with the world [7, p. 622]. This means that the full realization of autonomy requires the doctor not to be neutral, but to actively assist the patient in making an informed decision.

The author of a comparative study, Varahala S., proposes a "relational" model of autonomy, which recognizes that a patient's decisions are formed in a certain social and family context, and therefore, medical law must take into account both individual will and the network of relationships in which a person lives [8]. The same study provides a comparative illustration: in Japan, in the absence of advance directives or the need for life-saving intervention, hospitals usually provide treatment if it is absolutely necessary to save life, although a Japanese court has at the same time recognized the right of a Jehovah's Witness patient to refuse a blood transfusion on the basis of personal autonomy [8]. This example illustrates that even in systems with a strong paternalistic tradition, the right to refuse treatment is gradually gaining normative recognition.

The confrontation between autonomy and beneficence is particularly acute in psychiatry. A study in the British Journal of Psychiatry emphasizes that patient autonomy and beneficence are not polar principles, but should be considered as equivalent guidelines: society has a legitimate interest in the "good outcome" of treatment, and therefore a simple slogan of "more autonomy" cannot automatically solve complex clinical situations [18, p. 97]. At the same time, the authors insist: the patient should be an equal participant in decision-making, not a subordinate subject.

Thus, legal theory does not oppose autonomy and beneficence as incompatible values, but rather builds a hierarchy between them: in situations with a competent patient, his autonomous will is a priority; at the same time, the doctor retains the obligation to ensure the conditions for the formation of this will - by providing comprehensive information and eliminating pressure factors. Beneficence is realized not through the cancellation of the patient's decision, but through the quality of medical support for the process of making this decision.

5. Conclusions.

Thus, in our opinion, the patient's right to refuse treatment is an independent subjective human right, derived from the fundamental principles of personal autonomy, bodily integrity and human dignity. It is not exclusively a medical-ethical phenomenon, but has a clearly expressed legal nature and regulatory enshrined in international and national legal acts.

The doctrine of informed consent is the legal foundation of the right to refuse: refusal of treatment is the flip side of the right to informed consent. The full implementation of this right is possible only if both components of informed consent are observed: awareness and voluntariness.

The right to refuse treatment is not absolute. Its implementation depends on: the patient's legal capacity; the nature of the medical situation (ordinary or emergency); the availability and legal validity of advance directives. Lack of capacity does not deprive the patient of legal protection, but redirects decision-making to substitute mechanisms: advance directives or an authorized representative.

The practice of the ECHR confirms that refusal of treatment is a conventionally protected right under Article 8 of the ECHR, and even the protection of the right to life (Article 2) does not give the state the automatic right to forcible medical intervention contrary to the clearly documented will of a capable patient.

The theoretical conflict between patient autonomy and the doctor's beneficence is not insoluble: the modern doctrine of medical law establishes a hierarchy according to which the autonomous will of a capable patient is a priority, while the beneficence is implemented in the form of high-quality informational and procedural support for making this decision.

References:

1. Kim H. W., Lee A. How patient autonomy drives the legal liabilities of medical practitioners and the practical ways to mitigate and resolve them. Postgraduate Medical Journal. 2023. Vol. 99, No. 1168. P. 83–88. DOI: 10.1093/postmj/qgad003.

2. Pirotte B. D., Benson S. Refusal of Care. StatPearls. Treasure Island (FL): StatPearls Publishing, 2026. URL: https://www.ncbi.nlm.nih.gov/books/NBK560886/

3. Andoh B. The "Right" to refuse treatment. Medicine, Science and the Law. 2023. DOI: 10.1177/00258024221140660.

4. Andoh B. Right to refuse treatment upheld while advance directive failed. Medicine, Science and the Law. 2025. DOI: 10.1177/00258172241280435.

5. Abraham J. A., Abraham S. P. Patient Freedom to Choose or Refuse Treatment: Is Autonomy Upheld? IJSRM. Human. 2021. Vol. 19, No. 1. P. 124–134. URL: https://www.researchgate.net/publication/353854998_Patient_Freedom_to_Choose_or_Refuse_Treatment_Is_Autonomy_Upheld

6. Kim C. J. Ensuring Patients' Well-Deserved Right to Refuse Treatment, Not Jumping to an "Assisted Death With Dignity". Journal of Korean Medical Science. 2024. Vol. 39, No. 2. Art. e30. DOI: 10.3346/jkms.2024.39.e30.

7. Lewis J., Holm S. Patient autonomy, clinical decision making, and the phenomenological reduction. Medicine, Health Care and Philosophy. 2022. Vol. 25, No. 4. P. 615–627. DOI: 10.1007/s11019-022-10102-2.

8. Varahala S. Autonomy on Trial: Trust, Capacity, and the Doctor-Patient Divide in US Bioethics and Law. Voices in Bioethics. 2025. Vol. 11. DOI: https://doi.org/10.52214/vib.v11i.13957

9. Horn R., Kerasidou A. The Concept of Dignity and Its Use in End-of-Life Debates in England and France. Cambridge Quarterly of Healthcare Ethics. 2016. Vol. 25, No. 3. P. 404–413. DOI: 10.1017/S0963180116000050.

10. Kilbride M. K., Joffe S. The New Age of Patient Autonomy: Implications for the Patient-Physician Relationship. JAMA. 2018. Vol. 320, No. 19. P. 1973–1974. DOI: 10.1001/jama.2018.14382

11. Buelens W., Herijgers C., Illegems S. The View of the European Court of Human Rights on Competent Patients' Right of Informed Consent. Research in the Light of Articles 3 and 8 of the European Convention on Human Rights. European Journal of Health Law. 2016. Vol. 23, No. 5. P. 481–509. DOI: 10.1163/15718093-12341388

12. Pindo Mulla v. Spain [2024] ECHR 753: Grand Chamber judgment, 6 June 2024.

13. Leal-Adorna M. Informed Consent vs. Refusal of Treatment from a Legal Perspective: Spain and the Case of Adult Jehovah's Witnesses. Religions. 2025. Vol. 17, No. 1. Art. 7. DOI: 10.3390/rel17010007

14. Fry M. Autonomy and Its Limits: A Discussion of the Shortcomings of Informed Consent. Voices in Bioethics. 2024. Vol. 10. DOI: 10.52214/vib.v10i.12507.

15. Bolcato V., Franzetti C., Fassina G., Basile G., Martinez R. M., Tronconi L. P. Comparative study on informed consent regulation in health care among Italy, France, United Kingdom, Nordic Countries, Germany, and Spain. Journal of Forensic and Legal Medicine. 2024. Vol. 103. Art. 102674. DOI: 10.1016/j.jflm.2024.102674.

16. Marshall K. D. et al. Hospitals Are Not Prisons: Decision-Making Capacity, Autonomy, and the Legal Right to Refuse Medical Care, Including Observation. The American Journal of Bioethics. 2024. Vol. 24, No. 5. DOI: 10.1080/15265161.2024.2327293.

17. Recommendations on Informed Consent for European Emergency Departments. European Society for Emergency Medicine (EUSEM). URL: https://eusem.org/images/Patient_Informed_Consent_in_the_ED-FINAL.pdf.

18. Lepping P., Palmstierna T., Raveesh B. N. Paternalism v. autonomy — are we barking up the wrong tree? The British Journal of Psychiatry. 2016. Vol. 209, No. 2. P. 95–96. DOI: 10.1192/bjp.bp.116.181032

19. Bielov D. M., Hromovchuk M. V., Hretsa Ya. V., Tymchak V. V. Essence of somatic human rights in the process of biomedical research. Wiadomości Lekarskie. 2021. Vol. 74, No. 10. P. 2663–2667. DOI: 10.36740/WLek202110226

20. Myroslava V. Bielova, Viktoria I. Fridmanska, Viktoriia Yu. Svyshcho, Lesia V. Leshanych. Legal regulation of biomedical research: key principles and their implementation. Wiadomości Lekarskie Medical Advances, Volume LXXVII, ISSUE 10, October 2024. S. 2070-2076.

21. Bielov D., Hreca Ya., Shandra B., Bodnar S. The right to health care in the system of constitutional human rights: Theoretical and legal analysis of content and structure. Wiadomości Lekarskie Medical Advances. 2025. Vol. LXXVIII, Iss. 10. P. 2173–2179. DOI: 10.36740/WLek/213595. URL: https://www.wiadomoscilekarskie.pl/pdf-213595-133160?filename=The%20right%20to%20health%20care.pdf

Myroslava Bielova,
Doctor of Law, Professor,
Department of Constitutional Law and Comparative Law,
Faculty of Law,
Uzhgorod National University
ORCID: 0000-0003-2077-2342

Oleh Byelov,
Postgraduate Student, Department of Constitutional Law and Comparative Law
Uzhgorod National University
ORCID: 0009-0005-3272-9896

COMMUNICATION AS A MEANS OF INFLUENCE ON PUBLIC OPINION REGARDING THE ASSESSMENT OF THE NATIONAL POLICE ACTIVITIES

Bondarenko Viktoriia

DOI: https://doi.org/10.61345/1339-7915.2026.1.3

Annotation. The article examines communication as a means of influencing public opinion regarding the assessment of the National Police activities. The Roadmap on the Rule of Law in the context of Ukraine's accession to the European Union under Cluster 1 «Fundamentals of the EU Accession Process» provides for reforming the National Police activities with a focus on increasing public trust in the police. One way to strengthen police cooperation with civil society institutions and citizens is to communicate between representatives of the National Police and relevant departments to align police activities with the public need to ensure public safety and order under the legal framework of martial law. This determines the relevance of the research topic. The object of the study is the social relations in the field of communication between departments and officials of the National Police and citizens and civil society institutions in the context of the National Strategy for the Promotion of Civil Society Development in Ukraine for 2021–2026. The subject matter of the study is the legal provisions that regulate communication between the police and civil society institutions. The article analyses the impact of public opinion regarding police activities on the effectiveness of the performance of police duties under the legal regime of martial law, as well as the means and methods of communication of the National Police departments and officials to create a positive public opinion of police activities. Under martial law, the issue of effective communication between departments and officials of the National Police takes on significant importance, requiring the use of new forms and methods of informing the public. It is noted that national legislation lacks provisions setting out possible courses of action when assessing public opinion, particularly in the event of positive or negative public opinion, and, consequently, the effectiveness of the forms and methods of communication used. It is important to counter russia's information expansion.

Key words: public opinion, activities assessment, public trust, public control, the National Police.

1. Introduction.

The implementation of the Roadmap on the Rule of Law is a priority for the state in the context of European integration, as the level of public trust in the National police under martial law directly affects the effectiveness of the security and defence sector in repelling armed aggression by the russian federation [1]. An important stage in police reform was the amendment of the Law of Ukraine «On the National Police» regarding the introduction of the legal regime of martial law. The main idea behind the amendments was building trust towards the National Police, that is, to legally enshrine a partnership model of relations between society and the police. This model was effectively reflected in a key principle of police activities, which consists of the police's efforts to secure public trust and the support of citizens. The implementation of this principle of police activities has become a basic task for the law enforcement system; it directly influences the development of administrative legislation governing the National Police activities.

2. Analysis of scientific publications.

The issue of public trust towards the activities of state authorities in Ukraine is reflected in the works of V. Averianov, V. Bakumenko, V. Luhovyi, V. Kniaziev, M. Kovaliv, Z. Kisil, I. Koliushko, V. Ortynskyi, O. Obolenskyi, Y. Surmin and others. Scientific studies have investigated certain aspects of public assessment of state authorities' activities, in particular the analysis of the legislative framework, theory, methodology and practice of public administration decision-making, the implementation of administrative reform. However, the issue of evaluating the National Police activities in the context of cooperation with civil society institutions is not comprehensively discussed in the academic literature from the perspective of system analysis, and this requires further scientific research.

3. The purpose of this work is to examine public opinion as a criterion for evaluating the National Police activities.

4. Review and discussion.

Public opinion is the independent citizens' assessment of the positive and negative aspects of the activities of any subject or specific process. It arises under certain conditions and is formed by various objective and subjective factors. In the mechanism of interaction between society and police, aimed at ensuring public trust and support for police, it is necessary to consider the institution of public opinion regarding police activities.

The concept of «public opinion» is defined as the set of judgments prevalent within society and within specific social groups, expressing assessments of facts and events in public life, as well as people's attitudes towards these phenomena. Social consciousness is regarded as the set of theories, ideas and views that reflect actual social existence and the historical process within a specific period. Public opinion is a statistical snapshot of social consciousness, limited by the period over which data are collected.

The term «public opinion» is used in two senses: the opinion held by a significant number of people, or by members of a particular social group or subculture within society, and the prevailing view among members of the public. V. Pustovar notes that public opinion is one of the key social mechanisms influencing the content and direction of policy, particularly in a democratic system of government. It acts as a kind of corrective to government decisions, enabling the authorities to respond to public attitudes and maintain their political legitimacy and support [2, p. 93].

The search for the best form of government prompted discussions that turned to public opinion as the foundation of good governance. Civil society develops within the context of conflictual situations, as it encompasses many social groups, each with its personal, corporate and societal interests. Within these institutions in the sphere of public administration, clashes of interest arise due to the prioritisation of different values.

Conflicts can be situational and short-lived, or persistent and long-lasting. However, properly organised monitoring and analysis of social processes are clearly underestimated, and social factors are hardly ever taken into account in forecasts of socio-economic development. Such a situation leads to an escalation of social tensions.

Ya. Kovach clearly defined the purpose of public opinion monitoring. Accordingly, monitoring and assessment are key management processes aimed at achieving results. Assessment involves periodically comparing operations and/or results of activities against a set of explicit and implicit standards to improve activities [3].

The Law of Ukraine «On the National Police» (Part 3 of Article 11) stipulates that public opinion is the primary criterion for assessing police activities [4].

The scholars have attempted to define the concept of «public opinion regarding the National Police» and to expand its meaning and the mechanism by which it is applied. According to S. Subota, public opinion is

used on a daily basis to assess the actions and decisions of both individual police officers and the internal affairs authorities as a whole. Depending on the results of their activities, this assessment may be positive, negative or neutral. The assessment is influenced by the extent to which police activities align with generally accepted values, interests and social attitudes [5, p. 60].

The police, like other state authorities, will always be under close public scrutiny. The National Police's ineffective media relations are not a problem for the public that breeds mistrust, but rather a problem for the National Police, which must carry out systematic and effective work in this area to foster a positive public perception of police activities.

A. Kubaienko suggests that public opinion regarding the National Police is a form of social consciousness, in which the attitudes of various groups of people towards police activities and their assessment are manifested. This evaluation arises from the individual characteristics of respondents under the influence of environmental factors, performs supervisory, directive and administrative functions, and influences public administration in the sphere of internal affairs. According to the researcher, the traditional model, based on post-factum responses and hierarchical management, is gradually losing its effectiveness under modern conditions, where preventive risk management, community engagement and the integration of digital technologies are becoming essential [6, p. 118–119].

The essence of police activities is determined as public information activities carried out by state authorities, aimed at building trust between citizens and the police, and fostering an objective assessment of their work through the provision of comprehensive and accurate information on the results of law enforcement activities. These activities must be carried out using the digital platform of the Ministry of Internal Affairs of Ukraine as a public service. A digital platform for the provision of public services should be regarded as a complex entity comprising a set of information technologies and/or information systems, and/or software for electronic computers, through which various participants interact [7, p. 356]. This is consistent with the European Union's experience of digitising public services [8].

Public opinion regarding the National Police serves as a form of public control over police activities. It is rather difficult to determine the actual level of public trust towards the National Police, because the data from various sociological research centres differ significantly. Public opinion not only serves an informational and evaluative function (since the public's assessment of law enforcement services is one of the key indicators of results), but also acts as a means of public control.

Monitoring public opinion of police activities can certainly be regarded as a special form of public control over police activities. Continuous monitoring of public opinion is an invaluable resource for improving the effectiveness of police activities. A qualitative assessment of the National Police activities makes it possible to identify operational issues that require organisational responses.

Based on public opinion, we will obtain a powerful and objective tool for evaluating police activities. Only an open dialogue with civil society can ensure that the police take on board constructive public suggestions on how to improve their work. Consequently, studying public opinion is vital today, as it enables us to improve police activities.

M. M. Prokofiev, in examining the administrative and legal foundations for building trust, asserts that public trust is fostered through a variety of means. Public trust and support are key principles determining police activities. They are established in the Law of Ukraine «On the National Police», which defines the functional essence of the police. Public trust towards the police is built on a system of factors and conditions rooted in public opinion, which is formed by both external influence and internal, personal, subjective interactions between citizens and the police [9, p. 242].

Public opinion can be used as one of the key criteria for the official assessment of police activities in a given area.

In the research on the effectiveness of police activities in relation to road safety, S. S. Yesimov notes that public opinion is one of the main criteria for evaluating police activities [10, p. 195].

The results of sociological research should establish a dialogue with the public and help prevent breaches of the law and various abuses of authority by police officers. Furthermore, it is essential to take into account people's needs and expectations regarding police activities. When appealing to public opinion, there must undoubtedly be higher standards for the quality of information on which the public's assessment of police activities is based.

The analysis of public opinion is an essential condition for the existence of a democratic state. It is necessary to use this analysis to manage the functioning of various social institutions, including the police. The practical aspects of studying public opinion can be beneficial to society and make a significant contribution to the development of social institutions, particularly to the process of optimising police activities.

It should be noted that some authors propose a list of measures designed to improve public opinion regarding the National Police. For example, publishing up-to-date materials and reports on the National Police activities, creating public service announcements on law enforcement, covering the work of law enforcement officers in the media, public addressing of the heads of National Police bodies and departments at workplaces and public meetings, producing printed materials of an informational and preventive nature, and so on.

The academic literature contains critical views on the use of public opinion when assessing police activities. The issue of the effective and efficient use of public opinion in the management of law enforcement agencies is complex, multifaceted and controversial. It requires constant attention and further study. It is important to recognise that sociology does not solve practical problems. Even carefully formulated practical recommendations will remain a scientific curiosity unless they are followed by practical action.

The comments on the draft law «On the National Police» prepared by experts from the National Public Platform «Reforming the Ministry of Internal Affairs: Transparency and Responsibility» and the Human Rights Agenda state that the level of public trust towards the National Police is the primary criterion for assessing the effectiveness of the National Police bodies and departments. Trust is a rather complex indicator that does not always depend on activities, and therefore cannot be the main factor in assessing activities. It is proposed that the term «level of trust» should be replaced by the term «public opinion on the activities of ...» [11].

In this context, it is essential to keep the public informed about the findings of sociological studies on relations between the public and the police, so that the public knows that their views are not only taken into account but also actively put into practice. This leads to an increase in the public's self-esteem, civic engagement, and support and cooperation with the police in various forms of interaction. Scholars question the necessity and effectiveness of the police themselves conducting studies of public opinion regarding police activities.

The Law of Ukraine «On the National Police» provides for independent sociological organisations to survey public opinion on police activities through a tender process in accordance with the Law of Ukraine «On Public Procurement» [12].

An analysis of the views expressed by these legal experts and sociologists leads to the conclusion that public opinion regarding the National Police is highly influential. Firstly, monitoring public opinion on the National Police can be regarded as a unique and effective form of public control. Secondly, public opinion polls help to establish a continuous dialogue between the public and the police. Thirdly, public opinion regarding the National Police is being considered a criterion for assessing the effectiveness of police activities. Fourthly, public opinion enables the identification of significant problems in police activities and the elimination of breaches of the law and abuse by police officers. Fifthly, there is a link between public opinion, public trust and citizens' support for the police.

There are no provisions in Ukrainian legislation that indicate possible courses of action when assessing public opinion, particularly in the case of positive or negative public opinion. As historical experience in this area shows, the collection of public opinion on the police was subject to extremely weak legal regulation and was largely of an internal nature.

The Law of Ukraine «On the National Police» establishes an obligation to monitor public opinion regarding police activities and the police's interaction with civil society institutions.

The results of this monitoring must be regularly communicated to state bodies and local authorities, as well as to the public, via the media and the Internet.

Constant monitoring of public opinion regarding police activities is a method of conducting sociological research that ensures the continuous obtaining of information that reflects the public's views on police activities and the factors influencing those views.

The results of public opinion surveys on the National Police are published in print and online media in the form of summarised or structured sociological data. The work involved in conducting surveys of public opinion on police activities in specific regions of Ukraine constitutes research carried out with the aim of detailing the results of public opinion polls on police activities to identify and analyse the factors influencing the assessment of police effectiveness within a specific administrative-territorial unit.

Under martial law or a state of emergency, the assessment is temporarily suspended at the national level. The assessment will resume the following year once martial law or the state of emergency in Ukraine has been terminated or cancelled [13].

Public trust and support must be secured through a mechanism for monitoring public opinion regarding police activities. If the transparency and reliability of such monitoring cannot be guaranteed, it is unlikely that this legal mechanism will serve to enhance public trust towards the police or ensure adequate public support for law enforcement agencies.

Some scientists have noted a lack of universality and practicality in the research conducted by various sociological institutions to assess public opinion on police activities (NGO «Kharkiv Institute for Social Research», Kyiv International Institute of Sociology, Ilko Kucheriv «Democratic Initiatives» foundation, the Razumkov Centre's sociological service, and Taylor Nelson Sofres Ukraine LLC (TNS in Ukraine).

The Resolution of the Cabinet of Ministers of Ukraine «On the Approval of the Procedure for Assessing Public Trust towards the National Police» [14] sets out the criteria on which the assessment of public trust is based in accordance with the powers of the National Police as established by the Law of Ukraine «On the National Police»; and the degree of representativeness of social groups within the population.

However, during the pre-war period, the Ministry of Internal Affairs of Ukraine did not issue any regulatory acts addressing these issues. The practical value of public opinion surveys means that the results must be taken into account in police activities. At the same time, the public must be informed about how the results of monitoring public opinion on police activities are taken into account.

Under the Law «On the National Police», public opinion is a criterion for assessing police activities; consequently, the National Police must have a direct interest in the results of such assessments. The legislation must set out clear mechanisms providing for independent control over the monitoring of public opinion regarding police activities.

5. Conclusions.

Public opinion is a key criterion for evaluating police activities, enabling enhanced communication between the public and the police, diagnosing issues within police activities, and timely implementing measures to address and resolve them. Registration of public opinion on police activities is an important form of special public control over the National Police, enabling the establishment of a constant dialogue between the public and the police, the identification of significant problems in police activities, and the elimination of breaches of the law and police misconduct. This ensures the necessary level of public trust and support for the police. The results of monitoring public opinion on police activities may be regarded as an official assessment of police activities only if they are officially published in open sources.

The legality of law enforcement activities increase public trust and support for the police. The lawfulness of police activities increases public trust, and public trust compels the police to operate within the law. Therefore, it is important to involve the public in upholding this legal framework, which serves as a mechanism for enhancing public trust and support for the police.

References:

1. Cabinet of Ministers of Ukraine. (2025, May 14). Deiaki pytannia zabezpechennia perehovornoho protsesu pro vstup Ukrainy do Yevropeiskoho Soiuzu za klasterom 1 "Osnovy protsesu vstupu do YeS": Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 14.05.2025 No. 475-r [Some issues of ensuring the negotiation process on Ukraine's accession to the European Union under Cluster 1 "Fundamentals of the EU accession process": Order of the Cabinet of Ministers of Ukraine No. 475-r of May 14, 2025]. https://zakon.rada.gov.ua/laws/show/475-2025-%D1%80#Text

2. Pustovar, V. V. (2025). Vplyv hromadskoi dumky ta natsionalnoi svidomosti na formuvannia ekonomichnoi polityky [The influence of public opinion and national consciousness on the formation of economic policy]. Rehionalni studii – Regional Studies, 41, 89–94. https://doi.org/10.32782/2663-6170/2025.41.15

3. Kovach, Ya. V. (2025). Otsinka diialnosti orhaniv derzhavnoi vlady za napriamom "vzaiemodiia z hromadskistiu" [Assessment of public authorities' activities in the field of interaction with the public]. Naukovi perspektyvy – Scientific Perspectives, 1(55). https://doi.org/10.52058/2708-7530-2025-1(55)-1321-1328

4. Verkhovna Rada of Ukraine. (2015, July 2). Pro Natsionalnu politsiiu: Zakon Ukrainy vid 02.07.2015 No. 580-VIII [On the National Police: Law of Ukraine No. 580-VIII of July 2, 2015]. https://zakon.rada.gov.ua/laws/show/580-19#Text

5. Subota, S. I. (2018). Dovira naselennia yak kryterii otsiniuvannia efektyvnosti diialnosti Natsionalnoi politsii Ukrainy [Public trust as a criterion for evaluating the effectiveness of the National Police of Ukraine]. Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu – Scientific Bulletin of the International Humanities University, 31, 59–62.

6. Kubaienko, A. V. (2025). Modeli politseiskoi diialnosti: porivnialnyi analiz [Models of police activity: a comparative analysis]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: Pravo – Scientific Bulletin of Uzhhorod National University. Series: Law, 91(3), 110–121.

7. Yesimov, S. S. (2024). Tsyfrovi platformy u konteksti nadannia publichnykh posluh [Digital platforms in the context of public service provision]. Analitychno-porivnialne pravoznavstvo – Analytical and Comparative Jurisprudence, 4, 352–357. https://doi.org/10.24144/2788-6018.2024.04.56

8. Yesimov, S. S. (2024). Zarubizhnyi dosvid tsyfrovizatsii derzhavnykh posluh [Foreign experience of digitalisation of public services]. Analitychno-porivnialne pravoznavstvo – Analytical and Comparative Jurisprudence, 1, 386–390.

9. Prokofiev, M. M. (2020). Dovira hromadian do Natsionalnoi politsii: administratyvno-pravovi zasady formuvannia [Citizens' trust in the National Police: administrative and legal principles of formation]. Yurydychnyi naukovyi elektronnyi zhurnal – Legal Scientific Electronic Journal, 5, 239–242.

10. Yesimov, S. (2025). Ensuring traffic safety as a state function. Visegrad Journal on Human Rights, 2, 193–198. https://doi.org/10.61345/1339-7915.2025.2.27

11. National Civic Platform "Reforming the Ministry of Internal Affairs: transparency and accountability". (n.d.). Zauvazhennia do Proektu Zakonu "Pro Natsionalnu politsiiu" [Comments on the Draft Law "On the National Police"]. http://ccl.org.ua/wp-content/uploads/2013/07/zakon-policiya.pdf

12. Verkhovna Rada of Ukraine. (2015, December 25). Pro publichni zakupivli: Zakon Ukrainy vid 25.12.2015 No. 922-VIII [On Public Procurement: Law of Ukraine No. 922-VIII of December 25, 2015]. https://zakon.rada.gov.ua/laws/show/922-19

13. Cabinet of Ministers of Ukraine. (2022, December 9). Pro vnesennia zminy do punktu 6 Poriadku provedennia otsinky rivnia doviry naselennia do Natsionalnoi politsii: Postanova Kabinetu Ministriv Ukrainy vid 09.12.2022 No. 1380 [On amendments to paragraph 6 of the Procedure for assessing the level of public trust in the National Police: Resolution of the Cabinet of Ministers of Ukraine No. 1380 of December 9, 2022]. https://zakon.rada.gov.ua/laws/show/1380-2022-%D0%BF#n2

14. Cabinet of Ministers of Ukraine. (2018, February 7). Pro zatverdzhennia Poriadku provedennia otsinky rivnia doviry naselennia do Natsionalnoi politsii: Postanova Kabinetu Ministriv Ukrainy vid 07.02.2018 No. 58 [On approval of the Procedure for assessing the level of public trust in the National Police: Resolution of the Cabinet of Ministers of Ukraine No. 58 of February 7, 2018]. https://zakon.rada.gov.ua/laws/show/58-2018-%D0%BF#n18

Viktoriia Bondarenko,
PhD in Law, Associate Professor,
Professor at the Department of Language Skills Training,
Lviv State University of Internal Affairs
E-mail: qwsrty0304@gmail.com
ORCID: 0000-0003-2326-4394

TRAUMA-INFORMED APPROACH IN THE JUSTICE SYSTEM AND INTERNATIONAL LEGAL STANDARDS FOR THE PROTECTION OF VULNERABLE PERSONS

Bondarenko Yevheniia

DOI: https://doi.org/10.61345/1339-7915.2026.1.4

Annotation. The present article advances the proposition that the trauma-informed approach (TIA) constitutes, in contemporary international and European human rights law, not merely a professional best practice, but an emerging interpretive and operational framework through which binding obligations concerning the protection of vulnerable victims and witnesses are increasingly implemented. Contemporary justice systems are required not only to investigate and adjudicate cases effectively, but also to ensure that legal proceedings do not reproduce trauma or cause secondary victimisation. Methodologically, the article relies on an integrated legal-psychological analysis, combining doctrinal analysis of international and European legal standards with insights from trauma studies, victimology, vulnerability theory and ECtHR case law.

The article demonstrates that procedural insensitivity, including repeated questioning, victim-blaming reasoning, confrontational examination and failure to provide protective measures, may constitute a measurable and legally cognisable harm. It further argues that the Victims' Rights Directive, child-friendly justice standards, the Istanbul and Lanzarote Conventions, the Rome Statute, the Murad Code and ECtHR jurisprudence together form a coherent normative basis for trauma-informed justice.

The article identifies key obligations for States and competent authorities, including individual vulnerability assessment, prevention of secondary victimisation, adapted interviewing procedures, professional training and survivor-centred safeguards. The novelty of the article lies in conceptualising the trauma-informed approach as a normative bridge between trauma science, vulnerability theory and international legal standards for the protection of vulnerable persons in justice proceedings.

Key words: trauma-informed approach, secondary victimisation, vulnerability theory, Directive 2012/29/EU, Istanbul Convention; Murad Code, Lanzarote Convention, EctHR, Rome Statute, procedural protection.

1. Introduction.

The governance of legal proceedings involving vulnerable victims and witnesses of crime, sexual violence, and child abuse has undergone a fundamental normative transformation in the past two decades. What was once regarded as the province of therapeutic sensibility, adjusting the tone of an interview, providing adapted physical environments, or sequencing investigative steps to minimise distress, has progressively been incorporated into binding international and European legal instruments as a condition of procedural legality itself. For the purposes of this article, this development is important not only because it broadens the content of victims' rights, but also because it changes the understanding of what a fair and effective justice process requires. A justice system cannot be regarded as genuinely protective if its own procedures reproduce fear, shame, helplessness or distrust in persons whose participation it seeks to secure. The ECtHR made this shift most explicitly in *J.L. v. Italy* (2021), in which the Court held that judicial reasoning

reproducing sexist and moralising tropes directed at a sexual-assault survivor constituted secondary victimisation in violation of Article 8 of the Convention [29].

This article understands the development of trauma-informed justice through the interaction of two strands of scholarship and practice. The first is the development of vulnerability theory in legal scholarship and ECtHR jurisprudence, which has reframed vulnerability not as an individual deficit but as a universal human condition demanding institutional responsiveness [13, 14]. The second is the maturation of trauma science and victimology, which has empirically demonstrated that contact with legal institutions can itself intensify post-traumatic stress symptomatology in survivors of sexual and gender-based violence [5, 6]. Taken together, these approaches allow procedural protection to be analysed not as a benevolent addition to criminal justice, but as part of the State's obligation to organise proceedings in a manner compatible with human dignity, psychological safety and effective participation. This convergence should not be viewed as merely theoretical. It reflects the gradual formation of an international and European consensus that procedural indifference, including repeated questioning of a child, adversarial cross-examination of a rape survivor, or the reproduction of victim-blaming narratives in judicial reasoning, is not simply a failure of professional sensitivity. It may amount to a violation of legally protected rights.

The article therefore proceeds from the position that the protection of vulnerable victims and witnesses depends not only on the existence of formal rights, but also on the psychological and institutional conditions under which these rights are exercised in practice.

2. Analysis of scientific publications.

The scientific literature on trauma-informed justice has developed at the intersection of trauma studies, victimology, vulnerability theory and international human rights law. Foundational studies on trauma-informed care, including the SAMHSA framework, demonstrate that institutions may either support recovery and participation or reproduce harm through insensitive procedures [1]. Empirical research by Campbell, Orth, Smith and Freyd, and more recent studies on secondary victimisation and institutional betrayal show that legal, medical and social responses can aggravate the psychological consequences of the original offence and undermine victims' trust in justice institutions [5–9]. At the same time, vulnerability theory, particularly the works of Fineman, Mackenzie, Rogers, Dodds and Luna, provides a normative explanation of why legal systems must respond not only to individual characteristics of victims and witnesses, but also to situational and institutional factors that create or intensify vulnerability [10–12]. In the field of European and international legal scholarship, Peroni, Timmer, Heri, Liefaard, Mariotti and other authors have examined how vulnerability, child-friendly justice, victim-sensitive procedures and witness protection are gradually transformed into positive procedural obligations [13–17; 22]. However, despite the growing body of literature, trauma-informed justice is often analysed either as a psychological and professional practice or as a set of separate legal safeguards. Less attention has been paid to its cumulative normative meaning as an integrated legal framework connecting trauma science, vulnerability theory, secondary victimisation prevention and binding international and European standards. This gap determines the focus of the present article.

3. The aim of the work.

The present article pursues three objectives. First, it maps the conceptual foundations of the trauma-informed approach as they have migrated from clinical frameworks into the paradigm of legal obligation, with particular attention to the constructs of secondary victimisation and vulnerability. The article proceeds from the assumption that this movement is not a simple transfer of psychological terminology into legal discourse. Rather, it reflects a deeper change in the understanding of procedural justice, where the manner in which evidence is obtained, testimony is heard and victims are treated becomes part of the legal assessment of fairness and protection.

Second, it analyses the principal international and European legal instruments that operationalise this approach as positive procedural obligations such as the Murad Code, Directive 2012/29/EU, Directive (EU)

2016/800, Articles 68–69 of the Rome Statute, the Istanbul and Lanzarote Conventions, and the ECtHR's evolving jurisprudence on secondary victimisation.

Third, it formulates evidence-based recommendations for legislative, institutional, and educational development. While the author's previous study addressed access to justice for vulnerable victims and witnesses with particular attention to the challenges of implementing EU standards in the Ukrainian legal context [20], the present article has a different focus. It examines the broader international and European normative architecture that makes trauma-informed justice legally relevant and explains why such standards should guide the interpretation of procedural obligations in national justice systems. In this sense, the present article provides a theoretical and normative foundation for further analysis of professional readiness, institutional protocols and practical implementation.

Methodologically, the article relies on doctrinal legal analysis, case-law analysis of the ECtHR, comparative analysis of international and European legal instruments, and interdisciplinary synthesis of legal scholarship, victimology and trauma studies. This methodological combination allows the article to examine how psychological concepts such as trauma, secondary victimisation and vulnerability are translated into concrete procedural obligations within international and European human rights law.

The novelty of the article lies in conceptualising the trauma-informed approach as a normative bridge between trauma science, vulnerability theory and binding international legal standards for the protection of vulnerable persons in justice proceedings. Rather than treating TIA as a purely psychological or professional practice, the article frames it as an interpretive and operational framework that gives practical content to existing obligations to prevent secondary victimisation and ensure victim-sensitive justice.

4. Review and discussion.

The trauma-informed approach was systematised in the framework elaborated by the Substance Abuse and Mental Health Services Administration (SAMHSA, 2014), which defines trauma as arising from events, series of events, or circumstances experienced as physically or emotionally harmful or life-threatening, carrying lasting adverse effects on the individual's functioning across mental, physical, social, emotional, and spiritual dimensions [1]. The framework organises institutional response around four key assumptions: Realise, Recognise, Respond, and Resist re-traumatisation and six guiding principles: safety; trustworthiness and transparency; peer support; collaboration and mutuality; empowerment, voice and choice; and attention to cultural, historical, and gender issues. Although this framework was not originally designed as a legal doctrine, its relevance for justice systems is evident. It draws attention to the fact that institutional contact may either support recovery and participation or deepen the effects of the original harm.

Branson, Baetz, Horwitz, and Hoagwood (2017), in a systematic review of trauma-informed juvenile justice systems, identified ten implementation domains and underscored the necessity of cross-system alignment between mental-health and justice institutions [2]. Baker et al. (2016) developed the Attitudes Related to Trauma-Informed Care (ARTIC) scale as a validated instrument for measuring change in practitioner attitudes following training and this development has direct relevance to compliance monitoring of training obligations [3].

What distinguishes the TIA from other quality-of-service paradigms is its foundational premise that the institutional system itself can function as a source of harm. For justice institutions, this premise has direct legal significance. It means that harm may arise not only from the original offence, but also from the way in which the victim or witness is questioned, doubted, exposed to the alleged perpetrator, required to repeat traumatic details or confronted with stereotyped assumptions. The principle of resisting re-traumatisation demands that institutions audit their own procedures (interview techniques, courtroom layouts, scheduling practices, terminology, and evidentiary rules) for their potential to reactivate the survivor's traumatic experience. This conceptual move, from an exclusive focus on individual pathology towards a focus on institutional design and professional conduct, constitutes the bridge connecting trauma science to legal obligation.

1. Secondary Victimisation as a Legal-Psychological Category.

Secondary victimisation describes the additional harm a victim suffers through insensitive, victim-blaming, or institutionally indifferent responses from legal, medical, and social actors. Symonds (1980) introduced the metaphor of the 'second injury', capturing the permanent psychological wound inflicted when victims interpret institutional detachment or scepticism as personal rejection [4]. Campbell (2008) and Campbell et al. (2001) demonstrated in mixed-methods research that contact with legal, medical, and mental-health institutions exacerbated post-traumatic stress symptoms in survivors of sexual violence in a measurable and consistent pattern [5, 6]. Orth (2002) operationalised the construct specifically in criminal proceedings, identifying procedural and interactional injustice as its principal drivers [7]. Smith and Freyd (2014) developed the concept of *institutional betrayal*, demonstrating that institutions trusted to provide protection but failing to do so generate harm with effects analogous to interpersonal betrayal trauma [8].

The construct has been recently reinvigorated by Pemberton and Mulder (2025), who reframe secondary victimisation through the lens of *epistemic injustice*, arguing that procedural disregard constitutes a denial of the victim's standing as a knower, this framing maps with particular precision onto the procedural obligations articulated by the ECtHR [9]. Three psychological mechanisms drive secondary victimisation:

– *re-experiencing*, whereby forensic interviewing or adversarial cross-examination triggers intrusion and arousal symptoms;

– *loss of control*, whereby institutional procedures deprive the survivor of agency, replicating the helplessness of the original traumatic event;

– *betrayal*, whereby institutional failure collapses the survivor's schemata about safety, trust, and protective authority.

Each of these mechanisms corresponds to a cognisable violation in the framework of ECtHR positive-obligation doctrine, connecting the psychological analysis directly to enforceable legal standards. This is particularly important for the argument of this article, because it shows that secondary victimisation is not only a psychological consequence of poor institutional practice. It can become a legal category when State authorities fail to organise proceedings in a way that protects dignity, private life, psychological integrity and effective participation.

Vulnerability Theory and the Survivor-Centred Approach. Fineman's (2017) vulnerability theory provides the most systematic philosophical foundation for the legal obligations examined in this article [10]. Fineman replaces the autonomous liberal subject with the *vulnerable subject*, for whom embodied fragility and dependency are universal and inevitable features of human existence. Differences among individuals lie not in the presence or absence of vulnerability but in the *resilience resources* produced or withheld by institutional design, that's why generating an affirmative state obligation to construct responsive institutions rather than merely abstaining from direct harm.

Mackenzie, Rogers, and Dodds (2014) refined this framework by distinguishing between *inherent* vulnerability (arising from general conditions of embodied human existence), *situational* vulnerability (arising from specific personal, social, economic, or political circumstances), and *pathogenic* vulnerability, generated by interventions, including legal proceedings, intended to ameliorate harm but that instead produce new ones [11]. Luna's (2019) concept of *layered vulnerability* further captures the dynamic, intersectional, and relational character of vulnerability, resisting its reduction to fixed demographic categories [12]. The survivor-centred approach, articulated in the Murad Code and progressively incorporated into EU secondary legislation, operationalises this theoretical framework at the level of institutional design. It requires that proceedings be organised not only around the informational and evidentiary needs of the justice system, but also around the safety, dignity, agency and communicative capacity of the survivor. This does not weaken the requirements of due process. On the contrary, it strengthens the reliability and legitimacy of proceedings by creating conditions in which vulnerable persons can participate without avoidable procedural harm.

ECHR jurisprudence has progressively incorporated these theoretical insights into its doctrinal architecture. Peroni and Timmer (2013) traced the emergence of 'vulnerable groups' as a structural concept triggering enhanced positive obligations under Articles 2, 3, and 8 of the Convention [13]. Heri (2021) synthesised this development into a 'responsive human rights' framework, in which vulnerability, ill-treatment, and procedural protection form a coherent doctrinal cluster requiring States to act with special diligence in the design and administration of legal proceedings involving survivors of sexual and gender-based violence [14].

The legal significance of the trauma-informed approach does not arise from the SAMHSA framework or trauma science alone. Rather, it emerges through several pathways of normative translation**.** In legal terms, trauma-informed justice becomes relevant when psychological knowledge about trauma, memory, fear, shame, avoidance and loss of control is reflected in procedural duties, evidentiary safeguards, interviewing standards, training obligations and judicial reasoning. Treaty incorporation occurs where principles of victim-centred and trauma-sensitive justice are expressly reflected in binding instruments, such as the Istanbul Convention and the Lanzarote Convention. Also, EU secondary law translates these principles into concrete procedural obligations, including individual vulnerability assessment, adapted premises, professional training and measures to prevent secondary victimisation under Directive 2012/29/EU and Directive (EU) 2016/800. Important to admit that judicial interpretation by the ECtHR gives legal force to these standards by treating procedural insensitivity, stereotyped reasoning and confrontational examination as potential violations of Articles 3 and 8 of the Convention. Finally, soft-law instruments such as the Murad Code operate as interpretive and operational standards that specify how binding obligations, including those under Article 68 of the Rome Statute, should be implemented in practice. It is through this cumulative process, rather than through a single codified rule, that trauma-informed justice acquires normative relevance in international and European human rights law.

The conceptual analysis leads to three practical implications. First, national procedural systems should move beyond categorical understandings of vulnerability and adopt a dynamic model that recognises inherent, situational and pathogenic vulnerability. Second, secondary victimisation should be recognised as a legally relevant procedural harm requiring preventive safeguards at each stage of proceedings. Third, professional training should incorporate trauma-informed knowledge, including the mechanisms of re-experiencing, institutional betrayal and survivor-centred communication.

2. International and European Legal Standards as Instruments of Trauma-Informed Justice. *The Murad Code* - The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence, was released in April 2022 following a multi-year consultative process involving experts and survivors across numerous countries [15]. Named after Yazidi survivor and Nobel Peace laureate Nadia Murad, the Code establishes eight core principles constituting an ethical and operational framework for any actor gathering or using information about systematic and conflict-related sexual violence (CRSV): (1) safety and well-being first; (2) do no harm; (3) rights-based approach; (4) survivor-centred practice including informed consent; (5) good methods and appropriate qualifications; (6) quality and confidential information; (7) professional conduct, training, and cultural competence; and (8) coordination to reduce the burden on survivors.

Koenig and Egan (2025) have documented that the Code now functions as the reference standard for digital and field investigations of CRSV, including those conducted by and in partnership with the International Criminal Court [16]. Mariotti (2024) has advanced the doctrinal argument that compliance with Murad Code-equivalent standards may be understood as an operational means of giving effect to the obligations arising under Article 68 of the Rome Statute, which requires the Court to protect 'the safety, physical and psychological well-being, dignity and privacy of victims and witnesses' [17]. On this analysis, the Murad Code illustrates how soft-law instruments function as interpretive vehicles for binding treaty obligations and become a mechanism of direct relevance to national accountability processes for CRSV, including in contexts of armed conflict.

Directive 2012/29/EU known as the The Victims' Rights Directiv) establishing minimum standards on the rights, support and protection of victims of crime is the EU's foundational instrument on victims' rights and the most comprehensive legally binding expression of the trauma-informed approach in European

criminal procedure [18]. Article 22 requires Member States to ensure a 'timely and individual assessment' of victims to identify specific protection needs, with explicit consideration of personal characteristics, the type and nature of the crime, and circumstances; child victims are presumed to have specific protection needs. Article 23 sets out special measures during investigation and court proceedings, including adapted premises, trained professionals, continuity of personnel, prevention of visual contact with the alleged perpetrator, and prohibition of unnecessary questioning concerning the victim's private life. Article 25 mandates general and specialist training of officials likely to come into contact with victims.

In this respect, Directive 2012/29/EU moves beyond the merely formal recognition of victims' rights and introduces a more individualised model of procedural protection. Protective measures are to be determined on the basis of the victim's specific protection needs and the risk of secondary victimisation identified through an individual assessment, rather than exclusively by reference to the type of crime [18, 19]. As Bondarenko (2025) demonstrates in a systematic analysis of the Directive's implementation in Ukraine, even where legislative commitment to the Directive's requirements is unambiguous, the absence of a systematic vulnerability assessment mechanism at first contact with competent authorities and the lack of mandatory secondary victimisation prevention protocols create persistent implementation deficits that directly affect vulnerable victims and witnesses [20]. This finding underscores the structural gap between legislative transposition and operational compliance that characterises implementation challenges across multiple jurisdictions.

Directive (EU) 2016/800 (Procedural Safeguards for Children) is the first binding EU instrument harmonising procedural safeguards for children in criminal proceedings which requires a multidisciplinary individual assessment of the child's specific needs, conducted by qualified personnel prior to indictment (Article 7) [21]. Article 20 requires training of law-enforcement personnel, judges, prosecutors, lawyers, and detention staff on children's rights, age-appropriate questioning techniques, and child developmental psychology. Liefaard (2019) has argued that this Directive, together with Directive 2012/29/EU and the Council of Europe Guidelines on Child-Friendly Justice, constitutes a coherent EU *acquis* on the psycho-developmental adaptation of justice processes as a body of obligations whose discharge is impossible without trauma-informed professionals capable of recognising and responding to the specific needs of child victims and witnesses [22].

The Rome Statute Articles 68–69 and the Convergence with the Murad Code. Article 68(1) of the Rome Statute obliges the Court to take 'appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses,' with particular attention to the nature of the crime in cases of sexual or gender-based violence [23]. The associated Rules of Procedure and Evidence (specifically Rules 70 and 71) prohibit inferring consent from silence and exclude evidence of prior sexual conduct, constituting evidentiary translations of trauma science into international criminal procedure [24]. Mariotti (2024) has argued that Article 68 generates a legal obligation on the Prosecutor to ensure trauma-informed witness preparation, positioning the Murad Code not as voluntary guidance but as the operational content of a binding treaty obligation [17]. This has significant doctrinal implications, as States parties to the Rome Statute are not merely encouraged to consider trauma-informed standards in CRSV documentation. Rather, such standards increasingly provide an authoritative framework for giving practical effect to obligations concerning the safety, dignity, privacy and psychological well-being of victims and witnesses.

The Istanbul (CETS No. 210, 2011) to which the EU acceded on 28 June 2023 articulates the most comprehensive trauma-informed framework in European treaty law [25]. Article 18(3) requires that all protective measures be 'based on a gendered understanding of violence,' take a 'human-rights and victim-centred approach,' and 'aim at avoiding secondary victimisation.' Article 15 obliges States to provide and strengthen training for professionals on prevention and detection of violence and on how to prevent secondary victimisation in the handling of cases. McQuigg's (2021) analysis of *Volodina v. Russia* demonstrates how the Convention's obligations have been progressively incorporated into ECtHR positive-obligation doctrine across a range of domestic violence scenarios [26].

The Lanzarote Convention (CETS No. 201, 2007) provides the cornerstone framework for child victims of sexual exploitation and abuse [27]. Article 30 mandates that investigations and proceedings 'shall not aggravate the trauma experienced by the child.' Article 35 articulates the operational principles of trauma-informed

interviewing: interviews shall be conducted without unjustified delay, in specially adapted and equipped premises, by trained professionals, by the same persons where possible, and limited in number. Herbert and Bromfield (2016) provide the principal empirical evidence for the effectiveness of the Barnahus (Children's House) model (which is the institutional realisation of Article 35) in reducing the number of child investigative contacts, the time to disposition, and measurable levels of child distress during proceedings [28].

ECtHR Case Law about Secondary Victimisation as a Rights Violation. The ECtHR has translated the foregoing treaty obligations into binding judicial standards through a coherent and progressive body of case law. In M.C. v. Bulgaria (2003), the Court established the consent-based standard for rape, requiring States to penalise non-consensual sexual conduct regardless of physical resistance (a doctrinal translation of trauma science's account of the freeze response and the inadequacy of resistance as a marker of non-consent). In *Y. v. Slovenia* (2015), the Court found violations of Articles 3 and 8 arising from the repeated direct cross-examination of the applicant by her alleged abuser, establishing a procedural obligation to prevent confrontational examination that replicates the dynamics of sexual violence [30]. In J.L. v. Italy (2021) the Court held, for the first time, that the language of a national judicial decision reproducing sexist stereotypes and moralising judgements directed at a sexual-assault survivor constituted secondary victimisation amounting to a violation of Article 8 [29]. The article focuses on these judgments because they most directly illustrate the transformation of procedural insensitivity into a legally cognisable human rights violation.

The doctrinal synthesis that emerges from this jurisprudential evolution is unmistakable, becauce the ECtHR treats procedural insensitivity not as an administrative shortcoming but as a substantive violation of fundamental rights, generating positive obligations whose discharge depends on professionals and institutions capable of recognising and responding to trauma. Each of the judgments reviewed imposes concrete, measurable obligations (on interview procedures, courtroom organisation, evidentiary rules, and the language of judicial reasoning) whose compliance can only be verified in the context of trauma-informed professional competencies.

3. Practical Implications for Trauma-Informed Justice.

The analysis of international and European legal standards demonstrates that trauma-informed justice requires the translation of general protective obligations into concrete procedural safeguards. These safeguards should not be viewed as exceptional measures or discretionary improvements of procedural quality. They are the practical form through which legal systems show whether the rights of vulnerable victims and witnesses are genuinely protected or remain only declaratory. Rather, they constitute practical mechanisms through which States and competent authorities give effect to their obligations to protect vulnerable victims and witnesses from secondary victimisation, ensure their dignity and safety, and enable their effective participation in justice proceedings.

Against this background, national legal systems should establish a unified standard for the individual assessment of vulnerability. Such a standard should build on Article 22 of Directive 2012/29/EU and Article 7 of Directive (EU) 2016/800, and should be applied at the earliest point of contact with competent authorities. The assessment should be conducted by trained professionals and should take into account not only the personal characteristics of the victim or witness and the nature of the offence, but also situational and procedural factors that may increase the risk of secondary victimisation. This is especially relevant for legal systems dealing with conflict-related crimes, sexual violence, crimes against children and other categories of cases where the vulnerability of a person may be intensified by both the original harm and the justice process itself.

Investigative interviews with vulnerable victims and witnesses should be organised in a manner that minimises the risk of re-traumatisation. Audiovisual recording should become the procedural default, while written transcription should be treated as a derogation requiring reasoned justification. This approach would reduce the need for repeated questioning, preserve the evidentiary value of the testimony, and strengthen procedural fairness for all parties. Such a model is not only more sensitive to the psychological condition of the victim or witness. It also serves the interests of justice by improving the quality, consistency and reliability of evidence.

National prosecutorial and investigative authorities dealing with conflict-related sexual violence and other gross human rights violations should incorporate the principles of the Murad Code into their internal protocols. This recommendation is of particular importance for jurisdictions documenting large-scale international crimes, including crimes committed in the context of armed conflict, where the same survivor may be contacted by several investigative, prosecutorial, humanitarian and documentation actors. Although the Murad Code is formally a soft-law instrument, its principles provide an authoritative operational framework for implementing obligations concerning the safety, dignity, privacy and psychological well-being of victims and witnesses. Compliance with such protocols should be subject to appropriate internal and, where possible, independent external review.

In addition, procedural law should prohibit direct cross-examination of vulnerable victims and witnesses by alleged perpetrators, particularly in cases involving sexual violence, domestic violence, child victims, intellectual disability or severe post-traumatic symptomatology. The standard developed in Y. v. Slovenia demonstrates that confrontational examination may itself reproduce the dynamics of abuse and contribute to secondary victimisation. The problem is not limited to the emotional discomfort of the victim. In certain cases, the format of questioning may undermine the person's ability to give coherent testimony, reactivate traumatic responses and distort the balance between the rights of the defence and the State's duty to protect vulnerable participants in proceedings.

Trauma-informed justice also requires attention to the language and reasoning of judicial decisions. Judicial reasoning standards should prohibit stereotyped, victim-blaming or moralising language, especially in cases involving sexual and gender-based violence. The ECtHR's judgment in J.L. v. Italy confirms that such language may itself amount to secondary victimisation and undermine the State's obligation to protect the dignity and private life of victims. Judicial councils and training institutions should therefore treat trauma-sensitive reasoning as an element of judicial professionalism and accountability. This requires not only knowledge of anti-discrimination standards, but also an understanding of how trauma may affect memory, behaviour, emotional expression and the ability of a survivor to provide testimony. Without such knowledge, judicial reasoning may unintentionally reproduce stereotypes that international human rights law increasingly recognises as incompatible with the protection of dignity and private life.

Child-friendly justice requires institutional infrastructure capable of protecting children from avoidable procedural harm. The Barnahus model should be regarded as a benchmark for the institutional organisation of cases involving child victims and witnesses of sexual violence and abuse. Its implementation should be supported by statutory funding, clear inter-agency protocols and, where appropriate, population-based coverage benchmarks to ensure that access to child-sensitive justice does not depend on geography or donor-funded projects.

Taken together, these practical implications show that trauma-informed justice cannot be reduced to individual professional sensitivity. It requires legislative codification, institutional protocols, adapted interviewing procedures, professional training, appropriate infrastructure and accountability mechanisms. In this sense, the trauma-informed approach functions as an operational bridge between international legal standards and the everyday practice of justice institutions. Its value in showing how abstract obligations to protect dignity, privacy, safety and effective participation can be translated into daily professional decisions made by investigators, prosecutors, judges, lawyers, psychologists, social workers and other actors who come into contact with vulnerable persons.

5. Conclusions.

This article has established that the trauma-informed approach in the justice system constitutes a normative paradigm sustained by a coherent and mutually reinforcing body of international and European legal obligations. **The central argument is that trauma-informed justice should no longer be understood only as a matter of good professional practice. It increasingly operates as a standard through which the quality of procedural protection, the effectiveness of participation and the prevention of secondary victimisation can be assessed.**

The first conclusion concerns the conceptual foundation of the trauma-informed approach. Its premise that the system itself can be a source of harm, and its operationalisation through the principles of safety, empowerment and resistance to re-traumatisation, provide the intellectual framework for the legal obligations examined in Section 2. This is why trauma-informed justice should not be reduced to empathy or communication skills. It requires institutions to examine whether their own procedures, spaces, language and professional practices may generate avoidable harm. The psychological constructs of secondary victimisation, institutional betrayal, and pathogenic vulnerability are not merely theoretical categories but the evidentiary basis upon which international courts and treaty bodies have constructed binding procedural requirements.

The second conclusion concerns the normative structure of trauma-informed justice. The international and European legal standards examined in this article do not operate in isolation. Directive 2012/29/EU's individual vulnerability assessment obligation, Directive 2016/800's child-specific safeguards, the Istanbul Convention's requirement to avoid secondary victimisation, the Lanzarote Convention's child-friendly interviewing standards, the Murad Code's survivor-centred principles and the ECtHR's jurisprudence from M.C. v. Bulgaria through Y. v. Slovenia to J.L. v. Italy together articulate a framework that operationalises trauma-informed practice as procedural law. The cumulative effect of these instruments is that national authorities are expected not only to recognise vulnerability, but also to adapt procedures in response to it. Each instrument reinforces the obligations established by the others, generating cumulative normative weight that national legislators and international accountability processes cannot legitimately disregard.

The third conclusion concerns the practical meaning of the survivor-centred approach. It should not be treated as a discretionary enhancement of procedural quality. Rather, it increasingly represents a legally relevant standard for assessing whether proceedings protect the dignity, safety and effective participation of vulnerable victims and witnesses. Its operational content is sufficiently concrete to inform legislation, institutional protocols, professional training, interviewing standards and judicial reasoning.

The convergence between trauma science, vulnerability theory and international legal standards leads to a practical conclusion that trauma-informed practice is not only a matter of professional sensitivity. It is increasingly becoming a condition of legal compliance. For this reason, its institutionalisation in national procedural law, professional training and everyday justice practice should be viewed as a necessary element of effective, victim-sensitive and sustainable accountability.

References:

1. SAMHSA. Concept of Trauma and Guidance for a Trauma-Informed Approach. Rockville: SAMHSA, 2014. 27 p.

2. Branson C. E., Baetz C. L., Horwitz S. M., Hoagwood K. E. Trauma-informed juvenile justice systems: A systematic review of definitions and core components. Psychological Trauma. 2017. Vol. 9. No. 6. P. 635–646.

3. Baker C. N., Brown S. M., Wilcox P. D., Overstreet S., Arora P. Development and psychometric evaluation of the Attitudes Related to Trauma-Informed Care (ARTIC) Scale. School Mental Health. 2016. Vol. 8. No. 1. P. 61–76.

4. Symonds M. The 'second injury' to victims of violent acts. American Journal of Psychoanalysis. 2010. Vol. 70. No. 1. P. 34–41.

5. Campbell R. The psychological impact of rape victims' experiences with the legal, medical, and mental health systems. American Psychologist. 2008. Vol. 63. No. 8. P. 702–717.

6. Campbell R., Wasco S. M., Ahrens C. E., Sefl T., Barnes H. E. Preventing the 'second rape': Rape survivors' experiences with community service providers. Journal of Interpersonal Violence. 2001. Vol. 16. No. 12. P. 1239–1259.

7. Orth U. Secondary victimization of crime victims by criminal proceedings. Social Justice Research. 2002. Vol. 15. No. 4. P. 313–325.

8. Smith C. P., Freyd J. J. Institutional betrayal. American Psychologist. 2014. Vol. 69. No. 6. P. 575–587.

9. Pemberton A., Mulder E. Bringing injustice back in: Secondary victimization as epistemic injustice. Criminology & Criminal Justice. 2025. Vol. 25. No.1. P. 1–20.

10. Fineman M. A. Vulnerability and inevitable inequality. Oslo Law Review. 2017. Vol. 4. No. 3. P. 133–149.

11. Mackenzie C., Rogers W., Dodds S. (Eds.). Vulnerability: New Essays in Ethics and Feminist Philosophy. Oxford: Oxford University Press, 2014. 331 p.

12. Luna F. Identifying and evaluating layers of vulnerability - a way forward. Developing World Bioethics. 2019. Vol. 19. No. 2. P. 86–95.

13. Peroni L., Timmer A. Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law. International Journal of Constitutional Law. 2013. Vol. 11. No. 4. P. 1056–1085.

14. Heri C. Responsive Human Rights: Vulnerability, Ill-Treatment and the ECtHR. Oxford: Hart Publishing, 2021. 248 p.

15. Murad Code Project. Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence. London: IICI / Nadia's Initiative / UK PSVI, 2022. URL: https://www.muradcode.com/murad-code

16. Koenig K. A., Egan U. Digital investigations of systematic and conflict-related sexual violence: Practice and possibilities. Chicago Journal of International Law. 2025. Vol. 26. No. 1. P. 179–196.

17. Mariotti C. Witness preparation at the International Criminal Court: Towards a legal obligation to protect witnesses under Article 68 of the Rome Statute. Journal of International Criminal Justice. 2024. Vol. 22. No. 3–4. P. 585–612.

18. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. OJ L 315, 14.11.2012.

19. Kulesza C. Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. Improving Protection of Victims' Rights: Access to Legal Aid / ed. by P. Wiliński, P. Karlik. Poznań: Adam Mickiewicz University, 2014. P. 139–156.

20. Bondarenko Y. Implementation of EU Standards on Access to Justice for Vulnerable Victims and Witnesses: Challenges and Prospects for Ukraine. Analytical and Comparative Jurisprudence. 2025. Vol. 3. No. 5. P. 328–334. DOI: https://doi.org/10.24144/2788-6018.2025.05.3.48.

21. Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. OJ L 132, 21.5.2016.

22. Liefaard T. Access to justice for children: Towards a specific research and implementation agenda. International Journal of Children's Rights. 2019. Vol. 27. No. 2. P. 195–227.

23. Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 3.

24. Schabas W.A. (2016). The International Criminal Court: A Commentary on the Rome Statute (2nd ed.). Oxford University Press, 2016. 1541 p.

25. Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), CETS No. 210. Council of Europe, 2011.

26. McQuigg R. J. A. The European Court of Human Rights and domestic violence: Volodina v. Russia. International Human Rights Law Review. 2021. Vol. 10. No. 1. P. 155–171. DOI: https://doi.org/10.1163/18719732-12341452

27. Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), CETS No. 201. Council of Europe, 2007.

28. Herbert J. L., Bromfield L. Evidence for the efficacy of the Child Advocacy Center model. Trauma, Violence & Abuse. 2016. Vol. 17. No. 3. P. 341–357.

29. J.L. v. Italy, App. No. 5671/16, ECtHR, 27 May 2021.

30. Y. v. Slovenia, App. No. 41107/10, ECtHR, 28 May 2015.

31. M.C. v. Bulgaria, App. No. 39272/98, ECtHR, 4 December 2003.

Yevheniia Bondarenko
PhD, Associate Professor, Professor of the Department of Public and International Law Kyiv National Economic University named after Vadym Hetman, Ukraine
E-mail: bondarenko.yevheniia@kneu.edu.ua
ORCID: 0000-0003-0468-7949

DEVELOPMENT OF THE PROTECTION OF ENVIRONMENT THROUGH CRIMINAL LAW: COMPARATIVE ANALYSIS OF THE DIRECTIVES OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 2008/99/EC AND 2024/1203

Brynzanska Olha

DOI: https://doi.org/10.61345/1339-7915.2026.1.5

Annotation. The aim of the work is comparative analysis of the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Directive 2008/99/EC) and Directive (EU) 2024/1203 of the European parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (Directive 2024/1203).

Results of researches focus on consideration of provisions of the Directive 2008/99/EC and Directive 2024/1203, and also an identification of main trends in development of the protection of the environment through criminal law.

It comes to conclusions that it combines trends of Directive 2008/99/EC and original ideas of environmental protection through the criminal law. As the Directive 2008/99/EC Directive 2024/1203 regulates minimal rules of environmental protection through criminal law. At the same time dissimilar to Directive 2008/99/EC Directive 2024/1203 contains new provisions and approaches to impact on domestic criminal law: 1) increasing of the number of kinds of unlawful conduct; 2) obligation to ensure more severe liability for «qualified criminal offences» included conduct is comparable to «ecocide»; 3) criteria for evaluation of damage as substantial – the baseline condition of the affected environment; whether the damage is long-lasting, medium-term or short-term; the extent of the damage; the reversibility of the damage etc.; 4) freedom of national discretion for liability for acts committed negligently; 5) approval of standards for penalties and criminal or non-criminal penalties or measures for natural persons and legal persons (an obligation to restore the environment within a given period, if the damage is reversible; pay compensation for the damage to the environment; withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence; temporary bans on running for public office; etc).

Key words: environmental directive, environmental protection through the criminal law, ecocide, EU legislation, EU Member state, domestic criminal law.

1. Introduction.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Lisbon Treaty) is one of the most important agreement for constitutional basis of European Union (EU). Lisbon Treaty divides the competences between the EU and the Member States. There are no provisions about criminalization and penalization of socially dangerous conduct, including criminal offences or about other institutions of criminal law in the Lisbon Treaty. Nevertheless, area of freedom, security and justice also area of environmental protection are conferred both the EU and the Member States as mutual competence. The fact is that the EU Member States are authorized to adopt the legally binding acts if the EU doesn't regulate the area.

According to art. 69B (1) of Lisbon Treaty the European Parliament and the Council may, by means of directives establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. Some of these areas of crime are defined in the same article of Lisbon Treaty: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime [1]. However, on the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. The protection of the environment through criminal law is one of the area paying attention on importance of it. The issues of protection of the environment through criminal law in EU law are regulated by: 1) Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Directive 2008/99/EC); 2) Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (Directive 2024/1203).

2. Analysis of scientific publications.

Protection of the environment through criminal law in the framework of EU have become the subject of researches by Ukrainian and other scholars, in particular, O. O. Dudorov, P. Fiala, M. I. Havronyuk, O. Krutílek, V. K. Matviychuk, P. V. Melnyk, R. O. Movchan, R. P. Oliynychuk, M. Pitrová, T. L. Syroid, L. Yu. Timofeeva, J. Tlapák - Navrátilová etc. At the same time, issues of the comparative analysis of Directive 2008/99/EC and Directive 2024/1203 hasn't been paid enough attention in these researches.

3. The aim of the work.

On June 23, 2022 the European Council granted Ukraine the status of a candidate country for EU membership. It causes necessity to adapt national legislation to EU standards and the adaptation is impossible without knowledge about the processes of their development. Protection of the environment through criminal law is not exception in this context because environmental protection is one of the topicalest issues of Ukrainian legal policy. Taking it into account the aim of the work is comparative analysis of the Directive 2008/99/EC and Directive 2024/1203 and identification of main trends in development of the protection of the environment through criminal law.

4. Review and discussion.

The content of the Directive 2008/99/EC are based on the provisions of Convention on the Protection of Environment through Criminal Law (ETS №. 172) and Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law. No wonder the reasons for the adoption of Directive 2008/99/EC are generally similar to the reasons for the adoption of the aforementioned Convention and Council Framework Decision: increasing of the number of environmental crimes; the international nature of their consequences and as results, needs to harmonize the domestic legislation of the EU Member States; insufficiency of sanctions for environmental crimes, including priority to criminal liability over administrative means or a compensation mechanism under civil law. At whole the Directive 2008/99/EC obliges EU Member States to enshrine criminal penalties for serious infringements of Community legislation, connecting the definition of the elements of the offence in national law to the infringement of EU legal acts from list which is given in the annexes to this directive. Consequently the scope of the Directive 2008/99/EC deals with the definition of the elements of a crime in domestic legislation as violations of regulatory norms of environmental law. Also the elements of a crime is associated with a violation only of EU legal acts that are enshrined in the list (69 acts of EU legislation, including mainly directives and regulations of the European Parliament and the Council) but neither EU acts that are out of it nor domestic legislation. At the same time preamble to the Directive 2008/99/EC declares that it provides for minimum rules and EU Member States are free to adopt or maintain more stringent measures regarding

the effective criminal law protection of the environment [2]. It means significant discretion of EU Member States both in determination of the methods of implementing obligations under Directive 2008/99/EC and in decision-making about criminalization of conduct that harms the environment but are not violations of EU legal acts from annexes to this directive.

The Directive 2008/99/EC consists of 10 articles. The content of it can be briefly described as follows:

1. Art. 1. Subject matter– measures relating to criminal law in order to protect the environment;

2. Art 2. Definitions («unlawful», «protected wild fauna and flora species», «habitat within a protected site») with references to посиланням EU legislation;

3. Art 3. Offences: this provision describes conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence: (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (6) and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked; (d) the operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (f) the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species; (g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species; (h) any conduct which causes the significant deterioration of a habitat within a protected site; (i) the production, importation, exportation, placing on the market or use of ozone-depleting substances.

4. Art. 4. Inciting, aiding and abetting: it obliged the EU Member States to provide national legislation for criminal liability for inciting, aiding and abetting the intentional conduct referred to in art. 3 of Directive 2008/99/EC.

5. Art. 5. Penalties: EU Member States have to take the necessary measures to provide "effective, proportionate and dissuasive criminal penalties" for offences referred to in Articles 3 and 4 of Directive 2008/99/EC.

6. Art. 6. Liability of legal persons – EU Member States are obliged to ensure ensure liability of legal persons.

7. Art 7. Penalties for legal persons: EU Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Art. 6 are punishable by effective, proportionate and dissuasive penalties.

8. Articles 8-10. Transposition, entry into force, addressees [2].

In 2023 the European Parliament prepared the report that both suggested a revision of the Directive 2008/99/EC. It was determined the needs for improvement of mechanism for achievement of purposes of the Directive 2008/99/EC. The Report propose to set six objectives to improve the effectiveness of criminal investigations and prosecution across EU Member States: 1) to clarify terms used in the definitions of

environmental crime; 2) to bringing new environmental crimes under its scope; 3) to define sanction types and levels for environmental crime; 4) to foster cross-border investigation and prosecution; 5) to improve procedure of collection and dissemination of statistical data for decision-making on environmental crimes; 6) improve the effectiveness of national enforcement chain [3].

Completely needs for creation of autonomous interpretation to environmental crimes and new approaches to definition of penalty, for updating of procedure and mutual cooperation in criminal matters about environmental crimes caused the issue about new Directive on the protection of the environment through criminal law. The new Directive must replace the Directive 2008/99/EC and Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (the Directive 2009/123/EC), that also has some provisions about criminal liability for ship-source discharges of polluting substances [4].

The Directive 2024/1203 establishes minimum rules with regard to the definition of criminal offences and penalties in order to protect the environment. It consists of 30 articles and the provisions of Directive 2008/99/EC are reproduced in some of them particularly in interpretation of some legal definitions, list of criminal offences and penalties.

To begin with art. 3 of Directive 2024/1203 regulates the obligation of the State to ensure that conduct listed in paragraphs 2 and 3 of this Article, where it is intentional, and conduct referred to in paragraph 4 of this Article, where it is carried out with at least serious negligence, constitutes a criminal offence where that conduct is unlawful. For the purpose of this Directive, conduct shall be unlawful where it breaches: (a) EU law which contributes to pursuit of one of the objectives of the Union's policy on the environment as set out in Article 191(1) TFEU; or (b) a law, regulation or administrative provision of a Member State, or a decision taken by a competent authority of a EU Member State, which gives effect to the EU law referred to in point (a). Moreover, the conduct is unlawful even if it was committed with the permission of the competent authority of the EU Member State, if such permission was obtained by fraud or corruption, by extortion or coercion, or if such permission is manifestly inconsistent with legal requirements. In this case the interpretation of unlawful conduct differs from this definition in the Directive 2008/99/EC: it covers both a breaches of EU law and the legal acts of the Member States, and not only for a violation of the provisions of the exhaustive list of EU directives and regulations given in the annexes to Directive 2008/99/EC.

The next otherness is that Directive 2024/1203 has a larger number of types of conducts constitutes a criminal offence where it is unlawful and intentional. Some of them has been already defined in art. 3 of Directive 2008/99/EC and were added to with new details, in particular, related to references to EU acts that determine the unlawful of conducts (for example, (a) the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation, into air, soil or water which causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants or (k) the construction, operation and dismantling of an installation, where such conduct and such an installation fall within the scope of Directive 2013/30/EU of the European Parliament and of the Council, and such conduct causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants. Also in art. 3(2) Directive 2024/1203 it is characterized unlawful conducts of that were not specified in Directive 2008/99/EC, but were substantively related to conducts specified therein: the placing on the market, in breach of a prohibition or another requirement aimed at protecting the environment, of a product the use of which on a larger scale, namely the use of the product by several users, regardless of their number, results in the discharge, emission or introduction of a quantity of materials or substances, energy or ionising radiation into air, soil or water and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants (b) etc.

The last group of conducts are those acts for which criminalization was not previously required in domestic legislation. For instance there are the execution of projects within the meaning of article 1(2)(a), as referred to in art. 4(1) and (2), of Directive 2011/92/EU of the European Parliament and of the Council, where such conduct is carried out without a development consent and causes or is likely to cause substantial damage to the quality of air or soil, or the quality or status of water, or substantial damage to an ecosystem, animals

or plants (e); the ship-source discharge of polluting substances falling within the scope of Article 3 of Directive 2005/35/EC into any area referred to in Article 3(1) of that Directive, except where such ship-source discharge satisfies the conditions for exceptions set out in Article 5 of that Directive, which causes or is likely to cause deterioration in the quality of water or damage to the marine environment (i) etc [4].

Other novelty of Directive 2024/120 is the obligation of EU Member States to ensure in national law for provisions about qualified criminal offences. As qualified criminal offences are considered any of criminal offences relating to conduct listed in paragraph 2, if they cause: (a) the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or (b) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water. Taking into account preamble and travaux preparatoires of Directive 2024/120 «qualified criminal offences» includes conduct comparable to «ecocide», which is covered by the legislation of some EU Member States. Nevertheless, Directive 2024/1203, in its current version of 15 April 2025 is lack of the word «ecocide» [4].

Comparing the provisions of art. 3 of Directive 2008/99/EC, it can be defined the obligations of states to criminalize intentional conduct, but limited of discretion of decisions about criminalization of acts committed negligently, with art. 3 (4) of Directive 2024/1203 we must note a change in the EU approach to the criminalization of acts committed in the absence of intent. Article 3(4) of Directive 2024/1203 enshrines clear obligations of EU Member States to criminalize the conduct defined in paragraph 2, points (a) to (d), points (f) and (g), points (i) to (q), point (r)(ii) and points (s) and (t), if such an act is unlawful and committed with at least serious negligence. The definition of only certain types of criminally unlawful conduct from the general list of acts provided for in art. 3(2) of Directive 2024/1203, and the wording "at least with gross negligence" means the establishment of a minimum standard for criminalizing an act at the level of gross negligence, which does not exclude the right of the state to establish criminal liability not only for these, but also for other acts provided for art. 3 (2) of Directive 2024/1203, including those that can be committed not only with gross negligence, but also with other types of carelessness (for example, according to the terminology of Article 25 of the Criminal Code of Ukraine with criminally unlawful recklessness) [5].

Dissimilar to Directive 2008/99/EC, which didn't contain provisions on criteria for evaluation of damage as substantial, art 3 (6) Directive 2024/1203 enshrines such criteria: the baseline condition of the affected environment; whether the damage is long-lasting, medium-term or short-term; the extent of the damage; the reversibility of the damage etc.

Also the Directive 2024/120 has provisions manifestly new standards of penalties for natural persons and legal persons. Pursuant to Directive 2008/99/EC EU Member States shall take the necessary measures to ensure that criminal offences are punishable by effective, proportionate and dissuasive criminal penalties but without defining minimum or maximum measures. The Directive 2024/120 enshrines standards minimum or maximum measures of penalties and imprisonment for natural persons. At the same time EU Member States shall take the necessary measures to ensure that natural persons who have committed criminal offences referred to in Articles 3 and 4 may be subject to accessory criminal or non-criminal penalties or measures which may include an obligation to restore the environment within a given period, if the damage is reversible; pay compensation for the damage to the environment; withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence; temporary bans on running for public office; etc.

Directive 2024/120 regulates liability of legal persons more meticulous than Directive 2008/99/EC by defining the list of criminal or non-criminal penalties or measures. It includes the standards of fines depending on the total worldwide turnover of the legal person [4].

5. Conclusions.

So, the provisions of Directive 2024/1203 have developed the main ideas of Directive 2008/99/EC about the protection of environment through the criminal law from one side. From other side the Directive 2024/1203 contains some new provisions and approaches to impact on domestic criminal law: 1) increasing of the

number of kinds of unlawful conduct; 2) obligation to ensure more severe liability for «qualified criminal offences» includes conduct comparable to «ecocide»; 3) criteria for evaluation of damage as substantial; 4) freedom of national discretion for liability for acts committed negligently; 5) approval of standards for penalties and criminal or non-criminal penalties or measures for natural persons and legal persons. At whole Directive 2024/1203 combines trends of Directive 2008/99/EC and original ideas of environmental protection through the criminal law.

References:

1. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. (2007). https://eur-lex.europa.eu/eli/treaty/lis/sign/eng

2. European Parliament and Council of the European Union. (2008, November 19). Directive 2008/99/EC on the protection of the environment through criminal law. https://eur-lex.europa.eu/eli/dir/2008/99/oj

3. European Parliamentary Research Service. (2022). Revision of Directive 2008/99/EC Protection of the environment through criminal law [Briefing]. https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733555/EPRS_BRI(2022)733555_EN.pdf

4. European Parliament and Council of the European Union. (2024, April 11). Directive (EU) 2024/1203 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC. https://eur-lex.europa.eu/eli/dir/2024/1203/oj

5. Verkhovna Rada of Ukraine. (2001, April 5). Kryminalnyi kodeks Ukrainy vid 05.04.2001 No. 2341-III [Criminal Code of Ukraine No. 2341-III of April 5, 2001]. https://zakon.rada.gov.ua/laws/show/2341-14#Text

Olha Brynzanska,
PhD, Head of the Division of Analytical and Legal Work
of the Criminal Cassation Court of the Department of Analytical
and Legal Work of the Supreme Court, Ukraine
E-mail: obrynzanska@ukr.net
ORCID: 0009-0007-4730-8060

DEMOCRACY PERCEPTION IN WARTIME IN UKRAINE AS AN INDICATOR OF THE DEMOCRATIC TRANSFORMATION

Cherniak Ievgeniia

DOI: https://doi.org/10.61345/1339-7915.2026.1.6

Annotation. The article is devoted to examining the impact of war on the transformation of democratic perception in Ukrainian society through the prism of legal analysis. The full-scale armed aggression of the russian federation against Ukraine has led to significant changes in the functioning of state institutions, the mechanisms for the implementation of human rights and freedoms, and the public understanding of democratic values. Under these circumstances, a reassessment of the role of the constitutional principles such as democracy, the rule of law, popular sovereignty, and guarantees of human rights acquires particular significance. The aim of the article is to analyze democracy perception as a precondition for democratic transformation. Based on this analysis, the markers of the transformation process within the context of the constitutional and legal foundations of the state's functioning are revealed. The impact of the legal regime of martial law on the implementation of democratic procedures, the activities of public authorities, and the balance between ensuring national security and safeguarding constitutional human rights and freedoms are highlighted.

The research is based on a mixed-methods design. Transformation peculiarities of public perception of democracy and its multi-facets are looked into through the data of sociological surveys (quantitative component), as well as doctrinal analysis of regulatory framework and case law in order to provide a comprehensive understanding of the subject matter.

It is concluded that the war has become not only an indicator of limiting certain democratic procedures, but also a catalyst for rethinking democratic values and constitutional principles within society. The constitutional and legal dimension of this process lies in the search for an optimal balance between the need for the effective functioning of public authorities under martial law and the preservation of the fundamental principles of the democratic constitutional order.

Key words: democracy, martial law, constitutional law, democratic values, human rights, constitutional order, perception of democracy, democracy perception as an indicator of democratic transformation, Ukraine.

1. Introduction.

According to the Democracy Index Report of the V-DEM Institute (Sweden) for 2024 and 2025, Ukraine is classified as the third group of states, as electoral autocracy, among the four ones known to the expert community, respectively as 1) "Liberal Democracy", 2) "Electoral Democracy", 3) "Electoral Autocracy", 4) "Closed Autocracy" [1, p. 17; 2, p. 14]. Freedom House democracy index classifies Ukraine as a state with a transitional or hybrid regime in 2024, and as "partly freedom" country depends on the deterioration level in political rights and civil liberties in 2025 [3, 4].

Ukraine is a country of unstable democracy that continues to fight for its statehood in the war launched against it by the russian federation. It is rated in such way by at least the above-mentioned democracy index ratings. Thus, the search for answers to the question of the stage and future of democracy in Ukraine

is a continuation of the discussion about the challenges following the consequences of the russian war against Ukraine as a component of a broader discourse – about global instability, the necessity to preserve the international world order as a balanced system with an explicit demand to reorganize the global security system, in particular regarding the reform of the United Nations institutions or the creation of a new global organization or network of security organizations instead, *etc*. Indicative current trends such as existing the increasing number of votes by populist parties as a result of general elections in stable democracies countries, growing xenophobia, a decrease in the number of countries considered to be democracies, "alternative facts" and half-truths spread via the Internet, *etc.* are direct threats to democracy and significant challenges to the democratic and constitutional system both at the national and international levels. The way in which the Ukrainian people defend not just the statehood of Ukraine, but also the possibility of preserving Ukraine as a democracy, will determine the "tomorrow" of the Ukrainian state and its population.

The full-scale war in Ukraine has fundamentally altered the political, legal, and social landscape of the state. Beyond its immediate humanitarian and security implications, the war has also significantly influenced how democracy is perceived, understood, and evaluated by Ukrainian society. In contexts of existential threat, democratic values are often reinterpreted through the prism of survival, national unity, and security imperatives.

The issues of how war transforms democratic perception in Ukraine, focusing on the interplay between constitutional principles, societal attitudes, and institutional practices are concentrated on. The central argument is that the war actively reshapes the meaning and priorities associated with democracy.

2. Review of academic publications.

In constitutional legal theory and judicial practice, two concepts with different emphases on the protection of the democratic order compete with one another; however, they tend to be the addition rather than entirely oppose each other. These are the doctrine of procedural democracy, associated with the ideas of Joseph Schumpeter and Robert Dahl [5, 6, 7], and the concept of militant democracy formulated and developed by Karl Löwenstein [8]. Their researches remain foundational to deep scrutunizing democracy, including the influence of crisis circumstances that may lead to armed conflicts.

The interrelation between armed conflict and democracy has been extensively examined in legal science and legal scholarship. Traditional approaches suggest that war tends to weaken democratic institutions, leading to centralization of power and restrictions on civil liberties.

However, more recent studies highlight the possibility of democratic resilience, whereby societies adapt and reaffirm democratic values under crisis conditions [9, 10, 11].

Scholars have explored the concept of "democratic resilience" as the capacity of democratic systems to withstand external shocks while maintaining core principles. On the other hand, there are trends of abusing of this concept. For instance, the explanations of how states justify extraordinary measures by framing issues as existential threats in the situations of possible their abusing are emphasized in some contemporary researches [12].

The process of comprehension transit democratic processes in the context of Ukraine is ongoing [13, 14, 15, 16, 17]. Intending to build effective strategies for the post-crisis era in Ukraine, it is important to continue rethinking the socio-state processes of the ongoing wartime in dynamics.

3. The aim of the article

3. The aim of the article is to illustrate democracy perception not merely as a precondition for democratic transformation with its outcome, but as well an indicator of whether democratic transformation is substantive and able to achieve effective implementation in practice in Ukrainian society under conditions of war, and to reveal the markers of the transformation process within the context of the constitutional and legal foundations of the state's functioning.

4. Analysis and discussion.

The debate about the advantages and drawbacks of procedural and militant democracy remains relevant today. A classic example of the implementation of K. Löwenstein's concept of militant democracy is the practice of constitutional courts to ban anti-constitutional political parties. According to this concept, democracy is implied to defend itself against forces seeking to destroy the democratic order, even if such forces operate within the framework of formally democratic procedures. Within this concept, the banning of 'anti-democratic' political parties, restrictions on the activities of organisations that undermine the constitutional order, and other special constitutional protection mechanisms are regarded as permissible precautionary measures to protect democracy from encroachment or destruction. In contrast, procedural democracy is based on formalised rules and institutions: a) regular, free and competitive elections; b) a multi-party system and political pluralism; c) constitutional procedures; d) the functioning of representative state institutions; e) the formal equality of citizens in the political process, *etc.* As R. Dahl argues, democracy should be understood not as a fully achieved state but as an ongoing and "unfinished journey" toward greater political equality [7, p. 179–181]. Alternatively, militant democracy is considered as a protective system that is used when the ability to effectively defend democracy is under the threat. Nowadays, an attamps to find a balance between political pluralism and the need to protect democratic values is an illustration of this discourse. Therefore, reconsidering of these ideas remains relevant.

Since the full-scale invasion of the russian federation in Ukraine, a trend of developing modern constitutional doctrine has been traced in the direction from the doctrine of peacetime to the realities caused by the legal regime of martial law. The russian war against Ukraine as a causation for the ongoing martial law regime that was entered in first on February 24, 2022 not only provokes a limitation of democratic procedures (*for ex.,* the impossibility of holding elections), but strengthens public perception of democratic values as a separate protection object of the Ukrainian people in this war, and which, in the conditions of the predominance of measures necessary for national security and preservation of statehood, are under constant threat of restriction.

For the vast majority of Ukraine citizens, democracy remains a priority socio-political orientation, as evidenced by a sociological survey conducted in May 2023 by the Razumkov Center that had been made within the framework of the MATRA Programme supported by the Embassy of the Kingdom of the Netherlands in Ukraine [18]. A total of 2,020 respondents aged 18 and over were interviewed face-to-face between May 23 and May 31, 2023, in territories controlled by the Government of Ukraine. According to the data of the survey, 73,1 % of respondents agreed with the assertion that democracy is the most desirable type of government for Ukraine; 67,2% ones believed that Ukraine is not yet a fully democratic country, but is moving towards democracy, while 17.8% answered that Ukraine is a completely democratic state; to the question of whether the political system in Ukraine allows people to influence the actions of the government the largest percentage received the answer option "not enough" – 30,3%; 72,7 % of respondents considered the European model of state development to be the most attractive one.

Between 28 May and 3 June 2025, the Kyiv International Institute of Sociology (KIIS) conducted a nationwide public opinion survey (Omnibus), which included an additional question assessing whether Ukraine is perceived as moving toward democratic development or toward authoritarianism. 50% of Ukrainians believe that Ukraine is moving towards the development of democracy. At the same time, 41% feel that the country is moving towards authoritarianism, while another 9% are undecided [19].

Therefore, it is extremely important to distinguish between the system of values formed through the prism of the centuries-old existence of the Ukrainian people, enshrined in the Constitution, and how the russian federation imposes its own system of values on the Ukrainian occupied territories, which is rooted in imperialism and revanchism. In the context of that, it seems reasonable to convey to the world community what Ukrainians are defending, why and what they are fighting for.

When it comes to martial law, the state objectively acquires broader powers to restrict human rights and freedoms, which arises from the priority of national security and state survival. Although such restrictions

may comply with the principles of legality, necessity, and proportionality, they require adequate public justification and communication. Otherwise, a disparity between the formal legality of these measures and their social perception takes place.

A lack of communication from public authorities regarding the content, objectives and scope of restrictive measures leads to a deficit of understanding among citizens. As a result, a weakening of the legitimacy of legal decisions that should be perceived as a legitimate is occured. Even objectively necessary measures may be perceived as arbitrary or unjust if they are not accompanied by transparent explanations and effective safeguards against abuse.

In such a scenario, a negative dynamic of public sentiment develops: from misunderstanding to critical rejection, and ultimately to distrust in public authority as an institution. This gains particular significance in a situation where, as a result of martial law, standard democratic mechanisms of political accountability – in particular electoral procedures – are restricted. The inability to provide electoral renewal of public authority through elections may foster perceptions of diminished accountability, thereby generate deepening the crisis of trust.

In the context of current circumstances in Ukraine, abovementioned trend is evident in areas where state intervention should be most intense, specifically in mobilisation policy. Controversial coercive practices, contentious approaches to encouraging military service, and the perception that anti-corruption measures are ineffective foster a sense of inequality, selectivity or injustice in the application of the law among citizens. Finally, weakening of trust to not only specific institutions but in the legal system as a whole becomes inevitable effect.

The accumulation of distrust and public dissatisfaction generates social tension, which has the potential to destabilise the legal order. In the absence of effective channels for political participation and feedback, such tension tends to transform into legal conflicts.

In view of the above, the full burden of society's demand for fairness falls on Ukraine's courts. The growth number of disputes related to appealing decisions of public authorities, the protection of human rights, and the review of the legality of restrictive measures constitutes a logical consequence of unresolved social contradictions. Eventually, the higher level of accumulated social tension, the greater the burden on the judicial system, which is required not only to protect or restore violated rights, but also rehabilitate trust to the public authority and belief in fairness in the state.

Belief, like confidence in state institutions is not a static indicator. While some institutions gain increased legitimacy, others face scrutiny. This selective trust reflects a more pragmatic evaluation of institutional performance. An illustrative example is the case of Bill No. 12414, which was adopted by the Verkhovna Rada of Ukraine on 22 July 2025 [20]. Whilst it was formally aimed at improving pre-trial investigations under martial law, however, its provisions concerning the National Anti-Corruption Bureau (NABU) and the Specialised Anti-Corruption Prosecutor's Office (SAPO) raised serious concerns regarding the loss of independence of anti-corruption bodies.

Ukraine's anti-corruption infrastructure has been actively developed since 2015. Following the adoption of the relevant draft law by the Verkhovna Rada of Ukraine and its subsequent signing by the President of Ukraine, the powers of the Prosecutor General to oversee anti-corruption bodies were strengthened. Although the investigative jurisdiction of the NABU in corruption-related cases was expanded, the autonomy of the SAPO was reduced. At the same time, the Prosecutor General was granted the authority to withdraw cases from NABU and transfer them to the Bureau of Economic Security of Ukraine or other agencies, and vice versa.

The adoption of the Bill was preceded by searches carried out by officers of the Security Service of Ukraine and the Office of the Prosecutor General, without court warrants, at the offices of the NABU and the SAPO. It happened the day before the Bill was passed. Such actions by public authorities provoked resistance from civil society, including nationwide protests that had been held on 23 July 2025 across various cities of Ukraine, as well as criticism from Ukraine's international partners. Furthermore, the

country's European integration trajectory was under the criticism in light of the Bill adoption. Under such pressure, on 31 July 2025, a new law was passed which effectively revised the problematic provisions and restored the independence of the NABU and the SAPO from excessive interference by the Prosecutor General [21].

To sum up, the case demonstrates the interaction between democratic procedures and public scrutiny, and, in addition, can be interpreted as an example of "militant democracy," shown through institutional self-defense.

Among the issues that shed light on the consequences of the russian aggression on the territory of Ukraine and require rethinking and strategic elaboration, generating if not ready-made cliché solutions, then at least clear criteria in searching for answers to them, and which are a benchmark of the perception the democratic nature of the state, are the following.

The pursuit of justice in cases of compensation for war-related damage.

A notable example is case No. 757/13711/22, in which a judgment was delivered by the Supreme Court on 5 March 2025 [22]. As a result of artillery shelling during the russian federation's military invasion of Ukraine, in particular in the town of Gostomel, which was under occupation by russian forces until 2 April 2022, the claimant suffered pecuniary and non-pecuniary damage, for which, in the claimant's view, the State of Ukraine and the russian federation are fully liable. The case was adjudicated by the Supreme Court through the application of the doctrine of the positive obligations of the state. The court held that the State of Ukraine does not bear liability for material and non-pecuniary damage caused to the owner of real estate as a result of the armed aggression of the russian federation, provided that the State of Ukraine has duly fulfilled its positive obligations to protect property rights. The existence of state-approved legal and regulatory acts establishing a mechanism for compensation for damaged or destroyed property as a result of armed aggression, as well as the availability of procedures to apply for such compensation, were considered indicative of the State's compliance with its positive obligations.

Punishment for collaboration and the possibility of political rehabilitation for those who were forced to cooperate with the occupying administrations.

The relevance of the causes and consequences of collaborationist activity – and not merely in light of the russian federation's full-scale invasion in Ukraine territory – necessitates to seek and provide answers to complex questions regarding the criteria for determining penalties for collaboration. In Case No. 183/184/23, the Supreme Court held that the convicted person had committed a crime against the foundations of Ukraine's national security, constituting a significant public danger, and had engaged in activities aimed at introducing the educational standards of the aggressor state into educational institutions during the period of martial law [23]. The Court determined that the primary sentence imposed in the form of arrest did not comply with the general principles of sentencing, including legality, fairness, proportionality, and individualization of punishment, and would not contribute to the rehabilitation of the convicted person or to the prevention of further offenses. The court concluded that the imposition of arrest as the primary punishment constituted a misapplication of Ukrainian criminal law, resulting in the leniency of the sentence imposed and the non-compliance of the appeal court's decision with the requirements of Articles 370 and 420 of the Code of Criminal Procedure of Ukraine.

In case No. 953/7182/23, the Supreme Court held that the fact that a Ukrainian citizen voluntarily assumed a position in an unlawfully established body – rather than the performance of specific activities – constitutes sufficient grounds for classifying such actions as collaboration under Part 7 of Article 111-1 of the Criminal Code of Ukraine [24].

According to the circumstances of the case, a Ukrainian citizen, acting upon a proposal from members of the armed forces of the russian federation, voluntarily took up a post as a patrol officer in the unlawfully established body known as the 'People's Militia', created in a temporarily occupied territory, and began performing night-time security duties at its administrative building. The defence argued that the accused had only committed an attempted offence of voluntarily assuming a position in a law enforcement body, as

his activities were limited to guarding the building and did not include the execution of functions inherent to the role of a police officer.

Rejecting the arguments put forward in the appeal, the Supreme Court held that the disposition of Article 111-1(7) of the Criminal Code of Ukraine establishes liability for holding a position in an unlawfully established body, rather than for the specific activities of the individual whilst performing their duties. Following the consideration of the appeal, the Supreme Court upheld the decisions of the lower courts. Rejecting the arguments of the cassation appeal, the Supreme Court held that the disposition of Article 111-1(7) of the Criminal Code of Ukraine establishes liability for the assumption of a position within an unlawfully established body, rather than for the specific activities carried out by the individual in the course of such employment. Following the review of the cassation appeal, the Supreme Court upheld the decisions of the lower courts.

Cases concerning collaboration are particularly sensitive in light of the challenges facing post-war Ukraine. The issue of criteria for the application of lustration measures will arise, particularly with regard to preventing individuals found guilty of collaboration from holding elected public offices.

5. Conclusions.

From a legal perspective, democracy perception through: a) citizens' views on the legitimacy of public authority, the fairness of law, and the effectiveness of legal institutions; b) the level of trust in the judiciary, electoral processes, and public authorities; c) compliance with the principles of the rule of law, human rights, and equality before the law, serves as a socio-legal indicator of democratic transformations. The last one constitutes a structural process of change in the state. Both concepts are interrelated but not identical: the first one reflects a subjective (socio-legal) dimension, while the latter denotes an objective (institutional and legal) process.

Russian war against Ukraine reshapes democratic perception in Ukraine. As it has been illustrated, security considerations significantly influence public attitudes; legal frameworks adapt to wartime conditions; democratic resilience is evident despite challenges. The war has served not only as an indicator of limiting some democratic procedures, but also as a catalyst for a re-evaluation of democratic values and constitutional principles within society. The constitutional and legal dimension of this process implies the search for an optimal balance between the need for the effective functioning of state power under martial law and the preservation of the fundamental principles of the democratic constitutional order.

References:

1. V-Dem Institute. (2024). Democracy report 2024: Democracy winning and losing at the ballot box. https://www.v-dem.net/documents/43/v-dem_dr2024_lowres.pdf

2. V-Dem Institute. (2025). Democracy report 2025. https://www.v-dem.net/documents/60/V-dem-dr__2025_lowres.pdf

3. Freedom House. (2024). Nations in transit 2024: Ukraine. https://freedomhouse.org/country/ukraine/nations-transit/2024

4. Freedom House. (2026). Freedom in the world 2026: Ukraine. https://freedomhouse.org/country/ukraine

5. Schumpeter, J. A. (1942). Capitalism, socialism, and democracy. Harper & Brothers.

6. Dahl, R. A. (1989). Democracy and its critics. Yale University Press.

7. Dahl, R. A. (1998). On democracy. Yale University Press.

8. Löwenstein, K. (1957). Political power and the governmental process. University of Chicago Press.

9. Chachko, E., & Linos, K. (2024). Emergency powers for good. William and Mary Law Review, 66(1), 1–71.

10. Kaidatzis, A., Kalampakou, E., Kamtsidou, I., Papastylianos, C., & Stratilatis, C. (2024). European Union and its neighbours in a globalized world: The People's Constitution. The populist transformation of Constitutional Law (Vol. 17).

11. Council of Europe. (2026). The New Democratic Pact – A Commitment for 21st-century democratic security in Europe. https://www.coe.int/en/web/new-democratic-pact-for-europe/home

12. Cohen, M. I. (2024). Radicalised conservatism in the Hungarian Constitution: An analysis of justifications for rule of law backsliding. European Constitutional Law Review, 20, 424–450.

13. Barabash, I., & Berchenko, H. (2023). Chy zdatna demokratiia zakhyshchatysia v umovakh viiny? (Na dosvidi derzhavnoho budivnytstva pid chas rosiiskoi ahresii) [Is democracy capable of defending itself in war? On the experience of state building during Russian aggression]. Pravo Ukrainy – Law of Ukraine, 1, 54–75.

14. Lotiuk, O. (2023). Konstytutsiini zasady obmezhennia prav i svobod liudyny ta hromadianyna u pisliavoiennyi period [Constitutional principles of limitation of human and citizen rights and freedoms in the post-war period]. Aktualni problemy vitchyznianoi yurysprudentsii – Actual Problems of National Jurisprudence, 2, 9–15.

15. Haran, O. (2023). Democracy at war: What Ukrainians think. Ukraine Analytica. https://ukraine-analytica.org/democracy-at-war-what-ukrainians-think/

16. Savchyn, M. (2008). Polityko-pravovi harantii demokratii v Ukraini [Politico-legal guarantees of democracy in Ukraine]. Visnyk Tsentralnoi vyborchoi komisii – Bulletin of the Central Election Commission, 1(11), 33–45.

17. Kovalchuk, V. (2023). Konstytutsionalizm v umovakh viiny: pytannia tsinnostei, prav ta identychnosti [Constitutionalism in the conditions of war: Issues values, rights and identity]. Pravo Ukrainy – Law of Ukraine, 7, 115–127.

18. Razumkov Center. (2023, May). Opytuvannia shchodo sotsialno-politychnykh oriientatsii hromadian v Ukraini (traven 2023) [Survey on socio-political orientations of citizens in Ukraine (May 2023)]. https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/suspilnopolitychni-oriientatsii-gromadian-ukrainy-traven-2023r

19. Kyiv International Institute of Sociology (KIIS). (2023). Opytuvannia KIIS: «Chy rukhaietsia Ukraina do demokratii chy avtorytaryzmu?» [KIIS survey on «Is Ukraine moving towards democracy or authoritarianism?»]. https://www.kiis.com.ua/?lang=ukr&cat=reports&id=1539&page=1

20. Verkhovna Rada of Ukraine. (2025, July 22). Zakon Ukrainy vid 22.07.2025 No. 4555-IX [Law of Ukraine No. 4555-IX of July 22, 2025]. https://zakon.rada.gov.ua/laws/show/4555-20#Text

21. Verkhovna Rada of Ukraine. (2025, July 31). Zakon Ukrainy vid 31.07.2025 No. 4560-IX [Law of Ukraine No. 4560-IX of July 31, 2025]. https://zakon.rada.gov.ua/laws/show/4560-20#n6

22. Supreme Court of Ukraine. (2025). Postanova Verkhovnoho Sudu u spravi No. 757/13711/22 [Judgement of the Supreme Court in case No. 757/13711/22]. https://reyestr.court.gov.ua/Review/125673562

23. Supreme Court of Ukraine. (2024). Postanova Verkhovnoho Sudu u spravi No. 183/184/23 [Judgement of the Supreme Court in case No. 183/184/23]. https://reyestr.court.gov.ua/Review/116705036

24. Supreme Court of Ukraine. (2024). Postanova Verkhovnoho Sudu u spravi No. 953/7182/23 [Judgement of the Supreme Court in case No. 953/7182/23]. https://reyestr.court.gov.ua/Review/119961119

Ievgeniia Cherniak,
Doctor of Law, Professor of the Department of Constitutional Law
Educational and Scientific Institute of Law
Taras Shevchenko National University of Kyiv
E-mail: ievgeniia.cherniak@knu.ua
ORCID: 0000-0002-3524-3024

TYPES OF WILLS: A COMPARATIVE LEGAL ANALYSIS

Halkevych Serhii

DOI: https://doi.org/10.61345/1339-7915.2026.1.7

Annotation. The article states that by means of a will, a person (the testator) can determine in advance the disposition of all or part of their property and thereby avoid a number of problems in the future. The right to make a will may be exercised throughout a person's lifetime and includes both the right to draft one or more wills and the right to amend or revoke them.

The purpose of this study is to conduct a comparative legal analysis of the types of wills under the civil laws of Ukraine and certain European countries, and to identify common and distinguishing features based on the analyzed legislation.

The methodology of this study involves a comprehensive analysis of the civil legislation of Ukraine, the United Kingdom, Germany, Italy, France, and Poland, specifically focusing on the provisions of inheritance law regarding the types of wills and their characteristics. The study employs an analysis of legal literature, particularly civil codes, as well as comparative and systemic approaches to the examination of will types.

It is noted that the civil legislation of each country defines its own specific features regarding wills, which may share common traits with Ukrainian law or be radically different, incomprehensible, or even strange. At the same time, however, wills play an important role in the institution of inheritance law, and the experience of foreign countries can be useful in the process of reforming national civil legislation.

The article provides a detailed analysis of the legislation of foreign countries, and based on the results of this legal analysis, conclusions are drawn regarding the common and distinguishing features of existing classifications of wills. It is noted that the classification of wills in the Civil Code of Ukraine differs most radically from that of the United Kingdom. The existence of trust wills, living wills, and statutory wills is particularly uncommon in our legal system. Furthermore, holographic wills are absent in Ukraine (unlike in Poland, Germany, France, and Italy), and there is no practical need to introduce them. Notarized wills – also known as public wills – are characteristic of all the countries studied, as well as Ukraine. Another common feature is the existence of joint wills and secret wills.

Key words: inheritance law, wills, types of wills, comparative study, civil legal relations.

1. Introduction.

Ukrainian law defines a will as a personal disposition by a natural person in the event of their death, which by its nature constitutes a unilateral legal act [1]. Through a will, a person (the testator) may determine in advance the disposition of all or part of their property and thereby avoid a number of problems in the future. The right to make a will may be exercised throughout a person's lifetime and includes both the right to draft a will or multiple wills and the right to amend or revoke them. All of the testator's aforementioned powers, together with the means of their legal protection and enforcement, constitute the realization of testamentary freedom, which is a principle of inheritance law. Testamentary freedom, as a principle of inheritance law, includes, among other elements, the necessity of respecting the testator's will and the obligation to carry it out [2].

At the same time, it is necessary to take into account the existing statutory requirements regarding the types and content of a will, the procedure for its certification, the legal status of the testator, and so on, to ensure that the will is not subsequently declared invalid or void.

The main purpose of a will is to appoint an heir or heirs, as well as to determine the legal disposition of the estate (the testator's rights and obligations) that constitutes the subject of inheritance [3]. The civil legislation of each country defines its own specific features of wills, which may share common traits with Ukrainian law or be radically different, incomprehensible, or even strange. Nevertheless, the will occupies an important place in the institution of inheritance law, and the experience of foreign countries can be useful in the process of reforming national civil legislation.

2. Analysis of scientific publications.

The legal nature of wills has always been an active area of research among Ukrainian civil law scholars. In particular, research has focused on issues such as the form, content, and execution of wills; the grounds, procedure, and consequences of declaring them invalid; the analysis of judicial practice; and the specific features of certain types of wills. In general, the works of T.Y. Bilous, I. Dzery, O. Kalinichenko, A.Y. Kirik, O.E. Kukharev, M.O. Mikhailiv, M.V. Parasyuk, S.M. Sibilova, A. Fursa, and others can be highlighted. As for the issue of comparative legal analysis of types of wills in Ukraine and abroad, it has not actually been studied, since comparative research has most often been conducted regarding inheritance legal relations, intestate succession, or inheritance law in general.

3. The aim of the work

3. The aim of the work is to conduct a comparative legal analysis of the types of wills under the civil laws of Ukraine and certain European countries, and to identify common and distinguishing features based on the analyzed legislation.

4. Review and discussion.

The Civil Code of Ukraine distinguishes the following types of wills: ordinary wills, conditional wills, secret wills, joint wills, wills with a testamentary bequest, wills designating an heir, and partial wills [1].

In the United Kingdom, the classification of wills differs significantly from the Ukrainian one. First and foremost, standard wills should be distinguished, which are divided into simple (single) and mirror wills. A simple will is the most common and, depending on the person's wishes, can be either straightforward or complex. It is often drawn up by people who are not in a relationship, though there may be exceptions. This type of will may be drawn up by people who are married or living with a partner but have children from previous marriages; if the husband/wife/partner already has a will, etc.

Unlike a unilateral will, mirror wills are drawn up by spouses or civil partners. The Ukrainian equivalent here would be a joint will (albeit with significant differences). By their nature, these are two separate wills that reflect each other's wishes. Upon the death of one spouse or partner, the property automatically passes to the surviving spouse or partner, and upon the death of the latter, it is distributed in accordance with the wishes of the individuals specified in the mirror will. At the same time, it is important to note that the surviving spouse has the right to amend their will after the death of the first spouse, which can lead to unpredictable consequences [4].

In contrast to mirror wills, there are joint wills (or mutual wills) – legally binding agreements between two people, usually spouses, that ensure that after the death of one party, the surviving party cannot change the agreed-upon terms.

Another type is a trust will. These are typically used when a person wishes to provide for minor children, protect assets from potential creditors, or manage family wealth over time. In general, the following types can be distinguished: a discretionary trust (a trustee is appointed to manage the estate of a loved

one (children, incapacitated persons)); a property trust (allows you to specify who should benefit from the property or a share of the property); a life interest trust or perpetual ownership trust (allows you to grant another person the right to use the assets for the duration of their life following the testator's death); flexible life estate trust (similar to property trusts but offering additional flexibility, allowing trustees to modify payments or terms depending on changing circumstances). Additionally, it is important to note the living trust (also known as an inter vivos trust), which is established during a person's lifetime and allows assets to be transferred into the trust while the person is still alive.

A living will or advance directive is a written document that allows you to express your future wishes regarding care and medical treatment in the event that you lose legal capacity and are unable to communicate your preferences. Such a will does not pertain to the division or transfer of property.

Legal wills are drafted and approved by the Guardianship Court on behalf of the person who lacks legal capacity. To draft a statutory will, an authorized person, such as an attorney-in-fact or a representative of the Guardianship Court, must file a petition with the Guardianship Court. In this case, the Court assesses the person's best interests, taking into account their prior wishes, family circumstances, and financial situation [5].

Compared to the United Kingdom, the German Civil Code recognizes significantly fewer types of wills. The most common type is a handwritten will, also known as a holographic will or a private will. Such a will can be drafted by anyone at any time at home. Therefore, there are generally no costs associated with creating this type of will. It is important that the entire will be written by hand. A combination of computer printouts, copies, and handwritten sections is also not permitted. The will must specify the date and place of its creation. The will must be signed by the testator in their own handwriting, including their first and last name. If the will consists of multiple pages, the signature must appear on each page.

A public or notarized will is drawn up with the assistance of a notary. Notarization can take place in two ways: 1) the will is dictated orally to the notary; 2) a written record of the last will and testament may be submitted to the notary.

A joint will allows two people to dispose of their property in a single will and can be used by both married couples and registered civil partners. A joint will can be handwritten or notarized and cannot be changed after the death of the first spouse or partner. If the marriage or registered civil partnership is dissolved, the joint will also becomes invalid.

A variation of the joint will is the so-called "Berlin will." In this type of joint will, the two spouses or partners in a registered civil partnership mutually designate each other as sole heirs. Upon the death of one person, all property passes to the surviving partner, who becomes the primary heir, and only upon the death of the second person does the estate pass to the next heir [6].

The Polish Civil Code stipulates that property may be transferred after death only by will. Therefore, there is no other legal way to transfer one's assets to specific individuals after death. A will must be drawn up in the appropriate form and executed by a person who is of sound mind and has full legal capacity.

All wills are divided into general and special wills. General wills are the most common form of disposing of property after death. Legislators designed them to be appropriate for standard situations where no sudden or unforeseen events occur. These include: a handwritten (holographic) will, a notarized will, an allographic will, or a formal will.

A holographic will is written by hand and includes the date and signature. However, the absence of a date does not invalidate a holographic will if it does not raise doubts regarding the testator's capacity to make a will, the content of the will, or the relationship between multiple wills [7].

A notarial will is drawn up in the form of a notarial deed. An allographic will is a much less common form of a simple will. It is not widely used, mainly due to the requirement for two witnesses and the requirement that the will be drawn up in the presence of the mayor (or city council chair), district chair, provincial marshal,

district or municipal secretary, or the head of the civil registry office. The will is drafted and read aloud in the presence of witnesses, and the document is signed by the testator, the witnesses, and the person to whom the will was read. Additionally, this form is not suitable for deaf or mute individuals.

A special will may be drawn up only under strictly defined circumstances, such as when there is a fear of imminent death. This form of will is intended to provide the opportunity to express one's wishes regarding the disposition of one's assets in urgent and unforeseen circumstances. An oral will is drawn up in the presence of three witnesses. This form may be chosen if there is a fear of imminent death or special circumstances that make compliance with the standard form impossible or very difficult. An oral will must be drawn up within one year of its presentation or, if necessary, confirmed by testimony in court.

A will made during a voyage may be drawn up while traveling on a Polish seagoing vessel or aircraft before the ship's captain or his deputy by declaring the will to the ship's captain or his deputy in the presence of two witnesses. The ship's captain or his deputy records the testator's will, noting the date of its execution, and reads it aloud to the testator in the presence of the witnesses. The document is then signed by the testator, the witnesses, and the ship's captain or his deputy. If the testator is unable to sign, the reason for the absence of the testator's signature must be noted in the document. If this form is not possible, an oral will may be made.

A military will may be made only by members of the Armed Forces or persons associated with them. It is important to note that a special will loses its validity six months after the circumstances justifying the deviation from the standard cease to exist, unless the testator dies before the expiration of this period. The running of the time limit is suspended for the period during which the testator is unable to execute a standard will.

The Polish legislature is also considering the introduction of an audiovisual will. This became a hot topic in 2024, when the first draft amendment to the Civil Code was developed. Legislative work is currently underway on the second version, adopted by the Commission for the Codification of Civil Law. According to the new draft (dated October 28, 2025), an audiovisual will will be a form of oral will. The legislature has provided for the possibility of using this option only in certain situations. Thus, a last will and testament may be recorded on a smartphone when, due to extraordinary circumstances, preserving a standard form of a will is impossible or excessively difficult, and there is a fear of the testator's imminent death [8].

In Italy, the following types of wills exist: holographic, public, secret, and special. A holographic will is the simplest and most common form. To be valid, it must be entirely handwritten by the testator, including the date and signature. It does not require the involvement of a notary, but for this very reason, it is important that it be drafted precisely in accordance with the requirements of the Civil Code [9].

A public will is drawn up by a notary at the testator's dictation in the presence of two witnesses. After being read aloud, the document is signed and officially registered. This is the most formal and secure form, recommended in cases of complex inheritance matters or potentially contentious family situations. A secret will can be drafted by the testator themselves or by a third party, even mechanically. It is then sealed and deposited with a notary in the presence of two witnesses. Its contents remain confidential until the testator's death. Special wills are provided for exceptional situations, such as war, natural disasters, or isolation. They are valid for a limited time and permitted only when ordinary wills cannot be used [10].

Interestingly, joint wills (where two or more people jointly set forth their wishes in a single document) and reciprocal wills (where two or more people make arrangements in a single document for the benefit of one another) are prohibited. However, wills are valid if two or more persons set forth obligations to one another in separate documents [11].

In France, there are four main types of wills: authentic, secret, holographic, and international. An authentic will is a document drawn up by a notary. It must be drawn up in the presence of the testator and two witnesses. In addition, authentic wills are registered in the Central Register of Last Wills and Testaments, which eliminates the risk of their loss. Authentic wills are the least likely to be contested in court [12].

A secret will is drafted by the testator themselves and then handed over in an envelope to a notary in the presence of two witnesses. Thus, the contents of the will remain confidential until the inheritance case

is resolved. Secret wills are also registered in the Central Register of Last Wills and Testaments; however, only the date of registration can be guaranteed, while the validity and accuracy of the contents cannot be certified. In France, it is rarely used. Less than 1% of the wills registered each year are secret wills. A secret will is subject to strict formal requirements. Any error can render it invalid. Furthermore, neither the notary nor the witnesses can guarantee its content.

A holographic will is a document in which the testator personally attests to their final wishes by writing them out by hand on a blank sheet of paper. Although it is not mandatory to submit it to a notary, this can be done voluntarily. The main problem with such wills is that nearly half of them are declared invalid due to errors in form or content. An international will is a document intended for individuals residing abroad or who have assets located outside of France. This document is recognized in all countries that have signed the Washington Convention and is registered by a notary. In this case, the testator is free to choose the language in which the will is drafted [13].

5. Conclusions.

After conducting a legal analysis of the civil legislation of Ukraine, the United Kingdom, Germany, France, Italy, and Poland regarding types of wills, the following comparative conclusions can be drawn: 1) The classification of wills set forth in the Civil Code of Ukraine differs most radically from that of the United Kingdom. Particularly uncommon in our legal system are trust wills, living wills, and statutory wills. Regarding the latter, in Ukraine, as in the other countries studied, it is not possible to execute a will on behalf of an incapacitated person (who suffers from mental disorders). Under national law, a person lacking legal capacity is barred from entering into any legal transactions, including wills, and there are no mechanisms for others or authorized bodies to draft a will on their behalf. The only way to inherit such a person's property is by intestacy. Although the English experience certainly deserves attention; 2) In Germany, France, Poland, and Italy, there is the holographic will – the simplest type of will, which is handwritten, does not require notarization, but is most often subject to challenge in court. In Ukraine, however, a will – regardless of whether it is handwritten or typed – must always be certified by a notary or other officials, the list of whom is defined by the Civil Code. We believe that introducing a simple holographic form under current conditions would be entirely inappropriate, due to the high risk of forgery and the high percentage of such wills being declared invalid in court. Although this form would be the most convenient for testators; 3) Notarized wills, also known as public wills, are characteristic of all the countries studied, as well as Ukraine. However, in Ukraine, uncertified forms of wills are not permitted a priori; 4) The legislation of Ukraine, the United Kingdom, and Germany provides for a joint will, or the term more commonly used in the national legal system – a marital will. In Poland, Italy, and France, this type is not provided for; 5) Polish law distinguishes between travel wills and military wills among the special types of wills. Although Ukrainian law does not specifically provide for such types, it does define the particularities of certifying wills of military personnel; persons aboard sea or river vessels flying the Ukrainian flag; and persons participating in search or other expeditions; 6) In France, Italy, and Ukraine, secret wills are provided for, and the procedure for their drafting and announcement shares common features across all these countries.

References:

1. Verkhovna Rada of Ukraine. (2003, January 16). Tsyvilnyi kodeks Ukrainy vid 16.01.2003 No. 435-IV [Civil Code of Ukraine No. 435-IV of January 16, 2003]. https://zakon.rada.gov.ua/laws/show/435-15

2. Supreme Court of Ukraine. (2022, July 20). Postanova Tsyvilnoho kasatsiinoho sudu u spravi No. 461/2565/20 [Resolution of the Civil Cassation Division of the Supreme Court in case no. 461/2565/20]. https://protocol.ua/ua/postanova_ktss_vp_vid_20_07_2022_roku_u_spravi_461_2565_20_1/

3. Supreme Court of Ukraine. (2020, December 23). Postanova Tsyvilnoho kasatsiinoho sudu u spravi No. 367/704/16-ts [Resolution of the Civil Cassation Division of the Supreme Court in case no. 367/704/16-ts]. https://reyestr.court.gov.ua/Review/93794719

4. Culver Law. (n.d.). Different types of wills - Which is best for you? https://www.culverlaw.co.uk/news/types-of-wills

5. Town & Country Law. (n.d.). Understanding the different types of wills in England & Wales: Which one is right for you? https://townandcountrylaw.legal/understanding-the-different-types-of-wills/

6. Bürgerliches Gesetzbuch vom 18.08.1896 [Civil Code of August 18, 1896]. (1896). https://dejure.org/gesetze/BGB/516.html

7. Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny [Act of April 23, 1964—Civil Code]. (1964). Internetowy System Aktów Prawnych (ISAP). https://isap.sejm.gov.ua/isap.nsf/download.xsp/WDU19640160093/U/D19640093Lj.pdf

8. UNICEF Poland. (n.d.). Testament – jakie są jego rodzaje, kiedy jest ważny i co dzieje się po śmierci spadkodawcy? [A Will – What are the different types, when is it valid, and what happens after the testator's death?]. https://unicef.pl/chce-pomoc/nasze-programy/ponadczasowi/testament/rodzaje-testamentow

9. Codice Civile. Regio Decreto 16 marzo 1942, n. 262 [Civil Code. Royal Decree No. 262 of March 16, 1942]. (1942). Gazzetta Ufficiale. https://www.gazzettaufficiale.it/sommario/codici/codiceCivile

10. Consiglio Nazionale del Notariato. (n.d.). Testamenti [Wills]. https://www.notariato.it/it/famiglia/testamenti/

11. Ministro della Giustizia. (n.d.). Successione testamentaria [Testamentary succession]. https://www.giustizia.it/giustizia/it/mg_3_9_17.page

12. Le Code civil des Français 21 mars 1804 [The French Civil Code of March 21, 1804]. (1804). Journal officiel de la République française (JORF). https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/

13. Testament Solidaire. (n.d.). Testament: Tout savoir [Wills: Everything you need to know]. https://www.testament-solidaire.fr/blog/testament-tout-savoir

Serhii Halkevych,
Candidate of Juridical Sciences, Associate Professor,
Associate Professor Department of Private Law
Faculty of Law,
«Yuriy Fedkovych Chernivtsi National University»
E-mail: s.halkevych@chnu.edu.ua
ORCID: 0000-0003-2039-0942

EUROPEAN (SWEDISH) ANTI-CORRUPTION MODEL: INSTITUTIONAL AND LEGAL FRAMEWORK[1]

Horobets Nadiia

DOI: https://doi.org/10.61345/1339-7915.2026.1.8

Annotation. *The aim of the work is* to identify the features of the institutional and legal foundations of the European (Swedish) anti-corruption model and to assess the possibilities of its application in Ukraine.

The methodological basis of the study includes general scientific and special legal methods, in particular analysis, synthesis, comparative legal method. The research is based on the study of scientific publications of domestic and foreign scholars, as well as regulatory acts of the EU and Sweden in the field of anti-corruption and whistleblower protection.

Results. It has been established that the European (Swedish) anti-corruption model belongs to preventive (horizontal) models and is focused on eliminating the preconditions for corruption rather than solely combating its consequences. It combines legal, institutional, and social mechanisms to create an environment intolerant of corruption. Key features include transparency in public administration, effective public oversight, citizen participation in decision-making, high ethical standards for officials, and an independent judiciary. A central role is played by whistleblower protection, which has deep historical roots in Sweden and evolved from guarantees of freedom of expression and access to public information. Modern regulation, aligned with EU standards and Directive (EU) 2019/1937, significantly expanded protection, introduced diversified reporting channels, broadened the range of protected persons, and simplified protection through the concept of public interest. The effectiveness of this mechanism relies not only on legal guarantees but also on its interaction with public oversight, including the active role of the media. Certain shortcomings remain, such as limitations on compensation for whistleblowers and unclear sanctions for obstructing reporting or retaliation.

Conclusions. The Swedish experience demonstrates that effective anti-corruption policy is based on a comprehensive approach that combines legal regulation with a high level of public trust and active societal control. Certain elements of this model, particularly in the areas of transparency, digitalization, and whistleblower protection, can be adapted in Ukraine, taking into account national specificities.

Key words: anti-corruption model, European Union, Swedish model, corruption prevention, public oversight, whistleblowers, legal guarantees.

1. Introduction.

In the context of the need to improve the effectiveness of public administration in the field of anti-corruption in Ukraine, the study of European anti-corruption practices is of particular importance. One such practice

[1] The research was carried out within the framework of the international project in the field of education ERASMUS-JMO-2023-HEI-TCH-RSCH-101126904 - «EUPARTUA: Citizen Participation: Challenges and European Experience for Ukraine» (a joint project of Sumy State University, the Erasmust Jean Monnet Fund, and the Education, Audiovisual and Culture Executive Agency with the support of the EU). The European Commission's support for the production of this publication does not constitute an endorsement of its content, which reflects the views only of the authors, and the Commission cannot be held responsible for any use that may be made of the information contained therein.

is the European (Swedish) anti-corruption model, which is considered one of the most effective due to its high level of transparency, trust in public institutions, and well-developed legal culture. Certain elements of this model can be successfully applied in Ukrainian realities, particularly in terms of the openness of public institutions and the strengthening of legal guarantees. At the same time, the implementation of such experience requires a thorough study of the model itself and its underlying preconditions.

2. Analysis of scientific publications.

An analysis of recent studies and publications indicates significant interest in anti-corruption issues among both domestic and foreign scholars, including O. Bryhinets, D. Hlushkova, O. Kosytsia, J. G. Tillen, L. Moushey, E. Kristoffersson, Y. Larsson, K. Lappalainen, K. Sundqvist, and others. However, the issue of effectively implementing anti-corruption mechanisms, particularly adapting foreign experience to national conditions, requires further comprehensive study, especially in Ukraine, where institutional and social conditions differ from those in Sweden.

3. The aim of the work.

To identify the features of the institutional and legal foundations of the European (Swedish) anti-corruption model.

4. Review and discussion.

The European (Swedish) anti-corruption model belongs to the so-called horizontal models, which focus not so much on repressive measures as on systematic and preventive activities through incentives and corruption prevention. It is based on a combination of legal, institutional, and social mechanisms aimed at eliminating the preconditions for corruption by promoting integrity and preventing abuse of power. The key features of this model include strengthening public oversight, deregulation of economic activity, ensuring transparency in public administration, and introducing high ethical standards for public officials.

This model is most fully implemented in the Scandinavian countries, in particular in Sweden, Denmark, Finland, and the Netherlands, where it operates on the principles of good governance. Common features of these countries include active citizen participation in decision-making and accountability of public authorities, openness of public institutions, the promotion of integrity and intolerance toward corruption, high ethical standards for public officials, as well as the functioning of an independent and effective judiciary [1]. The combination of these factors undoubtedly creates a social environment in which corrupt practices are not only legally prosecuted but also socially unacceptable.

Researchers note that in countries such as France, Sweden, and Switzerland, priority is given to national welfare, financial stability, and respect for both authorities and citizens, which effectively displaces phenomena such as “corruption,” “bribery,” “self-enrichment,” and “concealment of income.” This allows these states to consistently rank among the least corrupt countries in global indices [2].

An important component of Sweden’s effective anti-corruption system is comprehensive legislation on whistleblower protection, which creates legal conditions for the timely detection of corruption and other abuses in both the public and private sectors. As noted by O. Kosytsia, Sweden is among the countries with a well-developed administrative and legal mechanism for protecting whistleblowers’ rights, which significantly increases the detection and prevention of corruption-related offenses [3, p. 254]. At the same time, the effectiveness of this mechanism is largely determined not only by formal legal guarantees but also by their close connection with the system of public oversight.

Public oversight itself serves as a key element of Sweden’s anti-corruption mechanism, ensuring the practical implementation of the whistleblower institution. It covers the activities of both public officials and business entities, with the media playing a leading role. The media promptly and publicly report any cases of corruption

regardless of the position or social status of the individuals involved, thereby fostering a high level of public intolerance toward corrupt practices. As a result, businesses are often more concerned about reputational risks arising from journalistic investigations than about intervention by law enforcement authorities [4, p. 110].

Legal guarantees of freedom of expression and the protection of individuals who disclose information of public interest in Sweden have deep historical roots and form the foundation of the modern system of public oversight. The Freedom of the Press Act (FPA) guarantees the right to provide any information for publication in print media, and since 1991, the Freedom of Expression Act (FSA) has extended similar guarantees to audiovisual media. Individuals who provide information to the media have the right to anonymity, and identifying the source of information is prohibited, except in cases involving the disclosure of legally protected secrets. In addition, public officials are protected from retaliation by their employers, ensuring a real possibility to expose corruption without fear of repression [5].

Today, public opinion in Sweden has such a significant influence that, in the event of a loss of public trust, a public official may lose immunity, be dismissed from office, and be banned from holding public positions or engaging in business activities in the future [6]. This approach further strengthens the preventive effect of anti-corruption policy.

An institutional extension of this approach is the digitalization of public administration, which serves as an important tool for reducing corruption risks and strengthening public oversight. The introduction of electronic public financial management systems ensures open access for citizens and the media to information on the use of budget funds, which significantly limits opportunities for abuse and enhances the transparency of financial processes [7, p. 123].

A special place in Sweden's anti-corruption system is occupied by the institution of whistleblower protection, the legal foundations of which were laid as early as 1766 with the adoption of the world's first Freedom of the Press Act (Tryckfrihetsförordningen) during the Age of Liberty, when Sweden and Finland were part of one state. This act was based on the idea that freedom of expression and access to information of public interest are necessary conditions for social welfare, as substantiated by Peter Forsskål in his work "Thoughts on Civil Liberty" (1759). Further development of the legislation took place through the expansion of guarantees of source confidentiality and the right to anonymity, in particular with the adoption of the 1949 Freedom of the Press Act [8, pp. 27–31].

For a long time, whistleblower protection in Sweden applied mainly to the public sector. Only since the late twentieth century, in response to the privatization of social services and the growing role of private corporations, have steps been taken to extend the rights of whistleblowers to the private sector. In particular, amendments to the Trade Secrets Act in 1990 prohibited the classification of serious violations as commercial secrets, and restrictive provisions in contracts were declared invalid [9, pp. 31–32].

Further development of the whistleblower institution is associated with the adoption of the Whistleblower Act of 2016, which applied to employees in both the public and private sectors. However, its scope remained limited, as it applied only to individuals in direct employment relationships and did not guarantee anonymity of reports. Moreover, this law did not lead to the formation of significant case law and was applied very rarely until the entry into force of the new 2021 Act.

A qualitatively new stage in the development of legal regulation of whistleblower protection began after the adoption of Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. In response, in October 2021 Sweden implemented the Act on the Protection of Persons Reporting Irregularities (2021:890), as well as the corresponding Ordinance (2021:949), which specifies the procedures for its implementation. The adoption of these acts significantly expanded the scope of legal guarantees and aligned national legislation with European standards of whistleblower protection.

According to the Act on the Protection of Persons Reporting Irregularities, protective guarantees – such as exemption from liability and protection against obstruction and retaliation – apply to natural persons who report or publicly disclose information on violations of public interest. This includes, in particular, acts or omissions that violate EU law, national provisions implementing or supplementing EU law, or that contradict the objectives and purposes of relevant EU acts within the scope of Directive (EU) 2019/1937. Importantly,

protection applies to individuals who obtained such information in the context of work-related activities, regardless of their status – employee, job applicant, volunteer, trainee, self-employed person, a person working under the supervision of an operator, a member of management bodies or a shareholder, as well as individuals who became aware of violations during previous involvement in relevant activities [10].

A key innovation of the new Act is the shift in focus from the category of "serious violations" to violations of public interest. The need for this approach stems from the fact that the requirement to prove the "seriousness" of a violation, established in the 2016 Whistleblower Act, was subject to justified criticism, as it required whistleblowers to make complex legal assessments prior to reporting and was incompatible with the EU Directive. Instead, the current legislation provides that the existence of public interest is sufficient, without the need to prove the degree of its "seriousness" [9, p. 42].

At the same time, the Act does not apply to reports concerning classified information in accordance with protective security legislation, nor to information related to national security in the fields of defense and security (Articles 2 and 8). However, the legislator introduced an important safeguard: a whistleblower cannot be held liable for breaching confidentiality obligations if, at the time of reporting, they had reasonable grounds to believe that the disclosure was necessary to reveal a violation [10].

The Act also regulates the channels for reporting. Reports may be submitted internally, externally, or through public disclosure; however, the latter is allowed only if the issue has not been resolved or in cases of immediate danger or risk. Following the entry into force of this Act, public authorities are required to establish and maintain external reporting channels (except in the defense and security sector), ensuring the possibility of written and oral reporting, acknowledgment of receipt, feedback, and information on the results of the review. In addition, since December 2023, all employers with 50 or more employees are required to implement internal reporting channels, with supervision of this obligation assigned to the Swedish Work Environment Authority [11].

The practice of applying the new Act is still emerging but already includes important cases. In the first case considered under its provisions, the court examined a situation involving a surgeon who reported violations in a private clinic, although the reports themselves were made before the Act entered into force. The court concluded that the new law could be applied, as the retaliation against the whistleblower occurred after its entry into force. At the same time, the key issue was the existence of public interest in the reported violations. The court emphasized that violations generally do not constitute a matter of public interest unless they are serious, while personal conflicts fall entirely outside the scope of the Act. In this case, the whistleblower failed to demonstrate the existence of public interest, and therefore the report and the alleged retaliation were not recognized as protected [12].

Despite the fact that the Act and the Ordinance implement the EU Directive, they go beyond its minimum standards. Protection extends not only to whistleblowers themselves but also to persons assisting them, as well as to legal entities associated with the whistleblower. Furthermore, the legislation explicitly provides protection in cases of disclosure of information of "public interest," reflecting an expanded understanding of the role of whistleblowers within the system of public oversight.

At the same time, reports by international organizations highlight a number of shortcomings in the current regulation. In particular, Recommendation XXII.vii on combating bribery emphasizes the need to ensure effective remedies for whistleblowers, including full compensation for damages. Although Swedish legislation provides for the right to compensation, it limits its amount in cases of dismissal to a maximum of 32 months' salary, which may hinder full reparation of the harm suffered [13, pp. 30–33]. In addition, it is noted that the Act does not establish direct sanctions for obstructing reporting or for retaliation against whistleblowers, which does not fully comply with the requirements of the EU Directive [14, pp. 30–31].

5. Conclusions.

The European (Swedish) anti-corruption model belongs to preventive models and is based on a combination of legal, institutional, and social mechanisms aimed at preventing corruption. Its effectiveness is ensured by a high level of transparency in public administration, a well-developed legal culture, trust in public

institutions, and active public participation. Key elements of this model include openness of public authorities, independence of the judiciary, high ethical standards for public officials, and effective public oversight, in which the media play a significant role. It is precisely the combination of legal guarantees and societal intolerance toward corruption that creates an environment in which corrupt practices are minimized.

Particular importance is attached to the institution of whistleblower protection, which in Sweden has deep historical roots and modern legislative support in line with EU standards. The 2021 legislation significantly expanded the scope of protection, simplified the conditions for its application, and introduced effective mechanisms for reporting violations in both the public and private sectors.

At the same time, despite its overall effectiveness, certain shortcomings remain, including limitations on compensation for whistleblowers and insufficient clarity regarding sanctions for obstructing reporting or applying retaliation.

Thus, Sweden's experience demonstrates that an effective anti-corruption policy is comprehensive in nature and relies not only on legal regulation but also on a high level of public trust and oversight. Certain elements of this model can be adapted in Ukraine, taking into account national specificities.

References:

1. Tillen, J., & Moushey, L. (2022). Anticorruption regulation: Sweden. Miller & Chevalier Chartered. https://nordia-law.com/wp-content/uploads/2022/02/2022-Anti-Corruption-Regulation-Sweden.pdf

2. Akimov, O. O. (2014). Psykholohichni aspekty proiaviv koruptsii v derzhavnomu upravlinni [Psychological aspects of corruption manifestations in public administration]. Derzhavne upravlinnia: teoriia ta praktyka – Public Administration: Theory and Practice, 1, 181–188.

3. Kosytsia, O. O. (2019). Administratyvno-pravovyi mekhanizm zabezpechennia prav vykryvachiv v Ukraini [Administrative and legal mechanism for ensuring whistleblowers' rights in Ukraine] (Doctoral dissertation). https://nauka.nlu.edu.ua/download/dissertation/Kosytsia/dis_Kosytsia.pdf

4. Hlushkova, D. V. (2021). Shvedskyi dosvid borotby z koruptsiieiu [Swedish experience in combating corruption]. 110–111. https://dspace.univd.edu.ua/server/api/core/bitstreams/89a0afaa-e455-4ff4-99ff-3631fbc04b82/content

5. Kristoffersson, E., & Larsson, Y. (2019, May). The role of whistleblowers at the Swedish Tax Agency. Paper presented at the 4th International Conference on Taxpayer Rights, Minnesota Law School. http://urn.kb.se/resolve?urn=urn:nbn:se:oru:diva-79725

6. Bryhinets, O. O. (2020). Vykorystannia dosvidu Shvetsii yak sposobu znyzhennia rivnia koruptsii v Ukraini [Using Sweden's experience as a way to reduce corruption in Ukraine]. 43–45. https://elar.navs.edu.ua/items/9ecbb7ed-ddb1-4c7c-9d6e-1842c2e12fa7/full

7. Berezniak, V., & Mariienko, A. (2025). Mizhnarodnyi dosvid protydii nepravomirnii vyhodi: uroky dlia Ukrainy [International experience in combating undue benefits: lessons for Ukraine]. Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav – Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs, 1, 119–127.

8. Gerdemann, S. (Ed.). (2023). Europe's new whistleblowing laws: Research papers from the 2nd European Conference on Whistleblowing Legislation. https://library.oapen.org/bitstream/id/b0948aa3-a768-4371-9df1-b91c2b74a799/gerdemann_whistleblowing.pdf

9. Fast Lappalainen, K. (2023). The evolution and implementation of whistleblower protection in Sweden. In S. Gerdemann (Ed.), Europe's new whistleblowing laws (pp. 25–62).

10. Act on the Protection of Persons Reporting Irregularities (SFS 2021:890). (2021). Ministry of Employment. https://www.government.se/government-policy/labour-law-and-work-environment/2021890-act-on-the-protection-of-persons-reporting-irregularities-2021890/

11. Ordinance on the Protection of Persons Reporting Irregularities (SFS 2021:949). (2021). Ministry of Employment. https://www.government.se/government-policy/labour-law-and-work-environment/2021890-act-on-the-protection-of-persons-reporting-irregularities-2021890/

12. Sundqvist, K. (2025, July 25). Sweden: The Swedish Labour Court issues first ruling under the new whistleblowing act. LEGlobal. https://leglobal.law/2025/07/25/sweden-the-swedish-labour-court-issues-first-ruling-under-the-new-whistleblowing-act/

13. OECD. (2024). OECD Anti-Bribery Convention Phase 4 report on Sweden. https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/12/oecd-anti-bribery-convention-phase-4-report-on-sweden_ac496ae1/77dec27d-en.pdf

14. National Agency on Corruption Prevention (NACP). (2025). Zakhyst vykryvachiv ta vidpovidalnist robotodavtsia [Whistleblower protection and employer liability]. https://wiki.nazk.gov.ua/wp-content/uploads/2025/analitychne-doslidzhennia-zakhyst-vykryvachiv-ta-vidpovidalnist-robotodavtsia.pdf

Nadiia Horobets,
PhD in Law
Senior Lecturer of the Department of Administrative, Commercial Law,
Financial and Economic Security
Academic and Research Institute of Law, Sumy State University
E-mail: ns.andriychenko@yur.sumdu.edu.ua
ORCID: 0000-0002-0282-2775

ADMINISTRATIVE AND LEGAL SUPPORT FOR ACCESS TO THE NOTARY PROFESSION IN UKRAINE

Khrebtova Aliesia

DOI: https://doi.org/10.61345/1339-7915.2026.1.9

Annotation. The aim of the work is to comprehensively study the administrative and legal support for access to the notary profession in Ukraine, to clarify the content of the relevant legal and organizational mechanisms, and to identify the problems and prospects for improving state regulation in this area. The methodological basis of the study consists of general scientific and special legal methods of cognition, in particular the formal legal, systemic and structural, logical-semantic, comparative legal, and functional methods.

Results. The article establishes that access to the notary profession in Ukraine is a complex administrative and legal mechanism covering a system of legally established requirements for a person, internship procedures, passing a qualification examination, obtaining a certificate granting the right to engage in notarial activity, and organizational admission to professional activity. It is substantiated that the effectiveness of such a mechanism directly affects the quality of notarial services, the level of legal certainty in civil circulation, and public trust in the notariat as a publicly significant legal institution. It is determined that an important role in ensuring access to the notary profession is played by state authorities, primarily the Ministry of Justice of Ukraine, which perform managerial, coordinating, and control functions in this area. At the same time, a number of problems have been identified related to the need to increase the transparency of administrative procedures, ensure the objectivity of professional selection, improve the criteria for assessing candidates' professional readiness, and strengthen guarantees of equal access to the profession.

Key words: notary, access to the profession, legal experience in the field of law, administrative and legal support, state regulation, notarial activity.

1. Introduction.

In the current conditions of development of Ukraine's legal system, the notariat occupies an important place in the mechanism for ensuring the protection and defense of the rights, freedoms, and legitimate interests of individuals and legal entities. The peculiarity of this institution lies in the fact that it combines the private-law orientation of notarial activity with the public-law principles of its organization, supervision, and admission to the profession. For this reason, the issue of access to the notary profession should be considered not only as a кадрове чи професійне matter, but primarily as an administrative and legal one, since it is connected with the implementation by the state of its regulatory function in the field of justice [1].

The relevance of the topic is обусловлена тим, що the effectiveness of notarial activity directly depends on the quality of the legal mechanism for forming the notarial corps. The requirements for a person seeking the right to engage in notarial activity, the procedure for confirming professional suitability, the role of public authorities in the procedures of admission to the profession, as well as the criteria for assessing legal experience in the field of law, influence the level of professionalism of notaries and public trust in the notariat as a whole [2]. In this context, the administrative and legal support for access to the notary profession acquires particular importance as an independent direction of legal regulation.

In academic literature, certain aspects of access to the notary profession, the administrative and legal status of a notary, and the reform of notarial activity have already been the subject of research. In particular, A. V. Lyla-Barska carried out a comparative analysis of access to the notary profession in Ukraine and the Federal Republic of Germany, which makes it possible to assess the national model of professional admission more broadly [6]. A. V. Medynska examined the administrative and legal status of a notary in Ukraine and in foreign countries, focusing on the place of the notary in the system of legal regulation and public administration [7]. The works of O. S. Diakovskyi, S. S. Moroz, S. S. Rozsokha, and Yu. B. Bobozhko reveal current problems of the administrative and legal status of a notary, the peculiarities of the administrative and legal support of notarial activity, and directions for its improvement [9]. Particular attention should also be paid to scholarly approaches to understanding the role of the notary in related legal mechanisms, in particular in the field of alternative dispute resolution, which indicates the expanding functional significance of the notary profession in the modern legal system.

At the same time, despite the existing scholarly developments, the issue of the administrative and legal support specifically for access to the notary profession in Ukraine cannot be considered exhaustively studied. This especially concerns the problem of the legislative understanding of legal experience in the field of law, the uniform application of qualification requirements, as well as the possibility of taking into account academic and scientific-pedagogical experience for persons engaged in professional activity in the field of law. Such issues are of not only theoretical but also clear practical importance, since they directly affect the transparency, objectivity, and fairness of procedures for access to the notary profession [3].

Therefore, the study of the administrative and legal support for access to the notary profession in Ukraine is relevant in view of the need to improve the current legislation, unify administrative practice, and develop a modern approach to determining the professional suitability of persons seeking to engage in notarial activity. This necessitates a comprehensive scholarly analysis of the relevant regulatory and doctrinal approaches.

2. Analysis of scientific publications.

The issue of the administrative and legal support for access to the notary profession in Ukraine lies at the intersection of several scholarly fields, in particular studies of notarial activity, the administrative and legal status of the notary, state regulation in the field of justice, and the reform of legal professions. In recent years, this topic has been covered in academic literature only fragmentarily, mainly through the analysis of the legal status of the notary, the specific features of notarial activity, the requirements for the profession, and certain aspects of state supervision in the relevant field [9].

Among the works directly related to the chosen topic, special attention should first be given to the study by A. V. Lyla-Barska, which presents a comparative analysis of access to the notary profession under the legislation of Ukraine and the Federal Republic of Germany. The value of this publication lies in its coverage of approaches to the formation of qualification requirements for a notary, as well as in the opportunity to compare the Ukrainian model of professional admission with foreign experience [6]. Such a comparison is important for assessing the effectiveness of the national mechanism of access to the profession and identifying possible directions for its improvement.

Of considerable importance for understanding the public-law nature of the notary profession is the dissertation research of A. V. Medynska, devoted to the administrative and legal status of a notary in Ukraine and in foreign countries. In this work, the notary is considered not only as a subject of professional legal activity but also as a participant in administrative and legal relations, which makes it possible to interpret more broadly the mechanisms of state influence on the organization of the notariat, including the procedures for acquiring the right to engage in notarial activity [7]. For the topic of this study, this work is important from the perspective of determining the place of access to the profession in the system of administrative and legal regulation.

A separate group is formed by scholarly works that analyze the administrative and legal status of the notary in particular types of legal relations and propose ways for its improvement. Thus, the article by O. S. Diakovskyi

and S. S. Moroz examines directions for improving the administrative and legal status of the notary as a subject of state registration, which is important for understanding the practical role of the notary in the exercise of powers delegated by the state [8]. In turn, Yu. B. Bobozhko reveals the concept and elements of the administrative and legal status of the notary in relations concerning state registration, focusing on the rights, duties, and competence of the notary in the sphere of public-law regulation [10]. Although these works are not devoted directly to access to the profession, they form an important theoretical basis for understanding why the state establishes increased requirements for candidates seeking to engage in notarial activity.

The article by S. S. Rozsokha is also of scholarly interest, as it highlights the historical and legal aspects of the administrative and legal support of notarial activity. This study makes it possible to trace the evolution of approaches to the organization of the notariat and state influence on it, which is important for a modern understanding of the legal nature of procedures for access to the notary profession [9]. Historical and legal analysis confirms that the requirements for the notary profession have always been connected with the need to ensure a high level of trust in this activity.

In addition, for understanding current trends in the development of the notary profession, the work of A. A. Khrebtova, which examines the role of the notary in the system of alternative dispute resolution, is of significance. Although the subject matter of this article goes beyond the narrow issue of access to the profession, it demonstrates the expansion of the functional role of the notary in the modern legal system and, consequently, indirectly strengthens the argument for the need for proper regulatory regulation of access to the profession and for ensuring a high level of professional training of candidates [11].

At the same time, the analysis of scholarly publications provides grounds to assert that in contemporary Ukrainian legal scholarship there is no comprehensive study specifically devoted to the administrative and legal support for access to the notary profession. The existing works either examine the notariat in general or focus on the status of the notary, his or her functions, ethical principles, or particular areas of activity [10]. Insufficiently explored remain the issues of the legislative definition of legal experience in the field of law, the criteria for its calculation, the inclusion of academic and scientific-pedagogical experience, as well as ensuring a uniform approach to the implementation of qualification requirements in the practice of access to the profession.

3. The aim of the study is to provide a comprehensive scholarly analysis of the administrative and legal support for access to the notary profession in Ukraine, to clarify the essence, content, and specific features of the legal regulation of the relevant relations, and to determine the place of this institution within the system of state regulation of notarial activity. Within the framework of the study, attention is focused on the fact that access to the notary profession is not merely a formally established procedure for acquiring the right to engage in notarial activity, but rather a complex administrative and legal mechanism through which the state ensures the formation of a professional, competent, and ethical notarial corps.

The aim of the study also includes the examination of the legally established requirements for persons seeking to engage in notarial activity, the analysis of the powers of public administration entities in the sphere of admission to the notary profession, as well as the identification of problematic aspects of the practical implementation of the relevant administrative procedures [5]. Particular emphasis is placed on studying the legal nature of the qualification requirements for a candidate for the position of notary, their significance for ensuring an appropriate level of professional training, and their compliance with the current conditions of the functioning of the notariat.

In addition, the aim of the study is to provide a scholarly substantiation of the need to improve the current legal regulation with regard to the legislative definition of the concept of legal experience in the field of law as one of the key conditions for access to the notary profession. In this connection, an important task is to analyze the possibility of taking into account not only practical legal experience, but also academic and scientific-pedagogical experience in the field of law, if the relevant professional activity is directly related to teaching legal disciplines, conducting legal research, and preparing scholarly works [4]. Such an approach

makes it possible to assess the extent to which the current mechanism of admission to the profession complies with the principles of legal certainty, fairness, equality, and objectivity.

4. Review and discussion.

The issue of interpreting the concept of «legal experience in the field of law» for the purposes of access to the notary profession should be considered not in isolation, but in the broader context of regulating access to other legal professions. Such an approach is justified given that a notary, like a judge or a lawyer, belongs to the category of persons whose professional activity is connected with the application of law, legal responsibility, heightened ethical requirements, and the performance of socially significant functions [7]. At the same time, the Law of Ukraine "On Notariat" establishes the requirement of work experience in the field of law, but does not disclose the content of this concept as thoroughly as is done in certain related laws governing other legal professions [4]. For this reason, in order to provide a scholarly substantiation of approaches to its interpretation, it is possible to turn to the analogy of law, that is, to the use of legislative models already formed in the sphere of access to other legal professions. Such an analogy does not mean the mechanical transfer of norms from one law to another, but it makes it possible to identify the general logic of the legislator regarding the understanding of legal experience as a type of professional legal activity.

The legislative approach to candidates for the position of judge is important for another reason as well. Within the framework of regulating access to the judicial profession, the legislator in fact recognizes that systematic academic legal activity constitutes a full-fledged form of professional experience in the field of law. This confirms that academic and scientific-pedagogical activity in the field of law may be regarded not as auxiliary, but as one that forms an appropriate level of professional legal competence [6]. This circumstance strengthens the argument that, in the notarial sphere as well, academic and scientific-pedagogical experience should be regarded as one of the possible types of legal experience in the field of law [9].

No less important is the approach enshrined in the legislation on the bar. In order to acquire the status of advocate, the law also proceeds from the necessity of having work experience in the field of law, and the very logic of legal regulation connects such experience with professional activity in the legal specialty after obtaining the relevant education. Thus, in this sphere as well, what is decisive is not the formal title of a position, but the legal nature of a person's professional activity [8]. This creates an important guideline for interpreting a similar requirement in the field of notariat, where what also matters is the existence of real professional legal experience rather than only a narrowly defined list of positions.

A further development of this approach can be traced in the practice of bodies of адвокатського самоврядування, which allow the inclusion in legal work experience of activity performed in the positions of academic and scientific-pedagogical employees, provided that such activity requires legal education and is related to educational, methodological, and scholarly work in the field of law. This is particularly demonstrative, since the bar, as one of the classical legal professions, effectively recognizes that teaching and scholarly activity in the field of law may constitute proper professional legal experience. For the notariat, such an approach constitutes a convincing analogous guideline, since academic and scientific-pedagogical activity in the field of law also presupposes in-depth knowledge of law, its interpretation, systematization, the formation of legal positions, and the professional training of future lawyers [10].

Therefore, the analysis of legislative approaches to access to the judicial and advocacy professions demonstrates that, in the Ukrainian legal system, there already exists a stable normative logic according to which legal experience may include not only practical work in traditional legal institutions, but also academic and scientific-pedagogical activity in the field of law. For this reason, in order to improve the administrative and legal support for access to the notary profession, it is advisable to enshrine at the level of the Law of Ukraine «On Notariat» or a subordinate normative act a clear definition of the concept of «legal experience in the field of law» [1]. Such a definition should expressly provide for the possibility of including academic and scientific-pedagogical experience in the field of law, provided that the relevant

activity was carried out in positions requiring legal education and was directly connected with teaching legal disciplines, conducting legal research in the field of law, and preparing scholarly works. Such an approach would ensure greater legal certainty, reduce the risk of inconsistent law enforcement, and broaden access to the profession for persons who possess proper legal qualifications but acquired their professional experience primarily in the sphere of legal scholarship and education.

The problem of access to the notary profession is further aggravated by the actual irregularity of qualification examinations. Although the Procedure for Admission of Persons to the Qualification Examination and for Conducting the Qualification Examination by the Higher Qualification Commission of the Notariat determines the procedural aspects of organizing the examination, it does not ensure a clear and predictable frequency for holding it. In practice, this leads to long time intervals between examinations. Thus, the qualification examination was publicly recorded as having been held in December 2020, with the next one taking place in June 2023, that is, with an interval of about two and a half years. This makes it possible to state that, in practical terms, examinations for selection to the notariat may be held, at best, approximately once every two to three years, which significantly complicates access to the profession, reduces the predictability of candidates' career planning, and creates additional organizational barriers to replenishing the notarial corps. In this regard, it is advisable to normatively establish a clearer frequency for holding the qualification examination or at least to impose an obligation to conduct it within reasonable and predictable time limits.

5. Conclusions.

The conducted study provides grounds for concluding that access to the notary profession in Ukraine is an independent element of administrative and legal regulation in the field of justice. Its content covers not only the establishment of qualification requirements for a candidate, but also the determination of procedures for admission to the qualification examination, assessment of a person's professional suitability, and adoption of a decision on granting the right to engage in notarial activity. It is through this mechanism that the state ensures the formation of a professional, competent, and ethical notarial corps capable of properly performing publicly significant functions in the field of protecting the rights and legitimate interests of individuals and legal entities.

It has been established that the current legal regulation generally forms the normative basis for access to the notary profession; however, it does not eliminate a number of practical problems. First of all, this concerns the absence of a clear legislative definition of the concept of legal experience in the field of law, which is one of the key conditions for access to the profession. The uncertainty of the content of such experience, the criteria for its calculation, and the types of professional activity that may be included in it creates preconditions for inconsistent law enforcement and excessive formalism in assessing candidates.

It is substantiated that, in order to improve the administrative and legal support for access to the notary profession, it is advisable to use related legislative approaches formed with regard to other legal professions, primarily judges and advocates. The analysis of such approaches gives grounds to assert that legal experience in modern legislation is not limited exclusively to practical legal work, but may also include academic and scientific-pedagogical experience in the field of law if the relevant activity is directly related to teaching legal disciplines, conducting legal research, and preparing scholarly works [6–10]. In this regard, it is advisable to normatively establish that such a type of professional activity may also be included in legal experience in the field of law for the purposes of access to the notary profession.

A separate practical problem is the irregularity of qualification examinations. The current procedure regulates the admission to and conduct of the examination; however, it does not establish a clear mandatory frequency for holding it, which negatively affects actual access to the profession. Publicly recorded notices of the examination held on December 2, 2020, and the next examination held on June 13–15, 2023, indicate a significant time gap between such procedures, meaning that in practice examinations may be held with intervals of several years. This complicates candidates' career planning, delays access to the profession, and creates additional organizational barriers to renewing the notarial corps.

In view of the above, it is advisable to improve administrative and legal regulation in two main directions. First, at the level of the law or a subordinate normative act, it is necessary to clearly define the concept of legal experience in the field of law, the criteria for its calculation, and the possibility of including academic and scientific-pedagogical experience in the field of law within it. Second, it is worth normatively establishing a minimum frequency for holding the qualification examination, for example, at least once a year or upon reaching a specified number of submitted applications.

References:

1. Verkhovna Rada of Ukraine. (1993, September 2). Pro notariat: Zakon Ukrainy vid 02.09.1993 No. 3425-XII [On Notariat: Law of Ukraine No. 3425-XII of September 2, 1993]. https://zakon.rada.gov.ua/laws/show/3425-12

2. Ministry of Justice of Ukraine. (2011, July 28). Pro zatverdzhennia Poriadku dopusku osib do skladannia kvalifikatsiinoho ispytu ta provedennia kvalifikatsiinoho ispytu Vyshchoiu kvalifikatsiinoiu komisiieiu notariatu: Nakaz vid 28.07.2011 No. 1905/5 [On approval of the Procedure for admission of persons to take the qualification exam and conduct of the qualification exam by the Higher Qualification Commission of Notariat: Order No. 1905/5 of July 28, 2011]. https://zakon.rada.gov.ua/laws/show/z0926-11

3. Cabinet of Ministers of Ukraine. (2011, August 31). Pro zatverdzhennia Polozhennia pro Vyshchu kvalifikatsiinu komisiiu notariatu: Postanova vid 31.08.2011 No. 923 [On approval of the Regulation on the Higher Qualification Commission of Notariat: Resolution No. 923 of August 31, 2011]. https://zakon.rada.gov.ua/laws/show/923-2011-%D0%BF

4. Ministry of Justice of Ukraine. (2009, September 30). Shchodo vykonannia vymoh Zakonu Ukrainy «Pro notariat»: Lyst vid 30.09.2009 No. 31-32/310 [Regarding implementation of the requirements of the Law of Ukraine "On Notariat": Letter No. 31-32/310 of September 30, 2009]. https://zakon.rada.gov.ua/laws/show/v3231323-09

5. Ministry of Justice of Ukraine. (2021, June 7). Pro zatverdzhennia Pravyl profesiinoi etyky notariusiv Ukrainy: Nakaz vid 07.06.2021 No. 2039/5 [On approval of the Rules of Professional Ethics of Notaries of Ukraine: Order No. 2039/5 of June 7, 2021]. https://zakon.rada.gov.ua/laws/show/z0754-21

6. Lyla-Barska, A. V. (2022). Dostup do profesii notariusa zghidno zakonodavstva Ukrainy ta Federatyvnoi Respubliky Nimechchyny: porivnialnyi analiz [Access to the profession of notary under the laws of Ukraine and the Federal Republic of Germany: A comparative analysis]. Yurydychnyi naukovyi elektronnyi zhurnal – Legal Scientific Electronic Journal, 8, 314–316.

7. Medynska, A. V. (2025). Administratyvno-pravovyi status notariusa v Ukraini ta u zarubizhnykh krainakh [Administrative and legal status of a notary in Ukraine and in foreign countries] (Doctoral dissertation).

9. Diakovskyi, O. S., & Moroz, S. S. (2025). Shliakhy vdoskonalennia administratyvno-pravovoho statusu notariusa yak subiekta derzhavnoi reiestratsii [Ways to improve the administrative and legal status of a notary as a subject of state registration]. Yurydychnyi naukovyi elektronnyi zhurnal – Legal Scientific Electronic Journal, 3, 279–283.

9. Rozsokha, S. S. (2025). Istoryko-pravovi aspekty administratyvno-pravovoho zabezpechennia notarialnoi diialnosti [Historical and legal aspects of administrative and legal support for notarial activities]. Yurydychnyi naukovyi elektronnyi zhurnal – Legal Scientific Electronic Journal, 1, 342–346.

10. Bobozhko, Yu. B. (2024). Poniattia ta elementy administratyvno-pravovoho statusu notariusa u vidnosynakh shchodo derzhavnoi reiestratsii [Concept and elements of the administrative and legal status of a notary in relations concerning state registration]. Pravo i suspilstvo – Law and Society, 1(1), 145–154.

11. Khrebtova, A. A. (2024). Rol notariusa v systemi alternatyvnoho vyrishennia sporiv: teoretychni zasady ta praktychni aspekty [The role of the notary in the system of alternative dispute resolution: Theoretical foundations and practical aspects]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: Pravo – Scientific Bulletin of Uzhhorod National University. Series: Law, 4(86), 124–129. https://doi.org/10.24144/2307-3322.2024.86.1.4.19

Aliesia Khrebtova,
Candidate of Sciences in Public Administration, Associate Professor,
Department of Fundamental and Sectoral Legal Sciences
Kremenchuk Mykhailo Ostrohradskyi National University
E-mail: alesyamytnik@gmail.com
ORCID: 0000-0002-4322-2354

ENSURING THE RIGHT TO ADEQUATE FOOD UNDER MARTIAL LAW IN UKRAINE

Kovalenko Tetiana

DOI: https://doi.org/10.61345/1339-7915.2026.1.10

Annotation. The article clarifies the nature and content of the right to adequate food, the specifics of its enshrining in international legal acts and national legislation, and also reveals the peculiarities of ensuring compliance with the right to adequate food under martial law in Ukraine. The right to adequate food is considered as the possibility for everyone to have free, stable economic and physical access to high-quality and safe food in quantities necessary and sufficient to fully satisfy a person's physiological needs for food, considering his age, health status, dietary needs, as well as religious, ethnic, and cultural preferences. As a component of the right to an adequate standard of living, the right to adequate food is a basic natural human right and has priority in guaranteeing the right to an adequate standard of living, compared to clothing or housing. After all, a person cannot exist without food, and insufficient food negatively affects health and can pose a threat to human life. The article finds that during martial law in Ukraine, the right to adequate food remains fundamental, ensuring access to sufficient and high-quality food as a component of the right to life and a decent standard of living. The observance of the right to adequate food under martial law in Ukraine is ensured by: the state's internal function of guaranteeing food security, creating an economic and legal mechanism for safe and balanced nutrition for children in educational institutions, providing adequate nutrition for defenders of Ukraine, as well as nutrition for internally displaced persons, ensuring uninterrupted supply of imported food and feed, simplifying food labeling, preventing shortages of food for domestic consumption, and providing state support for agricultural producers under martial law.

Key words: agricultural products, food security, nutrition, martial law, right to adequate food, right to an adequate standard of living.

1. Introduction.

The right to adequate nutrition ensures the basic human need for food and is a guarantee of the realization of the fundamental natural rights of everyone to life and health. This right is enshrined in international and national legal acts as a component of the multi-component right to an adequate standard of living, which includes food, clothing, housing, and other socially necessary goods. Thus, the Universal Declaration of Human Rights of 1948 proclaimed the right of everyone to a standard of living, including food, clothing, housing, medical care and social services, which is necessary for the maintenance of the health and well-being of himself and his family (Article 25). The International Covenant on Economic, Social and Cultural Rights of 1966 guarantees the right to an adequate standard of living and obliges states to take appropriate measures to ensure the realization of this right (Article 11). Similar provisions regulating the right to an adequate standard of living and its individual components are reflected in the provisions of other international human rights agreements, namely: the UN Convention on the Rights of the Child (Article 27), the Convention relating to the Status of Refugees (Article 20), the Convention on the Rights of Persons with Disabilities (Article 28), etc.

Based on the provisions of international legal acts, Article 48 of the Constitution of Ukraine of 1996 stipulates that everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing, and housing. In Ukrainian legal science, the right to an adequate standard of living is considered a social right. It is recognized as basic for the entire system of social and many economic

rights, since in practice the realization of this right is mediated through the exercise of other social and almost all economic rights.

2. Analysis of scientific publications. In the science of agrarian law of Ukraine, the problems of ensuring compliance with the right to adequate food remain beyond the attention of researchers who have focused their attention on the problems of food security as a guarantee of the right to adequate food. Thus, individual issues of legal ensuring of food security were covered in the works of O. M. Batygina, O. G. Bondar, S. I. Bugera, M. M. Chabanenko, O. V. Gafurova, Kh. A. Hryhorieva, V. M. Ermolenko, T. E. Kharytonova, G. S. Kornienko, T. O. Kovalenko, T. V. Kurman, M. Yu. Pokalchuk, A. M. Stativka, O. M. Tueva and other authors. The right to food as a legal category was studied by T. V. Kurman [1]. The Ukrainian experience of legal provision of food needs under martial law was studied by G. S. Kornienko [2]. However, the issue of ensuring compliance with the right to adequate food under martial law in Ukraine is still not a thoroughly studied agrarian and legal doctrine, which determines the relevance of this article.

3. The aim of this article is to clarify the nature and content of the right to adequate food, the specifics of its enshrining in international legal acts and national legislation, as well as to identify the features of ensuring compliance with the right to adequate food under martial law in Ukraine.

4. Review and discussion.

The current legislation of Ukraine does not disclose the concept of "adequate nutrition". It is worth noting that this concept is evaluative, since the definition of "adequate" nutrition of a person depends on the economic, political, social and other conditions of life of society in a certain historical period. For example, those conditions of sufficiency of nutrition that were recognized as appropriate for people in the 19th century are unacceptable for people of the 21st century. The legal doctrine draws attention to the fact that the peculiarity of the provision "adequate standard of living" enshrined in Art. 48 of the Constitution of Ukraine is the absence of limits to this sufficiency, its recommendatory formulation and constant variability depending on the level of socio-economic development of the country and other factors [3, p. 344].

In legal science, the content of the broader concept of "adequate standard of living" is revealed through two main categories: subsistence minimum and minimum wage [4, p. 218]. At the same time, as the Constitutional Court of Ukraine notes, in a state that is declared social, the amount of the subsistence minimum determined by the legislator must actually ensure a decent standard of living for a person [5]. However, to clarify the meaning of the concept of "adequate nutrition", the above categories are not enough, since the adequacy of nutrition directly affects a person's health and well-being and should be determined by medical indicators regarding the quantity and quality of food for proper nutrition of a person, taking into account certain physiological characteristics (children, the elderly, disabled people, athletes, etc.). In particular, the Recommendations for Healthy Eating for Adults, approved by the Ministry of Health of Ukraine on December 8, 2017 [6], note that the risks to the health of modern people are primarily associated with neglecting the basic principles of a healthy lifestyle. The principles of healthy eating are its foundation. Consuming an adequate number of calories daily through a balanced set of mostly healthy foods can significantly reduce the risk of cardiovascular diseases, diabetes, and cancer, i.e. the most dangerous diseases for Ukrainians. The basic principles of adequate nutrition include the following: a) a "healthy food plate" (half of the plate – vegetables and fruits, a quarter – protein foods, a quarter – whole grains (cereals, whole grain bread); b) variety (including proteins, fats, carbohydrates, vitamins and minerals in the diet); c) regimen and hydration (regular meals (3 main meals + snacks) and sufficient water); d) safety (foods must be high-quality, safe and nutritious); e) moderation (avoiding excessive consumption of salt (up to 5 g/day), sugar and fatty foods).

In Ukrainian legal science, there are different approaches to understanding the right to adequate nutrition. For example, Y. V. Kyrychenko considers the right to adequate nutrition as the right, first of all, to high-quality and high-calorie food so that a person does not feel hungry [3, p. 345]. According to G. A. Prochazka, the

right to adequate food can be defined as the right of every person to have constant and unlimited access to food and food products in quantity and quality sufficient to meet their dietary and cultural needs, and to receive, in accordance with their preferences, safe food, which will be necessary for the full maintenance of their physical and mental strength [7, p. 264].

Foreign scientists define the right to adequate food "as stable access to food in quantity and quality sufficient to meet one's dietary and cultural needs" [8, p. 69], as "the suitability of food products in quantity and quality necessary to meet a person's dietary needs, in the absence of hazardous components and suitable within a certain culture, as well as stable availability of such products, if this is not associated with a violation of other human rights" [9, p. 8]. The content of the right to adequate food includes the requirements of accessibility, suitability of food products, their acceptability, quality, satisfaction of dietary needs, religious, cultural, ethnic preferences. Its provision is associated with solving the problems of employment, age, disease, state of war, access to land, resources, etc. [10, p. 117].

Therefore, the right to adequate food can be defined as the possibility for everyone to have free, stable economic and physical access to high-quality and safe food in quantities necessary and sufficient to fully satisfy a person's physiological needs for food, taking into account their age, health status, dietary needs, as well as religious, ethnic, and cultural preferences. As a component of the right to an adequate standard of living, the right to adequate food is a basic natural human right and has priority in guaranteeing the right to an adequate standard of living, compared to clothing or housing. After all, a person cannot exist without food, and insufficient food negatively affects health and can pose a threat to human life.

Under martial law in Ukraine, the situation with the realization of the right to adequate food has become even more difficult. Thus, the Food Security Strategy of Ukraine for the period until 2027, approved by the order of the Cabinet of Ministers of Ukraine dated July 23, 2024 No. 684-r, states that according to the indicator "Food accessibility" Ukraine received 48.1 points out of 100 and is in 93rd place in the world and 26th place out of 26 European countries. The worst indicator of Ukrainian food security is "Sustainability and Adaptability" (43.5 points out of 100 and 94th place in the Global Food Security Index), which reflects the presence of significant problems with access to and management of water resources, as well as shortcomings in the risk management system. The only indicator that shows a better situation is "Food Quality and Safety Factor" (71.3 points out of 100 or 52nd place in the Global Food Security Index). According to its estimates, Ukrainians consume enough high-quality protein, and food products are generally safe, although the diet of the average Ukrainian is not distinguished by diversity

The right to adequate food during martial law in Ukraine remains fundamental, ensuring access to sufficient and quality food as a component of the right to life and a decent standard of living. The implementation of everyone's constitutional right to adequate food is ensured by the state's internal function of guaranteeing food security.

In Article 2 of the Law of Ukraine "On the Principles of State Agrarian Policy and State Policy of Rural Development" of June 24, 2004, food security is defined as the protection of a person's vital interests, which is expressed in the state guaranteeing unhindered economic access of a person to food products in order to maintain his or her normal life activities. The above normative definition has been subject to justified criticism in the legal literature, since it reflects only one aspect of food security in Ukraine - the economic accessibility of food products for the population. In addition, national regulatory legal acts do not define the components of food security, its principles, criteria, do not provide for an institutional and functional mechanism for its provision, etc. [11; 12].

One of the first laws that was adopted almost immediately after the introduction of martial law in Ukraine in February 2022 was the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Creation of Conditions for Ensuring Food Security under Martial Law" of March 24, 2022. An analysis of this Law shows that its provisions were aimed at ensuring the realization of everyone's right to adequate nutrition under martial law by introducing temporary special legal mechanisms for acquiring and exercising rights to agricultural land for sowing in the spring of 2022. In legal science, T. V. Kurman quite rightly draws attention to the fact that the specified Law "actually deals only with the creation of conditions for attracting land resources to agricultural production, while the issue of ensuring food security is not resolved by the

said Law and, unfortunately, does not form a legal mechanism for guaranteeing food security under martial law" [13, p. 16].

In addition to guaranteeing food security under martial law, the state applies economic and legal mechanisms aimed at ensuring and protecting everyone's right to adequate food, in particular:

1) Ensuring safe and balanced nutrition for children in educational institutions, which is of particular importance in martial law. In conditions of constant threats to the life and health of children, providing high-quality nutrition in educational institutions becomes a form of their protection, support for physical and psychological well-being. On October 8, 2025, the Cabinet of Ministers of Ukraine amended the Resolution of March 24, 2021 No. 305 "On Approval of the Norms and Procedure for Organizing Nutrition in Educational Institutions and Children's Health and Recreation Institutions", which take into account today's needs of children, adapt the requirements to the realities when traditional hot meals may be impossible due to emergency situations. This document defines the procedure for organizing nutrition for children, teachers and staff while staying in civil defense shelters. The founders of institutions are obliged to create reserves of water and long-term storage products, this applies to both ready-made chilled products and dishes from the buffet range to replace hot meals. It is worth noting that these changes allow for the provision of food even in local storage facilities or basements of schools during air raids or emergencies, and that this list and norms apply not only to students/children, but also to employees of educational institutions, children's health and recreation facilities [14]. From September 2026, Ukraine plans to introduce free hot meals for all students in grades 1-11, for which the Government has allocated almost UAH 5.9 billion in subventions.

2) Providing full nutrition to the defenders of Ukraine. The nutrition of the military is carried out in accordance with state standards, which provide a full ration per day. These issues are regulated by the Resolution of the Cabinet of Ministers of Ukraine "On the Nutrition Standards of Military Personnel of the Armed Forces, Other Military Formations and the State Service for Special Communications and Information Protection, Police Officers, Privates, and Commanding Officers of Civil Defense Bodies and Units" dated March 29, 2002 No. 426. In field conditions, military personnel are provided with individual rations, and during a stationary stay, three or four meals a day, depending on the provision standards. The energy value of the daily ration of military personnel is not less than 3500 kcal. The purchase of products is carried out according to the approved Catalog, which includes 360 items. This allows you to form a balanced and varied menu for Ukrainian defenders. The food packages of military personnel according to the Product Catalog are purchased by the Ministry of Defense agency "State Rear Operator". Their number is formed by the Command of the Logistics Forces of the Armed Forces of Ukraine, which submits a generalized application to the Procurement Policy Department of the Ministry of Defense of Ukraine. According to the results of the procurement, the price and calorie content are indicated for each product item [15]. The Resolution of the Cabinet of Ministers of Ukraine dated August 13, 2024 No. 955 (as amended on November 15, 2024 No. 1299) approved the Procedure for ensuring improved nutrition of military personnel during treatment in healthcare institutions of all forms of ownership and subordination in accordance with the standards applied in military medical institutions.

3) Providing food to internally displaced persons. For these persons, the current legislation provides for: a) free hot meals for children with the status of an internally displaced person in preschool, general secondary and vocational education institutions (Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Provision of Free Meals to Children of Internally Displaced Persons" of January 16, 2020); b) cash assistance for housing for internally displaced persons, which is intended, in particular, for independent purchase of food; c) centralized humanitarian assistance, which the Government of Ukraine coordinates through regional military administrations the distribution of food packages in regions with the largest number of displaced persons.

4) Ensuring uninterrupted supply of imported food products and feed during martial law. The Resolution of the Cabinet of Ministers of Ukraine "On measures to ensure uninterrupted supply of imported food products and feed during martial law" dated March 9, 2022 No. 234 provides that for the period of martial law, food market operators who, as a result of military (combat) actions, are unable to fulfill the requirements of Article 10 of the Law of Ukraine "On Information for Consumers on Food Products" dated December 6,

2018 regarding information on imported food products may sell food products on the customs territory of Ukraine, information about which is presented in a language other than the state language. In this case, the batches of the specified food products must be accompanied by mandatory information about the food product, set out in the state language. Such information is provided at the request of consumers by food market operators who sell food products, in the manner determined by such operators. The labeling of food products and feed imported (sent) to the customs territory of Ukraine as humanitarian aid may be set out in a language other than the state language.

5) Simplification of food labeling during martial law. According to the Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Food Labeling during Martial Law" dated March 3, 2022 No. 186, for the period of martial law, mandatory information on food labeling should be: name of the food product; quantity of the food product in established units of measurement; minimum shelf life or "use by" date; information about any ingredients or processing aids that cause allergic reactions or intolerance.

6) Preventing food shortages for domestic consumption. The Resolution of the Cabinet of Ministers of Ukraine "On Amendments to Appendices 1 and 5 of the Resolution of the Cabinet of Ministers of Ukraine No. 1424 of December 29, 2021" of March 5, 2022 introduced a de facto ban (zero quotas) on the export of strategically important food products and raw materials to ensure the food security of Ukraine under martial law. The volume of quotas "0" was established for the following goods: rye, oats, buckwheat, millet, sugar, salt. The export of live cattle and meat fell under the ban. The list of goods whose export requires a license was also expanded. The list included critically important agricultural products: wheat and a mixture of wheat and rye (meslin), corn, poultry meat, chicken eggs, and sunflower oil.

7) Ensuring state support for agricultural producers under martial law. In the legal science of Kh. A. Hryhorieva, special legal mechanisms aimed at state support for agricultural producers under martial law include: a budget subsidy per unit of cultivated agricultural land for economic activity - in the amount of 3,100 UAH per 1 ha, but not more than 372,000 UAH for one recipient; a special budget subsidy for keeping cattle (cows) - in the amount of 5,300 UAH per cow, but not more than 530,000 UAH for one recipient; grants for the creation or development of horticulture, berry growing and viticulture in the amount of no more than 70% of the cost of the planting project, but not more than 10 million UAH, provided that it is co-financed by the recipient's funds; grants for the creation or development of greenhouse farming [16].

5. Conclusions. The right to adequate food is the possibility for everyone to have free, stable economic and physical access to high-quality and safe food in quantities necessary and sufficient to fully satisfy a person's physiological needs for food, taking into account their age, health status, dietary needs, as well as religious, ethnic, and cultural preferences. As a component of the right to an adequate standard of living, the right to adequate food is a basic natural human right and has priority in guaranteeing the right to an adequate standard of living, compared to clothing or housing. After all, a person cannot exist without food, and insufficient food negatively affects health and can pose a threat to human life.

During martial law in Ukraine, the right to adequate food remains fundamental, ensuring access to sufficient and high-quality food as a component of the right to life and a decent standard of living. The right to adequate food under martial law in Ukraine is ensured by: the state's internal function of guaranteeing food security, creating an economic and legal mechanism for safe and balanced nutrition for children in educational institutions, providing adequate nutrition for defenders of Ukraine, as well as nutrition for internally displaced persons, ensuring uninterrupted supply of imported food and feed, simplifying food labeling, preventing shortages of food for domestic consumption, and providing state support for agricultural producers under martial law.

References:

1. Kurman, T. V. (2025). Pravo na prodovolstvo yak pravova katehoriia: mizhnarodno-pravovi ta konstytutsiini zasady [The right to food as a legal category: International legal and constitutional principles]. Analitychno-porivnialne pravoznavstvo – Analytical and Comparative Jurisprudence, 6(2), 141–146.

2. Avramova, O., & Korniienko, H. (2022). Ukrainskyi dosvid pravovoho zabezpechennia zhytlovoi ta prodovolchoi potreby v umovakh voiennoho stanu [Ukrainian experience of legal support for housing and food needs under martial law]. Baltic Journal of Legal and Social Sciences, 1, 6–14. https://doi.org/10.30525/2592-8813-2022-1-1

3. Kyrychenko, Yu. V. (2017). Aktualni problemy konstytutsiino-pravovoho rehuliuvannia prav, svobod ta oboviazkiv liudyny i hromadianyna v Ukraini v konteksti yevropeiskoho dosvidu: monohrafiia [Current problems of constitutional and legal regulation of human and citizen rights, freedoms and duties in Ukraine in the context of European experience: Monograph]. Tsentr uchbovoi literatury.

4. Kotkova, O. A. (2022). Pravo liudyny na dostatnii riven zhyttia: mizhnarodno-pravovi standarty [The human right to an adequate standard of living: International legal standards]. Pravo i suspilstvo – Law and Society, 4, 215–220.

5. Constitutional Court of Ukraine. (2018, May 22). Rishennia Velykoi palaty Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym podanniam 49 narodnykh deputativ Ukrainy... vid 22 travnia 2018 roku No. 5-r/2018 [Decision of the Grand Chamber of the Constitutional Court of Ukraine in the case on the constitutional petition of 49 people's deputies of Ukraine... dated May 22, 2018, No. 5-r/2018]. Ofitsiinyi visnyk Ukrainy, 51, 1792.

6. Ministry of Health of Ukraine. (2017, December 8). Rekomendatsii shchodo zdorovoho kharchuvannia doroslykh [Recommendations for healthy nutrition of adults]. https://moz.gov.ua/uploads/ckeditor/%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/01122017_Basic_Recommendations-1.pdf

7. Prokhazka, H. A. (2014). Dostatnie kharchuvannia i svoboda vid holodu v mizhnarodnomu pravi [Adequate nutrition and freedom from hunger in international law]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: Pravo – Scientific Bulletin of Uzhhorod National University. Series: Law, 29(2), 262–265.

8. Narula, S. (2006). The right to food: Holding global actors accountable under international law (CHRGJ Working Paper No. 7). NYU School of Law.

9. Vidar, M. (2003). The right to food in international law. Centre for Comparative and Public Law, University of the Western Cape.

10. FAO. (2006). The right to food guidelines: Information papers and case studies (H. de Haen & G. Pucci, Eds.). Food and Agriculture Organization of the United Nations.

11. Kurman, T. V. (2011). Shchodo poniattia ta oznak prodovolchoi bezpeky [Regarding the concept and features of food security]. Naukovyi visnyk Natsionalnoho universytetu bioresursiv i pryrodokorystuvannia Ukrainy – Scientific Bulletin of the National University of Life and Environmental Sciences of Ukraine, 165(1), 121–127.

12. Kovalenko, T. O. (2018). Poniattia, oznaky ta kryterii prodovolchoi bezpeky za zakonodavstvom Ukrainy ta inshykh derzhav [Concept, features and criteria of food security under the legislation of Ukraine and other states]. Administratyvne pravo i protses – Administrative Law and Process, 1, 30–41.

13. Kurman, T. V. (2022). Ahrarne pravo i zakonodavstvo ukrainy: synerhetychni zasady y perspektyvy rozvytku v umovakh hlobalnykh zahroz [Agrarian law and legislation of Ukraine: Synergistic principles and development prospects in conditions of global threats]. In A. P. Hetman & T. V. Kurman (Eds.), Ahrarne ta zemelne pravo Ukrainy: suchasna paradyhma i perspektyvy rozvytku: kolektyvna monohrafiia (pp. 576). Yurait.

14. State Service of Ukraine for Food Safety and Consumer Protection. (n.d.). Bezpechne kharchuvannia ditei v umovakh voiennoho stanu: onovleni vymohy dlia zakladiv osvity [Safe nutrition of children

under martial law: Updated requirements for educational institutions]. https://dpss-te.gov.ua/news/bezpechne-kharchuvannia-ditei-v-umovakh-voiennoho-stanu-onovleni-vymohy-dlia-zakladiv-osvity

15. Ministry of Defence of Ukraine. (n.d.). Ratsion zakhysnyka: yak orhanizovano kharchuvannia u Zbroinykh sylakh Ukrainy [Defender's ration: How nutrition is organized in the Armed Forces of Ukraine]. https://mod.gov.ua/news/raczion-zahisnika-yak-organizovano-harchuvannya-u-zbrojnih-silah-ukrayini

16. Hryhorieva, Kh. A. (2024). Analiz rozvytku ahroprotektsiinoho zakonodavstva Ukrainy v umovakh voiennoho stanu [Analysis of the development of agro-protection legislation of Ukraine under martial law]. Naukovi pratsi Natsionalnoho universytetu "Odeska yurydychna akademiia", 34, 54–66. https://naukovipraci.nuoua.od.ua/arhiv/tom34/8.pdf

Tetiana Kovalenko,
Doctor of Law, Professor
Leading Researcher
Department of Agrarian, Land, Environmental and Space Law
V. M. Koretsky Institute of State and Law
National Academy of Sciences of Ukraine
E-mail: kovalenko.tetyana@gmail.com
ORCID: 0000 0002 7103 6209

LEGAL STATUS OF THE POSTHUMAN: PHILOSOPHICAL AND LEGAL PRINCIPLES OF TRANSHUMANISM

Kregul Anton

DOI: https://doi.org/10.61345/1339-7915.2026.1.11

Annotation. Transhumanism, as both a philosophical movement and an emerging social practice, poses fundamental challenges to the foundational premises of contemporary legal science. This article examines transhumanism as a philosophical and legal category, tracing its intellectual genesis from Julian Huxley's 1957 formulation through the organizational and doctrinal contributions of Max More, Nick Bostrom, and Natasha Vita-More in the 1990s, to its present-day legal manifestations in neurotechnology, genetic engineering, and artificial intelligence. The article argues that transhumanism cannot be adequately situated within the traditional framework of either natural or positive law, but instead constitutes a distinct legal problem that requires systematic theoretical elaboration. Drawing on the liberal tradition of personal autonomy, the Thomistic natural law framework, and the emerging doctrine of neurorights, the study analyses how transhumanist ideas challenge the anthropological premises of human rights law, in particular, the principles of human equality, dignity, and bodily integrity, and how legal science may respond to those challenges without abandoning its anthropocentric foundations.

The article further examines concrete legal manifestations of the transhumanist challenge: the question of the legal status of the posthuman, the privacy implications of neural implants, the unresolved liability framework for genetic modifications, and the regulatory vacuum exposed by the He Jiankui case. The study proposes a multi-level regulatory framework, spanning international, regional, national, and corporate levels, grounded in the principles of proportionality, non-discrimination, reversibility of interventions, and the preservation of legal anthropocentrism. It concludes that legal anthropology faces a fundamental choice between an anthropocentric strategy, which accommodates technologically enhanced individuals within an expanded concept of the human, and a post-anthropocentric paradigm, in which legal personhood is determined by cognitive and moral competence rather than species membership. The first strategy is assessed as more legally secure in the short term; the second as potentially more just in the longer term, though requiring a foundational reconceptualization of legal subjectivity.

Key words: transhumanism, posthuman, legal personhood, neurorights, human dignity, bodily integrity, legal anthropocentrism.

1. Problem statement.

The accelerating development of biotechnology, neurotechnology, artificial intelligence, and genetic engineering has brought humanity to a threshold that legal science has not previously been required to address: the possibility of the emergence of a being that, while originating from a human, will possess characteristics that fundamentally distinguish it from the contemporary legal subject. The concept of the "posthuman", an entity whose cognitive, physical, or emotional capacities have been so radically enhanced through technological intervention that it can no longer be adequately described by existing legal categories, poses a direct challenge to the foundational assumptions upon which modern legal systems are built.

Contemporary law operates on the premise that the legal subject is a human being endowed with inherent dignity, equal rights, and a fixed biological nature. These assumptions underpin the entire architecture of constitutional rights, civil legal capacity, and international human rights law. Transhumanism, as both a philosophical movement and an emerging social practice, systematically undermines each of these premises: if human nature is malleable, if some individuals are technologically "enhanced" while others are not, and if consciousness can be digitally replicated or transferred, then the existing legal framework loses its anthropological foundation. The question of what, or who, is entitled to legal personhood, rights, and protections becomes not merely philosophical but urgently practical.

This problem is no longer confined to speculative discourse. Neural implants already raise questions about the privacy of thought and the integrity of the human mind; algorithmic decision-making systems challenge the traditional understanding of legal subjectivity; and the prospect of digital consciousness uploading forces a reconsideration of personal identity as a legal category. The case of He Jiankui, who in 2018 conducted heritable genome editing on human embryos, exposed the absence of unified international legal norms capable of either preventing or adequately sanctioning such interventions. These developments collectively demonstrate that the legal status of the posthuman is not a future problem – it is a present one, for which legal science remains largely unprepared.

2. Analysis of recent research and publications.

The intersection of transhumanism and law has attracted increasing scholarly attention over the past two decades, though the field remains fragmented across disciplines and lacks a consolidated legal-theoretical framework. The foundational philosophical literature was established by the movement's key architects: Max More, who in his 1990 essay Transhumanism: Toward a Futurist Philosophy first articulated transhumanism as a coherent philosophical direction, and Nick Bostrom, whose historical and theoretical contributions — most notably A History of Transhumanist Thought (2005) and In Defense of Posthuman Dignity (2005) – remain the standard doctrinal reference points. Bostrom's co-authored Transhumanist FAQ and the founding of the World Transhumanist Association in 1998 provided the organizational and intellectual infrastructure upon which subsequent legal scholarship has built.

The legal dimensions of transhumanism were among the first to be addressed by Francis Fukuyama, whose Our Posthuman Future: Consequences of the Biotechnology Revolution (2002) remains one of the most cited critical analyses. Fukuyama argued that transhumanism poses a direct threat to the principle of human equality, insofar as the emergence of technologically enhanced individuals fundamentally undermines the symmetry upon which equal rights are premised – a position that has since been elaborated upon by numerous legal scholars. Philippe Jougleux, in his study Frankenstein and the Law: Some Reflexions on Transhumanism, examined the multiple legal conflicts generated by transhumanist ambitions at both the international and European levels, including tensions with the principle of human dignity as enshrined in the Charter of Fundamental Rights of the European Union.

The rights-based dimension of the posthuman question has been examined in depth by Lisang Nyathi, whose article Unveiling the Right to Self-Transformation and Self-Enhancement: Exploring Transhumanism and Its Impact on Human Rights and the Future of Humanity (Deusto Journal of Human Rights, 2024) investigates whether self-enhancement may or should be recognized as a legally enforceable right, and addresses the fundamental tension between individual self-determination and the protective function of human rights law. The broader question of how transhumanist ideas reshape the foundations of human rights, including the displacement of human nature by self-determination as the normative basis of the legal order, is addressed in a 2021 study published in PubMed: Transhumanism and Law: From Human Nature to Self-Determination as the Foundation of Human Rights.

In the domain of neurotechnology and legal personhood, the scholarship has expanded significantly following real-world developments. The constitutional amendment adopted in Chile in 2021 – the first in the world to constitutionally protect "neurorights," including mental privacy, cognitive liberty, and equal access to neurotechnology, has generated substantial comparative legal analysis, including the study by Do, Badillo, Cantz, and Spivack (Privacy and the Rise of "Neurorights" in Latin America, Future of Privacy

Forum, 2024), which documents the first judicial decision on neuroprivacy issued by the Chilean Supreme Court in 2023. The ethical and legal implications of brain-computer interfaces, including the privacy of neural data and the risks of unauthorized access to cognitive processes, are examined in the study by Cassinadri and Ienca (Neuralink's Brain-Computer Interfaces: Medical Innovations and Ethical Challenges, Frontiers in Human Dynamics, 2025).

The legal personhood of human digital twins, entities that replicate a person's identity, values, and decision-making patterns in digital form, represents one of the most novel areas of inquiry. Muhammad Zia-Ul-Haq, in Legal Personhood and Identity of Human Digital Twins (Legal Research & Analysis, 2025), raises foundational questions about whether and under what conditions a digital copy of a person could or should be granted legal subjectivity, and identifies the cascading legal complications that such recognition would entail. In the field of genetic law, the case of He Jiankui has generated a parallel body of scholarship: Shuang Liu's Legal Reflections on the Case of Genome-Edited Babies (Global Health Research and Policy, 2020) examines the inadequacy of existing national and international legal frameworks in responding to heritable human genome editing, and calls for strengthened international cooperation and binding regulatory mechanisms.

Notwithstanding the breadth of existing scholarship, a significant lacuna remains: the absence of a comprehensive legal-theoretical framework that addresses the posthuman not as a bioethical concern but as a subject of legal science in the strict sense – one that systematically examines the legal nature of posthuman personhood, the normative basis for its rights and obligations, and the institutional mechanisms through which legal systems may adapt to accommodate or regulate technologically transformed human beings. The present study seeks to contribute to filling this gap.

3. The purpose of this article is to examine transhumanism as a philosophical and legal category: to analyse its genesis and conceptual content, to identify the legal challenges it generates, and to outline approaches to addressing those challenges within the framework of contemporary human rights law.

4. Presentation of the research material.

Transhumanism as an organized intellectual movement dates back to the late 1980s - early 1990s, although the ideas underlying it have much deeper roots. The term itself in its modern meaning was introduced by Julian Huxley back in 1957, describing the transition of man beyond the limits of his own nature through the conscious application of science and technology. However, as a structured movement, transhumanism took shape thanks to the efforts of Max Mohr, Nick Bostrom, Natasha Vita-Mohr and their associates, who in the 1990s formulated its key principles and organizational basis.

In particular, Max Mohr, in his essay "Transhumanism: Towards a Futurist Philosophy" (1990), first formulated the modern understanding of transhumanism as a philosophical movement, and together with T. O. Morrow he founded the journal "Extropia" (1989) and the Extropia Institute (1992-2007). In the 1990s, "extropianism", the libertarian doctrine of overcoming human limitations through technology, came to the forefront of the transhumanist movement, and Mohr formulated its key principles in "Principles of Extropy". In turn, Natasha Vita-Mohr made an even earlier contribution: Vita-Mohr's "Transhumanist Manifesto" was compiled in 1983 and revised in 1998-2020, and she was also among the authors of the Transhumanist FAQ in the mid-1990s. The organizational design of the movement was completed by Nick Bostrom: The World Transhumanist Association (WTA) was founded in early 1998 by Nick Bostrom and David Pearce with the aim of providing a common organizational base for all transhumanist groups and interests, as well as developing a more mature and academically respectable form of transhumanism [12].

From a doctrinal point of view, transhumanism can be defined as a socio-philosophical and scientific movement that advocates the use and development of technologies that can radically improve the human condition by improving the cognitive, physical and emotional abilities of a person, as well as overcoming aging and death [2, p. 25]. B. Cummings specifies that transhumanists distinguish three types of technological influence: therapeutic (restoration of the norm), improving (exceeding the norm) and transformative (replacing the human in a person) [1, p. 218].

In the same study, B. Cummings draws attention to the fact that transhumanism in the legal context has already revealed its "tentacles" in the field of intellectual property law, and such devices as Apple Watch and Google Glass are only a prologue to the technological-biological symbiosis envisaged by the pioneers of the movement [1, p. 220]. This observation emphasizes that legal science must respond to the challenges of transhumanism today, without waiting for full technological deployment.

R. Fridmansky suggests considering transhumanism as a "unifying slogan for various cultural, political, philosophical and digital trends" that promote the ideas of development and expansion of the boundaries of the human species [4, p. 2078]. This characteristic emphasizes the fundamental ideological heterogeneity of the movement: along with liberal-progressive branches, there are conservative, religious and technocratic variants of transhumanism, which significantly complicates its legal qualification.

For legal science, the question of whether transhumanism is only a philosophical position or whether it is already acquiring the status of a legal concept is fundamentally important. It seems that the latter statement more accurately reflects reality: transhumanism forms a new legal problem - from issues of patenting genetic modifications to the "neurorights" regime and thus inevitably penetrates the legal discourse. At the same time, we believe that the legal qualification of transhumanism as a category remains debatable: it does not fit into the traditional distinction between subjective law and legal norm, between natural and positive law. Transhumanism grows out of several interconnected philosophical traditions, each of which has its own legal implications. The first and most important is the tradition of individual autonomy, reaching its roots to the liberal philosophy of J. S. Mill: a person is sovereign over his own body and mind, therefore the state has no right to prohibit him from modifying his own organism. This idea has found legal embodiment in the principle of informed consent and the right to self-determination, but transhumanism extends it to limits that raise, in our opinion, serious legal questions: can a person "consent" to irreversible modifications that will change their very ability to consent in the future?

P. Corby, in his critical analysis, reveals a deep positivist optimism at the heart of transhumanism: the conviction that scientific methods are the only reliable path to human progress, and the limits of human existence are purely technical problems to be solved [5, p. 183]. There, the author refers to N. Bostrom and J. Savulescu, who defend not just the right, but the moral duty of human self-improvement through technology - a position that in the legal dimension can be transformed into discrimination against "imperfect" individuals [5, p. 184]. M. Potrch and V. Strakhovnyk analyze the project of "moral transhumanism", which involves the improvement of human moral virtues through genetic interventions and pharmacological means [7]. These authors emphasize that a key feature of human moral consciousness is sensitivity to grounds - the ability to recognize and respond to moral arguments [7]. Technological "improvement" of moral abilities can undermine this very sensitivity or make it redundant, which from a legal point of view means the destruction of the foundations of sanity and responsibility.

Fundamentally important for legal science is the position of D. Crouch, who argues that the Thomistic theory of natural law is not an obstacle, but a guideline for evaluating technologies of improvement: natural law, unlike popular ideas, is not absolutely immutable, since it proceeds from the goods to which human nature aspires, and not from specific biological manifestations of this nature [6]. Thus, those technologies that serve authentic human flourishing could receive legal recognition even within the framework of the natural law tradition, while those that destroy man as a rational and moral being would be subject to legal restrictions.

This approach seems to be the most promising for legal science, since it allows avoiding two extremes: techno-utopian libertarianism, which removes any legal restrictions, and bioconservative denial, which ignores the potential of scientific and technological progress for the protection of human rights. At the same time, the legal regulation of transhumanist technologies requires a criterion of distinction, since natural law in its modern interpretation is capable of providing such a distinction.

The most acute arena of the clash of transhumanism and law is the sphere of human rights. The classical concept of human rights is based on certain anthropological premises: the equality of people is based on a common nature, dignity - on the immutable core of humanity, inviolability - on the inviolability of bodily integrity. Transhumanism undermines all three premises: if human nature is changeable, if some people are "improved" and others are not, then what becomes the basis of equality and dignity? [13; 14; 15].

M. Lasalle records a fundamentally important shift: due to the transhumanist influence, nature is no longer considered the basis of law, but instead, self-determination and technological possibilities are in the focus of legal discourse [10, p. 227]. This shift is reflected in new legal constructs: the right to die, the right to change gender, the right to genetically improve one's own descendants - all of them grow out of the transhumanist logic of autonomy, which denies the normative nature of natural limitations.

A special legal issue is the so-called "neurorights" - rights in the field of protecting the human brain from technological intervention, manipulation and unauthorized access. R. Fridmansky argues that the accelerated development of neurotechnologies requires the formation of a new generation of human rights - rights that protect cognitive freedom, mental privacy and psychological continuity of identity [4, p. 2080]. It should be noted that a pilot example in this area is Chile, which in 2021 adopted an amendment to the constitution protecting "neural rights" - in fact, the first such step in the world at the level of the basic law.

V. Vardan draws attention to another aspect of the legal issues of transhumanism: responsibility for the consequences of technological improvement [2, p. 28]. If genetic editing leads to unpredictable consequences, who is responsible - a scientist, a company, a state or the "improved" person himself? The gap between the pace of technological development and legislative regulation creates a legal vacuum, which is especially dangerous given the irreversible nature of some interventions.

In the work devoted to legal anthropocentrism [8], the position is defended that the key legal task is to preserve the anthropocentrism of the legal system, that is, the person as the center and goal of law. even in conditions of technological transformation. The author proposes to distinguish between transhumanism, which seeks to improve man, and techno-ontological post-anthropocentrism, which generally goes beyond the limits of man as a legal subject [8]. It is quite clear that such a distinction is important for legal science: transhumanism in a moderate version can be accommodated within the existing legal system, while radical post-humanism requires a fundamentally new legal paradigm.

One of the most controversial issues at the intersection of transhumanism and law is the question of the legal status of the "posthuman" - a subject who, as a result of technological modifications, will acquire characteristics that will fundamentally distinguish him from modern man. Already today, this problem goes beyond abstractions: neuroimplants that already exist raise questions about the privacy of thoughts; algorithmic decision-making systems - about the nature of legal personality; the possibility of digital cloning of consciousness - about the identity of a person as a legal category.

B. Cummings argues that the issue of "legal personality of the posthuman" is one of the most fundamental legal issues of transhumanism [1, p. 230]. If a person's consciousness is uploaded to a computer, will it retain the same rights? If neural data is hacked or manipulated, who is the victim and who is the subject of responsibility? The answers to these questions require a revision of the very foundations of legal anthropology.

M. Lasalle emphasizes that the classical concept of human rights of 1948 has not undergone formal changes, but its anthropological content has been significantly modified due to judicial practice and new legal concepts that grow out of transhumanist ideas [10, p. 228]. Thus, the right to personal identity is gradually expanding to the right to an identity that a person chooses and forms himself, including with the help of technology. This process occurs spontaneously, without systematic legal understanding, which gives rise to inconsistency and contradictions in the application of law. M. Filipova, K. Iliev and R. Yuleva-Chuchulain indicate that transhumanist transformations of society require an updated system of legal relations, in which artificial intelligence, cyborgs and other new subjects will become equal participants in legal turnover [3]. These authors consider the transhumanist legal worldview as a response to the objective demands of the time, although they warn against overly radical interpretations that ignore legal guarantees of human protection.

It seems that legal anthropology is faced with a choice between two strategies. The first is the preservation of anthropocentrism by expanding the concept of man: recognizing that an "advanced" person remains a person in the legal sense as long as he retains a certain core of identity and rational autonomy. The second

is a gradual transition to a post-anthropocentric legal paradigm, where legal personality is determined not by species affiliation, but by the level of cognitive and moral competence. The first strategy is more conservative and safer, the second is more radical and potentially more just in the long term. It is quite understandable that the choice between them is one of the key tasks of legal science in the coming decades.

Despite the severity of the challenges, the regulatory response to transhumanism remains fragmented and inconsistent. V. Vardan states that states react to transhumanism in extremely diverse ways: Europe relies on the precautionary principle and strict protection of privacy, the USA chooses a more liberal approach with minimal regulatory intervention, China considers transhumanism as an instrument of geopolitical influence [2, p. 30]. Such diversity can lead to "improvement tourism" - the mass movement of people to jurisdictions with the least restrictive regulation.

In the field of neurorights, the first step was the constitutional enshrining of "neural rights" in Chile (2021). Proposals for the formation of a new generation of rights protecting mental privacy and cognitive freedom have also been expressed at the level of international legal discourse [4, p. 2081]. Genetic editing of the human genome remains unregulated at the international level: the case of He Jiankui, who edited the genome of children in 2018, revealed the lack of unified international norms that could prevent or punish such actions [2, p. 28].

Therefore, to systematize the legal regulation of transhumanist technologies, it seems appropriate to distinguish several levels: international legal (in particular, principles and standards similar to the Oviedo Convention on Bioethics), regional (the EU model, based on the precautionary principle and the protection of human dignity), national (constitutional enshrining of neurorights and special legislation on human enhancement) and corporate (standards of responsible development and application of relevant technologies).

Research on posthumanist challenges to law [8] offers a key guideline: legal anthropocentrism as a principle that does not deny technological changes, but preserves the person as the unchanging goal and limit of law. This principle should become one of the fundamental ones in any system of legal regulation of transhumanist technologies. Actually, in our opinion, the legal regulation of transhumanism is at the initial stage of its formation. Therefore, the most realistic and scientifically sound approach is the gradual development of a multi-level regulatory system based on the principles of proportionality, non-discrimination, reversibility of interventions and preservation of the anthropocentrism of law.

5. Conclusions.

As a result of our research, we can highlight the following key issues.

Transhumanism is an independent philosophical and legal category that describes a set of ideas, practices and legal requirements related to the technological improvement of man. It does not fit into the traditional framework of either natural or positive law, but forms a new legal issue that requires systematic scientific understanding. The genesis of transhumanism is associated with philosophical positivism and the liberal tradition of personal autonomy. Attempts to root transhumanism in the natural law tradition seem promising for legal science, as they make it possible to distinguish between improvements that serve genuine human flourishing and those that destroy the foundations of legal personality and responsibility.

Transhumanism poses fundamental challenges to human rights law: the threat of "designated inequality," the need to form neuro-rights, and a rethinking of the legal foundations of identity and cognitive freedom. Pilot legislative decisions indicate that the legal response to these challenges has already begun, although it remains fragmentary.

Legal anthropology faces a choice between a anthropocentric strategy (expanding the concept of the human through an "improved" person) and a post-anthropocentric paradigm (legal personality based on cognitive and moral competence). The first strategy is safer in the short term, the second is potentially more just in the long term.

References:

1. Cummings B. Transhumanism: Morality and Law at the Frontier of the Human Condition. Ave Maria Law Review. 2022. P. 216–270. URL: https://www.avemarialaw.edu/wp-content/uploads/2022/09/Cummings-Proof.pdf

2. Vardhan V. The Singularity and the Law: Expounding Transhumanism, Exponential Technology and the Incipient Legal, Ethical and Political Challenges. International Journal of Legal Developments & Allied Issues. 2022. Vol. 8, No. 2. P. 25–33. DOI: 10.55662/IJLDAI.2022.8204.

3. Filipova M., Iliev K., Yuleva-Chuchulayn R. A Transhumanist Legal Worldview: Responding to the Challenges of Time (Requirement, or Necessity?). Futurity Economics & Law. 2021. Vol. 1, No. 1. URL: https://futurity-econlaw.com/index.php/FEL/article/download/67/67

4. Fridmanskyy R. M. et al. Human Rights in the Context of Transhumanist Medicine: Ethical and Legal Aspects. Wiadomości Lekarskie. 2024. Vol. 77, No. 9. P. 2077-2082. DOI: 10.36740/WLek/195164.

5. Corby P. M. An Innate Despair: The Philosophical Limitations of Transhumanism and its Misplaced Hope in Human Enhancement. Linacre Quarterly. 2025. Vol. 92, No. 2. P. 182–192. DOI: 10.1177/00243639241281977.

6. Crouch D. T. Transhumanism within the Natural Law: Transforming Creation with Nature as Guide. Religions. 2024. Vol. 15, No. 8. Art. 949. DOI: 10.3390/rel15080949.

7. Potrč M., Strahovnik V. Transhumanism, Human Moral Enhancement, and Virtues. Religions. 2024. Vol. 15, No. 11. Art. 1345. DOI: 10.3390/rel15111345.

8. Lazarotto B. The Legal Anthropocentrism at Crossroads: International Legal Principles Ahead of Transhumanism and Post-Anthropocentrism. European Journal of Law and Technology. Vol 16. 2025. URL: https://ejlt.org/index.php/ejlt/article/view/1087

9. Nyathi L. Unveiling the Right to Self-Transformation and Self-Enhancement: Exploring Transhumanism and Its Impact on Human Rights and the Future of Humanity. Deusto Journal of Human Rights. 2024. № 13. P. 119–147. DOI: 10.18543/djhr.3072.

10. Lacalle M. Transhumanism and Law: From Human Nature to Self-Determination as the Foundation of Human Rights. Cuadernos de Bioética. 2021. Vol. 32, No. 105. P. 225–235. DOI: 10.30444/CB.100.

11. Huxley J. Transhumanism. In: New Bottles for New Wine: Essays. London : Chatto and Windus, 1957. P. 13–17.

12. Bostrom N. A History of Transhumanist Thought. Journal of Evolution and Technology. 2005. Vol. 14, № 1. URL: https://nickbostrom.com/papers/a-history-of-transhumanist-thought/

13. What does Transhumanism Mean for Human Rights? // International Service for Human Rights (ISHR). 2024. URL: https://ishr.org/what-does-transhumanism-mean-for-human-rights/

14. Philopedia. Transhumanism. URL: https://philopedia.org/topics/transhumanism/

15. Frankenstein and the law: some reflexions on transhumanism / Academia.edu. URL: https://www.academia.edu/13104163/

16. Cassinadri M., Ienca M. Neuralink's brain-computer interfaces: medical innovations and ethical challenges. Frontiers in Human Dynamics. 2025. URL: https://www.frontiersin.org/journals/human-dynamics/articles/10.3389/fhumd.2025.1553905/full

17. Do B., Badillo M., Cantz R., Spivack J. Privacy and the Rise of "Neurorights" in Latin America. Future of Privacy Forum. 2024. URL: https://fpf.org/blog/privacy-and-the-rise-of-neurorights-in-latin-america/

18. Zia-Ul-Haq M. Legal Personhood and Identity of Human Digital Twins. Legal Research & Analysis. 2025. Vol. 3, № 1. P. 12–25. DOI: 10.69971/lra.3.1.2025.42.

19. Liu S. Legal reflections on the case of genome-edited babies. Global Health Research and Policy. 2020. Vol. 5. Art. 23. DOI: 10.1186/s41256-020-00153-4.

20. Dmytro M. Bielov, Myroslava V. Hromovchuk, Yaroslav V. Hreca, Vasyl V. Tymchak. Essence of somatic human rights in the process of biomedical research. Wiadomości Lekarskie. Volume LXXIV, Issue 10, Part 2, October 2021. P. 2663-2668. DOI: 10.36740/WLek202110226

Anton Kregul,
Postgraduate Student, Department of Constitutional Law and Comparative Law
Uzhhorod National University
ORCID: 0009-0003-5508-5048

STATE REGISTRARS IN THE CONTEXT OF FINANCIAL MONITORING IN UKRAINE

Krytiev Anatolii

DOI: https://doi.org/10.61345/1339-7915.2026.1.12

Annotation. This research paper presents a comprehensive study of the institutional status and functional role of state registrars within the national system for preventing and combating the laundering of proceeds from criminal activities. The relevance of the topic stems from the need to transform the activities of registrars from a technical process of recording legal facts into an effective tool of preventive financial monitoring. The author highlights the existence of an 'institutional vacuum' whereby state registrars, whilst being on the 'front line' of control during the establishment of business entities, are not, de jure, granted the status of primary financial monitoring entities, which limits their ability to detect signs of fictitious business at the pre-transaction stage.

The paper provides a thorough analysis of the current regulatory framework, in particular the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" and legislation in the field of state registration. A causal link has been established between the inadequacy of procedures for identifying high-risk individuals and the growth of the shadow economy. Based on an analysis of practical case studies and data from open sources (in particular, the Opendatabot platform), the paper highlights schemes involving the use of 'nominee services', the mass registration of business entities under a single individual, and 'business fragmentation' for the purpose of minimisation of the tax burden.

Particular attention has been paid to a critical analysis of the provisions of the National Revenue Strategy for 2024–2030, specifically regarding the potential introduction of value added tax for individual entrepreneurs. The risks that such changes would pose to small businesses have also been assessed. The academic novelty of the research lies in the development of specific proposals for amending Ukrainian legislation with the aim of granting state registrars the status of primary financial monitoring entities and integrating their activities with the databases of the State Tax Service and the National Bank of Ukraine.

The author argues that the introduction of a risk-based approach at the stage of state registration will shift the focus of control from the banking sector to the stage of establishing business operations, thereby ensuring transparency in the business environment and enhancing the country's economic security. Recommendations have been formulated regarding the creation of a unified digital platform for interaction between the Ministry of Justice of Ukraine, tax authorities and the banking sector to enable the rapid identification of 'shell companies' and prevent the exploitation of vulnerable groups of population in unlawful financial schemes.

Key words: banking institution, state registrar, taxes, tax service, individual entrepreneur, financial monitoring, legal entity.

1. Introduction.

In Ukraine's current legal landscape, the activities of state registrars constitute a fundamental element of the national system for preventing and combating the laundering of criminal proceeds. As they handle

most of the documentation related to the establishment of business entities, state registrars effectively serve as the 'front line' of control. However, a key problem is the significant limitation of the information and analytical tools available to registrars when carrying out registration activities. This prevents them from fully identifying priority risks and detecting signs of bogus businesses as early as they are established.

Experience in law enforcement indicates that professional intermediaries, such as experienced lawyers or consultancy firms, are typically engaged to set up legal entities that are subsequently integrated into 'money laundering' schemes. The use of qualified legal guidance ensures that documents formally comply with legal requirements, while concealing the true purpose of establishing the company and the beneficial owners. Under such circumstances, the state registrar, lacking access to advanced analytical systems and databases of high-risk entities and individuals, unwittingly facilitates the legalisation of structures with signs of fictitiousness.

Creation of the necessary legal and procedural framework for the implementation of a risk-based approach in the activities of registrars is a strategic objective. Enabling them to identify potential risks at an early stage will significantly reduce the size of the informal economy. Furthermore, this will shift the focus of control from the banking sector to the state registration stage, thereby reducing the administrative burden on bank employees. Therefore, modernising the functions of the state registrar in the context of financial monitoring is a necessary step towards ensuring transparency in the business environment in Ukraine.

2. Analysis of scientific publications.

The theoretical framework of this study is based on the work of Melnik S.I., Vinichuk M.V. and Gorban I.M., who justify the priority of a risk-based approach and a preventive focus within the financial monitoring system [1].

The criminological aspect of the problem is explored by Levchenko Yu.O. and Mykytchyk O.V., who emphasise the need to strengthen the powers of registrars regarding the analysis of suspicious activities to prevent document forgery [2].

Drawing on the findings of Ukrainian scholars, we consider it appropriate to further research into mechanisms for identifying the subjective aspect (intent) of future transactions subject to financial monitoring. Our analysis focuses on the activities of Ukraine's state registrars, as it is precisely at the stage of state registration that the conditions are created for the subsequent use of legal entities in shadow economy schemes, which requires the introduction of new analytical control filters.

3. The aim of the work

3. The aim of the work is to conduct a comprehensive study of the functions of the state registrar in the context of preventing the laundering of proceeds of crime, as well as to formulate proposals for modernising the regulatory framework in order to enhance the information and analytical capabilities of registrars.

4. Review and discussion.

The process of business institutionalisation begins when an entity acquires the relevant civil-law status through the state registration of a legal entity or an individual entrepreneur.

In accordance with the provisions of the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" (hereinafter referred to as the Law No. 361-IX) the entities responsible for primary financial monitoring in relation to business support and establishment are: notaries; business entities that provide legal services; persons who provide services on establishment, operation or management of legal entities, trusts and other entities without legal personality [3].

Supervision in the field of financial monitoring regulation of the aforementioned entities is carried out by the Ministry of Justice of Ukraine.

The regulatory framework governing the activities of specially designated primary financial monitoring entities in the field of state registration is characterised by its multi-tiered structure and sectoral diversity. The key piece of legislation in this area is Law No. 361-IX [3], which establishes the general principles for preventing and combating money laundering. The procedural aspects of the activities of these entities, which are subject to state regulation and supervision by the Ministry of Justice of Ukraine, are detailed in the Regulations on the Conduct of Financial Monitoring by Primary Financial Monitoring Entities, approved by Order of the Ministry of Justice of Ukraine No. 3201/5 of 10 September 2021 [4]. This document regulates the specific procedure for carrying out financial monitoring measures.

The state's control and supervisory function in this area is ensured through the Procedure for the Exercise of Supervision in the Field of Preventing and Combating the Legalisation (Laundering) of Proceeds of Crime, approved by Order of the Cabinet of Ministers of Ukraine No. 662 of 16 June 2023 [5]. This regulatory act standardises the approaches of Ukraine's ministries of finance, justice and digital transformation to verifying compliance by entities with the requirements of legislation in the field of preventing the legalisation of criminal proceeds.

A separate regulatory framework is constituted by specific legislation governing registration procedures. The legal procedure for establishing and legalising business entities is set out in the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" [6]. It is precisely the correlation between the provisions of this Law and the requirements of financial monitoring legislation that creates the legal framework within which the state registrar must perform a preventive function to identify potential risks at the stage when the documents are submitted for business registration.

As a rule, the registration of a legal entity or an individual entrepreneur is carried out by a state registrar. As of 2026, the exact number of state registrars responsible for registering legal entities, individual entrepreneurs and public organisations in Ukraine has not been published in a standardised format, as their list is dynamically updated by the Ministry of Justice of Ukraine depending on martial law and cybersecurity considerations. Furthermore, public access to the list of state registrars is currently unavailable.

An analysis of publicly available information suggests that there is a widespread practice in Ukraine when a large number of companies are registered in the name of a single individual. These companies subsequently become involved in tax avoidance schemes and money laundering.

Such companies are usually established/registered with the state registrar as required by current legislation; however, state registrars are not designated as primary financial monitoring entities, and therefore have no obligation to verify whether an individual is involved in unlawful schemes.

Particular attention should be paid to the fact that the provisions of the Law No. 361-IX currently do not apply directly to state registrars in terms of granting them the status of primary financial monitoring entities. This creates a certain institutional vacuum, as the registrar, whilst having access to primary information about the business being established, lacks the actual powers to conduct a thorough check on individuals who may be seeking to facilitate tax evasion or the legalisation of shadow capital.

In order to provide state registrars with effective tools to thoroughly verify applicants and identify signs of fictitious business operations, it is considered appropriate to include them in the list of primary financial monitoring entities. This would give them a legal status requiring them to apply a risk-based approach when carrying out registration activities.

The experience of the banking sector could serve as the methodological basis for developing the criteria for such checks. In particular, it would be advisable to adapt the provisions of Resolution No. 65 of the Board of the National Bank of Ukraine dated 19 May 2020 "On the Approval of the Regulations on the Conduct of Financial Monitoring by Banks". Annex 19 "Criteria for the risk of legalisation (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction, terrorist

financing and/or the financing of the proliferation of weapons of mass destruction" to the aforementioned Regulations is of particular importance in this context. Adapting these criteria to the specific nature of registration activities will enable state registrars to carry out preventive analysis of atypical behaviour by founders, identify signs of nominal ownership among management, and block attempts to establish shell companies even before they commence active financial operations [7].

An important step towards modernising the preventive function is to enhance the information and analytical capabilities of state registrars. Granting them access to the databases of the State Tax Service of Ukraine, even with restricted functionality, will significantly facilitate the process of verifying individuals who act as founders of new enterprises. This will enable the identification of individuals who are frequently involved in tax minimisation schemes without their actual knowledge, or so-called 'nominee' owners.

Thanks to such data integration, the state registrar will be able to promptly analyse an individual's tax history and their links to other business entities where they hold the position of a director, accountant or are a founder. In our view, the list of information required for verification should include, in particular: the individual's current status within the structure of other legal entities; the presence of established taxpayer risk criteria; key indicators from income declarations and the level of taxes and duties paid; the existence of any arrears to the budget; information regarding the individual's involvement in criminal proceedings related to economic crimes.

Furthermore, it seems scientifically justified to introduce a mechanism limiting the number of legal entities registered by one individual, provided that such an individual meets specific risk criteria. To prevent abuse of powers by officials of state registration bodies and ensure the oversight is objective, the level of taxes and duties paid by enterprises controlled by the individual should serve as the key indicator for such a restriction. The introduction of such safeguards will make it possible to block the establishment of 'shell companies' at the registration stage, which is crucial for the stability of the state's financial system.

The civil law aspect of the disposal of shares in the authorised capital is governed by Article 21 of the Law of Ukraine "On Limited Liability and Additional Liability Companies", which provides for the right of a shareholder to dispose of their share, either for consideration or free of charge, to other shareholders or third parties [8]. However, the current procedure for the unhindered change of owners and managers of legal entities creates significant corruption risks and opportunities for abuse in the area of financial monitoring.

In our view, the introduction of amendments aimed at establishing certain restrictive measures regarding the re-registration of corporate rights is a pressing issue today. It would be advisable to introduce a mechanism whereby changes to the shareholders or management of a legal entity are only permitted after confirmation that there is no tax debt, and after the entity has undergone a relevant check by the state tax authorities.

The implementation of such an initiative would have a number of positive effects on the country's economic security, in particular: a significant reduction in tax avoidance and evasion schemes; the prevention of embezzlement of state budget funds through fictitious transactions; a reduction in the administrative burden on tax and law enforcement officials by eliminating the consequences of the activities of 'transit' companies.

The most significant outcome of these changes will be the elimination of the main mechanism for conducting dubious financial transactions and the subsequent laundering of funds. As a result, it is anticipated that the artificially created institution of 'nominee services', i.e. the use of nominal persons as founders and directors, will gradually disappear from Ukraine's legal framework. This category usually involves socially vulnerable groups (students, pensioners, low-income citizens), who, in return for financial remuneration or through the use of their lost documents, become the nominal owners of a large number of companies. Legislative reform in this area will create an effective barrier to the use of such individuals in illegal schemes, a practice that remains widespread to this day.

The practical aspect of the study confirms that the fictitious registration of legal entities has a number of destructive consequences. They include the accumulation of irrecoverable tax debt, the imposition of penalties, the initiation of criminal proceedings, the freezing of assets in banking institutions, and irreversible reputational and legal consequences [9].

Particular attention should be paid to the practice of using 'nominee' individuals for identification and verification procedures at banks. Organised groups usually accompany these individuals to financial institutions to open accounts formally, after which full control over remote banking services ('client-bank') is transferred to the real beneficiaries to facilitate unhindered transactions. This model of account management clearly shows the fictitious nature of the legal capacity of the registered individual.

Analysis of data from the Opendatabot platform reveals clear risk indicators, in particular an unusual concentration of registration data. For example, cases have been identified where over a thousand individual entrepreneurs were registered to a single telephone number, which is a classic criterion of 'mass registration' and indicates the artificial nature of such entities [10].

In the corporate sector, it is common practice to 'fragment businesses' by creating an artificial pool of individual entrepreneurs. This enables large companies to minimise unlawfully their tax liability by remaining within the simplified taxation system. The importance of detecting such schemes is highlighted by checks carried out by the State Tax Service of Ukraine. For example, 10 large retail chains selling household appliances and electronics were revealed to use a mechanism to fragment their ownership structure in order to evade paying full taxes [11].

These facts highlight that the state registrar, having access to information on contact details and the connections of individuals, can act as a barrier to such schemes as early as the document submission stage, provided that appropriate analytical verification algorithms are in place.

The causal link for the above actions on the part of business representatives can be attributed to the high tax rates in Ukraine:

– value added tax (VAT) at 20%;

– income tax at 18%;

– single contribution to compulsory state social insurance at 22%;

– military levy of 5%;

– it should also be noted that the State Tax Service of Ukraine frequently blocks tax invoices (often without justification).

In accordance with the National Revenue Strategy for 2024–2030, the Ukrainian government intends to introduce a value-added tax on the business activities of individual entrepreneurs. Should a new VAT be introduced for individual entrepreneurs, there is a risk that a large number of them will go bankrupt, which would further impact the already poor standard of living of small businesses and the population of Ukraine.

5. Conclusions.

The research conducted has proven the need to modernise the legal status of the state registrar, with a view to strengthening the preventive function of financial monitoring. The following is proposed based on the results of the analysis:

1. To amend Part 2 of Article 6 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations", expanding the powers of the state registrar to verify applicants in the following areas:

– ensuring access to the 'Tax Block' automated information system to check individuals (founders/directors) for inclusion in high-risk categories and the presence of 'nominal' characteristics that may indicate an intention to set up 'shell companies';

– checking the individual's tax compliance status, as well as analysing tax compliance at other business entities where the individual is a beneficiary or director;

– mandatory monitoring of data from the Unified State Register of Court Decisions regarding an individual's involvement in criminal proceedings related to tax offences, embezzlement of budget funds or money laundering;

– introducing a mechanism for the prompt exchange of information with the National Bank of Ukraine to identify individuals with whom banks have already classified business relationships as unacceptably high risk, or who have been included in lists of persons refused service.

2. To introduce a legal mechanism for refusing state registration (establishment) of new legal entities of any organisational and legal form if critical risk indicators, as defined by the regulatory acts of the Ministry of Justice of Ukraine, are identified.

3. To reform the institutional status of monitoring entities. We consider it appropriate to amend sub-paragraph 7 of paragraph 2 of Article 6 of the Law No. 361-IX to include state registrars in the list of primary financial monitoring entities. This will give them powers to identify and verify individuals on the basis of a risk-based approach.

4. To create a single digital platform for interaction between the Ministry of Justice of Ukraine, the tax authorities and the banking sector, which will automate the verification process and ensure the rapid real-time exchange of information on high-risk individuals.

Based on the above, the implementation of the proposed changes will shift the focus towards preventing high-risk entities from commencing operations. We are convinced that this will not only reduce the size of the shadow economy but also significantly optimise the resources of tax and banking institutions dedicated to the administration and monitoring of suspicious transactions.

References:

1. Melnyk, S.I., Vinichuk, M.V., & Horban, I.M. (2024). Finansovyi monitorynh [Financial monitoring] (Textbook). Lviv State University of Internal Affairs. https://dspace.lvduvs.edu.ua/bitstream/1234567890/7955/1/FinancMonitor-MELNYK__maket.pdf

2. Levchenko, Yu. O., & Mykytchyk, O. V. (2025). Osnovni napriamy udoskonalennia zakhodiv zapobihannia pidroblenniu dokumentiv, yaki podaiutsia dlia provedennia derzhavnoi reiestratsii yurydychnoi osoby ta fizychnykh osib – pidpryiemtsiv [Main areas of improvement of measures to prevent forgery of documents submitted for state registration of legal entities and individual entrepreneurs]. Naukovyi visnyk Uzhhorodskoho Natsionalnoho Universytetu. Seriia: Pravo, 90(4), 76–81. https://doi.org/10.24144/2307-3322.2025.90.4.10

3. Verkhovna Rada of Ukraine. (2019, December 6). Zakon Ukrainy "Pro zapobihannia ta protydiiu lehalizatsii (vidmyvanniu) dokhodiv, oderzhanykh zlochynnym shliakhom, finansuvanniu teroryzmu ta finansuvanniu rozpovsiudzhennia zbroi masovoho znyshchennia" No. 361-IX [Law of Ukraine "On prevention and counteraction to legalisation (laundering) of criminal proceeds, terrorist financing and financing of proliferation of weapons of mass destruction" No. 361-IX]. Vidomosti Verkhovnoi Rady Ukrainy, 25. https://zakon.rada.gov.ua/laws/show/361-20

4. Ministry of Justice of Ukraine. (2021, September 10). Pro zatverdzhennia Polozhennia pro zdiisnennia finansovoho monitorynhu subiektamy pervynnoho finansovoho monitorynhu...: Nakaz No. 3201/5 [On the approval of the regulations on the conduct of financial monitoring by primary financial monitoring entities...: Order No. 3201/5]. https://ips.ligazakon.net/document/RE36832

5. Cabinet of Ministers of Ukraine. (2023, June 16). Pro zatverdzhennia Poriadku zdiisnennia nahliadu u sferi zapobihannia ta protydii lehalizatsii (vidmyvanniu) dokhodiv...: Postanova No. 662 [On the

approval of the procedure for the exercise of supervision in the field of preventing and combating the legalisation (laundering) of proceeds of crime...: Resolution No. 662]. https://zakon.rada.gov.ua/laws/show/662-2023-%D0%BF

6. Verkhovna Rada of Ukraine. (2003, May 15). Zakon Ukrainy "Pro derzhavnu reiestratsiiu yurydychnykh osib, fizychnykh osib – pidpryiemtsiv ta hromadskykh formuvan" No. 755-IV [Law of Ukraine "On the state registration of legal entities, individual entrepreneurs and public organisations" No. 755-IV]. Vidomosti Verkhovnoi Rady Ukrainy, 31-32. https://zakon.rada.gov.ua/laws/show/755-15

7. National Bank of Ukraine. (2020, May 19). Pro zatverdzhennia Polozhennia pro zdiisnennia bankamy finansovoho monitorynhu: Postanova No. 65 [On the approval of the regulations on the conduct of financial monitoring by banks: Resolution No. 65]. https://zakon.rada.gov.ua/laws/show/v0065500-20

8. Verkhovna Rada of Ukraine. (2018, February 6). Zakon Ukrainy "Pro tovarystva z obmezhenoiu ta dodatkovoiu vidpovidalnistiu" No. 2275-VIII [Law of Ukraine "On limited liability and additional liability companies" No. 2275-VIII]. Vidomosti Verkhovnoi Rady Ukrainy, 13. https://zakon.rada.gov.ua/laws/show/2275-19

9. Lotysh, A. (2025, February 6). Koly vy «zasnovnyk» fiktyvnoho TOV, pro yake navit ne chuly: alhorytm dii [When you are the 'founder' of a fictitious limited liability company you've never even heard of: A step-by-step guide]. LIGA.net. https://blog.liga.net/user/alotish/article/58223

10. Opendatabot. (2026, January 15). 1 549 fopiv zareiestrovani na odnomu nomeri [1,549 individual entrepreneurs are registered under a single phone number]. https://opendatabot.ua/analytics/mass-phone

11. Ukrinform. (2026, February 10). Podatkova vykryla 10 torhovykh merezh na skhemakh «droblennia biznesu»: zbytky perevyshchuiut miliard [Tax authorities have uncovered 10 retail chains involved in 'business fragmentation' schemes: Losses exceed one billion]. https://www.ukrinform.ua/rubric-economy/4087298-podatkova-vikrila-10-torgovih-merez-na-shemah-droblenna-biznesu-zbitki-perevisuut-milard.html

12. Cabinet of Ministers of Ukraine. (2023, December 27). Pro skhvalennia Natsionalnoi stratehii dokhodiv do 2030 roku: Rozporiadzhennia No. 1218-r [On the adoption of the National Revenue Strategy up to 2030: Order No. 1218-r]. https://zakon.rada.gov.ua/laws/show/1218-2023-%D1%80

Anatolii Krytiev,
Postgraduate student of the Department of Sectoral Law
and General Legal Disciplines
Higher Education Institution "Open International University of Human Development "Ukraine"
E-mail: baxtak@gmail.com
ORCID: 0009-0009-3920-7424

PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF IMPLEMENTING ALGORITHMIC TECHNOLOGIES IN PRE-TRIAL INVESTIGATION

Kryvosheiev Mykola

DOI: https://doi.org/10.61345/1339-7915.2026.1.13

Annotation. This article provides a comprehensive and multi-layered analysis of the theoretical, legal, doctrinal, and ethical challenges determined by the systemic integration of algorithmic solutions and artificial intelligence (AI) technologies into the architecture of the modern criminal justice system. The author posits that the digital transformation of pre-trial investigation and judicial proceedings has catalyzed a fundamental ontological conflict between the paradigm of technological determinism – which prioritizes the maximization of procedural efficiency through the automated processing of vast datasets – and the classical anthropocentric legal paradigm, which asserts the absolute priority of fundamental human rights, individual agency, and personhood. This tension necessitates a radical re-evaluation of the conceptual foundations of criminal procedure in the era of the Fourth Industrial Revolution.

The research focuses on the epistemological risks inherent in the use of "black-box" algorithms within law enforcement, where the opacity of mathematical models utilized in predictive policing and recidivism risk assessment systems threatens the core principle of legal certainty. The author substantiates the necessity of a conceptual transition toward a new doctrine of "digital humanism." This doctrine is envisioned as a sophisticated synthesis of institutional legal safeguards and ethical engineering filters, implemented through the innovative framework of "Ethics by Design." It is argued that ethical norms must be embedded directly into technical protocols and the underlying source code of software utilized in criminal proceedings, thereby transforming algorithmic architecture into an accountable and transparent tool of justice rather than a self-governing entity.

A pivotal component of this study is the critical examination of the mathematical and socio-legal limitations of equity in automation. Specifically, the article explores the "Kleinberg-Chouldechova impossibility theorem of fairness," which demonstrates that different definitions of algorithmic equity – such as calibration, predictive parity, and error rate balance – are mathematically incompatible under certain conditions. The author argues that this theorem serves as a crucial warning against over-reliance on purely technical solutions to social bias. It underscores the fact that achieving "fairness" in a criminal justice context is not merely a computational task but a profound political and legal choice that requires human judgment to navigate the inherent trade-offs between competing metrics of equality.

Furthermore, the article addresses the transformative evolution of conventional human rights in the digital age. The author provides a detailed analysis of the genesis and substantive content of the "right to an explanation" regarding algorithmic logic, which is emerging as an indispensable condition for ensuring the right to a fair trial. It is demonstrated that without the ability of the defense to verify, challenge, and rebut algorithmic outputs, the adversarial character of the judicial process is fundamentally compromised. Additionally, the study investigates the persistent problem of algorithmic bias arising from the use of unrepresentative or historically skewed training data. The author asserts that protection against "automated stigmatization" must attain the status of a specialized procedural guarantee to prevent the perpetuation of systemic social prejudices through seemingly objective digital instruments.

In its concluding remarks, the article emphasizes that the legitimacy of innovative investigation and adjudication depends not on the technical perfection of algorithms, but on the legal system's capacity to ensure meaningful human oversight – the "human-in-the-loop" principle. The author concludes that the future of criminal procedural doctrine must focus on enhancing the transparency, explainability, and auditability of algorithmic systems. This study holds theoretical significance for the development of legal doctrine in the digital epoch and offers practical insights for the establishment of rigorous validation standards for forensic and investigative software, ensuring that technological progress serves the interests of truth and human dignity.

Key words: human rights, algorithmic technologies, pre-trial investigation, criminal law, digital humanism, artificial intelligence, algorithmic transparency, algorithmic bias, human-in-the-loop, black-box algorithms, ethics by design.

1. Introduction.

The accelerated integration of innovative technologies into criminal procedural activities gives rise to a fundamental dilemma between investigative efficiency and the protection of core human rights. Such technologies may simultaneously prove efficacious for crime detection and procedurally lawful, while remaining ethically untenable due to their potential to infringe upon human dignity, exert a chilling effect on democratic freedoms, or facilitate systemic discrimination against vulnerable populations. The theoretical and legal conceptualization of this issue is predicated on the necessity of balancing public interest (societal security) with private autonomy – a dynamic that acquires new ontological dimensions in the context of digital transformation.

A central challenge lies in the fact that classical criminal procedure concepts, established during the era of "material forensics," prove inadequate for regulating relations within the digital sphere. Specifically, a series of fundamental contradictions emerge:

1. The Crisis of Individual Autonomy: The mass collection of biometric data and the analysis of digital footprints (Big Data) effectively eliminate the "right to anonymity," transforming private life into an object of constant, proactive surveillance.

2. The Deficit of Algorithmic Transparency: The deployment of machine learning systems for risk assessment or identification precipitates the "black box" problem, wherein the logic underpinning procedurally significant decisions remains opaque to both the defense and the court, thereby undermining the principle of equality of arms.

3. The Blurring of Boundaries for Legitimate Interference: The transformation of evidence from physical objects into informational entities enables remote and imperceptible privacy intrusions, which complicates procedural oversight regarding the legality of investigative actions.

Given these considerations, scientific inquiry aimed at developing ethical filters and legal safeguards for "digital forensics" acquires profound relevance.

2. Analysis of scientific publications.

The legal and ethical challenges arising from the technologization of law enforcement constitute a complex, interdisciplinary field of inquiry. Notwithstanding the considerable interest in discrete aspects of technical and forensic support, a systemic analysis of the ethico-legal implications of this technological evolution is currently in its nascent stages of formation. Various facets of this problematic have been addressed by scholars such as P. Brey, A. Cavoukian, A. Chouldechova, S. Corbett-Davies, W. Fleisher, B. Friedman, P.K. Lin, and L. Zornetta, among others. An assessment of the current state of literature reveals a paucity of integrative research. The majority of existing scholarship remains focused on narrow, sector-specific issues – such as algorithmic bias or discrete ethical dilemmas – which precludes a comprehensive

elucidation of the broader systemic patterns governing the development of ethico-legal standards for technological application at the pre-trial investigation stage.

3. The aim of the work.

The objective of this study is to conduct a conceptual analysis and reconceptualize the substantive content of the categories of 'human rights,' 'privacy,' and 'ethics' in light of their transformation driven by the biotechnological and digital revolutions. Furthermore, the research aims to identify and systematize the risks inherent in the deployment of algorithmic methods within the framework of pre-trial investigations.

4. Review and discussion.

The implementation of innovative tools in pre-trial investigations is accompanied by a series of systemic legal risks that necessitate a revision of traditional procedural paradigms to ensure a balance between investigative efficiency and adherence to fundamental standards of justice. In modern criminal procedural doctrine, human rights should be viewed as a system of boundaries, defined by international and national law, which limit the coercive power of the state during the collection, processing, and application of forensically relevant information. The ultimate objective of such a system is the preservation of human dignity and liberty amidst the intensive digitalization of investigative activities.

In the era dominated by "digital forensics" and "genetic identification", a paradigmatic shift has occurred: human rights have expanded from the physical to the informational sphere. An evolutionary extension of these fundamental rights is "digital human rights" [1] – legal guarantees and standards predicated on human dignity that safeguard an individual's right to digital identity. This encompasses the right to the inviolability, uniqueness, and authenticity of one's digital profile – including biometric data, digital traces, and behavioral attributes – as well as the state's obligation to guarantee that this identity is not distorted, misappropriated, or erroneously interpreted by algorithmic systems. Furthermore, it includes the right to protection against unlawful interference in one's virtual environment, the guarantee of personal and biometric data security, and the right to a fair trial involving transparent and unbiased algorithmic systems.

Within the framework of pre-trial investigation, human rights function as a "legal filter" that determines the admissibility of evidence. Any technological innovation, such as mass facial recognition or Big Data analytics, must be subjected to a proportionality test. Currently, human rights, ethics, and transparency constitute the so-called "triangle of legitimacy" for forensic innovation. The absence of any of these elements renders a technology, regardless of its technical efficacy, unacceptable for integration into the legal system of a democratic state.

Accordingly, through the lens of forensic technologies, *human rights* can be defined as a system of fundamental guarantees protecting an individual's physical, digital, and biometric integrity from disproportionate or opaque interference. This system is operationalized through the rights to informational self-determination, the explainability of algorithmic decisions, and the adversarial scrutiny of technological evidence.

Conceptually, this definition is articulated through three core dimensions: 1. *Digital Privacy*; 2. *Algorithmic Fairness and Transparency*; and 3. *Human-Centricity* (*Human-in-the-Loop*).

1. Digital Privacy. The classical conception of the right to privacy, famously articulated by Warren and Brandeis in 1890 as the "right to be let alone" [2] and subsequently codified in international law (Article 12 of the Universal Declaration of Human Rights [3], Article 17 of the International Covenant on Civil and Political Rights [4], and Article 8 of the European Convention on Human Rights [5]) as protection against "arbitrary or unlawful interference" with one's private life, was rooted in a spatial paradigm. Within this framework, specific spheres of life (the home, correspondence, private documents) were designated as areas where an individual maintains a reasonable expectation of privacy, as opposed to public spaces where such an expectation is absent. This private-public dichotomy persisted in a world where surveillance was predominantly local, episodic, and necessitated the physical presence of an observer.

Contemporary pre-trial investigative technologies fundamentally disrupt this classical privacy paradigm through several key mechanisms:

– *Ubiquitous Surveillance:* The deployment of real-time automated facial recognition systems, geolocation data from mobile operators, and metadata regarding internet activity enables constant monitoring.

– *The Inferential Nature of Technology:* Machine learning algorithms go beyond recording observable behavior; they extrapolate latent information that an individual may never have explicitly disclosed, such as political affiliations, financial standing, medical conditions, or sexual orientation.

– *Data Vulnerability and Persistence:* Digital information can be instantaneously replicated, transferred across jurisdictions, stored indefinitely, or repurposed for objectives entirely divergent from the original intent.

– *The Proliferation of Biometric Collection:* Biometric data holds a qualitatively distinct status from other forms of personal information due to its uniqueness – biometric parameters serve as "lifelong identifiers" that cannot be altered – and its inferential potential (the ability to reveal sensitive information, such as ethnic origin or genetic predispositions). Consequently, the GDPR [6] and various national legal frameworks categorize biometric data as a "special category" of personal data requiring enhanced protection. Its processing is permitted only under specific conditions of consent or, in exceptional circumstances such as criminal investigations, subject to rigorous procedural safeguards.

Under contemporary conditions, the understanding of privacy is undergoing a profound transformation – shifting from the traditional "right to be let alone" toward the right to informational self-determination and the inviolability of personal and biometric data that can be identified, extracted, or analyzed via technical means. In the realm of forensic activity, privacy manifests through several interconnected dimensions:

Communicative and Digital Privacy: The inviolability of electronic traces, metadata, and correspondence, which are capable of reconstructing an individual's private life with a high degree of granularity (the concept of the "digital twin").

Biometric and Genetic Privacy: The protection of unique biological identifiers (such as DNA profiles), the processing of which by artificial intelligence algorithms constitutes a substantial interference with an individual's identity.

Spatial and Cognitive Privacy: Safeguards against covert remote surveillance, geolocation tracking, and predictive profiling methods aimed at identifying characteristic behavioral patterns without the individual's awareness.

From the perspective of forensic methodology, privacy at the pre-trial investigation stage functions as a normative regulator of technological invasiveness. It establishes the boundary at which the efficiency of an investigator's search-and-discovery activities must be subordinated to the principles of proportionality and necessity in a democratic society. Consequently, in the digital era, privacy evolves into a requirement for algorithmic accountability, technical transparency of the technologies used for evidentiary collection, and the principle of data minimization.

2. *Algorithmic Fairness and Transparency*. In the digital age, the substance of algorithmic fairness undergoes significant transformation, where ethics emerges as a foundational internal criterion for due process. Within this framework, the right to a fair trial is interpreted primarily as the right to audit and understand the algorithm.

The deployment of proprietary, "closed" software products ("black box" technologies) for DNA analysis, ballistic examinations, or risk assessments poses a direct threat to the transparency of justice. Legal protection, reinforced by the ethical imperative of transparency, dictates that every defendant must possess the right to know the underlying logic of the technology that identified them and must be granted a genuine procedural opportunity to challenge that logic.

Accordingly, ethics in forensic technologies is operationalized through the following dimensions:

Algorithmic Fairness: Ethics dictates that technology must not generate disproportionate risks for specific social or ethnic groups. This entails a rejection of predictive policing systems if they exhibit a bias toward discriminating against residents of particular neighborhoods or members of specific demographics. A technology is deemed ethical only when the probability of statistical error (False Positive/False Negative) is distributed equitably among all subjects, regardless of their status.

Protection from Algorithmic Discrimination: This dimension guarantees an individual's right to be evaluated based on their personal actions rather than the statistical profile of a group to which they belong. Predictive analytics technologies often carry the risk of labeling certain social or ethnic groups as "crime-prone." It is the state's duty to deploy only those systems that have undergone an independent bias audit.

Thus, ethics in forensic technologies constitutes a system of value standards and technical constraints ensuring that innovative methods (AI, biometrics, predictive analytics) are utilized in a manner that does not degrade human dignity, precludes algorithmic discrimination, and ensures the epistemic impartiality of truth-finding procedures.

The case of the COMPAS algorithm, developed by Northpointe, has become a seminal precedent in global scholarly discourse. The 2016 investigative report by *ProPublica* revealed systemic "algorithmic bias," manifested in a significantly higher probability of false-positive recidivism predictions for specific ethnic groups, thereby refuting claims regarding the axiological neutrality of artificial intelligence in the justice system.

The subsequent case of *State v. Loomis* [7] represented the judiciary's first attempt to legitimize AI while acknowledging its inherent limitations. In this instance, the defense for Loomis was denied the opportunity to scrutinize the algorithm's methodology, as it was protected under the developer's trade secrets. This case highlighted the "*black box*" problem, where the proprietary nature of the technology precludes a technical audit of the methodology by the defense, effectively nullifying the principles of transparency and the equality of arms.

The *State v. Loomis* case established the theoretical groundwork for the transition toward the paradigm of *Explainable Artificial Intelligence (XAI)* and the requirement of *algorithmic transparency*. This is defined as the state of accessibility, intelligibility, and verifiability of the logical and technical processes governing an innovative system, ensuring that parties to criminal proceedings and the court can scrutinize the reliability, accuracy, and impartiality of the generated outputs.

3. Human-centricity (Human-in-the-Loop) refers to the fundamental right of an individual to ensure that any final decision significantly impacting their liberty – such as a notice of suspicion or a motion for detention – is made exclusively by a human agent (an investigator, prosecutor, or judge) rather than an automated system. Technology must serve solely as an auxiliary tool, never as the ultimate arbiter. This anthropocentric approach necessitates a shift from passive reaction toward technological risks to the proactive implementation of the **"***Values by Design*" paradigm. This involves embedding *Privacy by Design* and *Ethics by Design* standards directly into the digital architecture. In synergy with the concept of *Explainable AI (XAI)*, this approach ensures the transparency of algorithmic determinations.

The outlined transformation of the substantive content of human rights amidst intensive technological advancement reshapes the principles of pre-trial investigation and creates an urgent need for an updated theoretical and doctrinal framework for forensic technology. The future development of a legal regulatory strategy for innovation must be based on a philosophical-legal synthesis, where classical legal principles of proportionality and subsidiarity are organically integrated with the nascent concept of digital humanism.

The theoretical conceptualization of the contemporary innovative transformation of pre-trial investigation is rooted in several fundamental concepts, the most vital of which is *digital humanism* [8]. This approach is predicated on the priority of human dignity and human rights over technological expediency. A critical extension of this is the human-in-the-loop approach, which substantiates the necessity of maintaining final

human control (by the investigator or expert) over algorithmic decisions. This ensures legal accountability and prevents "algorithmic determinism," a state wherein mathematical logic supplants the procedural inner conviction of the subject of proof.

An analysis of the legal and ethical challenges posed by innovative technologies in pre-trial investigations demonstrates the inadequacy of the reactive regulatory model, wherein the law attempts to "catch up" with technological advancement *post-factum*. An alternative to this model is the "Values by Design" or "Privacy by Design" paradigm. Under this approach, regulatory requirements – including privacy protection, bias mitigation, transparency, and accountability – must be integrated into the very architecture of the technology during the development phase, rather than being appended as an afterthought.

The concepts of "Values by Design," "Privacy by Design," and "Ethics by Design" (EbD) represent a paradigmatic shift in the methodology of developing and deploying forensic technologies. They necessitate the direct integration of ethical values, legal constraints, and human rights standards into the architecture (algorithm, code, and design) of a technical tool at the stage of its conceptualization. EbD constitutes an evolutionary extension of the "Privacy by Design" concept (pioneered by Ann Cavoukian in the 1990s) [9], yet it possesses a significantly broader regulatory scope.

EbD is underpinned by the theory of "Value Sensitive Design" (VSD), which posits that technology is not axiologically neutral; rather, it inherently embodies the values and biases of its creators. In a forensic context, this implies that an algorithm that fails to incorporate the presumption of innocence "at the level of the code" is fundamentally legally defective.

The implementation of the Ethics by Design (EbD) concept necessitates adherence to five foundational principles:

1. Algorithmic Transparency and Explainability: The technology must be engineered such that its conclusions are interpretable by a human agent (investigator, judge, or defense counsel). The utilization of Explainable AI (XAI) methods circumvents the "black box" problem, ensuring that the logic underpinning evidentiary formation is accessible for technical and legal audit.

2. Automated Data Minimization: The system must be programmed to automatically delete or mask redundant information irrelevant to the scope of the investigation. A practical application includes the automated blurring of faces of random bystanders in video footage who are not subjects of the search.

3. Bias Mitigation: During the algorithmic training phase (e.g., for facial recognition systems), representative datasets must be utilized to eliminate the risk of discrimination based on racial, ethnic, or gender characteristics.

4. Auditability: The system architecture must provide for the automatic logging of all operations, enabling the reconstruction of the provenance of each individual piece of evidence to ensure its procedural legitimacy and admissibility.

5. Human-in-the-Loop: The design of innovative tools must technically preclude the autonomous formulation of procedural decisions by a machine. The system's role is strictly confined to decision support, while ultimate legal responsibility remains with the investigator.

The "Ethics by Design" concept serves as the primary mechanism for preserving democratic standards of justice amidst the increasing **"**algorithmization" of crime and investigation. It facilitates a critical shift from a reactive regulatory model to a proactive one, characterized by the preventive exclusion of human rights violations through technical means.

The case of *State v. Loomis* underscored the necessity for research regarding the theoretical substantiation of algorithmic fairness, shifting the discourse from the realm of purely procedural safeguards to the spheres of mathematical ethics and epistemology. According to the *"Impossibility Theorem of Fairness"* formulated by Kleinberg and Chouldechova [10, 11], mathematical models are incapable of simultaneously ensuring

parity across all algorithmic fairness metrics. In the context of law enforcement, this limitation may result in the biased profiling of vulnerable populations (manifesting as racism, sexism, ableism, and other forms of discrimination). The theorem highlights the inherent mathematical constraints of algorithms and substantiates the necessity of making an *ethical choice* between competing models of fairness when configuring forensic systems.

The essence of this theorem lies in the proven mathematical incompatibility of three fundamental criteria of algorithmic fairness: statistical parity (equalized odds), calibration, and predictive parity (error rate balance). The authors mathematically demonstrated that in scenarios where base rates of a phenomenon differ across various population groups (e.g., based on ethnic or social characteristics), an algorithm is mathematically unable to satisfy all three fairness requirements simultaneously.

The theorem demonstrates that prioritizing one fairness criterion (such as ensuring an equal probability of false arrests across different groups) inevitably results in the violation of another (such as a disparity in predictive accuracy for those same groups). Consequently, the "Impossibility Theorem of Fairness" recontextualizes the problem of algorithmic bias from a purely technical dimension into a *politico-legal* one. It asserts that "fairness" cannot be achieved solely through code optimization; rather, it requires a conscious choice by society and the legislator regarding which type of algorithmic accuracy may be sacrificed to achieve a specific social good.

The mathematical limitations identified in the theorem are not a death knell for algorithmic fairness; instead, they emphasize that its realization is less a matter of code and more a question of political strategy and legal regulation aimed at balancing conflicting social interests. The mathematical contradiction among fairness criteria compels the abandonment of the illusion of "technological neutrality" in favor of a model of conscious trade-offs. In criminal proceedings, this necessitates a legal answer to a critical question: is it permissible to sacrifice the overall accuracy of a system to eliminate discriminatory disproportionality in false positives regarding vulnerable groups [12]?

Balancing competing interests – efficiency, accuracy, equality, and justice – always entails a *compromise* [13]. Given the mathematical proof of the "Impossibility Theorem of Fairness," according to which the simultaneous achievement of all parameters of statistical accuracy and equality is impossible, the law enforcement system must transition to a strategy of overtly declaring the value-based criteria embedded within each specific software tool. This transparency should be grounded in four key priorities that define the legitimacy of using innovations in the process of proving.

The first and foundational priority is transparency, realized through the implementation of the *"Right to Explanation".* This model shifts the emphasis from the final outcome to the quality of the procedure itself. According to this approach, an algorithm whose internal logic remains opaque cannot be integrated into the criminal process, regardless of its technical accuracy metrics. The critical factor for criminal proceedings here is not the mere fact of an AI-generated conclusion, but the existence of a genuine opportunity for the suspect to understand the stages of the system's cognitive analysis and to challenge them effectively within an adversarial process. The concept of *Explainable AI (XAI)* dictates that the results of automated data processing must be interpretable and intelligible to all participants in the investigation. Implementing this approach is vital for ensuring the right to a fair trial, as only an explainable algorithm enables the principle of equality of arms and provides the defense with the means to verify the reliability of evidence.

The priority of *Equalized Odds*, which involves the mathematical equalization of false identification rates to prevent systemic bias, requires developers and law enforcement agencies to ensure – specifically in the context of Automated Facial Recognition Technology (FRT) – that the algorithm does not produce *False Positives* for members of particular ethnic or social groups more frequently than for others. To prevent discrimination, it is considered permissible to deliberately reduce the overall predictive accuracy of a system if such a trade-off is necessary to achieve an identical rate of false accusations across all demographic groups.

Conversely, the priority of *Predictive Accuracy* focuses on maximizing the efficiency of truth-finding. Under this model, an algorithm that identifies a perpetrator in the vast majority of cases is deemed "fair" from

the perspective of the goals of criminal proceedings regarding swift and comprehensive investigation. However, such a model carries inherent risks of "technocratic determinism" and thus requires mitigation through the priority of human oversight – the *"Human-in-the-loop" principle*. The latter establishes the *subsidiary nature* of algorithmic systems, defining them as intellectual support tools rather than autonomous decision-making entities. The subject of the proceedings is obligated to conduct an independent cognitive verification of the system's logic, evaluating the generated data in conjunction with the totality of other evidence.

5. Conclusions.

This study establishes that the integration of innovative technologies into forensic activities during the pre-trial investigation stage has precipitated a fundamental shift in the legal paradigm: moving from the traditional protection of physical integrity toward the safeguarding of *informational self-determination* and *digital human rights*. It has been determined that the primary contemporary challenge lies in resolving the contradiction between technological determinism, which seeks maximum investigative efficiency, and the anthropocentric approach, which demands unconditional adherence to fundamental human rights.

The systemic ethicality of innovations is ensured through the implementation of the *Ethics by Design* principle and the *Human-in-the-Loop* model, wherein technology remains a subsidiary tool of intellectual support. This approach necessitates the integration of ethical filters and data minimization mechanisms directly into the system architecture during the development phase. Consequently, abandoning "proprietary" closed algorithms in favor of transparent methodologies is a prerequisite for ensuring institutional trust in forensic investigation outcomes within a democratic society.

The theoretical-legal foundation of this research confirms that phenomena such as the "black box effect" and algorithmic bias are not merely technical defects but possess deep axiological roots. Drawing upon the Kleinberg-Chouldechova impossibility theorem of fairness, it is demonstrated that the selection of an algorithm's mathematical model is an ethico-legal decision requiring state regulation. Thus, the concepts of *Ethics by Design* and Explainable AI (XAI) must be regarded not as optional recommendations but as imperative requirements for the architecture of forensic systems. Epistemological transparency and explainability emerge as imperatives under which a developer's trade secret cannot restrict the defense's right to verify the underlying logic of generated results and system error rates.

In conclusion, the emergence of a new theoretical-legal paradigm – *"Digital Humanism"* in criminal proceedings – can be observed. Within the framework of digital humanism, innovative technologies serve as instruments for enhancing human cognitive capacity, provided that the moral integrity of the process is preserved. This model offers a resolution to the central dilemma of the modern era: how to utilize the unprecedented power of artificial intelligence without transforming the criminal process into a mere algorithmic calculation devoid of ethical substance.

References:

1. Walshe, P. (2020). Digital identity: Report prepared for the Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) (T-PD(2020)04rev). Council of Europe. https://rm.coe.int/t-pd-2020-04rev-digital-identity-tc-en/1680a0c051

2. Warren, S. D., & Brandeis, L. D. (1890). The right to privacy. Harvard Law Review, 4(5), 193–220. https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html

3. UN General Assembly. (1948). Universal declaration of human rights (217 A (III)). https://www.un.org/en/about-us/universal-declaration-of-human-rights

4. UN General Assembly. (1966). International covenant on civil and political rights (United Nations Treaty Series, Vol. 999, p. 171). https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

5. Council of Europe. (1950). European convention for the protection of human rights and fundamental freedoms, as amended by Protocols Nos. 11 and 14 (ETS No. 5). https://www.echr.coe.int/documents/convention_eng.pdf

6. European Union. (2016). Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). Official Journal of the European Union, L119, 1–88. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679

7. Supreme Court of Wisconsin. (2016). State v. Loomis, 881 N.W.2d 749. https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=171690

8. Nida-Rümelin, J., & Weidenfeld, N. (2022). Digital humanism: For a humane transformation of democracy, economy and culture in the digital age. Springer. https://doi.org/10.1007/978-3-031-12482-2

9. Cavoukian, A. (2009). Privacy by design. Information and Privacy Commissioner of Ontario. https://www.ipc.on.ca/en/media/1826/download?attachment

10. Kleinberg, J., Mullainathan, S., & Raghavan, M. (2016). Inherent trade-offs in the fair determination of risk scores. Proceedings of the 8th Innovations in Theoretical Computer Science Conference (ITCS 2017). https://arxiv.org/abs/1609.05807

11. Chouldechova, A. (2017). Fair prediction with disparate impact: A study of bias in recidivism prediction instruments. Big Data, 5(2), 153–163. https://doi.org/10.1089/big.2016.0047

12. Corbet-Davies, S., Pierson, E., Feller, A., Goel, S., & Huq, A. (2017). Algorithmic decision making and the cost of fairness. Proceedings of the 23rd ACM SIGKDD International Conference on Knowledge Discovery and Data Mining (KDD '17), 797–806. https://doi.org/10.1145/3097983.3098095

13. Lin, P. K. (2021). Machine see, machine do: How technology mirrors bias in our criminal justice system. New Degree Press.

Mykola Kryvosheiev,
postgraduate, Department of Law, P.H.E.I. «European University»
Kyiv, Ukraine
E-mail: kryvosheev@e-u.edu.ua
ORCID: 0009-0004-7414-4944

SOCIAL ENTREPRENEURSHIP: LEGAL DIMENSION

Lyalyk Oleksandr

DOI: https://doi.org/10.61345/1339-7915.2026.1.14

Annotation. Social entrepreneurship has emerged as one of the most significant hybrid phenomena at the intersection of commercial activity, civil society, and public policy, yet its legal regulation remains fragmented, conceptually contested, and structurally inadequate across most jurisdictions. This article conducts a comparative legal analysis of the principal models of legal and regulatory treatment of social enterprises, examining the social cooperative model as exemplified by Italy and Belgium, the special law model as implemented in Malta and Cyprus, and the integration model characteristic of Spain and France. Particular attention is devoted to two of the most influential common law constructs, the British Community Interest Company and the American benefit corporation, whose contrasting approaches to the balance between entrepreneurial freedom and the credibility of social identity reveal a fundamental regulatory choice that legislators worldwide are compelled to confront. The article further examines the OECD's 2022 Guide on designing legal frameworks for social enterprises and the EU Social Economy Action Plan (2021) as the principal international benchmarks against which national regulatory systems are assessed, identifying the systemic obstacles to effective regulation identified in the comparative literature: definitional vagueness, competing regulatory requirements, absence of standardized social impact assessment, and the risk of "purpose-washing."

Against this comparative background, the article analyses the current state of Ukrainian legislation on social enterprises, including the Law of Ukraine "On Social Enterprises" (No. 2710-IX of 2022), and assesses its conformity with EU standards and the obligations arising from Ukraine's candidate status and the Association Agreement. The study argues that the most appropriate regulatory model for Ukraine is the legal qualification model, which enables organizations of any existing form to acquire social enterprise status upon meeting established criteria, without requiring reorganization into a new legal entity. Drawing on the CIC experience, the article contends that the effectiveness of such a model depends critically on the introduction of mandatory annual reporting, an independent supervisory mechanism, and a prior public interest test — instruments that significantly reduce the risk of purpose-washing and enhance institutional legitimacy. The adoption of a dedicated law on social enterprises incorporating these elements is identified as a priority task of Ukraine's economic and legal reform agenda.

Key words: social entrepreneurship, social enterprise, legal qualification, hybrid organizations, community interest company, benefit corporation, European integration.

1. Problem statement.

Social entrepreneurship has emerged as one of the most dynamic and multifaceted phenomena at the intersection of economic activity, civil society, and public policy. Unlike traditional commercial enterprise, which is oriented primarily toward profit maximization, social entrepreneurship pursues a dual mandate: the generation of social value alongside financial sustainability. This hybrid nature, combining market mechanisms with social mission, creates a fundamental tension that existing legal frameworks, designed predominantly for either purely commercial or purely non-profit entities, are structurally ill-equipped to accommodate. The result is a regulatory environment characterized by ambiguity, fragmentation, and

institutional uncertainty, which in turn constrains the development of the sector and limits its contribution to the resolution of pressing social problems.

The absence of a universally accepted legal definition of social entrepreneurship is not merely a terminological inconvenience – it has direct practical consequences for the legal status of social enterprises, their access to public procurement, tax incentives, grant financing, and investor protection mechanisms. In many jurisdictions, social enterprises operate in a legal grey zone: they are neither fully recognized as commercial entities nor as non-profit organizations, and are therefore denied the regulatory benefits available to both. This ambiguity is compounded by the diversity of organizational forms through which social entrepreneurship is practiced – cooperatives, community interest companies, benefit corporations, social purpose companies, and hybrid structures – none of which is uniformly regulated even within the European Union, let alone at the global level.

For Ukraine, these challenges are further intensified by the imperatives of European integration. The Association Agreement between Ukraine and the European Union, and Ukraine's candidate status obtained in 2022, impose an obligation to align national legislation with EU standards in the field of social economy and social entrepreneurship. The EU's Social Economy Action Plan (2021) and the Council Recommendation on developing social economy framework conditions (2023) set a clear regulatory benchmark that Ukrainian law has yet to meet. The adoption of the Law of Ukraine "On Social Enterprises" in 2022 represented a significant legislative step, yet critical gaps remain in the areas of certification, supervision, tax treatment, and access to public support mechanisms. The legal dimension of social entrepreneurship in Ukraine is therefore simultaneously a question of domestic regulatory reform and of European integration strategy.

2. Analysis of recent research and publications.

The scholarly literature on social entrepreneurship spans economics, management, sociology, and law, though legal-theoretical contributions remain comparatively underdeveloped relative to the broader interdisciplinary field. The foundational conceptual work was undertaken primarily by management scholars: J. Gregory Dees, whose 1998 essay The Meaning of Social Entrepreneurship established the entrepreneurial model of social value creation, and C. K. Prahalad, whose work on market-based approaches to poverty alleviation contributed to the theoretical legitimation of hybrid organizational forms. In the European context, the EMES Research Network, and in particular the work of Jacques Defourny and Marthe Nyssens, developed the multi-stakeholder cooperative model of social enterprise that has substantially influenced EU regulatory policy.

The legal dimensions of social entrepreneurship have received increasing attention in the comparative law literature. A. Fici, in his comparative study of social enterprise law in Europe (Social Enterprise Law: A Comparative Overview, 2017), documented the significant divergence in national legal frameworks across EU Member States and identified the principal regulatory challenges: the definition of social purpose, profit distribution constraints, governance requirements, and the relationship between social enterprise law and general company law. The question of legal form has been examined in depth by L. Heckman and others, who argue that the emergence of hybrid legal forms, such as the Community Interest Company in the United Kingdom, the Società Benefit in Italy, and the Benefit Corporation in the United States, represents a structural legislative response to the inadequacy of traditional binary classifications of commercial and non-profit entities.

The EU regulatory framework for social entrepreneurship has been analysed extensively in the context of the Social Business Initiative (2011) and subsequent policy developments. R. Addari and others have examined the implementation of the EU Social Economy Action Plan (2021), identifying the principal normative gaps that Member States are expected to address. The Council Recommendation of 27 November 2023 on developing social economy framework conditions has generated a new wave of comparative legal analysis, particularly regarding public procurement preferences, social labelling, and access to finance for social enterprises.

In Ukrainian legal science, the study of social entrepreneurship remains at an early stage. O. Sydorchuk, V. Yevtushenko, and T. Vasyltsiv have examined the economic dimensions of social entrepreneurship

development in Ukraine, while contributions to its legal aspects have been made by O. Kibenko and N. Kuznietsova in the context of corporate law reform. The adoption of the Law of Ukraine "On Social Enterprises" (No. 2710-IX of 21 July 2022) has prompted initial commentaries in the legal literature, though a comprehensive legal-theoretical analysis of the act, including its conformity with EU standards and its interaction with adjacent legislation on cooperatives, civil society organizations, and public procurement, remains absent from the scholarly record.

The comparative experience of Central and Eastern European states that have undergone EU accession is of particular relevance for Ukraine. Poland's Act on Social Cooperatives (2006) and its subsequent amendments, Slovakia's framework for social enterprises introduced in 2018, and the Czech experience with social enterprise certification have each been examined in the regional literature as models of legislative adaptation to EU social economy standards. These studies collectively highlight that successful legal regulation of social entrepreneurship requires not merely the adoption of a definitional framework, but the construction of an integrated system of institutional support, fiscal incentives, and public procurement preferences – a system that Ukraine has only begun to develop.

Notwithstanding the growing body of literature, a significant gap remains at the level of legal theory: the absence of a systematic examination of social entrepreneurship as a legal category in its own right, one that addresses its legal nature, its place within the system of legal persons, the normative basis for its special regulatory treatment, and the constitutional dimensions of state support for the social economy. The present study seeks to address this gap within the framework of Ukrainian and comparative European law.

3. The purpose of this article

3. The purpose of this article is a comparative legal analysis of models of legal and regulatory regulation of social entrepreneurship in leading legal systems, identifying their systemic advantages and disadvantages and formulating conclusions regarding the prospects for improving the relevant legislation in Ukraine.

4. Presentation of the research material.

Determining the legal nature of a social enterprise is the initial and at the same time the most debatable issue of the entire regulatory discourse. Most researchers agree that a social enterprise is neither a traditional commercial organization nor a non-profit structure, but rather occupies an intermediate, hybrid position between them. Fleischer G. and Pendl M. note that different models of thought in Europe and the USA fundamentally conceptualize this phenomenon differently: if the American tradition tends to see a social enterprise as a business that produces social value along with economic value, then in Europe there is a more widespread emphasis on democratic governance and the priority of the social mission over profitability [1, p. 272].

Vicente L. questions the very validity of the slogan "doing well by doing good" as a basis for social entrepreneurship, emphasizing that market logic inevitably limits the ability of corporations to do good for the sake of good itself, not for profit [2, p. 156]. In the same study, the author draws attention to the groundbreaking nature of the 2019 Business Roundtable Statement, in which 181 CEOs of large American corporations declared their commitment to taking into account the interests of all stakeholders, not just shareholders, which indicates a general transformation of ideas about the corporate purpose [2, p. 158]. The key feature that distinguishes a social enterprise from a regular business entity is hybridity, that is, the combination of financial sustainability and social mission as equal constituent elements of the organization. It is this duality that complicates the legal qualification and definition of the appropriate regulatory regime: traditional categories of corporate law, developed under the shareholder value maximization model, are poorly adapted to the needs of hybrid organizations. Fleischer G. and Pendl M., in turn, state that corporate law in this area is in a state of gradual but irreversible rethinking [1, p. 282].

According to the author, the uncertainty of the legal nature of a social enterprise is not just a theoretical problem, but also a practical one, since it is on it that the choice of organizational and legal form,

management system, conditions for attracting financing and mechanisms for protecting the social mission from erosion under the pressure of commercial interests depend.

Analysis of the legislation of the EU member states allows us to identify three fundamental models of legal regulation of social enterprises, which differ not only in the technique of norm-setting, but also in the conceptual approach to defining the essence of a social enterprise.

The first model, the social cooperative model, is the most widespread and involves the use of a cooperative legal form as the organizational basis of a social enterprise. It has its roots in Italy, which was the first country in the world to adopt a special law on social cooperatives in 1991. Fajardo G. gives an illustrative example of Belgium: this country introduced the concept of a "social purpose company" back in 1995, but in the new Code of Societies and Associations of 2019 it radically changed the approach, allowing only cooperative companies to qualify as social enterprises [3, p. 68]. The second model, the model of a special law, involves the adoption of a separate regulatory act that defines the concept, requirements and legal status of a social enterprise regardless of the specific organizational and legal form. Fichi A. establishes that the latest national laws, in particular those adopted in Malta in 2022 and Cyprus in 2020, implement this model, introducing the so-called legal qualification: an organization of any form can acquire the status of a social enterprise provided that it meets the established requirements, and also lose this status without the need for liquidation or reorganization [4, p. 175]. This model is considered the most flexible, as it reduces transaction costs and does not tie the social mission to a specific corporate form. The third model, the model of integration into the law on the social economy, is characteristic of states that have adopted framework laws on the social and solidarity-based economy. This model covers a wider range of entities: cooperatives, mutual societies, associations, foundations and social enterprises themselves, and normatively provides their systemic support. Spain, which does not have a specific law on social enterprises, but regulates social initiative cooperatives within the framework of the general law on cooperatives of 1999, occupies an intermediate position between the second and third models [3, p. 74].

The OECD in its 2022 guide states that although some legislation on social enterprises exists in 16 EU countries, and explicit strategies for their support - in another 11, legislators recognize that without high-quality legal regulation, social enterprises face obstacles in attracting investment and accessing public resources [5, p. 15]. At the same time, the guide emphasizes that the effectiveness of the legal framework depends not on the very fact of the existence of a special law, but on the quality of its substantive requirements and mechanisms for supervising their implementation [5, p. 22].

So, as we can see, none of the three models is absolutely optimal: the choice between them is determined by the legal tradition, institutional capacity and socio-economic priorities of each state. At the same time, it seems quite logical to observe a pan-European trend towards a gradual transition from the social cooperative model to a more flexible model of legal qualification.

In the common law tradition, two of the most influential special legal constructs for social enterprise have been formed, the British Community Interest Company (CIC) and the American benefit corporation, which are the subject of active comparative research and normative borrowing.

The CIC was introduced in the UK in 2005 and is currently the most detailed legal form of social enterprise in the world. Liptrap J.S. in his study analyzes the CIC through the prism of four constitutive differences from the traditional corporation: the public benefit regime (including the "public interest test" upon registration), specific duties of directors, limited rights of shareholders and the "asset lock" mechanism, which makes it impossible to distribute assets to the detriment of the social mission [6, p. 601]. There, the author argues that there is a causal relationship between welfarist state policy and the special profile of CIC, which has remained out of the attention of legal doctrine [6, p. 596].

The scientist develops this analysis in the context of a broader discussion about the corporate purpose, arguing for the need to borrow from the CIC regime a mechanism for prior state verification of the declared corporate purpose in order to prevent "purpose-washing" - a situation when companies formally declare a social or environmental purpose without supporting it with real activities [7, p. 770]. Unlike American benefit corporations, whose accountability system is criticized for its weakness, CIC provides for

mandatory annual reporting to a special regulator, which significantly increases the level of trust in this form [7, p. 785].

Andreadakis S. points to a paradoxical situation: despite the fact that the UK is the country with the most developed social enterprise sector in the world, there is no legislation on benefit corporations in it, and B Corps certification has not yet become widespread [8, p. 796]. The main explanation for this is the flexibility of the Companies Act 2006, which already imposes on directors the obligation to take into account the interests of a wide range of stakeholders. At the same time, the author states that this obligation is not provided with real enforcement mechanisms, which devalues its practical significance [8, p. 800]. Sorensen K.E. and Neville M. in a comparative study of the American benefit corporation, the British CIC and the Danish certification regime found that these three systems balance the flexibility attractive to entrepreneurs and investors and the requirements of the credibility of the social enterprise status in radically different ways [9, p. 270]. Benefit corporation is distinguished by its simplicity of registration and broad entrepreneurial freedom, but is criticized for its lack of accountability mechanisms. CIC, on the other hand, provides a higher level of credibility at the cost of higher transaction costs [9, p. 285].

Thus, a comparison of CIC and benefit corporation reveals a fundamental regulatory choice between two values: freedom of entrepreneurial initiative and credibility of social identity. Logically, the optimal legal model should find a balance between them, providing for both an accessible procedure for obtaining the status of a social enterprise and effective mechanisms for supervising compliance with the social mission.

The effectiveness of the legal framework for social enterprises is determined not only by the presence of appropriate legislation, but also by the quality of management mechanisms and the ability of social enterprises to obtain and maintain legitimacy in their institutional environment. Pratippornnarong D. notes that the management of social enterprises through a special regulatory framework is only one of the possible modes of corporate governance; the effectiveness of this regime depends on the consistency between legal requirements and the organizational culture of the enterprise [10].

Singh N.K. and Kumar P. in a critical analysis of the legal and regulatory frameworks of social entrepreneurship identify five systemic obstacles to effective regulation: the general nature of legal norms that do not take into account the specifics of social enterprises; vague terminology; competing regulatory requirements; lack of resources for law enforcement; lack of standardized mechanisms for assessing social impact [11, p. 5]. To overcome these obstacles, they propose a model of adaptive regulatory design with the involvement of stakeholders in the formation of legal norms [11, p. 9]. Spanus T. et al. in their work established that the legitimation of social enterprises depends on the institutional context and target stakeholders: different legitimation strategies are applied depending on whether the key stakeholders are the state, market actors or civil society [13, p. 8]. Researchers focus on the gap in the analysis of the role of incubators and accelerators of social enterprises in the process of legitimation [13, p. 12].

In turn, Mair J. and co-authors open an often ignored dimension - advocacy activities of social enterprises aimed at influencing public policy and legislation. The authors prove that the choice of management model and organizational and legal form directly affects the ability of a social enterprise to perform the function of an agent of change in the normative environment [12, p. 8]. Thus, law not only regulates social enterprises, but is also indirectly formed through their collective actions in the public space. Legal regulation of social enterprises is not self-sufficient: its effectiveness is inextricably linked to the quality of the institutional environment, the readiness of the state for dialogue with stakeholders and the ability of social enterprises themselves to defend their place in the legal system through advocacy activities.

It should be noted that the OECD 2022 Guide "Designing a Legal Framework for Social Enterprises" is currently the most authoritative international document systematizing practical recommendations on this issue. The document is based on the extensive definition of a social enterprise proposed by the European Commission's 2011 Social Business Initiative: a social enterprise is a social economy operator whose primary objective is to achieve social impact rather than to generate profit for its owners; the enterprise carries out entrepreneurial and innovative activities in the market, and the profits are mainly directed to achieving social goals [5, p. 18]. The OECD distinguishes three categories of legal approaches: legal forms that provide a special type of legal entity for social enterprises; legal qualifications that give a special status or label to existing organizational

forms; and hybrid approaches that combine these two methods [5, p. 25]. The analysis of each of them is carried out through the prism of the ability to ensure clarity of legal status, protection of social mission, accessibility for various organizational forms and minimization of regulatory costs.

For Ukraine, these recommendations are of practical importance in the context of the implementation of obligations stipulated by the Association Agreement between Ukraine and the EU, and the benchmark of European integration reforms. Currently, domestic legislation does not contain a special regulatory definition of a social enterprise and does not provide for a separate organizational and legal form for it.

Given the experience of the EU, the most acceptable for Ukraine seems to be a model of legal qualification that does not require existing organizations to reorganize into a new legal form, but introduces a special status of a social enterprise for entities that meet the established criteria. Such a model is less costly for the regulator, more flexible for business entities and, at the same time, is able to ensure a sufficient level of transparency and accountability, provided that a properly developed mechanism of qualification supervision is in place. In turn, the CIC experience shows that the key element of such a mechanism is mandatory annual reporting and independent regulatory supervision, which significantly reduces the risks of "purpose-washing" [7, p. 782].

We believe that the development and adoption in Ukraine of a special law on social enterprises with the introduction of a legal qualification model and effective supervision mechanisms is a priority task of economic and legal reform in this area.

5. Conclusions.

Thus, in our opinion, a social enterprise as a legal phenomenon is a hybrid entity that combines the features of a commercial organization and a non-profit structure and does not fit into traditional corporate law categories. The uncertainty of its legal nature is a source of practical problems: the impossibility of clear identification in legal relations, the risk of "purpose-washing" and legal uncertainty regarding the distribution of profits and supervision of compliance with the mission.

In the EU member states, three main models of legal regulation of social enterprises have developed: the social cooperative model, the special law model, and the integration model into the law on the social economy.

In the EU member states, three main models of legal regulation of social enterprises have developed: the social cooperative model, the special law model and the integration model into the law on the social economy. There is a general trend towards a transition from the first model to a more flexible model of legal qualification, which allows acquiring the status of a social enterprise without changing the organizational and legal form.

In addition, a comparative analysis of the CIC and the benefit corporation reveals a fundamental regulatory choice between entrepreneurial freedom and the credibility of social identity. Thus, the British CIC provides a higher level of credibility due to mandatory reporting, a public interest test and an asset lock mechanism; in turn, the American benefit corporation is distinguished by the accessibility of registration, but is criticized for the weakness of accountability mechanisms.

The effectiveness of the legal framework for social enterprises depends not only on the availability of special legislation, but also on the quality of management mechanisms, the institutional environment and the ability of social enterprises to maintain legitimacy in relations with the state, the market and civil society. Advocacy activities of social enterprises are an important factor in the formation of a favorable regulatory environment.

References:

1. Fleischer H., Pendl M. The Law of Social Enterprises: Surveying a New Field of Research. European Business Organization Law Review. 2024. Vol. 25. P. 269–297. DOI: 10.1007/s40804-024-00314-9.

2. Vicente L. The Social Enterprise: A New Form of Enterprise? The American Journal of Comparative Law. 2022. Vol. 70, Suppl. 1. P. i155–i184. DOI: 10.1093/ajcl/avac018.

3. Fajardo G. Social Enterprises in the European Union: Gradual Recognition of Their Importance and Models of Legal Regulation. In: Peter H., Vargas Vasserot C., Alcalde Silva J. (eds.). The International Handbook of Social Enterprise Law. Springer, Cham, 2022. P. 55–82. DOI: 10.1007/978-3-031-14216-1_3.

4. Fici A. Models and Trends of Social Enterprise Regulation in the European Union. In: Peter H., Vargas Vasserot C., Alcalde Silva J. (eds.). The International Handbook of Social Enterprise Law. Springer, Cham, 2022. P. 153–180. DOI: 10.1007/978-3-031-14216-1_8.

5. OECD. Designing Legal Frameworks for Social Enterprises: Practical Guidance for Policy Makers. OECD Publishing, Paris, 2022. 140 p. DOI: 10.1787/172b60b2-en.

Liptrap J. S. British social enterprise law. Journal of Corporate Law Studies. 2021. Vol. 21, 6. No. 2. P. 595–650. DOI: 10.1080/14735970.2021.1959990.

7. Liptrap J. S. Corporate Purpose, Social Enterprise Law and the Future of the Corporation: A UK Perspective. European Company and Financial Law Review. 2024. Vol. 21, No. 5-6. P. 762–820. DOI: 10.1515/ecfr-2024-0026.

8. Andreadakis S. Social Enterprises, Benefit Corporations and Community Interest Companies: The UK Landscape. In: Peter H., Vargas Vasserot C., Alcalde Silva J. (eds.). The International Handbook of Social Enterprise Law. Springer, Cham, 2023. P. 789–808. DOI: 10.1007/978-3-031-14216-1_42.

9. Sørensen K. E., Neville M. Social Enterprises: How Should Company Law Balance Flexibility and Credibility? European Business Organization Law Review. 2015. Vol. 16, No. 2. P. 267–296. DOI: 10.1017/S1566752914001128.

10. Prateeppornnarong D. Governance Through Regulation: Assessing the Contribution of a Regulatory Framework Towards the Quality of Social Enterprise Governance. Journal of Social Entrepreneurship. 2025. DOI: 10.1080/19420676.2025.2538226.

11. Singh N. K., Kumar P. Analysing Social Entrepreneurship's Legal and Regulatory Frameworks Using Collaborative Innovation. Journal of Law and Sustainable Development. 2023. Vol. 11, No. 6. Art. e1188. DOI: 10.55908/sdgs.v11i6.1188.

12. Mair J. et al. The Political Side of Social Enterprises: A Phenomenon-Based Study of Sociocultural and Policy Advocacy. Journal of Management Studies. 2025. Vol. 62, No. 2. P. 489–530. DOI: 10.1111/joms.13134.

13. Spanuth T. et al. Exploring social enterprise legitimacy within ecosystems from an institutional approach: A systematic literature review and research agenda. International Journal of Management Reviews. 2024. Vol. 26, No. 1. P. 3–28. DOI: 10.1111/ijmr.12349.

14. Byelov D.M., Bielova M.V., Social entrepreneurship: exercise of the constitutional freedom of a person for entrepreneurial activity. European Socio-Legal and Humanitarian Studies. 2023. Issue 2. p. 4-10. URL: https://ehs-journal.ro/

Oleksandr Lyalyk,
Postgraduate Student, Department of Constitutional Law and Comparative Law
Uzhhorod National University
ORCID: 0009-0006-8416-4556

LEGAL REGULATION OF ENVIRONMENTAL EDUCATION: PROBLEMS AND WAYS OF IMPROVEMENT

Machuska I. B.

DOI: https://doi.org/10.61345/1339-7915.2026.1.15

Annotation. The article studies the institute of environmental education and analyzes the problems of its legal regulation in the context of adapting the norms of Ukrainian legislation to EU legislation and in the context of compliance with the goals of sustainable development.

It is noted that environmental education is one of the significant factors in ensuring human safety and forming its environmental awareness. The article defines the goal of environmental education, which is to form an ecological culture, ecological thinking and the formation of environmental awareness, based on the attitude towards nature as a unique value.

The features of the institute of environmental education in Ukraine and the EU countries and its legal regulation are studied. It is proved that in the EU countries, environmental education is one of the priority areas, developing in accordance with the provisions of the "European Green Deal".

It is noted that environmental education in Ukraine is part of the national education system and aimed at harmonization with EU norms and in accordance with the goals of sustainable development. It was concluded that the institution of environmental education is not sufficiently regulated by national legislation, is fragmentary in nature and requires improvement through the adoption of a separate regulatory legal act: the Law of Ukraine "On Environmental Education".

Key words: environmental education, institute of environmental education in Ukraine, legal regulation of environmental education, environmental awareness, environmental culture, environment, ecology.

1. Introduction.

The rapid development of industry, the use of vehicles, dangerous technologies, natural and man-made emergencies, military conflicts and other negative factors significantly affect the state of the environment and threaten the health of citizens and their safety.

Every year the problem of environmental pollution, both at the national and global levels, becomes more acute, and the question of finding ways to solve it becomes more urgent. As studies by a number of international and non-governmental organizations show, every sixth premature death in the world is associated with environmental pollution. According to estimates by domestic experts, in Ukraine about 17 million people, or 34% of the total population, are negatively affected, for example, by atmospheric pollution. Malformations in children in cities with a polluted environment occur 3-4 times more often than in relatively clean ones, respiratory diseases are registered twice as often, the general level of morbidity of the population is 25-40% higher, the level of allergic, oncological, cardiovascular, genetic and other diseases is also higher [1, p. 248].

One of the significant factors in ensuring human safety is a developed institute of environmental education, environmental awareness and its legal regulation.

The goal of environmental education is to form an ecological culture, ecological thinking and the formation of consciousness, based on the attitude towards nature as a unique value and the use of knowledge to ensure human safety and health.

Environmental education in Ukraine is actively harmonized with European standards, moving from theoretical knowledge to the formation of a "green" consciousness. In EU countries, the priority is the integration of sustainable development into all educational levels, Ukraine also introduces environmental initiatives, eco-universities and European practices, in particular within the framework of the "European Green Deal".

Environmental education plays a key role in the formation of a conscious society, eco-centric thinking and a responsible attitude towards nature, which is fundamental for the sustainable development of the country. It is aimed at fostering a culture of nature use, reducing environmental risks, harmonizing Ukrainian legislation with EU norms and forming skills for a careful attitude towards the environment.

Environmental education in Ukraine is part of the national education system, which operates on the basis of legislation aimed at harmonization with EU norms and implementation of sustainable development goals.

Environmental education has acquired particular importance in the context of the European Green Deal, which is a roadmap of measures that will transform the EU into an efficient, sustainable and competitive economy, identify means to transform Europe into the world's first climate-neutral continent by 2050, stimulating economic development, improving people's health and quality of life, and transforming climate and environmental challenges into opportunities in all areas and policies of the EU, guaranteeing a fair and inclusive nature of the green transition [2]. In particular, Directives 2003/4/EC and 2008/99/EC emphasize the need to ensure citizens' access to environmental information and establish liability for environmental damage.

Environmental education in the EU countries is based on the Resolution of the Council of Ministers (1988), aimed at educational environmental protection activities among the population, establishing information to society about environmental problems and ways to solve them, involving broad segments of the population in environmental activities; on the Resolution of the European Parliament (1993), which provides for the implementation of environmental education in school subjects. In addition, environmental education is based on the European Green Deal (The European Green Deal, 2019), which provides for a set of measures for educational environmental protection activities, in particular, involving students in working in the natural environment. The ideas of the Green Deal are aimed at "not borrowing" natural resources from future generations, but taking care of their preservation today, providing descendants with a decent ecologically clean environment [3].

Thus, in the EU countries, programs and concepts for the development of environmental education, programs and plans for training modern-level environmental specialists have been developed and are being improved, recommendations on ecological and educational content have been developed. Thus, in European countries, ecology has become a mandatory subject in all schools and higher educational institutions, departments and faculties of an ecological profile have been created.

An important condition for the development of environmental education in Ukraine is the gradual harmonization of Ukrainian environmental legislation with EU law standards in accordance with the EU-Ukraine Association Agreement and environmental reforms in Ukraine. Also, the development of environmental education is one of the components of the Sustainable Development Goals. At the same time, the regulatory and legal regulation of such an important institution as environmental education is not sufficiently regulated by national legislation and is fragmentary. In order to improve the legal regulation of environmental education, it is advisable to adopt a separate regulatory and legal act, the Law of Ukraine "On Environmental Education", which would contain provisions on the levels of environmental education, its components, and also to supplement the existing regulatory acts with provisions on the implementation of environmental education provisions.

2. Analysis of scientific publications.

Analysis of legal literature allows us to conclude that there is a significant number of scientific works by Ukrainian scientists devoted to the issues of legal aspects of environmental education in the field of ecology. Among the researchers of the problems of legal support of environmental education, the following domestic scientists can be distinguished, namely: O.M. Mandryk, M.S. Malovany, M.M. Orfanova, K.O. Pysanka, I.V. Perkun, T. Perga, V.G. Pogrebnyak, M. Shved, T.M. Yatsishyn.

3. The purpose of the article is to study the institution of environmental education, the features of its legal regulation, and to establish ways to improve the legal regulation of environmental education in Ukraine.

4. Presenting main material.

The current environmental situation encourages a rapid restructuring of the thinking of humanity and each individual person, the formation of environmental awareness and environmental culture, in this regard, environmental education is becoming a new priority area of education. The experience of EU countries shows that based on the principles of the country's environmental policy, a high level of environmental culture and an active position of man in environmental protection activities, it is possible to improve the state of the environment. At the same time, a high level of environmental culture is not possible without environmental education, which should be carried out on the basis of comprehensiveness and continuity of education [4, p. 131].

Environmental education is an important component of increasing the level of public awareness of the environment, the impact of humanity on it, expanding awareness of environmental issues and supporting a sustainable lifestyle.

The formation of the Institute of Environmental Education in Ukraine is associated with the holding of the Stockholm Conference of the UN on the Environment (1972), where for the first time legislative acts were adopted aimed at organizing the protection and control of the environment and ensuring human safety [5, p. 65].

In independent Ukraine, the issue of legal regulation of environmental education is specified in the Law of Ukraine "On Environmental Protection" dated 25.06.1991 No. 1264-XII, which defines the right to environmental education as one of the important environmental rights of citizens (Part 8, Article 9) [6]. Also, the Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030" dated 28.02.2019 No. 2697-VIII states that education in the interests of balanced (sustainable) development is one of the main instruments for implementing the state environmental policy, which is aimed at introducing continuous environmental education. That is, the implementation of education in the interests of balanced (sustainable) development, including environmental education and upbringing, educational activities, is carried out with the aim of forming environmental values in society and increasing its environmental awareness, access to environmental information [7].

The regulatory legal act that directly regulates the specifics of the implementation of environmental education in Ukraine is the Concept of Environmental Education of Ukraine, approved by the Decision of the Board of the Ministry of Education and Science of Ukraine No. 13/6-19 of 20.12. 2001 - (hereinafter - the Concept) [8]. The Concept was drawn up with the aim of restructuring the content of education and upbringing in accordance with the requirements of the time and the main provisions of the National Doctrine of Education Development in the 21st Century and is based on the strategy of sustainable development of Ukraine formulated in the Address of the President of Ukraine to the Verkhovna Rada of Ukraine "Ukraine: Progress in the 21st Century. Strategy of Economic and Social Policy for 2000-2004" (276a/2000). At the same time, the Concept as a document adopted in 2001 no longer reflects all the realities and problems of the present and requires significant changes.

It is worth noting that the legal regulation of environmental education in the legislation of Ukraine is fragmentary and needs to be improved. In this context, it seems appropriate to supplement the Law of Ukraine "On Environmental Protection" dated 25.06.1991 No. 1264-XII, with a separate section - "Environmental Education", as well as to provide the concept of "environmental education". It is also necessary to improve the provisions of the Concept of Environmental Education in Ukraine in accordance with the Sustainable Development Goals, the European Green Deal and in the context of adapting legislation to EU legislation.

Also, in order to improve the provisions of environmental education and increase its role in education and society, it seems appropriate to adopt a separate regulatory legal act, the Law of Ukraine "On Environmental Education", which contained provisions on the levels of environmental education, its components.

The implementation of environmental education should include clearly structured stages aimed at all age, social and professional groups of the population [9, p. 23]. It can be distinguished into two main areas of education: formal and informal. Formal education covers all links of the general education system that exists in Ukraine: preschool, school, extracurricular, vocational, higher and postgraduate. The second area - informal education - has an educational nature and is aimed at forming the ecological culture of the population through the church, mass media, public environmental organizations, parties, etc. Informal education is a process of forming environmental knowledge that occurs in compliance with the principles of accessibility and practicality. At the same time, environmental education is not possible without practical environmental activities and public environmental movements.

Also, public environmental organizations play a significant role in implementing environmental education. Thus, in Ukraine there are a large number of public environmental organizations (All-Ukrainian Ecological League, Green World, Eco-Law, Ukrainian Society for Nature Conservation, Voice of Nature, All-Ukrainian Ecological Public Organization MAMA86, All-Ukrainian Committee for Support of the United Nations Environment Program (UkrUNEPcom) and many others [10, p. 69].

Thus, it is appropriate to note that environmental education in Ukraine is the foundation for the formation of new values, where man interacts with nature harmoniously, ensuring a sustainable future.

The Institute of Environmental Education is appropriate to consider a key process that helps to increase the level of awareness of environmental protection and ensuring the safety of the population, countering modern challenges in the field of ensuring the ecological security of the state. Modern environmental education is a systemic component of the national education system, the main goal of which is the formation of a new type of worldview based on the relationship between man and the environment in the system "nature - "man is society".

5. Conclusions.

Taking into account the above, it is advisable to draw the following conclusions. Environmental education as part of the national education system of Ukraine plays a key role in the formation of a conscious society, a responsible attitude towards the environment and is one of the fundamental components of the country's sustainable development. It is aimed at fostering a culture of environmental protection, reducing environmental risks, harmonizing Ukrainian legislation with EU norms and the Sustainable Development Goals.

Environmental education has acquired particular importance in the context of adapting the norms of Ukrainian environmental legislation to EU legislation, the European Green Deal and compliance with the Sustainable Development Goals.

At the same time, the regulatory and legal regulation of environmental education is not sufficiently regulated by national legislation and is fragmentary. In order to improve the legal regulation of environmental education, it is advisable to adopt a separate regulatory act, the Law of Ukraine "On Environmental Education", which would contain provisions on the levels of environmental education, its components, as well as to supplement the current regulatory acts with provisions on environmental education, namely: the Law of Ukraine "On Environmental Protection" dated 25.06.1991 No. 1264-XII, to supplement with a separate section - "Environmental Education", to improve the provisions of the Concept of Environmental

Education in Ukraine in accordance with the Sustainable Development Goals, the European Green Deal and in the context of adapting legislation to EU legislation.

References:

1. Pohrebniak, V. H., & Voloshyn, V. S. (2008). Shliakhy podolannia ekolohichnoi kryzy na zemli z tochky zoru predstavnykiv pryrodnychykh nauk [Ways to overcome the environmental crisis on earth from the perspective of representatives of natural sciences]. Visnyk Pryazovskoho derzhavnoho tekhnichnoho universytetu – Reporter of the Priazovskyi State Technical University, 18(1), 248–253.

2. Ministry of Foreign Affairs of Ukraine. (n.d.). Yevropeiskyi zelenyi kurs [European Green Deal]. https://ukraine-eu.mfa.gov.ua/posolstvo/galuzeve-spivrobitnictvo/klimat-yevropejska-zelena-ugoda

3. Perha, T. Yu. (n.d.). Dosvid krain Yevropeiskoho Soiuzu u vprovadzhenni ekolohichnoi osvity v systemu pochatkovoi i zahalnoi serednoi osvity [The experience of the European Union countries in the implementation of environmental education in the system of primary and general secondary education]. https://elibrary.ivinas.gov.ua/4807/1/Dosvid%20krain%20Yevropeiskoho%20Soiuzu.pdf

4. Mandryk, O. M., Malovanyi, M. S., & Orfanova, M. M. (2019). Ekolohichna osvita dlia staloho rozvytku [Environmental education for sustainable development]. Naukovo-tekhnichnyi zhurnal, 1(19), 130–139.

5. Pysanka, K. O. (2014). Problemy ekolohichnoi osvity ta vykhovannia v riznykh krainakh svitu [Problems of environmental education and upbringing in different countries of the world]. Molodyi vchenyi – Young Scientist, 4(7), 65–70.

6. Verkhovna Rada of Ukraine. (1991, June 25). Pro okhoronu navkolyshnoho pryrodnoho seredovyshcha: Zakon Ukrainy vid 25.06.1991 No. 1264-XII [On environmental protection: Law of Ukraine No. 1264-XII of June 25, 1991]. Vidomosti Verkhovnoi Rady Ukrainy, 41, 546. https://zakon.rada.gov.ua/laws/show/1264-12#Text

7. Verkhovna Rada of Ukraine. (2019, February 28). Pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku: Zakon Ukrainy vid 28.02.2019 No. 2697-VIII [On the basic principles (strategy) of the state environmental policy of Ukraine for the period until 2030: Law of Ukraine No. 2697-VIII of February 28, 2019]. https://zakon.rada.gov.ua/laws/show/2697-19#Text

8. Ministry of Education and Science of Ukraine. (2001, December 20). Pro kontseptsiiu ekolohichnoi osvity v Ukraini: Rishennia Kolehii MON Ukrainy No. 13/6-19 vid 20.12.2001 r. [On the concept of environmental education in Ukraine: Decision of the Board of the Ministry of Education and Science of Ukraine No. 13/6-19 of December 20, 2001]. https://zakon.rada.gov.ua/rada/show/v6-19290-01#Text

9. Orfanova, M. M., & Yatsyshyn, T. M. (2015). Ekolohizatsiia osvitnoho protsesu: ekolohichna osvita ta vykhovannia [Ecologization of the educational process: Environmental education and upbringing]. Ekolohichnyi visnyk, 6, 23–24.

10. Malovanyi, M. S. (2010). Formuvannia ekolohichnoi svidomosti ta yii rol v zabezpechenni ekolohichnoi bezpeky [Formation of environmental consciousness and its role in ensuring environmental safety]. Ekolohichna bezpeka ta zbalansovane resursokorystuvannia – Environmental Safety and Sustainable Resources Management, 2, 68–75.

I. B. Machuska,
doctor of legal sciences, Professor of the Department of Private Law
Legal Institute
«Kyiv National Economic V. Hetman University»
ORCID: 0000-0002-6441-8356

IMPROVEMENT OF UKRAINIAN LAND LEGISLATION IN THE CONTEXT OF COMPLIANCE WITH SUSTAINABLE DEVELOPMENT GOALS

Machuska I. B., Chyryk O. I., Argatiuk I. V.

DOI: https://doi.org/10.61345/1339-7915.2026.1.16

Annotation. The article examines the problems of legal regulation of land protection and rational use in the context of compliance with the goals of sustainable development and establishing provisions for their improvement.

The state of land resources of Ukraine and their significance for the country's economy and its food security are studied. It is noted that land, as a special natural resource, requires measures for protection and rational use. The need to maintain a significant level of balanced (sustainable) environmental development is proven, in which the state of land resources would comply with all relevant norms and standards. It is noted that today, due to the military aggression of the Russian Federation, agricultural lands have been significantly contaminated with explosive objects and toxic substances and require the application of special measures for the safety of their use.

The goals of sustainable development are analyzed, namely: overcoming poverty; overcoming hunger, achieving food security, which are guidelines for the development of draft forecast and program documents, draft regulatory legal acts. It is noted that for the practical implementation of sustainable development goals, it is necessary to apply effective mechanisms and methods, as well as develop appropriate regulatory and legal regulation in the field of land relations. It is noted that in order to ensure that the norms of Ukrainian land legislation comply with the goals of sustainable development and in the context of adapting national legislation to EU legislation, it seems appropriate to improve the norms of legislation on the protection of land, especially agricultural land, land affected by pollutants and soils from the hostilities of the Russian Federation, the aggressor state, as well as to strengthen control and supervisory activities for the protection and rational use of land resources.

Key words: land, land resources, land protection, land legislation, improvement of land legislation norms, sustainable development goals.

1. Introduction.

Significant land resources have become one of the characteristic trends of the twentieth century, which has led to irreversible changes in ecosystems, soil pollution, and changes in the quality of life of people. These trends have led to the need for a radical solution to problems related to the protection and rational use of land resources.

Land resources are the main foundation of the economy, ensuring food production not only for a particular state, but also for all countries in the world and directly shaping food security and export potential of countries, and are also an important component of the environment and one of the most important natural resources.

At the same time, land as a natural resource is characterized by territorial limitations, irreplaceability, which requires measures for its protection and rational use by both the state and citizens of Ukraine.

Today, in order to improve the state of the environment and land resources, EU countries are introducing environmental standards and norms into economic activities aimed at the safe use of natural resources, including land, which will comply with the Sustainable Development Goals, both in the world as a whole and in EU countries in particular.

The global sustainable development goals, approved in 2015 at the United Nations summit (hereinafter referred to as the UN), are today the basis for the formation of national strategies of many countries. For the practical implementation of the concept of sustainable development, it is necessary to apply effective and organizationally coordinated mechanisms, methods, models and a system of measures, and to develop appropriate regulatory and legal regulation [1, p. 23].

Ukraine has ratified the main international documents that ensure the achievement of goals and the construction of a system of state regulation to achieve sustainable development of the state. Thus, supporting the global sustainable development goals by 2030 proclaimed by the resolution of the General Assembly of the United Nations of September 25, 2015 No. 70/1 and the results of their adaptation taking into account the specifics of Ukraine's development, set out in the National Report "Sustainable Development Goals: Ukraine", Ukraine ensures compliance with the Sustainable Development Goals of Ukraine for the period until 2030, namely: 1) overcoming poverty; 2) overcoming hunger, achieving food security, improving nutrition and promoting sustainable development of agriculture. The Sustainable Development Goals of Ukraine for the period until 2030 are guidelines for the development of draft forecast and program documents, draft regulatory legal acts in order to ensure the balance of the economic, social and environmental dimensions of sustainable development of Ukraine [2].

At the same time, to implement such sustainable development goals as: overcoming hunger, achieving food security, improving nutrition and promoting sustainable development of agriculture, it is necessary to adhere to such a level of balanced (sustainable) environmental development, at which the state of land resources would comply with all relevant norms and standards.

In this context, the issue of improving the legal regulation of land legislation is of particular importance. The solution to the problems of rational use and protection of land, in practice, has not been fully achieved to date, which leads to a deterioration in the state of land resources, the ecological balance of the environment and human safety.

In order to ensure that the norms of Ukrainian land legislation comply with the goals of sustainable development and in the context of adapting national legislation to EU legislation, it seems appropriate to improve the norms of legislation on the protection of land, especially agricultural land, land affected by pollutants and soils from the hostilities of the Russian Federation, the aggressor state, as well as to strengthen control and supervisory activities for the protection and rational use of land resources.

2. Analysis of scientific publications.

The theoretical and methodological basis for studying the concept of sustainable development and protection and use of land resources as its environmental component, and improving land legislation, was the work of the following scientists: G.I. Balyuk, I.K. Bystryakov, Z.M. Buryk, B. Burkynsky, L. Didkivska, V. Geets, Z. Gerasymchuk, B. Danylyshyn, V.E. Vlasyuk, Z.V. Gerasymchuk, Yu.S. Gorban.

The issue of land use and protection in the context of the legal regime of martial law was studied in the works of the following scientists: E. Bardadym, I. Zaplina, D. Kolomiytseva, D. Luts, A. Misinkevich, L. Misinkevich.

3. The purpose of the article is to study the problems of legal regulation of the protection and rational use of land resources in the context of compliance with sustainable development goals and the established provisions for their improvement.

4. Presenting main material.

Modern relations between society and nature are characterized by the need to implement measures to protect natural resources, prevent the emergence and timely resolution of legal problems of rational use and protection of land, including agricultural land. The rational use and protection of land resources has always been the focus of attention of Ukrainian society, which is associated with the multifaceted exploitation of land as an object of human economic activity, its spatial limitation, irreplaceability and irreproducibility.

Ukraine is the largest country in Europe in terms of land area, and in terms of the qualitative composition of soils and bioproductivity of land - one of the richest countries in the world. Currently, Ukraine accounts for about 0.45% of the world's land fund, but arable land occupies 2.4% of the world's arable land area. Ukraine ranks fifth in the world in terms of agricultural land area (41.8 million hectares) after countries such as the USA, China and Canada.

In Ukraine, agricultural lands account for 70% of all land area; among them, arable lands account for an average of 55%, and in some regions for more than 80%. One of the most important components of land resources is soil - the surface layer of the earth's crust, the main quality of which is fertility [3, p. 43].

The main property of land as a means of production, forming its consumer value, is its fertility. The most favorable conditions for increasing land fertility are created with a rational combination of the use of its natural and artificial productive capabilities. It is the growth of economic fertility that is the most important task of increasing the efficiency of land use [4, p. 23].

The Constitution of Ukraine (Article 14) and the Land Code of Ukraine (Article 1) state that land is the main national wealth and is under special protection of the state.

Ukraine is one of the key guarantors of global food security, exporting agricultural products to 70 countries. Through the Grain From Ukraine initiative, an international humanitarian program launched in 2022, more than 300,000 tons of food were delivered to 18 of the poorest countries, and in total, ports sent more than 10 million tons of cargo. Grain from Ukraine is an international humanitarian program launched in 2022, aimed at exporting Ukrainian agricultural products to the poorest countries in Africa and Asia, which has saved more than 20 million people from hunger [5].

Thus, one of the pressing issues in the context of compliance with the Sustainable Development Goals, namely: overcoming hunger, achieving food security, is the protection and rational use of land, especially agricultural land.

It is worth noting that the military actions of the Russian Federation caused significant damage to the agricultural sector of Ukraine, covering about 36% of crop production and mining about 30% of the territory, including soil contamination with heavy metals, which led to an extremely critical state of the land. In addition, due to the explosion of mines, rockets and bombs, huge craters are formed, which disrupt the landscape component and structure of the land. It should be emphasized that, due to the deposition of heavy metals in the soil, groundwater and the entire natural environment are polluted [6, p. 28].

In conditions of martial law, management in the field of land use and protection faces unprecedented challenges, which necessitate the adaptation of legal, economic and organizational mechanisms to new realities. The legal regime of martial law requires special measures to ensure environmental safety, therefore it is important to develop mechanisms that allow for effective control over land use during wartime, ensure land ownership rights, and avoid environmental disasters associated with land pollution [7, p. 23].

Thus, agricultural lands affected by hostilities require certified inspection for contamination with explosives and toxic substances.

In order to protect and rationally use land, especially agricultural land, it is advisable to improve the norms of land legislation that concern control and supervision, protection of land resources, especially agricultural land and especially valuable categories of land in Ukraine. Also, compliance with the provisions based

on ensuring sustainable use and protection of land, improving the condition of affected ecosystems and promoting the achievement of a neutral level of land degradation, implementing an effective system for increasing their fertility, minimizing soil contamination by hazardous pollutants and waste is of particular importance.

In the context of studying the protection and rational use of land, as well as in order to approximate the legislation of Ukraine to the EU legislation in the field of land relations, compliance with the norms of land legislation that include the provisions of the European Green Deal aimed at soil conservation, sustainable development of rural areas, prevention of soil degradation and promotion of biodiversity is of particular importance.

Thus, the provisions of the land legislation of Ukraine should be aimed at integrating the principles of sustainable development, which involves the harmonization of environmental, economic and social interests, the greening of legal norms aimed at the rational use of lands and their protection for future generations.

The provisions of the land legislation should be aimed at adapting its norms to EU legislation, strengthening control over the rational use and protection of lands.

One of the ways to solve the above problem is to supplement the provisions of the Land Code of Ukraine, the Laws of Ukraine: "On Environmental Protection", "On Land Protection", "On Control over the Use and Protection of Lands", "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030", with provisions on the special protection of lands affected by military actions, their conservation and ensuring the safety of the population during their use.

In this context, it is advisable to agree with the opinion of E. Berdadym and D. Luts [8, p. 96], which note that the National Target Program for Land Use and Protection, approved by the Resolution of the Cabinet of Ministers of Ukraine dated January 19, 2022 No. 70-r (hereinafter referred to as the Concept) [9], does not correspond to today's realities and requires amendments to it that take into account the aspects of the restoration of land plots that were damaged as a result of the war and take into account the realities of the war and the needs of post-war restoration of land resources.

5. Conclusions.

Taking into account the above, it is advisable to draw the following conclusions. Land resources, as one of the most important natural resources, require special protection and rational use measures. In the context of Ukraine's implementation of sustainable development goals (overcoming hunger, achieving food security, promoting sustainable development of agriculture), compliance with the norms for the protection and rational use of land resources and soils becomes particularly relevant.

In order to ensure that the norms of Ukrainian land legislation comply with the goals of sustainable development and in the context of adapting national legislation to EU legislation, it seems advisable to improve the norms of national legislation on the protection of land, especially agricultural land and land that has been affected by pollutants from hostilities - the Russian Federation, the aggressor state, as well as to strengthen control and supervision activities for the protection and rational use of land resources.

References:

1. Buryk, Z. M. (2018). Teoretyko-metodolohichni zasady derzhavnoho rehuliuvannia staloho rozvytku Ukrainy [Theoretical and methodological principles of state regulation of sustainable development of Ukraine] (Doctoral dissertation). National Academy for Public Administration under the President of Ukraine.

2. President of Ukraine. (2019, September 30). Pro Tsili staloho rozvytku Ukrainy na period do 2030 roku: Ukaz Prezydenta Ukrainy No. 722/2019 [On the Sustainable Development Goals of Ukraine for the

period until 2030: Decree of the President of Ukraine No. 722/2019]. https://zakon.rada.gov.ua/laws/show/722/2019#Text

3. Humeniuk, M. M. (2012). Efektyvnist vykorystannia zemelnykh resursiv silskohospodarskymy pidpryiemstvamy rehionu [Efficiency of land resources use by agricultural enterprises of the region]. Rekultyvatsiia skladnykh tekhnoekosystem u novomu tysiacholitti: noosfernyi aspekt: materialy mizhnarodnoi naukovo-praktychnoi konferentsii, 83–88.

4. Mochernyi, S. V. (Ed.). (2000). Ekonomichna entsyklopediia: U trokh tomakh [Economic encyclopedia: In three volumes] (Vol. 1). Vydavnychyi tsentr «Akademiia».

5. Suspilne. (2024, November 23). Eksport ukrainskoho zerna zabezpechuie 400 mln liudei u 100 krainakh [Export of Ukrainian grain provides for 400 million people in 100 countries]. https://suspilne.media/886821-eksport-ukrainskogo-zerna-zabezpecue-400-mln-ludej-u-100-krainah-zelenskij/

6. Misinkevych, L. L., & Misinkevych, A. L. (2022). Pravovi problemy okhorony ta vidnovlennia zemel pid chas dii voiennoho stanu v Ukraini [Legal problems of land protection and restoration during martial law in Ukraine]. Universytetski naukovi zapysky – University Scientific Notes, 5-6(89-90), 27–34.

7. Lytvynova, K. A., & Yermolaieva, T. V. (2024). Pravovi problemy okhorony zemel v umovakh voiennoho stanu [Legal problems of land protection under martial law]. Naukovyi visnyk Uzhhorodskoho Natsionalnoho Universytetu. Seriia: Pravo – Scientific Bulletin of Uzhhorod National University. Series: Law, 157–162.

8. Bardadym, E. M., & Luts, D. M. (2023). Pravovi zasady okhorony zemel v umovakh voiennoho stanu [Legal principles of land protection under martial law]. Problemy ta perspektyvy realizatsii ta vprovadzhennia mizhdystsyplinarnykh naukovykh dosiahnen, 96–97.

9. Cabinet of Ministers of Ukraine. (2022, January 19). Pro skhvalennia Kontseptsii Zahalnoderzhavnoi tsilovoi prohramy vykorystannia ta okhorony zemel: Rozporiadzhennia Kabinetu Ministriv Ukrainy No. 70-r [On approval of the Concept of the National Target Program for land use and protection: Order of the Cabinet of Ministers of Ukraine No. 70-r]. https://zakon.rada.gov.ua/laws/show/70-2022-%D1%80#Text

I. B. Machuska,
Doctor of Legal Sciences, Professor of the Department of Private Law
Legal Institute
«Kyiv National Economic V. Hetman University»
ORCID: 0000-0002-6441-8356

O. I. Chyryk,
Senior Teacher of the Department of Foreign Languages
Legal Institute
«Kyiv National Economic V. Hetman University»
ORCID: 0009-0004-6054-3952

I. V. Argatiuk,
Senior Teacher of the Department of Foreign Languages
Legal Institute
«Kyiv National Economic V. Hetman University»
ORCID: 0009-0005-5076-5639

THE IMPACT OF THE PROHIBITION OF THE THREAT OR USE OF FORCE ON WARTIME DIPLOMACY IN INTERNATIONAL LAW

Manuilova Kateryna, Zhakun Marharyta

DOI: https://doi.org/10.61345/1339-7915.2026.1.17

Annotation. This article examines the impact of the principle prohibiting the threat or use of force on the content, limits, and functions of wartime diplomacy in contemporary international law. The relevance of the topic stems from the fact that, in the context of modern armed conflicts, hybrid forms of confrontation, coercive diplomatic signalling, and expansive interpretations of the right of self-defence, the place of diplomacy in situations involving the threat or actual use of force has become increasingly contested. This issue is especially significant against the background of the Russian Federation's armed aggression against Ukraine, as well as within broader trends in contemporary international practice, where diplomatic pressure, demonstrations of force, and legal justifications for the use of force are ever more frequently intertwined.

The choice of topic is also conditioned by the fact that wartime diplomacy remains an underexplored phenomenon in international legal doctrine. Despite the substantial body of scholarship devoted to the prohibition of the use of force, the right of self-defence, *jus ad bellum*, and the mechanisms for maintaining international peace and security, insufficient attention has been paid to the question of how precisely the principle prohibiting the threat or use of force shapes the normative boundaries of wartime diplomacy. The article argues that wartime diplomacy should be regarded not merely as a practical instrument of communication in conditions of armed conflict, but also as a distinct form of diplomatic activity whose lawfulness and functional purpose are determined by the logic of Article 2 and Article 51 of the UN Charter. The study seeks to deepen the doctrinal understanding of wartime diplomacy, clarify its place within the system of international law, and outline promising directions for further research in this field.

Key words: wartime diplomacy, threat of force, use of force, international law, self-defence, peace through strength, jus ad bellum, armed conflict, war, nuclear weapon, international peace and security.

1. Introduction.

Wartime diplomacy in contemporary international law appears to be a complex and underexplored phenomenon that remains at the stage of scholarly conceptualisation. In the context of armed conflicts and the intensification of security challenges, diplomacy is increasingly functioning in close connection with issues of the threat or use of force, self-defence, and the peaceful settlement of disputes. At the same time, contemporary international practice demonstrates a growing number of instances in which states attempt to justify the use of force as preventive or pre-emptive; particularly illustrative in this regard are the examples of the Russian Federation, the United States, and Israel. In this context, it may be assumed that the principle prohibiting the threat or use of force determines the limits of the use of force not in isolation, but in interaction with diplomatic practices that accompany the legal justification of a state's position, shape foreign policy signalling, and influence the permissible forms of conduct in situations of conflict. In such circumstances, it may further be assumed that the principle prohibiting the threat or use of force defines the general boundaries of lawful diplomatic activity during conflict, which makes this issue a promising direction for further development within international legal doctrine.

2. Analysis of scientific publications.

The issues surrounding the use of force, the prohibition of the threat of force, the maintenance of international peace and security, and the related forms of international legal response have received sustained scholarly attention. Important contributions to the study of these questions have been made by Ukrainian scholars, including M. Antonovych, A. Voitsikhovskyi, V. Repetskyi, V. Butkevych, O. Merezhko, Kh. Bekhruz, M. Cherkes, V. Pylypenko, M. Buromenskyi, O. Zadorozhnii, V. Berehuta, I. Bohinska, A. Skoropad, N. Vavilova, I. Sivokha, V. Leonov, and A. Horot. At the same time, the broader doctrinal framework has been shaped by the works of H. Kissinger, I. Brownlie, W. Sharp, R. Ago, D. Bowett, P. Jessup, M. McDougal, J. Kunz, H. Lauterpacht, A. Randelzhofer, J. Stone, H. Waldock, L. Henkin, R. Higgins, O. Schachter, S. Schwebel, and M. Shaw.

3. The purpose of this study

3. The purpose of this study is to examine the impact of the principle prohibiting the threat or use of force on the content, limits, and functions of wartime diplomacy in international law, as well as to clarify the extent to which this principle may determine lawful forms of diplomatic activity in situations of armed conflict.

4. Presentation of the main material.

In V. Butkevych's view, international law is a system of rules governing international relations with the aim of ensuring peace, human rights, and co-operation [2, p. 25]. The essential content and distinctive features of international law are expressed through its fundamental, historically conditioned foundations, which possess the highest imperative and legal value. The fundamental principles of international law constitute a normative reflection of the most important regularities and foundations of the contemporary system of international relations.

In contemporary academic discourse, the concept of security diplomacy is used to denote the diplomatic management of international relations in the field of security with the aim of preventing conflicts, reducing tensions, and maintaining stability through negotiations, multilateral mechanisms, and institutional forms of co-operation [8]. Within this broader category, wartime diplomacy appears as a special type of diplomatic activity that becomes relevant in the context of armed conflict, the use of force, or the threat of force, and is characterised by changes in objectives, instruments, and the range of subjects involved in diplomatic interaction [16, p.115].

The nature of contemporary diplomacy, including security diplomacy, is complex and multidimensional, which requires a comprehensive approach to explaining the mechanisms through which different interests, needs, and values of the actors in international politics are reconciled at the national, regional, and global levels. The particular depth and complexity of security diplomacy are determined by at least three factors. First, the function of ensuring security is among the key functions of the state. Secondly, the categories of international security, threat, challenge, and risk lie at the heart of various theories of security, as well as concepts of regional and continental integration. Thirdly, unlike participation in trade or political frameworks of co-operation, interaction in the sphere of security reflects a special, often crisis-driven and even extreme character of international relations, in which negotiations and compromise are frequently conducted under the pressure of the potential use of force [9]. It is precisely in this context that wartime diplomacy acquires significance as a separate subject of international legal research.

As regards the principles of international law, they acquired normative consolidation after the end of the Second World War, during the period of the establishment and development of the United Nations (hereinafter – the UN). The UN Charter is regarded as the foundational international legal instrument that legally закрепiв the fundamental principles of international law, in particular the principle of the peaceful settlement of international disputes and the principle prohibiting the use of force or the threat of force [14].

It should be noted that no universal international treaty, including the UN Charter, contains unified definitions of the concepts of "peace", "war", "threat", "use of force", and "armed attack" [14]. This normative uncertainty gives rise to a variety of doctrinal and practical approaches to the interpretation of the relevant

rules of international law. In such circumstances, wartime diplomacy acts as an instrument of legal, institutional, and communicative support for the positions of states in situations connected with the threat of force or its use.

The unrestricted right of states to wage (declare) war was first called into question during the Hague Peace Conferences of 1899 and 1907. At the same time, the first international legal instrument that fully prohibited war as a means of pursuing national policy was the 1928 Paris Pact (the Kellogg–Briand Pact). It was the first multilateral treaty aimed at renouncing aggressive war, and the overwhelming majority of states became parties to it. In particular, Article 1 of the Paris Pact provided that its parties "condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another", while Article 2 established the obligation to settle international disputes and conflicts exclusively by peaceful means [1 p.11].

At the same time, the prohibition on recourse to war applied only to violations of the Covenant of the League of Nations and did not extend to the right of self-defence, which in practice remained almost unrestricted. In this connection, the League of Nations' attempts to create an effective mechanism of collective security by more precisely defining the concept of aggression and strengthening obligations concerning measures against the aggressor proved unsuccessful [4, p. 103].

The further development and normative entrenchment of this approach took place in the UN Charter. Pursuant to Article 2 of the UN Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" [14]. The principle prohibiting the threat or use of force is one of the central elements of contemporary *jus ad bellum*, within which the lawfulness of recourse to force, exceptions to that prohibition, and permissible forms of international legal response by states are determined.

At the same time, modern international legal doctrine increasingly raises the question of the permissibility of using force in order to forestall international threats, which makes the discussion concerning the limits of self-defence particularly relevant. In such circumstances, the right of self-defence is linked only to a situation in which an armed attack has become imminent and other means of protection are exhausted or manifestly ineffective.

The problem of the use of force is connected with the need to identify the extreme states of inter-state relations and to establish normative boundaries within the relevant spectrum, which constitutes the subject matter of international legal regulation. At the same time, the spectrum of inter-state relations is conceived as lying between two extreme states – peace and war, neither of which has an entirely unambiguous legal meaning. Within this "grey zone" between peace and war, wartime diplomacy performs the functions of communication, deterrence, de-escalation, legal support, and the preparation of conditions for the subsequent settlement of conflict.

In its 1996 Advisory Opinion on the legality of nuclear weapons, the International Court of Justice stated that the mere possession of nuclear weapons does not in itself constitute a prohibited threat. The Court indicated that a threat of force violates the UN Charter only where the subsequent possible use of that force would itself be unlawful under international law. Accordingly, the assessment of the lawfulness of a threat of force depends on whether the possible act of force itself would be compatible with international law [17].

In turn, Article 51 of the UN Charter provides for the possibility of using force in cases of self-defence: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security..." [14]. Thus, the right of self-defence is recognised as inherent, but it is not absolute and may be exercised only where the grounds established by international law are present.

Nevertheless, the right of self-defence is also subject to certain limitations, traditionally reduced to the requirements of necessity and proportionality. In the case of an "imminent attack", doctrine permits the possibility of using force in response to an "imminent threat" [15]. This approach is based on the

understanding that a state cannot be required to passively await the actual delivery of the first strike if the attack is directly anticipated and other means of averting it have already been exhausted. Given the nature of modern means of warfare, the opposite approach would substantially narrow the practical content of the right of self-defence.

In this regard, contemporary doctrine increasingly employs the terms "preventive self-defence" and "preemptive self-defence". In this context, *preemptive self-defence* is associated with neutralising an immediate or proximate threat, whereas *preventive self-defence* concerns responding to a threat that is neither immediate nor obvious. Accordingly, preventive and preemptive measures should be treated as two distinct types of action, the lawfulness of which is assessed differently in international law. Analysing the practice of preemptive uses of force, N. Vavilova, I. Sivokha, and V. Leonov propose dividing such actions into three categories: "anticipation of actions", "prevention" (that is, preventive or prophylactic measures), and "anticipation of intentions" [15]. In such circumstances, the role of wartime diplomacy increases, since it accompanies the legal justification of the state's position, communicates its intentions externally, and may at the same time function as a mechanism of deterrence against escalation.

This raises the question of whether a state may invoke self-defence in order to justify a threat of force. Within the corresponding narrative, it is argued that the expansion of a defence alliance creates a threat and therefore justifies a forceful response. However, the mere fact of a state's membership in a defence alliance does not in itself constitute either an act of aggression or, all the more so, an armed attack that could justify self-defence. Accordingly, a state has no right to use military force against another state and, by the same token, may not threaten it with such force unless there is a proper basis in international law for doing so.

A separate issue is whether the stationing of troops by other states or the supply of arms by them violates the prohibition on threats of military force. If a state is subjected to military intervention, it has the right to self-defence and may also seek assistance from other states. Military action within the framework of collective self-defence is lawful provided that additional requirements are met, above all the requirement of proportionality. In that case as well, wartime diplomacy performs the function of co-ordinating the common position of states, providing legal explanation for their actions, and facilitating institutional interaction with international organisations.

Finally, it should be noted that a state cannot always be brought before an international court for violating the UN Charter. In essence, the fundamental principles of international law are secured primarily through negotiations, diplomatic pressure, the mechanisms of international organisations, and, at times, in conjunction with economic sanctions. This once again underscores the importance of diplomatic mechanisms in ensuring the effectiveness of the principle prohibiting the threat or use of force.

The current state of the principle of non-use of force and non-threat of force is characterised by increasingly complex methods of its violation, interpretation, and justification. The most striking example remains the russian's full-scale war against Ukraine, which has been characterised not only by the large-scale and continuous use of force, but also by a sustained practice of legal and political justification, systematic threats, including nuclear threats, and attempts to legitimise aggression through the rhetoric of "self-defence" and "prevention" [6]. In doctrine, the Russian case is viewed as one of the most illustrative examples of a concealed or denied threat of force that preceded the full-scale invasion and exposed the insufficient effectiveness of international legal guarantees prohibitinag the threat of force.

No less revealing is the contemporary American formula of "peace through strength", which in the strategic documents of the United States is interpreted as a combination of deterrence, military superiority, economic pressure, and diplomatic initiative. The United States National Security Strategy expressly emphasises that strength is the best means of deterrence and also creates the conditions for peace, since actors who respect US power are more receptive to its efforts to resolve conflicts and maintain peace [7, p. 11-12]. Similarly, the 2026 National Defense Strategy refers to the creation of conditions for *restoring peace through strength* [12, p. 5]. From the standpoint of international law, such a doctrine does not in itself constitute an automatic violation of Article 2 of the UN Charter; however, it reduces the practical distance between diplomatic pressure, the demonstration of force, and the threat of force, where the negotiating process begins to rely upon overt military superiority as an instrument of coercion. For that reason, the analysis of the doctrine of

"peace through strength" is important for the study of wartime diplomacy as a form of interaction between legal regulation, political pressure, and force signalling.

In this context, the examples of US uses of force in Venezuela and strikes against Iran assume additional significance. According to Reuters, the capture of Nicolás Maduro by US forces in January 2026 was criticised as a possible violation of international law [5], while the subsequent joint US and Israeli strikes against Iran on 28th of February 2026 were officially justified by reference to self-defence, although the international reaction revealed deep disagreements as to their lawfulness [13]. Such cases indicate that contemporary practice increasingly combines the actual use of force with its subsequent legal justification by reference to Article 51 of the UN Charter.

Particular attention should also be paid to the rhetoric concerning Greenland [3] and Cuba. In January 2026, Reuters reported that the US administration had discussed options for acquiring control over Greenland, including the possible use of military force [10]; in March 2026, Reuters also recorded public statements by the US President about the possibility of "taking" Cuba [11]. Recent doctrine emphasises that international law prohibits not only the use of force as such, but also a credible threat thereof where the contemplated act (for example, the annexation of territory) would itself be unlawful. Thus, even in the absence of an immediate attack, such statements may constitute an independently relevant problem within the meaning of Article 2 of the UN Charter. In this sense, wartime diplomacy in contemporary conditions encompasses not only activity during the active phase of war, but also the diplomatic management of crises arising against the background of public threats, force signalling, and demonstrative coercion.

5. Conclusions.

The analysis presented in this article suggests that the principle prohibiting the threat or use of force serves as a basic international legal foundation through which the content, limits, and permissible forms of wartime diplomacy should be assessed. In the light of contemporary international legal doctrine and practice, wartime diplomacy does not lose its relevance in conditions of armed conflict; on the contrary, it acquires a special functional purpose as a means of legally supporting the state's position, crisis communication, deterrence, de-escalation, and participation in the settlement of conflict situations. At the same time, given the underexplored character of wartime diplomacy as an independent phenomenon, it would appear premature to formulate its final and exhaustive definition. Rather, it may be assumed that in contemporary international law it emerges as a particular form of diplomatic activity whose lawfulness and functional purpose are determined primarily by the logic of Articles 2 and 51 of the UN Charter. Contemporary practice, including russia's full-scale war against Ukraine, the struggle for geopolitical power, and the ambiguous interpretation of the rules on self-defence and the use of force signalling in diplomacy, only reinforces the need for further doctrinal reflection on this phenomenon.

References:

1. Berehuta, V. V., & Bohinska, I. V. (2021). Istorychne znachennia paktu Briana-Kelloha yak odniiei iz idealistychnykh initsiatyv mizhvoiennoho periodu [The historical significance of the Kellogg–Briand Pact as one of the idealistic initiatives of the interwar period]. Visnyk studentskoho naukovoho tovarystva DonNU imeni Vasylia Stusa, 2(13), 10–15.

2. Butkevych, V., Mysyk, V., & Zadorozhnii, O. (2002). Mizhnarodne pravo. Osnovy teorii [International law. Fundamentals of theory] (V. Butkevych, Ed.). Lybid.

3. Reuters. (2026, January). France: Working with allies on plan should US move on Greenland. https://www.reuters.com

4. Horot, A. M. (2022). Osoblyvosti zastosuvannia syly chy pohrozy syloiu v mizhnarodnomu pravi [Peculiarities of the use of force or threat of force in international law]. Istoryko-pravovyi chasopys, 1(18), 102–107. https://chasopys.hl.vnu.volyn.ua

5. Reuters. (2026, January). Legality of US capture of Venezuela's Maduro in focus at United Nations. https://www.reuters.com

6. Peters, A. (2022, February 4). Russia's threat to Ukraine a violation of international law. Max Planck Law Perspectives. https://doi.org/10.17176/20220530-130415-0

7. President of the United States. (2025). National security strategy of the United States of America. The White House. https://www.whitehouse.gov

8. DiploFoundation. (2026, February). Security diplomacy. https://www.diplomacy.edu/topics/security-diplomacy/

9. Skoropad, A. V. (2025). Transformatsiia bezpekovoi dyplomatii v Yevropi (1945–2024) [Transformation of security diplomacy in Europe (1945–2024)]. Kyiv Borys Grinchenko University. https://elibrary.kubg.edu.ua

10. Reuters. (2026, January). Trump discussing how to acquire Greenland, US military always an option, White House says. https://www.reuters.com

11. Reuters. (2026, March 16). Trump says he can do "anything I want" with Cuba. https://www.reuters.com

12. U.S. Department of Defense. (2026). 2026 National defense strategy: Restoring peace through strength for a new golden age of America. https://media.defense.gov

13. UK House of Commons Library. (2026, March). US/Israel–Iran conflict 2026 (Research Briefing). https://researchbriefings.files

14. United Nations. (1945). Charter of the United Nations. https://www.un.org/en/about-us/un-charter

15. Vavilova, N. V., Sivokha, I. M., & Leonov, V. V. (2016). Pravo derzhav na zastosuvannia syly v mizhnarodnykh vidnosynakh [The right of states to use force in international relations]. Zbirnyk naukovykh prats Tsentru voienno-stratehichnykh doslidzhen Natsionalnoho universytetu oborony Ukrainy im. Ivana Cherniakhovskoho, 1(56), 18–23. https://doi.org/10.33099/2304-2745/2016-1-56/18-23

16. Zhakun, M. (2025). Contemporary wartime diplomacy in action: The international legal context of Ukraine–European Union relations. Uzhhorod National University Herald. Series: Law, 91, 112–118. https://doi.org/10.24144/2307-3322.2025.91.5.16

17. International Court of Justice. (n.d.). Legality of the threat or use of nuclear weapons. https://www.icj-cij.org/case/95

Kateryna Manuilova,
Associate Professor, PhD in Law, Associate Professor of the Department of International and European Law
National University "Odesa Law Academy"
ORCID: 0000-0003-3066-4900

Marharyta Zhakun,
PhD candidate in International Law, Department of International and European Law
National University "Odesa Law Academy"
ORCID: 0009-0002-4414-8798

SANCTIONS AND JUDICIAL REVIEW IN UKRAINE: LIMITS OF JUDICIAL DISCRETION AND PROTECTION OF HUMAN RIGHTS

Melnychenko Ruslan

DOI: https://doi.org/10.61345/1339-7915.2026.1.18

Annotation. Sanctions in Ukrainian law serve as a special instrument of the state's response to threats to national security, sovereignty, and economic interests. The normative basis of the sanctions mechanism is formed by the Law of Ukraine «On Sanctions» of 14 August 2014 No. 1644-VII (hereinafter – the Law) [1], which defines sanctions as special economic and other restrictive measures applied for the purpose of protecting national interests, national security, and the territorial integrity of Ukraine (Art. 1). The mechanism of their application has a complex character and includes a preparatory stage (formation of proposals on the application of sanctions by the entities defined in Part 1 of Art. 5 of the Law, in particular the Cabinet of Ministers of Ukraine, the Security Service of Ukraine, and the National Bank of Ukraine), the adoption of a decision by the National Security and Defense Council of Ukraine (hereinafter – the NSDC), and its enactment by a decree of the President of Ukraine, as well as further judicial review of the relevant acts [1].

The relevance of the study is due to the fact that sanctions, being an instrument for ensuring public interests, simultaneously have a significant impact on human rights and freedoms, in particular the right to property and the right to effective judicial protection.

The aim of the work is to conduct a comprehensive analysis of the mechanism of judicial appeal against sanctions in Ukraine from the perspective of determining the limits of judicial review, identifying its restrictions, and assessing the effectiveness of the protection of individual rights.

The methodological basis of the study consists of the formal legal method used for the analysis of legislative provisions, a systematic approach to the consideration of the sanctions mechanism as an integral legal construction, as well as the comparative legal method for comparing national practice with European standards of human rights protection.

Results of the study show that judicial review of the application of sanctions in Ukraine has a limited nature and is mainly reduced to verifying the formal legality of acts of the President of Ukraine without proper assessment of their substantiation and evidentiary basis. It has been found that the absence of a full-fledged examination of the factual grounds for the application of sanctions, as well as the use of lowered standards of proof in cases concerning the recovery of assets to state revenue, create risks of violation of the right to a fair trial and the right to property.

Key words: sanctions, sanctions mechanism, judicial review, protection of human rights, right to property, right to a fair trial.

1. Introduction.

In the modern international legal order, sanctions have become widespread as an instrument of response by states and international organizations to violations of international law, security threats, and other actions that contradict the fundamental principles of international relations. Over recent decades, sanctions

mechanisms have become an important component of the national security policy of many states, and their application covers a wide range of economic, financial, and other restrictive measures.

At the same time, sanctions are increasingly becoming the subject of legal discussions, as their application significantly affects the rights and interests of natural and legal persons. First of all, this concerns property rights, freedom of economic activity, and the right to effective judicial protection. In this regard, in modern legal doctrine special attention is paid to the issues of the legal nature of sanctions, the limits of their application, and the mechanisms for control over the relevant decisions of state authorities.

The relevance of this issue is determined by the necessity to ensure an appropriate balance between the interests of the state in the field of national security and the guarantees of human rights protection. For this reason, the study of legal mechanisms that allow verifying the legality of sanctions and preventing possible abuses of power is of particular importance.

In this context, judicial review should play a special role, being intended to restore justice, ensure compliance with the principle of the rule of law, and provide effective protection of the rights of persons subject to restrictive measures. However, in practice, it does not fulfill this function: courts limit themselves to checking formal procedures without conducting a proper assessment of the substantive grounds for the application of sanctions.

2. Analysis of scientific publications.

The issue of judicial review of sanctions in Ukraine is relatively new for national legal science, which is due to the increased use of sanctions after 2014 and especially under martial law. In this regard, scientific research in this field is still in the process of formation and is characterized by significant attention to administrative judiciary practice and the role of the Supreme Court. A significant contribution to the study of the sanctions mechanism was made by M. M. Stefanchuk and O. V. Salenko in their article «Jurisdictional Concept of Recovery to the State Revenue of Assets of Sanctioned Persons» [2]. The authors draw attention to the fact that the corresponding mechanism has a composite legal nature and combines features of different types of state coercion.

The problems of practical application of sanctions and their judicial review are also studied in the work of V. S. Bunyak «Individual Sanctions in Ukraine: Controversial Practice in the Context of the ECtHR Decision M. S. L., TOV v Ukraine», who notes that «*judicial protection at the level of the Supreme Court is recognized as an «ineffective means of protection», which is an infrequent case regarding the assessment of the practice of the highest judicial body of a member state of the Council of Europe*» [3].

A separate direction of research is the analysis of judicial practice in cases concerning the application of sanctions, which is presented in the work of Ye. Kruk, T. Slipachuk, and A. Bagan «Sanctions in Ukraine: Between Practice and International Law. Discussion of Judges and Lawyers» [4]. As noted in the respective study, «*at present it is not determined under what conditions the state has the right to move from temporary restriction to the permanent deprivation of a person's property rights. Without a clear normative boundary between these two instruments, there is a risk of disproportionate or even arbitrary interference with the right to property».*

Despite the existence of a significant number of scholarly works dedicated to specific aspects of sanctions policy and judicial review of its application, it should be noted that this issue remains the subject of active scientific inquiry. In modern legal literature, there are numerous interesting and substantive studies that analyze both the legal nature of sanctions and the procedural features of their appeal. At the same time, most of these studies are fragmentary in nature and focus primarily on individual elements of the problem – specifically, on the procedure for applying sanctions, the role of courts, or standards of proof.

3. The aim of the article is a comprehensive study of the mechanism of judicial appeal of sanctions decisions in Ukraine with a focus on determining the actual limits of judicial review and the nature of

discretionary powers of public authorities in this sphere. Special attention is paid to identifying procedural and substantive limitations that arise during the consideration of relevant cases. The study is also aimed at analyzing the effectiveness of the existing model of judicial protection of the rights of persons subject to sanctions, taking into account its ability to ensure the real restoration of violated rights, and not only a formal verification of the legality of the respective acts. A separate task is to clarify the relationship of the sanctions mechanism with other forms of state coercion, in particular criminal law restrictions, and to analyze the extent to which the application of sanctions may in fact approximate criminal punishment in its consequences. This allows for an assessment of the impact of the sanctions mechanism on guaranteed rights and freedoms of individuals, particularly regarding procedural guarantees provided by criminal proceedings, and to identify the risks of bypassing classical protection standards in the context of implementing state security measures.

4. Review and discussion.

In the system of public law, sanctions play a special role as an instrument for protecting the national interests of Ukraine. The law defines sanctions as special economic and other restrictive measures applied for the purpose of protecting national security, sovereignty, territorial integrity, and the economic interests of the state (Art. 1 of the Law) [1]. Sanctions are not a form of criminal liability or punishment, they are aimed at restricting certain rights and opportunities of individuals within the legal framework of public relations.

The normative model of sanctions application in Ukraine provides for three interrelated stages. The first is the preparatory stage, within which the authorized state bodies (in particular, the Security Service of Ukraine, the National Bank of Ukraine, and the Cabinet of Ministers of Ukraine) collect, verify, and assess information regarding specific subjects whose activities may pose a threat to national security. Based on this analysis, the respective materials are submitted for consideration by the NSDC. The second stage is the adoption by the NSDC of a decision on the application of sanctions, which, in accordance with Part 7 of Article 107 of the Constitution of Ukraine, is enacted by a decree of the President of Ukraine [5].

Finally, the third stage is the judicial review of sanctions decisions. Its essence lies in the possibility for an individual or legal entity, against which restrictive measures have been applied, to appeal to the Supreme Court with a claim for recognition of the illegality of the decree of the President of Ukraine that enacted the NSDC decision. This is due to the fact that, in accordance with Part 4 of Article 22 of the Code of Administrative Procedure of Ukraine (hereinafter – CAP Ukraine), it is the Supreme Court, as a court of first instance, that has jurisdiction over cases regarding the appeal of acts of the President of Ukraine [6].

At the same time, in practice, the exercise of the right to judicial protection in cases concerning the application of sanctions remains limited. Formally, a sanctioned person has the opportunity to apply to the court and challenge the respective decree of the President of Ukraine. However, the subject of judicial review is the decree itself, as an act of individual action, and not a full assessment of the reasonableness of the decision on the application of sanctions. Within administrative proceedings, the court usually focuses on verifying the legality of the act and compliance with the procedure of its adoption, that is, the conformity of the decree with the requirements of the laws of Ukraine and the limits of the powers of the President of Ukraine. Meanwhile, questions regarding the factual grounds for the application of sanctions, in particular the sufficiency of evidence that formed the basis for the respective NSDC decision, remain outside the scope of judicial review.

At the same time, in cases concerning the appeal of sanctions, there is no possibility for a full multi-stage review of the judicial decision, which objectively narrows the procedural guarantees of the individual. In situations where sanctions can significantly restrict property rights, business reputation, and other fundamental interests of a person, such a structure of judicial control raises questions regarding the adequacy of procedural guarantees for effective judicial protection.

Such a model of judicial control leads to a situation in which a person against whom sanctions have been applied is deprived of the opportunity to challenge the reasonableness of the allegations brought against them or to demand a full review of the evidentiary basis that formed the grounds for restricting their rights.

As a result, judicial proceedings are reduced to verifying the formal legality of the President's decree, while a substantive assessment of the grounds for applying sanctions remains within the discretion of state authorities. Under such conditions, the effectiveness of judicial control as a tool for restoring violated rights raises legitimate questions and discussions in legal doctrine and law enforcement practice.

In this context, the practice of the European Court of Human Rights is illustrative. In particular, in the case of Witkowski v. Poland, the Court noted the following: «*The Court recalls that provisions regarding formal requirements related to the submission of remedies aim to ensure the proper administration of justice, including respect for the principle of legal certainty. Interested parties must be able to expect compliance with these provisions. The Court has repeatedly stated that, although the right to submit a remedy is undoubtedly subject to legal requirements, courts, applying procedural law norms, must avoid both excessive formalism, which could undermine the principle of fair proceedings, and excessive flexibility, which would lead to the annulment of procedural requirements established by law*» [7].

The above ECHR practice demonstrates an important principle: procedural rules should serve the purposes of justice and not create barriers to access. For this reason, excessive formalism in the activity of courts is regarded as one of the factors that undermines the effectiveness of the right to judicial protection.

A particular problem of the sanctions appeal mechanism is that judicial review is the only form of legal protection available to a sanctioned person. The law does not provide for any alternative administrative procedure for reviewing or canceling sanctions decisions, which means that judicial control itself must ensure the effective restoration of violated rights. At the same time, the procedural model of such control has a number of significant limitations. In particular, according to Part 4 of Article 22 of the CAP Ukraine, cases regarding the appeal of acts of the President of Ukraine are under the jurisdiction of the Supreme Court as a court of first instance [6]. This means that the consideration of the case effectively begins immediately at the level of the highest judicial body. Under such conditions, the procedural structure of judicial control does not provide sufficient depth for verifying the circumstances of the case and objectively narrows the possibilities for a full and comprehensive examination of evidence, which ultimately affects the effectiveness of protecting the rights of the person against whom sanctions have been applied.

In view of this, the issue of the effectiveness of judicial control in cases regarding the application of sanctions becomes particularly significant. If judicial review is effectively the only form of legal protection, the procedure of such review must meet the highest standards of fair trial. Limiting the court's ability to verify the reasonableness of applying sanctions or to examine the evidence that formed the basis for their imposition calls into question the effectiveness of this mechanism in terms of the guarantees provided by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The issue gains particular importance given that sanctions directly affect the right to private property, which is traditionally recognized as one of the fundamental human rights. Even in Roman law, private property was considered a sacred and inviolable right of the individual. Subsequently, this idea was enshrined in the European legal tradition and is reflected in modern international standards, in particular in Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right of every person to peacefully enjoy their possessions [8]. For this reason, the mechanism of judicial control over decisions that may lead to the actual blocking or loss of property must meet the highest standards of legal certainty and procedural fairness.

Special attention should be given to the correlation between the sanctions mechanism and the criminal-law instruments of state coercion. By their nature, certain types of sanctions (in particular, asset freezes, restrictions on property use, prohibition of business activities) effectively lead to consequences equivalent to measures of securing criminal proceedings or forms of punishment. For example, the seizure of property in criminal proceedings, according to Part 1 of Article 170 of the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine), is defined as *«a temporary deprivation, until its cancellation in the manner established by this Code, by decision of an investigating judge or a court, of the right to alienate, dispose of, and/or use property in respect of which there is a set of grounds or reasonable suspicions to consider that it is evidence of a criminal offense, subject to special confiscation from the suspect, the accused, the convicted, or third parties …»* [9]. Thus, the seizure of property in criminal proceedings is applied exclusively by court

decision, whereas sanctions in the form of asset freezes effectively achieve a similar result without the need to establish the person's guilt in criminal proceedings.

At the same time, a fundamental distinction is that criminal proceedings are accompanied by a system of procedural guarantees enshrined in the Constitution of Ukraine and the CPC of Ukraine. In particular, according to Article 62 of the Constitution of Ukraine, a person is considered innocent of committing a crime and may not be subjected to criminal punishment until their guilt has been proven in accordance with the law and established by a court's conviction [5]. Criminal proceedings also provide for the adversarial principle, the right to defense, and the examination of evidence in a court hearing. In contrast, the application of sanctions occurs in a non-judicial manner and does not require adherence to these guarantees. The absence of the need to prove the individual's guilt, as well as the lack of procedural mechanisms for a full adversarial hearing, significantly differentiates the sanctions mechanism from the criminal process, even despite the similarity of their actual consequences.

Particularly illustrative in this context is the institution of asset recovery in favor of the state. According to paragraph 2 of Part 1 of Article 5-1 of the Law, such a sanction as the recovery of assets of natural or legal persons in favor of the state may be applied during the period of martial law or after its termination or repeal, and on the condition that a sanction in the form of asset freezing has already been imposed on the relevant natural or legal person in the manner prescribed by this Law [1]. Thus, the legislator directly links the possibility of final confiscation of property with the prior restriction of the right to dispose of it, which increases the intensity of interference in the sphere of property rights.

It is important that even within the framework of judicial consideration of cases concerning asset recovery in favor of the state, criminal-law standards of proof are not applied. This is confirmed by judicial practice. In particular, in case No. 991/5120/24 of 24.07.2024, the High Anti-Corruption Court (hereinafter – HACC) stated the following: *«The procedure for applying the sanction in the form of asset recovery in favor of the state under conditions of martial law does not reach the level of a criminal accusation and therefore does not require providing the Respondent, under an administrative claim, with such guarantees as are established for the exercise of the 'classic' right to defense in criminal proceedings»* [10].

In cases concerning the recovery of assets in favor of the state, the HACC must establish that the respondent's actions created a significant threat to the national security, sovereignty, or territorial integrity of Ukraine, or substantially contributed to the commission of such actions by other persons. However, as noted in the analysis of the High Anti-Corruption Court's practice regarding the application of the sanction in the form of asset recovery in favor of the state for 2022–2025 by the Legislative Ideas Institute, authors T. Khutor, B. Karnaukh, A. Klymosiuk, T. Riabchenko, *«this fact must be established using not a criminal-law, but a reduced civil-law standard of proof, which the HACC somewhat inaccurately calls the «preponderance of evidence» standard»* [11]. This means that interference with an individual's property rights may occur at a significantly lower level of evidentiary proof than in criminal proceedings, despite the similarity of legal consequences.

In this context, there arises a risk of forming a kind of «parallel accountability mechanism», which allows the state to achieve an effect comparable to criminal punishment without observing the guarantees inherent in criminal proceedings. This concerns not only the absence of the requirement to prove the person's guilt beyond a reasonable doubt but also the lack of a full adversarial process, the possibility of directly examining evidence, and effectively refuting the allegations. In practice, a person suffers significant restrictions on their rights – primarily property rights – without being provided with procedural instruments traditionally considered minimally necessary for a fair hearing. Under such conditions, judicial review, even if formally available, does not always compensate for the deficit of guarantees at the stage of the decision to apply sanctions.

This gives rise to a deeper problem, manifested in the internal contradiction of the sanctions mechanism. On the one hand, sanctions are officially not recognized as measures of legal liability, which allows avoiding the application of criminal-procedural standards. On the other hand, in terms of their legal consequences, they may be identical or comparable to criminal-law restrictions, particularly regarding the actual deprivation of a person's ability to use and dispose of their property. Such a construct creates a dangerous precedent in which the state obtains an instrument of substantial interference with individual

rights without proper judicial control and without ensuring basic procedural guarantees. As a result, there is a risk of circumventing criminal-procedural standards, which undermines the rule of law and calls into question the fairness and legitimacy of applying such measures.

Accordingly, a key task of law enforcement practice should be to prevent the substitution of criminal-law mechanisms with sanctions instruments and to ensure that even in the sphere of national security, interference with individual rights remains constrained by the principles of proportionality, legal certainty, and effective judicial review.

5. Conclusions.

The conducted research allows us to assert that the sanctions mechanism in Ukraine functions as an instrument of public influence applied outside the framework of classical judicial procedure, while at the same time causing significant interference with the rights and interests of natural and legal persons.

Judicial control over the application of sanctions is limited. The Supreme Court, when considering cases on the appeal of decrees of the President of Ukraine, focuses on checking the formal legality of the respective acts, without conducting a full analysis of the factual grounds for their adoption, the sufficiency of evidence, and the proportionality of interference with the rights of the individual. Such an approach narrows the content of the right to effective judicial protection and does not ensure the real restoration of violated rights.

The absence of alternative procedures for reviewing sanctions decisions and the concentration of case consideration in the Supreme Court as the court of first instance objectively limit the possibilities for a comprehensive examination of the circumstances of the case. As a result, judicial control does not fully perform the function of restraining the discretionary powers of state authorities.

The relationship between sanctions and criminal-law measures deserves particular criticism. In their consequences, sanctions – particularly the blocking of assets and their subsequent recovery in favor of the state – are comparable to criminal-law restrictions, yet they are applied without compliance with the standard of proof of guilt, the presumption of innocence, and other basic procedural guarantees. This creates a situation in which the state effectively exercises coercive influence equivalent to criminal punishment, outside the framework of criminal proceedings.

Thus, the current model of the sanctions mechanism is characterized by structural inconsistency: formally not being a form of legal liability, sanctions perform a function close to punitive. In the absence of proper judicial control, this creates a risk of circumventing constitutional guarantees and undermines the principle of the rule of law.

To eliminate these problems, it is necessary to shift the focus of judicial control from formal verification of acts to a substantive analysis of the grounds for the application of sanctions, including the assessment of evidence and the proportionality of interference with the rights of the individual. Only with real, rather than formal, judicial control is it possible to ensure an appropriate balance between national security interests and guarantees of human rights protection.

References:

1. Verkhovna Rada of Ukraine. (2014, August 14). Pro sanktsii: Zakon Ukrainy vid 14.08.2014 No. 1644-VII [On sanctions: Law of Ukraine No. 1644-VII of August 14, 2014]. https://zakon.rada.gov.ua/laws/show/1644-18

2. Stefanchuk, M. M., & Salenko, O. V. (2025). Yurysdyktsiinyi kontsept stiahnennia u dokhid derzhavy aktyviv pidsanktsiynykh osib [Jurisdictional concept of recovery of assets of sanctioned persons into state revenue]. Pravova derzhava – The Constitutional State. https://pd.onu.edu.ua/article/view/340313

3. Buniak, V. S. (2025, November 18). Indyvidualni sanktsii v Ukraini: spirnist praktyky u konteksti rishennya ESPL M. S. L., TOV v Ukraine [Individual sanctions in Ukraine: Controversial practice in the context of the ECHR decision M. S. L., LLC v. Ukraine]. Protocol.ua. https://protocol.ua/ua/individualni_sanktsii_v_ukraini_spirnist_praktiki_u_konteksti_rishennya_espl_m_s_l_tov_v_ukraine/

4. Kruk, Ye., Slipachuk, T., & Bahan, A. (2025). Sanktsiyi v Ukrayini: mizh praktykoyu i mizhnarodnym pravom. Diskusiya suddi ta pravnykiv [Sanctions in Ukraine: Between practice and international law. Discussion of a judge and lawyers]. Yuridicheskaya Gazeta. https://yur-gazeta.com/publications/practice/inshe/sankciyi-v-ukrayini-mizh-praktikoyu-i-mizhnarodnim-pravom-diskusiya-suddi-ta-pravnikiv.html

5. Konstytutsiia Ukrainy: Zakon Ukrainy vid 28.06.1996 No. 254k/96-VR [Constitution of Ukraine: Law of Ukraine No. 254k/96-VR of June 28, 1996]. (1996). https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

6. Kodeks administratyvnoho sudochynstva Ukrainy: Zakon Ukrainy vid 06.07.2005 No. 2747-IV [Code of Administrative Justice of Ukraine: Law of Ukraine No. 2747-IV of July 6, 2005]. (2005). https://zakon.rada.gov.ua/laws/show/2747-15

7. European Court of Human Rights. (2018, December 13). Witkowski v. Poland (Application no. 21497/14). https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-188264%22]}

8. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. (1997, July 17). Legislation of Ukraine. https://zakon.rada.gov.ua/laws/show/994_535

9. Kryminalno-protsesualnyi kodeks Ukrainy: Zakon Ukrainy vid 13.04.2012 No. 4651-VI [Criminal Procedure Code of Ukraine: Law of Ukraine No. 4651-VI of April 13, 2012]. (2012). https://zakon.rada.gov.ua/laws/show/4651-17

10. Supreme Court of Ukraine. (2024, July 24). Rishennia u spravi No. 991/5120/24 [Decision in case no. 991/5120/24]. Unified State Register of Court Decisions. https://reyestr.court.gov.ua/Review/120574507

11. Khutor, T., Karnaukh, B., Klymosiuk, A., & Riabchenko, T. (2024). Analiz praktyky Vyshchoho antykoruptsijnoho sudu shchodo zastosuvannya sanktsiyi u vydiv styahennya aktyviv v dokhid derzhavy za 2022–2023 roky [Analysis of the practice of the High Anti-Corruption Court regarding the application of the sanction in the form of asset forfeiture to the state for 2022–2023]. Institute of Legislative Ideas. https://izi.institute/media/analysts/pdf/2025/01/27/analiz-praktyky-vyshchoho-antykoruptsijnoho-sudu-za-2022-2023-roky.pdf

Ruslan Melnychenko,
Attorney, Ph. D in Law,
Head (Department of Legal Support of Business Activity)
State University of Trade and Economics
E-mail: r.melnychenko@knute.edu.ua
ORCID: 0000-0002-9562-6983

MORAL AND PSYCHOLOGICAL FACTORS IN THE DETERMINATIVE SYSTEM OF CRIME IN TOURISM SECTOR

Nesterova Iryna

DOI: https://doi.org/10.61345/1339-7915.2026.1.19

Annotation. The article examines the moral and psychological determinants of criminal behavior within the tourism sector in the context of contemporary criminological theory. Based on classical and modern criminological concepts, as well as interdisciplinary research in moral psychology, the study analyzes the interaction between socio-economic, legal, and ethical factors in the formation of criminal motivation. Particular attention is paid to the role of moral emotions (shame, guilt, empathy), value orientations, and individual psychological characteristics that influence a person's readiness to engage in unlawful conduct.

The research emphasizes the specific nature of tourism as a social sphere characterized by increased victim vulnerability due to psychological states associated with leisure, reduced critical perception, and heightened trust. Simultaneously, the moral deformation of offenders, including the erosion of social responsibility and the prioritization of material gain, creates favorable conditions for economically motivated and violent crimes within tourism.

Drawing on contemporary international studies on morality and crime, as well as criminological theories of situational action and victimology, the article substantiates the systemic role of moral and psychological factors in the mechanism of crime determination. It argues that effective crime prevention in the tourism sector requires not only legal and organizational measures but also the development of moral culture, ethical standards in business practices, and victimological awareness among tourists.

The paper concludes by highlighting the need for an integrative criminological model that incorporates moral-psychological, socio-economic, and victimological components in order to enhance preventive strategies at both national and international levels, particularly in the context of globalization and transnational security challenges in tourism.

Key words: criminology, crime behavour, tourism sector, moral psychology, crime prevention, victimology, criminal motivation, moral emotions, transnational crime.

1. Introduction.

In criminology, it is widely recognized that the issue of crime determination occupies a central place among other scientific problems examined by criminologists, since their comprehensive analysis constitutes a necessary prerequisite for effective counteraction to and prevention of crime.

Within the mechanism of crime causality, a cause generates crime as its consequence, whereas conditions do not directly produce this phenomenon but facilitate the emergence and spread of criminal manifestations in society. At the same time, it is always a matter of their joint action and the necessary interconnection between them as elements of a unified system [1, p. 57; 2, p. 45; 3, pp. 8, 19].

The aggregate of causes and conditions whose interaction results in such consequences as crime in general and individual criminal offenses is commonly defined in criminological science as criminogenic

determinants. At the same time, scholarly sources substantiate that limiting the process of crime determination exclusively to causes and conditions is methodologically incorrect. The system of criminogenic determination also encompasses correlation relationships, functional dependencies, state-based connections, and other forms of interdependence among social phenomena.

In the contemporary context of the intensive development of tourism, the issue of the criminogenic influence of moral and psychological factors acquires particular relevance. The determination of crime in the tourism sector is not limited to economic or organizational-legal aspects; it also encompasses subjective components, namely the moral, ethical, and psychological characteristics of potential offenders.

2. The state of development of the problem.

The problem of crime determination in criminology has attracted considerable scholarly attention in both domestic and foreign academic discourse. This issue has been explored by such Ukrainian and international scholars as Shakun V. I., Holovkin B. M., Kostenko O. M., Naden O. V., Orlean A. M., as well as foreign researchers including Kaiser G., Schneider G. J., Sutherland E. H., Hirschi T., Merton R. K., Christie N., etc.

Their works reveal the theoretical and methodological foundations of criminogenic determination, including the role of social and moral-psychological factors in the formation of criminal behavior, as well as the interrelationship between individual and social determinants of crime.

The relevance of further research into moral and psychological factors within the system of crime determination in this sphere is justified both from a theoretical and methodological perspective - in order to deepen the understanding of the mechanism of criminogenic determination - and from a practical perspective - with a view to developing effective and systemic measures for the prevention of crime in the field of tourism.

3. Purpose of the article.

Taking into account the above, the purpose of this article is to analyze moral and psychological factors as a key element within the system of crime determination in the tourism sphere and to define their influence on the formation of criminal behavior among potential offenders.

4. Presentation of the main material.

In our opinion, the determinants of crime in the sphere of tourism may be classified into socio-economic, moral and psychological, legal, and organizational-managerial categories. Taken together, these determinants form a cause-and-effect complex of this particular type of crime and serve as a basis for the further development of measures aimed at preventing the acts under consideration.

Among the socio-economic determinants of crime in the sphere of tourism, which in our view are decisive, it is necessary to include the ongoing economic crisis in Ukraine and the resulting impoverishment of a significant part of the population, the expansion of the shadow economy, and shortcomings in tax policy, among other factors.

Moral and psychological determinants play a significant role in shaping subjects of criminal behavior within the sphere under consideration. These include the deformation of moral values in society (primarily the professional and moral deformation of individuals employed in the tourism sector), acquisitiveness and the cult of money in society, as well as a decline in the level of social responsibility.

The legal determinants of criminal offenses in the field of tourism consist of the imperfection and instability of the regulatory framework governing tourism activities, as well as deficiencies in criminal legislation aimed at counteracting offenses committed in this sphere.

Organizational and managerial determinants include the imperfect organization of governance in the tourism sector (instability in the activities of agencies entrusted with relevant functions, lack of transparency in personnel policy within the sphere, corruption among officials), as well as shortcomings in the activities of law enforcement agencies (corruption, low levels of professionalism, etc.).

In our opinion, it is necessary to proceed from the premise that the most immediate cause of crime lies in socio-psychological factors, that is, in defects of social consciousness and morality [4, p. 224].

This refers to the subjective dimension - the imperfection of human nature and its value orientations. It is evident that such deformations do not arise in isolation; rather, they are derivative of the contradictions and negative phenomena existing within society and the state - including socio-economic, political, organizational-managerial, and legal factors, among others.

This well-substantiated position, shared by many leading criminologists, appears to us the most convincing, as it allows external factors to be regarded specifically as conditions for crime rather than its direct causes. Indeed, if, for example, economic hardships were considered a cause of crime, the question arises: why do some individuals engage in unlawful behavior under identical circumstances, while others refrain from it even in extremely difficult life situations?

Contemporary research indicates the necessity of including morality as a separate factor in criminological models of crime causation. For instance, in the context of Ukraine, studies examining the direct relationship between individual morality and criminal behavior have shown that a low level of moral emotions associated with adherence to principles of integrity is significantly correlated with a higher frequency of offenses, particularly corruption-related and economic crimes [5].

Moral and psychological determinants occupy a significant place in criminological science, as they represent stable emotional and value-based orientations of the individual that shape the formation of unlawful motivation, the level of empathy, the ability to anticipate the consequences of one's actions, and the capacity for self-control. Within criminological research, moral motivation is understood not only as an individual psychological characteristic but also as a socially conditioned element, shaped under the influence of cultural norms, legal regulation, and the specific features of the social environment.

Attention should also be paid to foreign criminological studies on the relationship between morality and crime. According to the SAT theory, the emotions relevant for explaining decisions to commit a crime are shame and guilt, as these moral emotions are widely recognized as being associated with moral behavior [6; 7; 8].

Guilt is defined as a negative experience that typically arises as a result of a particular action and is directed inward toward oneself [9]. The feeling of guilt can be anticipated even at the stage of considering an action and is measured along a continuum: a strong sense of guilt indicates significant concern about a potential violation of a moral norm, whereas a weak sense reflects minimal concern about a possible breach of a moral rule.

Anticipated shame is understood as a negative experience that does not necessarily arise from a specific action but is associated with the presence of, or the expectation of, evaluation by others [9]. The level of shame is also assessed on a scale: strong shame reflects the perception that others are seriously concerned about a potential violation of a moral norm, while weak shame indicates that the social environment attaches little significance to it.

Empathy is defined both as an emotional process and as a stable personality trait (as opposed to a temporary state or situational emotion). It is assumed that a high level of empathy increases the likelihood of experiencing shame and guilt when making a decision to commit a crime. Conversely, a low level of empathy is likely to reduce an individual's propensity to experience shame and guilt in the course of such a decision [5].

Researchers Trivedi-Bateman N., Markovska A., and Serdiuk O. hypothesize that the higher the level of internalized moral norms, as well as the intensity of experienced shame, guilt, and empathy, the lower the likelihood that individuals will engage in acts of corruption, theft, or violent offenses [5].

Thus, one of the significant determinants shaping the personality of an offender is the substantial degradation of moral and spiritual values in contemporary society. For a considerable portion of the population in Ukraine, the loss of socially approved orientations has become characteristic, while the pursuit of material gain increasingly dominates behavioral motives.

In this regard, the scholar V. I. Shakun convincingly emphasizes that "the change in the political and socio-economic system in Ukraine has contributed to a certain shift in the consciousness of its citizens, whereby the possession of money has become decisive, displacing other values, primarily moral ones, with which several generations of Ukrainians were born and raised" [6, p. 376].

In conclusion, a defining feature of contemporary society is the hypertrophied focus on material enrichment—the pursuit of maximum profit with minimal effort and expenditure, even at the expense of deceiving others. Undoubtedly, the position of Professor B. M. Holovkin is relevant here, who notes that the consciousness of individuals with stable legal sources of income is no less susceptible to the temptation of wealth accumulation and enrichment than that of ordinary lumpen or socially marginalized elements [4, p. 249].

We are convinced that contemporary social conditions indicate the presence of a conducive environment for the formation of corresponding deformations in social consciousness, much of which is, to a significant extent, created by the state itself. The consequence of this is the devaluation of basic social and moral orientations, the erosion of ethical foundations, the intensification of the spiritual crisis, and the expansion of the spectrum of social pathologies.

In this context, the founder of the "naturalistic" approach in criminology, O. M. Kostenko, emphasizes that the existing crime in Ukraine, particularly corruption and pseudo-entrepreneurship, is a symptom of the prevalence of the phenomenon of social pathologization of the individual in our society. According to the scholar, the basis of a sociopathic personality lies in the inconsistency of an individual's will and consciousness with the natural laws of social life [7, p. 149], which, in his view, constitutes a key obstacle to the process of national revival in Ukraine.

The degradation of moral and ethical orientations among a significant portion of the population, and their replacement by the pursuit of easy profit, is one of the key factors of crime in the context under consideration. For some, the absence of these values becomes a basis for unlawful enrichment, while others - as rightly noted by O. V. Naden [8, p. 39] and A. M. Orlean [9, p. 35] - deprived of stable moral principles, are willing to obtain profit by any means, even though prostitution, thereby creating a pool of "live commodities" from which human traffickers select their victims.

Both foreign and domestic scholars note that, during travel, individuals often tend to underestimate the level of potential threats. This is due to a psychological orientation toward relaxation and positive emotions, a certain degree of trustfulness, and a focus on the enjoyable aspects of being in a new environment - particularly on experiencing new impressions and establishing social contacts. Such a behavioral pattern creates additional opportunities for offenders, who rely on the fact that tourists generally do not anticipate the emergence of unlawful situations and, therefore, act with less caution.

During their vacations, tourists constitute a high-risk group for becoming victims of offenses. This is explained by the specific psychological state associated with leisure: a focus on relaxation and positive emotions, a reduction in critical perception, decreased caution, and a greater tendency to trust unfamiliar social surroundings. This perspective is also reflected in foreign criminological studies, which emphasize the heightened victim vulnerability of tourists to unlawful acts. In particular, the section "Tourist and Visitor Crime," published by Cambridge University Press, provides a comprehensive analysis of the characteristics of crimes against visitors and the behavioral factors that contribute to the emergence of such situations in various countries around the world [14].

According to research by security expert Peter Dolamore of S-R, crime remains one of the most serious threats to travelers and the hospitality sector in many areas of activity [15]. He notes that in numerous tourist centers around the world, tourists are deliberately targeted for petty crimes, including pickpocketing

and fraud. An analytical review of this phenomenon highlights typical behavioral patterns: professional fraudsters and con artists who exploit tourists' psychological trust; thefts carried out through distraction (typical pickpocketing schemes) in popular tourist areas; the sale of counterfeit tickets and accommodation bookings; and "guide" vendors who conceal payment conditions.

Popular tourist cities, such as Bangkok (Thailand), are recognized among the leaders in reports of theft and fraud targeting tourists. Bangkok ranks first as the world's most pickpocket- and fraud-prone city in 2025, with a record 9.82 reports per 1,000 tourist reviews. This figure is striking, considering that Thailand was previously known as a relatively safe destination [16]. These data indicate that psychosocial factors - such as tourists' expectations of safety and trust - can be exploited by offenders for criminal purposes.

5. Conclusions.

Thus, the conducted research confirms that socio-economic, legal, and organizational-managerial factors create the general conditions of the criminogenic environment in the field of tourism. At the same time, it is precisely the moral and psychological deformations of the individual - such as a reduced sense of social responsibility, the establishment of self-serving orientations, weakened moral emotions of shame and guilt, and a deficit of empathy - that play a decisive role in transforming these conditions into concrete unlawful behavior.

These factors act as direct determinants of criminal motivation and behavior, as they define an individual's psychological readiness to violate legal norms and implement unlawful intentions.

We are convinced that effective crime prevention in the tourism sector is impossible without a comprehensive consideration of moral and psychological factors. They determine the subjective readiness of a potential offender to act illegally and correlate with the frequency of criminal offenses. Contemporary criminological approaches indicate the necessity of integrating psychological, ethical, and socio-economic determinants into a unified system, which allows for more accurate prediction of unlawful behavior and the development of effective preventive measures.

A distinctive feature of the tourism sector is the combination of two interconnected processes: the formation of an offender against the backdrop of moral devaluation of values and a hypertrophied orientation toward material gain; and the heightened victim vulnerability of travelers, which is caused by the psychological state associated with leisure, decreased critical perception, trustfulness, and orientation toward positive experiences.

International research confirms that crime in the tourism sector often exploits the psychological characteristics of travelers' behavior. This emphasizes the need to account for the victimological aspect when analyzing criminal risks, alongside the characteristics of the offender.

Thus, an effective system for preventing crime in the tourism sector should combine several directions: the improvement of legal and regulatory frameworks and the organizational support of the tourism industry; the enhancement of legal culture and the cultivation of moral responsibility among tourism sector employees; and the development of empathy and ethical values in society as a whole.

A promising avenue for further research is the development of an integrative criminological model of crime determination in the tourism sector, which would combine moral-psychological, socio-economic, and victimological components, taking into account globalization trends and transnational security challenges in tourism. Such an approach would contribute to a more systematic understanding of the causes of crime and improve the effectiveness of preventive and protective measures at both national and international levels.

We believe that further investigation of this issue should be aimed at creating a comprehensive criminological model of crime determination in tourism, integrating moral-psychological, socio-economic, and victimological factors, while considering contemporary globalization trends and transnational security

challenges in the tourism sector. This model will allow for a deeper and more systematic analysis of the causes of crime and enhance the effectiveness of preventive and protective measures at both national and international levels.

References:

1. Danshyn, I. M., Holina, V. V., Kalman, O. H., & Lysodied, O. V. (2003). Kryminolohiya: Zahalna ta Osoblyva chastyny [Criminology: General and Special parts] (Textbook). Pravo.

2. Dzhuzha, O. M., Vasylevych, V. V., & Kolb, O. H. (2010). Kryminolohiya: navchalnyi posibnyk [Criminology: Study guide]. Atika.

3. Yarmysh, N. M. (2003). Teoretychni problemy prychynno-naslidkovoho zv'yazku v kryminalnomu pravu (filosofsko-pravovyi analiz) [Theoretical problems of cause-and-effect relationship in criminal law (philosophical and legal analysis)] (Extended abstract of doctoral dissertation). Yaroslav Mudryi National Law Academy.

4. Holovkin, B. M. (2011). Koryslyva nasylnytska zlochynnist v Ukrayini: fenomen, determynatsiya, zapobihannya [Mercenary violent crime in Ukraine: Phenomenon, determination, prevention] (Monograph). Pravo.

5. Trivedi-Bateman, N., Markovska, A., Serdiuk, O., & Zuniga, M. (2025). The role of morality in corruption, theft, and violence in a Ukrainian context. European Journal on Criminal Policy and Research, 31, 781–801. https://doi.org/10.1007/s10610-024-09598-6

6. Eisenberg, N. (2000). Emotion, regulation, and moral development. Annual Review of Psychology, 51, 665–697. https://doi.org/10.1146/annurev.psych.51.1.665

7. Tangney, J. P., Stuewig, J., & Mashek, D. J. (2007). Moral emotions and moral behavior. Annual Review of Psychology, 58, 345–372. https://doi.org/10.1146/annurev.psych.56.091103.070145

8. Tangney, J. P., & Fischer, K. W. (Eds.). (1995). Self-conscious emotions: The psychology of shame, guilt, embarrassment, and pride. Guilford Press.

9. Wikström, P. O. H., Oberwittler, D., Treiber, K., & Hardie, B. (2012). Breaking rules: The social and situational dynamics of young people's urban crime. Policing: A Journal of Policy and Practice, 6(4), 330–331. https://doi.org/10.1093/police/pas032

10. Shakun, V. I. (2003). Suspilstvo i zlochynnist [Society and crime]. Atika.

11. Kostenko, O. M. (2008). Kultura i zakon - u protydiyi zlu [Culture and law in the counteraction to evil] (Monograph). Atika.

12. Naden, O. V. (2004). Torhivlya zhinkamy yak kryminalno-pravova ta sotsialna problema suchasnosti [Trafficking in women as a criminal-legal and social problem of modernity] (Monograph). Atika.

13. Orlean, A. M. (2005). Kryminalno-pravova kharakterystyka torhivli lyudmy [Criminal-legal characteristics of human trafficking] (Monograph). SIM.

14. Natarajan, M. (Ed.). (2019). International and transnational crime and justice (2nd ed.). Cambridge University Press. https://doi.org/10.1017/9781108597296

15. Dolamore, P. (2020, January 15). Travel troubles: Emerging crime trends in the tourism sector. S-RM Insights. https://www.s-rminform.com/srm-insights/crime-trends-in-the-tourism-sector

16. VOI. (2025, December 4). 6 world tourism cities filled with pickpocket actions in 2025. https://voi.id/en/lifestyle/539961

Iryna Nesterova,
PhD in Law, Associate Professor,
Department of Criminal Law Policy
Uzhhorod National University
E-mail: iryna.nesterova@uzhnu.edu.ua
ORCID: 0000-0003-0481-2965

CONTRACTS IN THE FIELD OF DISPOSAL OF PROPERTY RIGHTS TO OBJECTS OF RELATED RIGHTS UNDER THE LEGISLATION OF UKRAINE: CONSTITUTIONAL AND CIVIL LAW ASPECTS

Pecherova N. H.

DOI: https://doi.org/10.61345/1339-7915.2026.1.20

Annotation. What is this work devoted to? The purpose of this work is to highlight the gaps studied by the author, which are common to the entire system of contracts in the field of disposal of property rights to objects of related rights under the legislation of Ukraine in terms of their consistency with the guarantees provided by the Constitution of Ukraine. This work was carried out thanks to the dialectical approach, logical techniques, as well as hermeneutic-legal and comparative-legal methods.

Based on the research conducted, the author of the article achieved the following results. Thus, the existence of such gaps was established as: the absence of the person of the creator of objects of related rights, despite the fact that in some forms of disposal of property rights, including objects of related rights, the legislator speaks indirectly about the creator and about granting him personal non-property rights; the absence of a clearly prescribed moment of transfer of property rights from the person of the creator to other subjects under a number of contracts. These gaps are fundamental, while others that the author draws attention to are derived from them, but are also very important. The reason for these gaps, in the author's opinion, is a truncated understanding of intellectual property rights in relation to creators and an exaggeration of the technical component in the creation of objects of related rights. What do these gaps affect? These gaps make it impossible for the creators who created them to dispose of property rights to objects of related rights, and also deprive them of the opportunity to protect the related right belonging to them, which for some reason is not recognized. The author of the article concludes that the proposal to attribute creators to subjects of related rights without changing the existing structure of the Civil Code of Ukraine and the relevant Law of Ukraine "On Copyright and Related Rights", as well as unifying objects of copyright and related rights into a single group of objects and also without changing the existing legislation mentioned above, is appropriate. In the opinion of the author of the work, in the future it will be advisable to affix both copyright and related rights protection marks on related rights objects, taking into account the proposed changes.

All proposed changes will be aimed at harmonizing the relevant legislation of Ukraine in the field of intellectual property law on the above issues with the guarantees provided by the Constitution of Ukraine, and accordingly ensuring the functioning of legal regulation on these issues as a holistic system.

Key words: constitutional and legal guarantees in the field of intellectual property rights, intellectual property rights, the content of intellectual property rights, the creator of objects of related rights, a truncated understanding of intellectual property rights, personal non-property rights, property rights, methods of using objects of related rights, disposal of property rights to objects of related rights, recognition and protection of related rights.

1. Introduction.

Working on each individual type of agreement in the field of property rights management, including related rights objects, the author of the article identified common problematic issues that are inherent in each form of property rights management for related rights objects. The main gap in the current Ukrainian legislation, in the author's opinion, is the lack of attribution of the creator of related rights objects to the primary subjects of related rights, and accordingly the inability to be a party to the relevant agreements, to manage the property rights actually belonging to them, and accordingly the deprivation of the opportunity to protect the violated right, since such a right "as if" does not exist. Today, the composition of related rights subjects looks as follows according to Part 2 of Article 35 of the Law of Ukraine "On Copyright and Related Rights" (hereinafter referred to as the Law) "2. The subjects of related rights are: 1) the performer (the primary subject of related rights to the performance), the performer's heirs and other individuals or legal entities who have acquired property rights to the performance on the basis of a contract or law; 2) the phonogram producer (the primary subject of related rights to the phonogram), the heirs (successors) of the phonogram producer and other individuals or legal entities who have acquired property rights to the phonogram on the basis of a contract or law; 3) the videogram producer (the primary subject of related rights to the videogram), the heirs (successors) of the videogram producer and other individuals or legal entities who have acquired property rights to the videogram on the basis of a contract or law; 4) the broadcasting organization (the primary subject of related rights to the broadcasting organization's program), the successors of the broadcasting organization and other individuals or legal entities that have acquired property rights to the broadcasting organization's program on the basis of a contract or law" [1].

The next problematic aspect, related to the first, is the lack of regulation in the norms of the relevant Ukrainian legislation of the moment of transfer of property rights from creators as primary subjects of related rights. An example of this is Article 15 of the Law "1. Personal non-property copyrights to a work created to order belong to the author. 2. Property rights to a work created to order are transferred to the customer from the moment of creation of the work in its entirety, unless otherwise provided for by the order contract. Property rights of intellectual property to a work of fine art created to order (except for a work specially created as an element of a computer program) belong to its author, unless otherwise established by contract or law. 3. If property rights to a work are transferred to the customer, the author has the right to remuneration. 4. The customer has the right to make changes to the work created on order, to accompany it with illustrations, prefaces, afterwords, etc., unless otherwise provided for in the order agreement" [1].

Both of the highlighted aspects, representing scientific novelty for Ukrainian legal thought in the field of intellectual property law, do not have the most important thing - coordination with the guarantees provided by the Constitution of Ukraine according to Art. 41, 54. Thus, according to Art. 41 of the Constitution of Ukraine "Everyone has the right to own, use and dispose of their property, the results of their intellectual, creative activity. The right to private property is acquired in accordance with the procedure established by law. Citizens may use objects of state and municipal property law in accordance with the law to meet their needs. No one may be unlawfully deprived of the right to property. The right to private property is inviolable. Forced alienation of objects of private property law may be applied only as an exception for reasons of public necessity, on the grounds and in the manner established by law, and subject to prior and full compensation for their value. The forced alienation of such objects with subsequent full compensation for their value is allowed only in conditions of war or a state of emergency. Confiscation of property may be applied exclusively by court decision in cases, to the extent and in the manner established by law. The use of property may not harm the rights, freedoms and dignity of citizens, the interests of society, or worsen the ecological situation and natural qualities of the land" [2].

According to Article 54 of the Constitution of Ukraine, "Citizens are guaranteed freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyrights, moral and material interests arising in connection with various types of intellectual activity. Every citizen has the right to the results of his intellectual and creative activity; no one may use or distribute them without his consent, with the exceptions established by law. The state promotes the development of science, the establishment of scientific ties between Ukraine and the world community. Cultural heritage is protected by law. The state ensures the preservation of historical monuments and other objects of cultural value, takes measures to return to Ukraine the cultural values of the people that are outside its borders" [2].

2. Analysis of recent research and publications.

Issues related to those considered in this work were addressed by such scholars as Kapitsa Yu. M., Kodinets A. O., Shimon S. I., Stefan A. S., Yakubovsky I. E. Thus, Yakubovsky I. E. in his work "Agreements on the Disposal of Intellectual Property Rights: Main Directions of Recodification" considers the issue of the expediency of placing a license among the list of agreements in Chapter 75 of the Civil Code of Ukraine, as well as the expediency of the existence of a provision on a standard license agreement in the same chapter. On these issues, the scholar notes the following position: "Taking into account the last caveat, another option for solving the problem seems more optimal: to exclude the provisions relating to the license for the use of an intellectual property right from Chapter 75 of the Civil Code of Ukraine and transfer them to Chapter 35 of the Civil Code of Ukraine. In this case, the license could be considered as a general concept that encompasses various legal forms of granting permission to use an object of intellectual property rights, including public licenses. This option would allow preserving the concept of Chapter 75 of the Civil Code of Ukraine as one that covers specifically contractual forms of disposal of intellectual property rights, which would correspond to the structural placement of this chapter in Subsection 1 of Section III of Book 5, which is entitled "Contractual Obligations"" [3]. Kodinets A.O. in his work "Disposal of Intellectual Property Rights: Problems and Prospects of Legislative Regulation" considers in his work, in particular, the novelties of the adopted Law of Ukraine "On Copyright and Related Rights". Among other things, in this work, the scientist notes the following point of view: "Therefore, we state that such a public license should be issued not simply by publishing its terms together with providing an unlimited number of persons with the objects of copyright or related rights, but by using electronic signature or electronic digital signature, as required by the legislation on electronic document flow" [4], which one cannot but agree with. However, the question of the presence of gaps identified by the author of the work in the aspect of the consistency of the civil law aspect with the constitutional law aspect was not considered, for some reason, and the indicated gaps were not investigated directly, and therefore the study presented by the author is one of the first in this direction.

3. The purpose of this work is to study all currently existing forms of disposal of property rights to objects of related rights from the point of view of highlighting such existing gaps as the absence of the creator as the primary subject of related rights, as well as the absence of the moment of transfer of property rights from the creator of objects of related rights to other subjects for the purpose of compliance with the guarantees provided by the Constitution of Ukraine. The objectives of this work are to highlight the above-mentioned gaps for their consistency with the guarantees provided by the Constitution of Ukraine and to develop proposals for the current relevant legislation of Ukraine.

The methodological basis of the study was the dialectical approach and logical techniques, as well as hermeneutic-legal and comparative-legal methods.

4. Presentation of the main material.

According to Part 1 of Article 1107 of the Civil Code of Ukraine (hereinafter referred to as the Code) "1. Disposal of intellectual property rights is carried out on the basis of the following transactions: 1) a license to use an object of intellectual property rights; 2) a license agreement; 3) an agreement on the creation to order and use of an object of intellectual property rights; 4) an agreement on the transfer of exclusive intellectual property rights; 5) another transaction on the disposal of intellectual property rights" [5]. According to Part 1 of Article 48 of the Law "1. Disposal of property rights to copyright objects or objects of related rights may be carried out on the basis of: 1) an employment contract (contract) - in terms of the conditions for the distribution of property rights to a service work or service performance, service phonogram, service videogram; 2) an agreement on the creation to order and use of a copyright object or object of related rights; 3) an agreement on the transfer (alienation) of property rights to a copyright object or object of related rights; 4) a license agreement for the use of a copyright object or object of related rights; 5) a public license for the use of a copyright object or object of related rights; 6) another transaction for the disposal of property rights to a copyright object or object of related rights. The terms of transactions regarding the disposal of property rights to objects of copyright or objects of related rights

regarding the transfer (alienation) or granting of permission to use (license) regarding the property right for fair remuneration, provided for in Part Three of Article 12, Part Three of Article 38, Part Three of Article 39, Part Three of Article 40 of this Law, are null and void" [1].

Moving directly to the issues raised in the problem statement, we will demonstrate the existing gaps using the example of the following forms of disposal of property rights to objects of related rights.

Let's start by considering the employment contract (contract) in terms of the distribution of property rights to an official object of related rights. So, looking ahead, the differences between the Code and the Law in terms of regulating relations under this form of disposal are interesting. According to Art. 429 of the Code "1. Personal non-property intellectual property rights to an object created in connection with the execution of an employment contract belong to the employee who created this object. In cases provided for by law, individual personal non-property intellectual property rights to such an object may belong to a legal entity or individual where or for whom the employee works. 2. Intellectual property rights to an object created in connection with the performance of an employment contract (contract) belong to the employee who created this object and the legal entity or individual where or for whom he works, jointly, unless otherwise established by this Code or the contract. 3. The specifics of the exercise of intellectual property rights to an object created in connection with the performance of an employment contract may be established by law" [5]. According to Part 1, 2 of Article 14 of the Law, "1. Personal non-property copyrights to a service work belong to the employee whose creative work created such a work. 2. Property rights to a service work shall be transferred to the employer from the moment of the creation of the service work in its entirety, unless otherwise provided for by this Law, an employment contract (contract) or another agreement on property rights to a service work concluded between the employee (author) and the employer. If property rights to the work are transferred to the employer, the employee who is the author of the service work shall have the right to remuneration. If the employee's job duties directly involve the creation of service works of the relevant types, the author's remuneration for the creation and use of such works, as well as for the transfer of rights to them, may be included in the employee's salary in accordance with the agreement between the employee and the employer" [1]. Thus, the situation arises that, having secured personal non-property rights both under the Code and the Law, the employee does not have secured property rights, as a general rule, according to the Law. According to the Code, he owns such property rights together with the employer. At the same time, the employer is not recognized as a co-author according to the current provisions of the relevant Ukrainian legislation. We believe that property rights cannot automatically belong to the employer for whom the creator works, either in terms of their securing both for the employee and the employer, and even more so transfer completely as defined, as a general rule, according to the relevant Law. Let's ask ourselves the question, why? Let's answer it simply, can the creator change jobs throughout his life? And what are the terms of validity of related rights? Yes, according to Part 2 of Article 45 of the Law "2. The intellectual property right to a phonogram is valid from the moment of production of the phonogram. The term of validity of intellectual property rights in a phonogram shall expire after 50 years, calculated from January 1 of the year following the year of production of the phonogram. If the phonogram is lawfully published during this term, the term of validity of intellectual property rights in a phonogram shall expire after 50 years, calculated from January 1 of the year following the year of publication" [1]. That is, in practice, a situation arises where an employee can change his place of work, and the property rights to the service work created by him, as a general rule, according to the Law, will be transferred to the employer and will have a term of validity, in the case of such an object of related rights as a phonogram, given by us, of 50 years. At the same time, the creator of the service object of related rights is deprived of the opportunity to be a party to agreements on the disposal of property rights to objects of related rights, since he is not a subject of related rights according to the current Ukrainian legislation. There is also a dissonance in the fact that the personal non-property rights of the employee, as noted above, are assigned to him, but at the same time, according to the content of Art. 37 of the Law, such personal non-property rights are not assigned in any part "1. Personal non-property rights of the performer mean the right to demand: 1) recognition that he is the performer of the relevant performance; 2) to indicate or communicate his name (pseudonym) in connection with each use of the performance (if this is practically possible); 3) to ensure the proper quality of the recording of his performance and to counteract any distortion, distortion or other significant change of the performance, recording of the performance that may harm his honor and reputation; 2. The producer of a phonogram and the producer of a videogram have the right to demand: 1) to indicate his name (name) in the original and each copy of the phonogram, videogram or on its (their) packaging along with the title

of the work, the name (names) of the author (authors), the performer (performers); 2) to mention his name (name) in the process of using the phonogram, videogram (if this is practically possible). 3. A broadcasting organization has the right to indicate its name in connection with the use of the program of the broadcasting organization. 4. Personal non-property rights of a performer, phonogram producer, videogram producer, broadcasting organization cannot be transferred (alienated) to other persons and are not inherited" [1].

Thus, according to Art. 1112 of the Code "1. Under an agreement on the creation and use of an object of intellectual property rights, one party (the creator - a writer, artist, etc.) undertakes to create an object of intellectual property rights in accordance with the requirements of the other party (the customer) and within the established period. 2. An agreement on the creation to order and the use of an object of intellectual property rights must determine the methods and conditions of use of this object by the customer. 3. The original work of fine art created to order shall become the property of the customer. In this case, the intellectual property rights to such a work shall remain with its author, unless otherwise established by the agreement or law. 4. The terms of the agreement on the creation to order and the use of an object of intellectual property rights that restrict the right of the creator of this object to create other objects shall be null and void" [5].

According to Art. 15 of the Law "1. Personal non-property copyrights to a work created to order belong to the author. 2. Property rights to a work created to order are transferred to the customer from the moment of creation of the work in its entirety, unless otherwise provided for by the order contract. Intellectual property rights to a work of fine art created to order (except for a work specially created as an element of a computer program) belong to its author, unless otherwise established by contract or law. 3. If property rights to a work are transferred to the customer, the author has the right to remuneration. 4. The customer has the right to make changes to the work created to order, to accompany it with illustrations, prefaces, afterwords, etc., unless otherwise provided for by the order contract" [1]. If we analyze the above-mentioned provisions of the Code regarding this form of contract, we can assume that the contract between the parties must agree on the methods and conditions of using the object, including the object of related rights, that the property rights to the created object of related rights remain with the creator of such an object, and in addition, in our opinion, this construction implies that the property rights to such a commissioned object of related rights may be transferred not in full, but in part. As for the provisions on this type of contract under the relevant Law, property rights, as a general rule, are transferred to the customer from the moment of creation of the work. So, as we can see, there is a gap in the understanding of the ownership and the moment of transfer of property rights to the object of related rights created to order. In our opinion, the indication of the ownership of personal non-property rights actually to the creator both under the Code and the relevant Law indicates that the creator still exists, but his personal non-property rights are not reflected in the corresponding norm of the relevant Law on the personal non-property rights of subjects of related rights. As for the moment of transition, we believe that it should be more clearly spelled out in the future and its essence should be that property rights primarily belong to the creator of a particular object of related rights, and only then is the transition to the customer carried out.

Thus, according to Part 1 of Article 1113 of the Code, "1. Under an agreement on the transfer of intellectual property rights, one party (a person who is the subject of property rights to an object of intellectual property rights) transfers these rights to the other party in part or in full in accordance with the law and on the terms specified in the agreement. The subject of an agreement on the transfer of property rights cannot be objects and property rights that did not exist at the time of the conclusion of the agreement" [5].

According to Part 1 of Article 49 of the Law "1. The subject of copyright or related rights may transfer (alienate) his property rights to the object of copyright or related rights, provided for in accordance with Part One of Article 12, Part One of Article 38, Part One of Article 39, Part One of Article 40 of this Law, to any other person in full on the territory of all states of the world or partially for certain methods of use on the territory of certain states of the world, or for all methods of use on the territory of certain states of the world. In the event of transfer (alienation) of property rights to the object of copyright or related rights, property rights in part to the extent not provided for in the contract shall be deemed not to have been transferred (alienated). The subject of an agreement on the transfer (alienation) of property rights to copyright objects and objects of related rights cannot be objects and property rights that did not exist at the time of conclusion of the agreement" [1].

Summarizing both the above-mentioned norms of both the Code and the relevant Law on this form of disposal of property rights to objects of related rights, we note that the actual creators of such objects cannot be a party to this agreement, since they are not subjects of related rights according to the understanding of the relevant Ukrainian legislation on this issue. That is, a paradoxical situation arises when, for example, personal non-property rights actually belong to the creator as per the employment contract (contract) in terms of the distribution of property rights to the created object of related rights, and the creator cannot actually dispose of them. The same situation applies to the agreement on the creation to order and use of the object of related rights, since personal non-property rights belong to the creator, but he is not recognized as such. And what about in practice such a hypothetical situation when a contract was concluded between the creator of the object of related rights and the customer, but the customer did not make, for example, a calculation, which then means that the creator cannot fully exercise his powers regarding his property right in the future, for example, conclude a license agreement, public license, etc., since he is impersonal?

Thus, according to Part 1 of Article 1109 of the Code "1. Under a license agreement, one party (licensor) grants the other party (licensee) permission to use an object of intellectual property rights in a certain way (ways) for a certain period of time in a certain territory, and the licensee undertakes to pay a fee for the use of the object, unless otherwise established by the agreement" [5].

According to Part 1 of Article 50 of the Law, "1. Under a license agreement, one party (licensor) grants the other party (licensee) permission to use the object of copyright or the object of related rights in a certain way (ways) for a certain period of time in a certain territory, and the licensee undertakes to pay a fee for the use of the object, unless otherwise established by the agreement. The licensor may be the subject of property copyright or related rights, and in cases provided for by the agreement or law, another authorized person. The licensee does not have the right to use the object of copyright or the object of related rights in ways not directly provided for by the license agreement" [1].

Summing up this form of disposal, we note that the creator of the object of related rights is deprived of the opportunity to be a party to this form of disposal as well.

The key to solving, in particular, the issue highlighted above under the license agreement is also the clear prescription of the moment of transition from the creator to the employer under the employment contract (contract) in terms of the distribution of property rights to the created service object of related rights. Since, if property rights do not have an automatic transition, as a general rule, then there is a creator who created this or that service object of related rights, and accordingly he should have the opportunity to dispose of the property rights belonging to him by concluding license agreements as well.

Regarding such a form of disposal of property rights as a public license, we note the following. Thus, according to Art. 455 of the Code "1. The subject of related rights may grant permission for the use of the relevant object by any person on the terms specified by him (public license). 2. A person who uses the object of related rights on the basis of a public license is obliged to comply with the terms specified by the subject of related rights, on which it was issued" [5].

According to Part 1 of Article 51 of the Law, "1. A copyright holder or a related rights holder may grant permission for the use of an object of copyright or related rights by any person on the terms and conditions specified by him (public license). A public license is issued by publishing its terms together with providing the possibility of remote familiarization with the relevant object of copyright or related rights to an unlimited number of persons using information and telecommunication systems" [1]. As with the previous form of the contract, unfortunately, creators of related rights are deprived of the opportunity to be a party to this type of contract, and accordingly, to dispose of it.

Creators of objects of related rights cannot appeal to international conventions in the field of copyright, since, as an example, the conventions cited by the author of the work do not currently include objects of related rights in the scope of copyright. But does this mean that this will not happen one day? So, let us ask ourselves whether a computer program was immediately an object of copyright?

In connection with the above, we will consider additional examples of appeals to international conventions on copyright that may take place in the future, but for now from the point of view of demonstrating the essence of intellectual property rights, which can be split due to a wide range of ways of its use.

Thus, according to Art. 11ter of the Berne Convention for the Protection of Literary and Artistic Works, Paris Act of 1971 "(1) Authors of literary works enjoy the exclusive right of authorizing: (i) the public reading of their works, including such public reading carried out by any means or methods; (ii) the communication by any means of reading their works for the public. (2) The same rights shall be granted to authors of literary works in respect of the translation of their works during the entire term of their rights in the original works" [6]. This provision is an example of the illustration of the implementation of the order to grant one's property right for use in a certain manner.

According to Part 1, Article 5 of the Universal Copyright Convention, "1. Copyright shall include the exclusive right of the author to translate, to publish translations and to authorize the translation and publication of translations of works protected under this Convention" [7].

According to Part 1, Article 6 of the World Intellectual Property Organization Copyright Treaty, adopted by the Diplomatic Conference on December 20, 1996, "(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the distribution to the general public of the original and copies of their works by sale or other transfer of ownership" [8].

That is, the ways of using property rights are quite diverse, broad and not exhaustive. Let us illustrate this with the example of Part 1 of Article 39 of the Law "1. The subject of related rights to a phonogram has the right to use the phonogram in any way (ways) and the exclusive right to authorize or prohibit the use of the phonogram in other ways. The ways of using a phonogram are, in particular: 1) reproduction in any form and by any means; 2) inclusion in an audiovisual work, videogram, or other phonogram; 3) distribution of copies of the phonogram; 4) rental or lending of copies of the phonogram; 5) interactive provision of access; 6) any modification; 7) public notification; 8) import of copies of the phonogram. This list is not exhaustive" [1].

We will illustrate the "splitting" of property rights using the example of Part 2 of Article 39 of the Law "2. Property rights to a phonogram specified in Part 1 of this Article may be granted or transferred (alienated) to another person on the basis of a law or a transaction in full (for all methods of using a phonogram in the territory of all states in the world) or in part (for individual methods of using a phonogram in the territory of all states in the world or for individual methods of using a phonogram in the territory of individual states in the world, or for all methods of using a phonogram in the territory of individual states in the world). A person who has acquired property rights to a phonogram in full or in part is a subject of related rights within the limits of the acquired rights. The subject of related rights to a phonogram has the right to grant permission for use and dispose of property rights to a phonogram in another manner that does not contradict the law" [1].

In the future, in connection with the proposed changes below, it is considered appropriate to affix the copyright protection sign together with the sign of protection of objects of related rights. Today, the relevant norms under the current profile Law are reflected as follows. Thus, according to Part 3 of Article 9 "3. For the emergence and exercise of copyright, registration of copyright or any other special registration thereof, as well as the fulfillment of any other formalities, is not required. The copyright holder may use the copyright protection sign to notify about his property rights, consisting of the Latin letter "C" circled – C, next to which the name (name) of the subject of property rights to the work and the year of the first publication of the work are indicated" [1].

According to Part 4 of Article 36 of the Law, "4. The subject of related rights to a performance or a phonogram or a videogram to notify about his property rights to the relevant object of related rights has the right to use a special sign of related rights protection, consisting of the Latin letter "P" surrounded by a circle – P, next to which are indicated the name (name) of the subject of property rights, the year of the first publication of the object of related rights. The sign of related rights protection is indicated in the phonogram, videogram, in each copy thereof or on the packaging containing a copy of the phonogram or videogram" [1].

Turning to the issue of international conventions in the field of related objects, we note the following. Thus, according to Art. 13 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 26.10.1961, "Broadcasting organizations shall enjoy the right to authorize or prohibit: (a) the retransmission of their television and radio broadcasts; (b) the fixation of their television and radio broadcasts; (c) the reproduction of: (i) fixations of their television and radio broadcasts made without their consent; (ii) fixations of their television and radio broadcasts made in accordance with the provisions of Article 15, if the reproduction was made for purposes other than those specified in these provisions; (d) the public communication of their television broadcasts, if it is made in places accessible to the public for a fee; the conditions for the implementation of broadcasting are regulated by the national legislation of the state in which protection of this right is requested" [9].

According to Article 3 of the Convention for the Protection of the Interests of Producers of Phonograms against Unauthorized Reproduction of Their Phonograms of 29.10.1971, "Each State Party shall retain the right to determine under its national law the legal measures by which this Convention shall be applied, which shall include one or more of the following measures: protection by means of the grant of copyright or other special right; protection by means of legislation on unfair competition; protection by means of criminal sanctions" [10].

According to Article 11 of the World Intellectual Property Organization Performances and Phonograms Treaty, adopted by the Diplomatic Conference on December 20, 1996, "Producers of phonograms shall have the exclusive right to authorize the direct or indirect reproduction of their phonograms by any means and in any form" [11].

Thus, the list of methods of using property rights to objects of related rights is also quite wide, which was illustrated above by the example of international conventions in the field of protection and enforcement of related rights, but so far the interests of direct creators of related rights remain not covered by the content of the latter.

5. Conclusions.

In connection with the issues discussed above, it is considered appropriate to answer the question of why the creators of related rights objects are impersonal, why the creators of related rights cannot dispose of their property rights, because such rights "supposedly" do not exist, although the author of the article demonstrated the assignment of personal non-property rights to the creators of related rights objects (for example, an employment contract (contract) in terms of the distribution of property rights to service related rights objects, an agreement on the creation to order and use of the related rights object), and accordingly why the creators of related rights objects are deprived of the opportunity to recognize and protect their rights. The answer is, in our opinion, the truncated granting of the actual creators of related rights to the possession, use and disposal of intellectual property rights. In fact, intellectual property rights are two-component, consisting of personal non-property rights and property rights. However, for some reason this concept does not work in the case of actual creators of related rights.

Thus, according to the content of Art. 418 of the Code "1. Intellectual property right is the right of a person to the result of intellectual, creative activity or to another object of intellectual property rights, defined by this Code and other law. 2. Intellectual property right consists of personal non-property rights of intellectual property and (or) property rights of intellectual property, the content of which in relation to certain objects of intellectual property rights is defined by this Code and other law. 3. Intellectual property right is inviolable. No one may be deprived of intellectual property rights or restricted in its exercise, except in cases provided for by law" [5].

Why does this concept not work? It does not work, in the author's opinion, due to some exaggeration of the technical component in the creation of such objects, due to the approach that when creating copyright objects there is an author, while when creating objects of related rights there is "as if" no creator. Although, according to Part 1 of Article 421 of the Code "1. Subjects of intellectual property rights are: the creator (creators) of the object of intellectual property rights (author, performer, inventor, etc.) and other persons

who own personal non-property and (or) property rights to intellectual property in accordance with this Code, another law or agreement" [5].

What is necessary, from the point of view of the author of the article, to correct the highlighted situation around creators of related rights?

The necessary steps are to introduce the creator into the composition of subjects of related rights, indicating him as the first subject according to the content of the relevant articles of both the Code and the relevant Law. By combining copyright objects and objects of related rights into one large group of objects, while maintaining the structure of the current profile Law in terms of allocating objects of related rights to a separate section. This will ensure a fair balance between creators of objects of related rights and other subjects of related rights.

Thus, creators of objects of related rights will be able to own, use and dispose of their rights, and accordingly act as a party to agreements on the disposal of property rights to objects of related rights, and accordingly use the guarantees provided by the Constitution of Ukraine.

In conclusion, we note that in the opinion of the author of the work, the proposed changes are intended to eliminate such gaps as the recognition of the creator of related rights as the subject of related rights, as well as a clear prescription of the moment of transfer of property rights, as well as the absence of automatic transfer of property rights from the creator under a number of contracts, and will not only be aimed at harmonizing with the guarantees provided by the Constitution of Ukraine, namely Art. 41, Art. 54, and will also be fully consistent with the understanding of the content of intellectual property rights under the Civil Code of Ukraine, which consists of personal non-property and property rights. Why is this necessary? In our opinion, this is necessary for a consistent understanding of intellectual property rights, the content of intellectual property rights, the disposal of property rights to objects of intellectual property rights (and in the case of this scientific work, property rights to objects of related rights) and the protection of intellectual property rights.

References:

1. Verkhovna Rada of Ukraine. (2022, December 1). Zakon Ukrainy pro avtorske pravo i sumizhni prava No. 2811-IX [Law of Ukraine on copyright and related rights No. 2811-IX]. https://zakon.rada.gov.ua/laws/show/2811-20

2. Konstytutsiia Ukrainy: Zakon Ukrainy vid 28.06.1996 No. 254k/96-VR [Constitution of Ukraine: Law of Ukraine No. 254k/96-VR of June 28, 1996]. (1996). https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

3. Yakubivskyi, I. (2024). Dohovory shchodo rozporiadzhennia maiinovymy pravamy intelektualnoi vlasnosti: osnovni napriamy rekodyfikatsii [Agreements on the disposal of intellectual property rights: Main directions of recodification]. In Harmonizatsiia dohovirnoho zakonodavstva Ukrainy z pravom Yevropeiskoho Soiuzu (pp. 114–119). Ivan Franko National University of Lviv. https://law.lnu.edu.ua/wp-content/uploads/2024/07/Zbirnyk-tez-konferentsii-2024.pdf#page=114

4. Kodynets, A. (2023). Rozporiadzhennia pravamy intelektualnoi vlasnosti: problemy ta perspektyvy zakonodavchoho rehuliuvannia [Disposal of intellectual property rights: Problems and prospects of legislative regulation]. In Stvorennia, okhorona, zakhyst i komertsializatsiia obiektiv prava intelektualnoi vlasnosti (pp. 271–278). Igor Sikorsky Kyiv Polytechnic Institute. http://cpdcipr.kpi.ua/article/view/278805/273453

5. Tsyvilnyi kodeks Ukrainy: Zakon Ukrainy vid 16.01.2003 No. 435-IV [Civil Code of Ukraine: Law of Ukraine No. 435-IV of January 16, 2003]. (2003). https://zakon.rada.gov.ua/laws/show/435-15

6. Bernska konventsiia pro okhoronu literaturnykh i khudozhnikh tvoriv [Berne Convention for the Protection of Literary and Artistic Works]. (1971, July 24). https://zakon.rada.gov.ua/laws/show/995_051

7. Vsesvitnia konventsiia pro avtorske pravo [Universal Copyright Convention]. (1952, September 6). https://zakon.rada.gov.ua/laws/show/995_052

8. Dohovir Vsesvitnoi orhanizatsii intelektualnoi vlasnosti pro avtorske pravo [World Intellectual Property Organization Copyright Treaty]. (1996, December 20). https://zakon.rada.gov.ua/laws/show/995_770

9. Mizhnarodna konventsiia pro okhoronu interesiv vykonavtsiv, vyrobnykiv fonohram i orhanizatsii movlennia [International Convention for the Protection of the Interests of Performers, Producers of Phonograms and Broadcasting Organizations]. (1961, October 26). https://zakon.rada.gov.ua/laws/show/995_763

10. Konventsiia pro okhoronu interesiv vyrobnykiv fonohram vid nezakonnoho vidtvorennia ikhnikh fonohram [Convention for the Protection of the Interests of Producers of Phonograms against Unauthorized Reproduction of Their Phonograms]. (1971, October 29). https://zakon.rada.gov.ua/laws/show/995_124

11. Dohovir Vsesvitnoi orhanizatsii intelektualnoi vlasnosti pro vykonannia i fonohramy [World Intellectual Property Organization Performances and Phonograms Treaty]. (1996, December 20). https://zakon.rada.gov.ua/laws/show/995_769

N. H. Pecherova,
Candidate of Juridical Sciences
E-mail: mrs.pecherova@gmail.com
ORCID: 0000-0001-9750-1693

RESTRICTION OF LABOR RIGHTS UNDER MARTIAL LAW: A CONSTITUTIONAL AND LEGAL PERSPECTIVE

Pleskun Oleksandr, Slobodianyk Tetiana

DOI: https://doi.org/10.61345/1339-7915.2026.1.21

Annotation. The article examines the constitutional and legal foundations for restricting labor rights during the period of martial law in Ukraine. Under wartime conditions, labor relations undergo significant changes driven by the need to ensure the state's defense capability, adapt the labor market to security challenges, and support the functioning of critical sectors of the economy, which requires prompt responses to social and labor risks. Particular importance is attached to the flexibility of labor law regulation, which makes it possible to quickly modify the organization of production processes and ensure the continuity of enterprise activities under conditions of increased danger.

The study analyzes legal mechanisms that enable the state to temporarily restrict certain labor rights of employees and employers, including issues of compulsory labor engagement, changes in working hours, the introduction of flexible work arrangements, remote and home-based work, suspension of employment contracts, and restrictions on the right to strike.

The relationship between these restrictions and fundamental constitutional guarantees—such as the right to work, freedom of labor, the right to social protection, and decent working conditions—is examined, taking into account the principles of proportionality, necessity, and legal balance between public interests and human rights. It is emphasized that any restrictions must be temporary in nature, clearly defined by law, and consistent with the democratic standards of the rule of law.

Particular attention is paid to the analysis of Ukraine's regulatory framework, including legislation on the legal regime of martial law and specific provisions of labor law, decisions of the Constitutional Court of Ukraine, judicial practice, as well as international legal standards in the field of labor. The practice of applying the relevant norms by courts of general jurisdiction is also examined, making it possible to identify trends in law enforcement and problematic aspects of protecting workers' rights.

The article highlights existing inconsistencies in law enforcement practice, problems of effective control over compliance with labor rights, the limited capacity of state supervision mechanisms under martial law, and the risks of abuse by employers, particularly with regard to unlawful dismissal, non-payment of wages, or forced transfer to other working conditions. Directions for improving legislation and law enforcement practice are outlined.

Key words: martial law, labor rights, restriction of rights, constitutional law, right to work, freedom of labor, labor legislation.

1. Introduction.

Martial law creates extraordinary challenges for the state's legal system, particularly in the field of labor relations. The issue of restricting labor rights becomes especially relevant in light of the need to mobilize resources, adapt the labor market, and ensure the functioning of key sectors of the economy and defense. Constitutional guarantees of human rights, including freedom and safety of labor, acquire a new dimension under conditions of threats to national security. The practice of applying such restrictions requires not

only legal analysis but also an assessment of their compliance with the fundamental principles of the Constitution of Ukraine and international standards. Thus, the study of mechanisms for restricting labor rights during martial law is important for ensuring a balance between the protection of human rights and the obligations of the state.

2. Analysis of scientific publications.

Contemporary research on the restriction of labor rights and the legal regulation of labor relations under martial law is multifaceted and encompasses both theoretical-legal and practical aspects.

One of the key sources is the work of S. Bortnyk, which examines the specific features of legal regulation of labor relations under martial law, in particular restrictions on the right to work and the right to strike, as well as the impact of the Law of Ukraine "On the Organization of Labor Relations under Martial Law" No. 2136-IX of March 15, 2022 (hereinafter – Law No. 2136-IX) on labor guarantees. In particular, the scholar concludes, among other things, that the experience of introducing martial law in the country has revealed a number of both practical and theoretical-legal problems, including issues related to the unambiguous understanding of the legal foundations of martial law by relevant subjects, as well as the procedure for its introduction and termination under the conditions that have developed in the country [1, p. 116].

The research of M. Dyban is devoted to the problems of guaranteeing workers' rights, including those related to working time, rest time, and remuneration, which are critically important during martial law [2, pp. 134–142]. The author emphasizes the need to adapt legislation to ensure a balance between employees' rights and the security needs of the state.

A. Andrushko, in his publication, analyzes labor relations during martial law, highlighting issues of conclusion, suspension, and termination of employment contracts, as well as mechanisms for ensuring labor guarantees under conditions of a changed organization of work. Emphasizing the relevance of this issue, the author concludes that the topic is also актyal due to Ukraine obtaining the status of a candidate for accession to the European Union; therefore, compliance with European Union standards in the field of labor relations is important on the eve of the adoption of a new Labor Code of Ukraine [3, p. 148].

I. V. Nazarenko and K. Yu. Melnyk examine legal guarantees of employees in the areas of working time, rest, and remuneration, and outline the problems of implementing these rights under martial law, noting that ensuring the effectiveness of legal guarantees of workers' rights in the field of labor—particularly regarding working time, rest periods, and remuneration—is an important condition for the return of citizens from abroad and the effective performance of employees in Ukraine [4, p. 70].

Thus, the analysis of scholarly works allows us to conclude that labor rights under martial law are temporarily restricted by law, while the legislation provides certain guarantees to maintain a balance between the interests of the state and those of employees.

3. The aim of the work.

The purpose of the article is to provide a comprehensive constitutional and legal analysis of the restriction of labor rights under martial law, to identify the legal grounds and limits of such restrictions, and to formulate recommendations for their improvement.

4. Review and discussion.

Article 64 of the Constitution of Ukraine establishes that, under conditions of martial law or a state of emergency, certain restrictions on rights and freedoms may be imposed, with an indication of the duration of such restrictions [5].

The regulation of labor rights under martial law is determined by a number of legislative acts, primarily Law No. 2136-IX, which establishes the peculiarities of applying certain provisions of the Labor Code during martial law [6]. Law No. 2136-IX provides that, for the duration of martial law, restrictions are introduced on the constitutional rights and freedoms of individuals and citizens guaranteed by Articles 43 and 44 of the Constitution of Ukraine, namely the right to work and the right to strike.

It is also worth mentioning the Law of Ukraine "On the Legal Regime of Martial Law" No. 389-VII of May 12, 2015 [7], which defines the general framework for restricting rights and freedoms during martial law, including their temporary modification to ensure national security. According to this law, restrictions must be proportional and lawful and cannot be applied arbitrarily.

The Constitutional Court of Ukraine (CCU) plays an important role in protecting labor rights as constitutional guarantees. In its decision of December 11, 2025, No. 1-r/2025, the CCU emphasized that the right to work, to safe working conditions, to remuneration, and to timely receipt of wages are integral elements of a worker's constitutional rights (Art. 43 and Part 1 of Art. 55 of the Constitution of Ukraine), and that state-imposed restrictions must be objectively justified and proportionate. The Court also noted that the criterion of "reasonableness" of a legislative restriction, such as the deadline for bringing a case to court, must be assessed in light of martial law conditions but should not deprive a worker of effective access to justice [8].

The case law of the Supreme Court confirms current trends in the application of labor legislation under martial law. In its ruling of October 2, 2024, in Case No. 755/8135/22, the Supreme Court noted that the concept of "change of essential working conditions" includes changes in remuneration conditions and emphasized that certain provisions of the Labor Code do not apply during martial law by virtue of Law No. 2136-IX (for example, notifying employees about changes in working conditions) [9]. This indicates that courts take into account the special legal regime, but must not violate constitutional guarantees without sufficient legislative basis.

Supreme Court judges have also repeatedly highlighted international labor standards as an important element in resolving disputes during martial law. The significance of applying international labor law norms in labor cases was emphasized during training sessions and judicial briefings involving representatives of the International Labour Organization (ILO) and the National School of Judges of Ukraine. This contributes to international standards serving as a guiding reference in national practice.

As a member of the International Labour Organization (ILO) and a participant in international legal agreements, including the European Convention on Human Rights, Ukraine is obliged to uphold basic standards of workers' rights even under challenging conditions. In particular, Article 15 of the European Convention on Human Rights provides that, in time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under the Convention, but only to the extent strictly required by the exigencies of the situation and provided that such measures are not inconsistent with its other obligations under international law [10].

The case law of the Supreme Court of Ukraine indicates a growing emphasis on interpreting international standards within the national context. This helps judges resolve disputes in accordance with these standards and harmonize national legislation with international norms.

Despite the existence of legislative regulation of labor relations during martial law, its practical application reveals a number of significant contradictions and problems:

1. Contradictions in the interpretation of laws. Law of Ukraine No. 2136-IX provides for temporary changes in the procedures for concluding, modifying, and terminating employment contracts. However, courts and employers often interpret certain provisions differently, particularly regarding changes to essential working conditions, working hours, and leave. This creates unpredictability in the legal regime and increases the risk of violations of employees' rights.

2. Problems in monitoring compliance with labor rights. Existing state supervisory bodies do not always have the capacity to effectively monitor compliance with labor rights, especially during wartime, when

many enterprises operate in critically important sectors of the economy, and work processes are often remote or incompletely documented.

3. Risks of employer abuse. Temporary restrictions on labor rights and simplified procedures for changing working conditions create opportunities for abuse by employers, including transferring employees to other positions without consent, reducing wages, failing to pay compensation, and neglecting minimum labor guarantees.

5. Conclusions.

The restriction of labor rights under martial law has a constitutional and legal basis and is aimed at ensuring national security and defense. However, their application requires clear regulatory framework, compliance with the principle of proportionality, and consideration of international standards. It is necessary to improve legislation, strengthen control mechanisms, and ensure an adequate balance between the protection of workers' rights and public interests. Raising the legal awareness of employers and employees through training, consultations, and informational campaigns that explain the rights and obligations of the parties during martial law will also be helpful. Such an approach will reduce conflicts and violations of labor rights and contribute to strengthening Ukraine's legal system under emergency conditions.

References:

1. Bortnyk, S. M. (2022). On the issue of the features of legal regulation of labor relations under martial law. Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav – Bulletin of Kharkiv National University of Internal Affairs, 97(2), 106–117.

2. Dyban, M. (2023). Legal regulation of labor relations during martial law: Current issues. Naukovi pratsi Kyivskoho aviatsiinoho instytutu. Seriia: Pravo – Scientific Works of Kyiv Aviation Institute. Series: Law, 2(71), 134–142.

3. Andrushko, A. (2022). Labor relations during martial law. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: Pravo – Scientific Bulletin of Uzhhorod National University. Series: Law, 147–150.

4. Nazarenko, I. V., & Melnyk, K. Yu. (2023). Legal guarantees of workers' rights in the field of working time, rest time, and remuneration during martial law. Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav – Bulletin of Kharkiv National University of Internal Affairs, 3(102), 70–80.

5. Konstytutsiia Ukrainy: Zakon Ukrainy vid 28.06.1996 No. 254k/96-VR [Constitution of Ukraine: Law of Ukraine No. 254k/96-VR of June 28, 1996]. (1996). https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

6. Verkhovna Rada of Ukraine. (2022, March 15). Pro orhanizatsiiu trudovykh vidnosyn v umovakh voiennoho stanu: Zakon Ukrainy No. 2136-IX [On the organization of labor relations under martial law: Law of Ukraine No. 2136-IX of March 15, 2022]. https://zakon.rada.gov.ua/laws/show/2136-20

7. Verkhovna Rada of Ukraine. (2015, May 12). Pro pravovyi rezhym voiennoho stanu: Zakon Ukrainy No. 389-VIII [On the legal regime of martial law: Law of Ukraine No. 389-VIII of May 12, 2015]. https://zakon.rada.gov.ua/laws/show/389-19

8. Constitutional Court of Ukraine. (2025, December 11). Rishennia Konstytutsiinoho Sudu Ukrainy No. 1-r/2025 [Decision of the Constitutional Court of Ukraine No. 1-r/2025]. https://zakon.rada.gov.ua/laws/show/va01p710-25

9. Supreme Court of Ukraine. (2024, October 2). Postanova u spravi No. 755/8135/22 [Ruling in case no. 755/8135/22]. https://protocol.ua/ua/postanova_ktss_vp_vid_02_10_2024_roku_u_spravi_755_8135_22

10. Council of Europe. (1950, November 4). European convention on human rights. https://zakon.rada.gov.ua/laws/show/995_004

Oleksandr Pleskun,
Candidate of Legal Sciences, Associate Professor,
Associate Professor of the Department of Fundamental and Branch Juridical Sciences,
Faculty of Law, Humanity and Social Sciences,
"Kremenchuk Mykhailo Ostrohradskyi National University"
E-mail: kafedragun@gmail.com
ORCID: 0000-0001-6152-4957

Tetiana Slobodianyk,
Candidate of Legal Sciences, Associate Professor,
Associate Professor of the Department of Fundamental and Branch Juridical Sciences,
Faculty of Law, Humanity and Social Sciences,
"Kremenchuk Mykhailo Ostrohradskyi National University"
E-mail: kafedragun@gmail.com
ORCID: 0000-0003-1838-5781

NEURORIGHTS: A NEW GENERATION OF HUMAN RIGHTS IN THE AGE OF NEUROTECHNOLOGY

Popovich Terezia

DOI: https://doi.org/10.61345/1339-7915.2026.1.22

Annotation. The article investigates neurorights as a new generation of human rights emerging in response to the rapid advancement of neurotechnology. It is established that neurorights arose at the intersection of neuroethics and neurolaw as a response to the unprecedented capacity of neurotechnologies to measure and alter human brain activity. The concept of neurorights is defined as the ethical, legal, social or natural principles of freedom or entitlement related to a person's cerebral and mental domain. Two competing scholarly positions are analysed: proponents of a new generation of rights argue that existing law is insufficient to protect the mind, while opponents contend that established rights, freedom of thought, mental integrity, and privacy, should be developed instead. The main types of neurorights are systematised: cognitive liberty, mental privacy, mental integrity, and psychological continuity. The constitutional experience of Chile is examined as the first state to enshrine neurorights in its basic law in 2021. International legal initiatives are analysed, including OECD recommendations, regional declarations, UNESCO documents, and a UN Human Rights Council resolution. The article concludes that neurorights represent a necessary conceptual instrument for protecting mental autonomy and that a principled approach grounded in established human rights law is the most viable path forward.

Key words: neurorights; neurotechnology; cognitive liberty; mental privacy; human rights; mental integrity; neuroethics.

1. Introduction.

The rapid progress of neuroscience and neurotechnology has opened unprecedented possibilities for humanity: from restoring motor functions through brain-computer interfaces to decoding the attempted speech of patients with severe disabilities. At the same time, these technologies have generated threats that legal systems had never previously encountered, the capacity to read thoughts, manipulate memory, influence decision-making, and modify human personality. While thoughts were once considered fundamentally inaccessible to external observation, contemporary neuroimaging and brain-computer interface technologies are dismantling this presumption.

In this context, the question arose whether existing human rights law is capable of protecting persons from specifically neurotechnological threats. The debate surrounding this question gave rise to the concept of 'neurorights' - new or reconceptualised rights aimed at protecting the human brain and mental domain. Despite the relative novelty of the term, the conceptual basis of neurorights has developed rapidly: they have found expression in constitutional law (Chile, 2021), international recommendations (OECD, UNESCO, OAS), and a substantial body of scholarly literature.

For legal scholarship, neurorights pose challenges on multiple levels: theoretical (are they genuinely new rights or merely specifications of existing ones?), normative (which legal form is most appropriate?), and practical (how can effective enforcement be ensured?). The investigation of these questions is an urgent task for both international and constitutional law.

2. Recent Scholarship.

The most influential contribution to the conceptualisation of neurorights is the article by M. Ienca published in 2021, in which the author reconstructs the genesis of neurorights, proposes a systematic taxonomy, and defines them as 'the ethical, legal, social or natural principles of freedom or entitlement related to a person's cerebral and mental domain' [7]. In the same work, the author refers to the pioneering contributions of R. Boire and W. Sententia, who established the concept of 'cognitive liberty' as the right to control one's own consciousness [7].

A critical position is held by J. C. Bublitz in two significant works. In a 2022 paper, he argues that the proposed neurorights suffer from 'neuroexceptionalism' and 'neuroessentialism' and fail to satisfy quality criteria debated in rights theory; instead, existing rights should be developed further [1]. In a later work of 2024, however, the same author softens his critique, acknowledging that consciousness is a constitutive feature of legal personhood and that the rights to mental integrity and privacy require development to address neurotechnological threats [2]. In the same study, Bublitz identifies four dimensions of human dignity that neurotechnological interventions may violate: protection of the preconditions of legal personhood; self-determination and autonomy; core aspects of personality; and respect for subjectivity [2].

S. Ruiz and co-authors in 2024 examined the Chilean experience of constitutionally enshrining neurorights and investigated the connection between neurotechnology, ethics, and politics [11]. T. Istace in the same year analysed whether existing international law can protect the human mind from neurotechnological intrusions and concluded that it is incomplete but flexible [9]. J. M. Muñoz and J. Á. Marinaro in 2023 proposed the concept of 'reconceptualised human rights', arguing that neurorights are not entirely new rights but rather new normative responses to new technological challenges within the established rights system [10].

Ienca's article (2021) is a peer-reviewed publication in the leading international journal Frontiers in Human Neuroscience (EPFL / ETH Zürich), devoted to a comprehensive normative-ethical and conceptual analysis of neurorights – a new category of human rights designed to protect the brain and mind of an individual from the interference of neurotechnology. The author offers a systematic taxonomy of neurorights, encompassing derivatives of freedom of thought, the right to privacy, mental integrity and personal identity, and also analyzes current legislative initiatives in this area at the level of the OECD, the Council of Europe and individual states (in particular, Chile and Spain) [7].

3. The aim of this article is to provide a comprehensive examination of neurorights: their genesis and conceptual content, the scholarly debate over their necessity, the constitutional and international legal experience of their recognition, and the prospects for their development within the human rights system.

4. Main part.

The term 'neurorights' entered scholarly discourse relatively recently, yet its conceptual roots date to the early 2000s. M. Ienca in his 2021 work traces how the concept of 'cognitive liberty', developed by R. Boire and W. Sententia, became the starting point for the formation of neurorights [7]. Sententia defined cognitive liberty as 'the right and freedom to control one's own consciousness and electrochemical thought process', while J. C. Bublitz later qualified it as a 'basic human right' guaranteeing 'an individual's sovereignty over her mind' [7].

A turning point was the article by M. Ienca and R. Andorno in 2017, which for the first time proposed four concrete neurorights: the right to cognitive liberty, mental privacy, mental integrity, and psychological continuity [7]. This formulation became the basis for subsequent debates. Alongside this, the Neurorights Foundation led by neuroscientist R. Yuste proposed a slightly different list of five neurorights: the right to mental privacy, personal identity, free will, equitable access to mental augmentation, and protection from algorithmic bias [3].

M. Ienca provides a systematic taxonomy of neurorights, identifying at least five families depending on the normative principles from which they derive: derivatives of freedom of thought, of the right to privacy, of mental integrity, of personal identity, and other ethical corollaries [7]. This taxonomy is analytically valuable but simultaneously reveals the complexity of the interrelationships among neurorights and their potential overlap with existing rights.

It should be noted that from its very emergence, the concept of neurorights generated terminological controversy: J. C. Bublitz criticises the use of this term on grounds of inconsistency with established legal categories, and a number of authors prefer to speak of the 'reconceptualisation' of existing rights rather than new ones [1]. Nevertheless, the term 'neurorights' has become entrenched in scholarly and public discourse as a convenient designation for the set of normative claims relating to the protection of the brain and consciousness from technological interference.

The central theoretical question in the neurorights debate is whether genuinely new rights are needed or whether expanded interpretation and development of existing rights would suffice. This debate has fundamental practical significance, since the answer determines the strategy of norm-setting.

Proponents of a new generation of rights, primarily M. Ienca and R. Andorno, argue that neurotechnologies open qualitatively new vectors of threat for which existing legal categories are insufficient [7]. In the same work, the authors contend that 'the possibilities opened up by neurotechnological developments will force a reconceptualisation of certain human rights, or even the creation of new rights to protect people from potential harm' [7]. They ground this argument in the fact that thoughts were traditionally considered absolutely inaccessible to external interference, and neurotechnologies have for the first time made such interference possible.

J. C. Bublitz in his 2022 work consistently defends the opposing position: the proposed neurorights are conceptually flawed and prone to 'rights inflation' [1]. In the same work, the author demonstrates in detail that each of the four proposed neurorights either duplicates existing rights (freedom of thought, the right to privacy, the right to bodily integrity) or suffers from an excessive 'neuroexceptionalist' approach – that is, it unjustifiably insists on the specificity of neurotechnologies compared to other forms of interference with the mind [1].

In a 2024 work, however, J. C. Bublitz partially revises his position, acknowledging that certain aspects of the protection of the mental domain require normative development. The author proposes distinguishing between an absolutely protected 'core' of freedom of thought (no one can be obliged to hold or not hold particular thoughts) and qualified rights to mental integrity and privacy, interference with which is permissible only when justified and proportionate [2].

T. Istace in 2024 takes an intermediate position: existing law is incomplete but flexible, capable of adapting to new challenges through expansive interpretation [9]. In the same work, the author notes that key rights, mental integrity and freedom of thought, already exist in international law but require specification in the neurotechnological context [9]. J. M. Muñoz and J. Á. Marinaro in 2023 propose the compromise concept of 'reconceptualised rights': neurorights are not new de novo rights but new normative responses to new technological challenges within the established rights system [10].

In our view, the most productive approach combines both positions: it is necessary both to develop existing rights, in particular, to specify the content of freedom of thought and the right to privacy with respect to neurotechnologies, and to formulate new specific constructs where existing law is fundamentally insufficient.

The right to cognitive liberty is the starting point in the conceptual development of neurorights. J. C. Bublitz defines it as a right that 'guarantees an individual's sovereignty over her mind' and prohibits anyone from asserting claims over the right-holder's mental states [2]. The positive dimension of this right encompasses the freedom to alter one's own consciousness, including through technology, chemical substances, or meditation, without state interference. Accordingly, the right to cognitive liberty is simultaneously protective (against forced interventions) and liberal (permitting voluntary ones).

The right to mental privacy protects 'private or sensitive information in a person's mind from unauthorised collection, storage, use or even deletion' [7]. The particular complexity of this right arises from the specificity of neurotechnologies: they are capable of reading mental information that the person has not yet articulated or even consciously registered. This is why one study of mental privacy and mind reading argues that authentic safeguards for the mental realm require an expansion of protection beyond brain-targeted devices to encompass the full spectrum of 'mind-reading' applications, including digital methods [3].

The right to mental integrity protects against interventions that 'bypass rational reasoning and cause mental harm' [4]. V. Tesink and co-authors in 2024 analysed this right through the lens of the 'extended mind' thesis: if technological devices become part of a person's cognitive processes, legal protection must extend to them as well [12]. In the same study, the authors argue that the right to mental integrity should be conceptually distinguished from the rights to cognitive liberty, mental privacy, and psychological continuity, since each protects a distinct dimension of the mental domain [12].

The right to psychological continuity protects the stability of personality and identity from external manipulation. Deep brain stimulation, neuropharmacological substances, or exhaustive neuromarketing interventions could potentially alter a person's identity against their will. G. Cassinadri in a 2025 study proposes a multidimensional understanding of the right to mental integrity as simultaneously multidimensional (encompassing different aspects of the mind), multilayered (different levels of protection), and extended (applying to external cognitive devices) [4].

The four core neurorights thus cover distinct, though interconnected, dimensions of the protection of consciousness: the right not to be compelled to hold certain thoughts; the right to keep them private; the right not to have them forcibly altered; and the right to the stability of one's own identity. This internal differentiation underscores why a single right or a simple expansion of existing privacy protection cannot adequately address all neurotechnological risks.

The most resonant legislative step in the field of neurorights was the Chilean constitutional reform of 2021. S. Ruiz and co-authors in their 2024 study analyse this reform as the first precedent worldwide of constitutionally enshrining the protection of 'neural rights' [11]. The reform amended the Chilean Constitution with a provision protecting brain 'activity' and 'information' from unauthorised interference. In the same work, the authors identify a conceptual problem: the Chilean legislature did not draw a clear distinction between neurotechnologies that 'read' and those that 'stimulate' brain activity, which may complicate enforcement [11].

At the international level, the first significant document in the field of neurorights was the OECD Recommendation on Responsible Innovation in Neurotechnology of 2019, establishing principles for the responsible development of neurotechnologies. The Inter-American Juridical Committee (OAS) adopted recommendations in 2021 and 2023. UNESCO published a report entitled 'The Risks and Challenges of Neurotechnologies for Human Rights' in 2023 and a draft international instrument in 2024.

T. Istace in her 2024 work records that in 2022 the UN Human Rights Council adopted draft resolution A/HRC/51/L.3 on neurotechnology and human rights [9]. In the same work, the author notes that in 2025 the UN Special Rapporteur on the right to privacy called on all states to introduce specific regulatory regimes for neurotechnologies and neural data [9].

E. García-López, J. M. Muñoz, and R. Andorno in their 2021 editorial article outline the general context and formulate the key question: how can the therapeutic and diagnostic potential of neurotechnologies be utilised without jeopardising human dignity and human rights? [5]. In the same work, the authors emphasise the need for deeper theoretical elaboration as a prerequisite for effective norm-setting [5].

Thus, at both the constitutional and international legal levels, neurorights are gradually acquiring normative expression. However, this normative base remains fragmented: it lacks systematization and unified standards, which complicates effective application. The Chilean experience, while historically

significant as a first step, illustrates the dangers of premature codification without sufficient conceptual clarity.

The interaction of neurorights with established human rights operates at several levels.

The closest connection exists with freedom of thought, conscience, and religion, guaranteed by Art. 18 ICCPR and Art. 9 ECHR. J. C. Bublitz in 2022 argues that this freedom has an 'absolutely protected core': no one can be required to hold or not hold certain thoughts [1]. In the same work, however, the author stresses that neurotechnologies have for the first time made it technically possible to interfere with this core and it is precisely this fact that demands a normative response. A separate author in 2022 demonstrates that Art. 18 ICCPR can be interpreted as providing comprehensive protection of mental processes and brain data, serving as a normative basis for regulating neurotechnologies [6].

The right to privacy acquires a new dimension in the neurotechnological context. M. Ienca and G. Malgieri in 2022 analysed the protection of 'mental data' within the GDPR and established that the existing data protection regime is fundamentally important but not exhaustive [8]. Protection against 'mind reading' requires a broader normative basis than data protection, since mental information is more sensitive and its disclosure may have irreversible consequences.

The right to bodily integrity transforms into a right to mental integrity. The study by G. Cassinadri in 2025 proposes a multidimensional understanding of the right to mental integrity, simultaneously multidimensional, multilayered, and extended, which cannot simply be a 'translation' of the right to bodily integrity into the mental domain: it requires its own conceptual development [4].

J. M. Muñoz and J. Á. Marinaro in 2023 propose viewing neurorights as 'reconceptualised human rights': they do not conflict with the existing legal system, are not excessive, and do not give rise to rights inflation, but rather constitute new normative responses to new technological challenges within the established rights system [10]. In our view, this approach is the most methodologically persuasive: it combines respect for existing legal constructs with openness to conceptual renewal, avoiding both the conservatism of complete denial and the radicalism of wholesale rights creation.

5. Conclusions.

First, neurorights constitute a set of normative claims protecting the human brain and mental domain from the specific threats posed by neurotechnologies; their genesis is linked to the development of the concept of 'cognitive liberty' in neuroethics and neurolaw in the early 2000s.

Second, the debate between proponents of a new generation of rights and proponents of developing existing law is not mutually exclusive: the most productive approach combines expansive interpretation of freedom of thought and the right to privacy with the formulation of new specific constructs where existing law is fundamentally insufficient.

Third, the principal types of neurorights, cognitive liberty, mental privacy, mental integrity, and psychological continuity, each protect a distinct dimension of mental autonomy and are not mere duplications of existing rights; their internal differentiation reflects the multifaceted nature of the neurotechnological threat.

Fourth, the Chilean constitutional precedent of 2021 and international initiatives by the OECD, UNESCO, and the United Nations demonstrate that neurorights are gradually acquiring normative expression; however, this normative base remains fragmented and requires systematisation at the international level.

Fifth, neurorights do not represent rights inflation but rather a necessary conceptual response to a technological challenge that has, for the first time in history, made possible direct interference with the human mental domain – the 'inner citadel' of personality that had hitherto been considered inaccessible to external influence. The recognition of this challenge by leading international institutions and legal scholars

underscores the urgency of developing a coherent, principled framework for the legal protection of the human mind.

References:

1. Bublitz, J. C. (2022). Novel neurorights: From nonsense to substance. Neuroethics, 15, Article 7. https://doi.org/10.1007/s12152-022-09481-3

2. Bublitz, J. C. (2024). Neurotechnologies and human rights: Restating and reaffirming the multi-layered protection of the person. International Journal of Human Rights, 28(5), 782–807. https://doi.org/10.1080/13642987.2024.2310830

3. Brown, C. M. L. (2024). Neurorights, mental privacy, and mind reading. Neuroethics, 17, Article 34. https://doi.org/10.1007/s12152-024-09568-z

4. Cassinadri, G. (2025). The right to mental integrity: Multidimensional, multilayered and extended. Neuroethics, 18, Article 16. https://doi.org/10.1007/s12152-025-09585-6

5. García-López, E., Muñoz, J. M., & Andorno, R. (2021). Editorial: Neurorights and mental freedom: Emerging challenges to debates on human dignity and neurotechnologies. Frontiers in Human Neuroscience,. https://doi.org/10.3389/fnhum.2021.823570

6. Hertz, N. (2022). Neurorights – Do we need new human rights? A reconsideration of the right to freedom of thought. Neuroethics, 16, Article 5. https://doi.org/10.1007/s12152-022-09511-0

7. Ienca, M. (2021). On neurorights. Frontiers in Human Neuroscience, 15. https://doi.org/10.3389/fnhum.2021.701258

8. Ienca, M., & Malgieri, G. (2022). Mental data protection and the GDPR. Journal of Law and the Biosciences, 9(1). https://doi.org/10.1093/jlb/lsac006

9. Istace, T. (2024). Human rights law: An incomplete but flexible framework to protect the human mind against neurotechnological intrusions. Law, Innovation and Technology, 16(1), 309–340. https://doi.org/10.1080/17579961.2024.2313796

10. Muñoz, J. M., & Marinaro, J. Á. (2023). Neurorights as reconceptualized human rights. Frontiers in Political Science, 5. https://doi.org/10.3389/fpos.2023.1322922

11. Ruiz, S., Valera, L., Ramos, P., & Sitaram, R. (2024). Neurorights in the constitution: From neurotechnology to ethics and politics. Philosophical Transactions of the Royal Society B, 379. https://doi.org/10.1098/rstb.2023.0098

12. Tesink, V., Douglas, T., Forsberg, L., Ligthart, S., & Meynen, G. (2024). Right to mental integrity and neurotechnologies: Implications of the extended mind thesis. Journal of Medical Ethics, 50. https://doi.org/10.1136/jme-2023-109645

13. Bielova, M., & Byelov, D. (2023). Transhumanism as a legal category. Visegrad Journal on Human Rights, (6), 6–12. https://doi.org/10.61345/1339-7915.2023.6.1

Terezia Popovich,
Doctor of Law, Associate Professor,
Associate Professor of the Department of Theory and History of State and Law
Uzhgorod National University
ORCID: 0000-0002-8333-3921

ARTIFICIAL INTELLIGENCE IN COURT PROCEEDINGS: CURRENT TRENDS AND LEGAL CHALLENGES

Tegza Oleksandr

DOI: https://doi.org/10.61345/1339-7915.2026.1.23

Annotation. The integration of artificial intelligence into court proceedings represents a pivotal transformation in the organization of judicial systems, promising significant gains in procedural efficiency while simultaneously generating fundamental legal and institutional challenges. This article examines the current state and prospects of AI implementation in Ukrainian court document management, analysing both the opportunities offered by intelligent automation and the legal tensions arising from the coexistence of paper and electronic document circulation under the Unified Judicial Information and Telecommunication System (UJITS). Drawing on the experience of Palm Beach County, Florida – where AI-powered robotic process automation classifies and files nearly a third of all electronic submissions — the article demonstrates that technologies such as optical character recognition, automated document classification, and intelligent case management systems are capable of substantially reducing the workload of court staff, accelerating procedural timelines, and enhancing access to justice. At the same time, the article documents the practical dysfunctions of Ukraine's transitional model, in which the simultaneous maintenance of parallel paper and electronic workflows has increased, rather than reduced, the burden on court personnel and created structural obstacles to the realization of the constitutional right of unhindered access to justice under Article 55 of the Constitution of Ukraine and Article 6 of the European Convention on Human Rights.

The article further analyses the normative framework governing AI in the Ukrainian judicial system, including the Concept for the Development of Artificial Intelligence in Ukraine (2020) and the CEPEJ European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems (2018), and identifies five priority domains for AI implementation: document workflow automation, judicial decision support, enhancement of access to justice, systemic transparency and anti-corruption monitoring, and process robotization. The study argues that the introduction of AI into Ukrainian court proceedings must be guided by the principles of non-discrimination, transparency, human oversight, and data security, and that full automation of judicial decision-making remains both technically premature and institutionally undesirable at the present stage. The article concludes that AI should be integrated as an organic complement to the existing judicial model rather than as a substitute for human judgment, with continuous monitoring and optimization as mandatory conditions of responsible deployment.

Key words: artificial intelligence, court proceedings, judicial document management, electronic justice, algorithmic bias, access to justice, legal regulation.

1. Problem statement.

The integration of artificial intelligence into judicial systems represents one of the most profound transformations in the history of legal institutions. Courts worldwide are increasingly adopting AI-powered tools for document management, case scheduling, legal research, risk assessment, and even decision-support in adjudication. These developments promise significant gains in procedural efficiency, consistency of outcomes, and access to justice – yet they simultaneously raise fundamental questions about the compatibility of algorithmic governance with the core principles of the rule of law: judicial independence, impartiality, transparency, the right to a fair trial, and the accountability of public power.

The tension between efficiency and fairness is not new to procedural law, but artificial intelligence introduces qualitatively new dimensions to this tension. Unlike human decision-makers, AI systems operate through processes that are frequently opaque, difficult to audit, and impossible to challenge through conventional legal mechanisms. The so-called "black box" problem, the inability of affected parties to understand, contest, or obtain a reasoned explanation for algorithmically generated outcomes, strikes at the heart of due process guarantees enshrined in Article 6 of the European Convention on Human Rights, Article 47 of the Charter of Fundamental Rights of the European Union, and equivalent provisions in national constitutional systems. When an AI tool influences the scheduling of hearings, the assessment of procedural risks, or the flagging of documents for judicial attention, the question of who bears legal responsibility for errors, biases, or discriminatory outcomes becomes acutely difficult to answer within existing frameworks of judicial accountability.

The problem is further compounded by the systemic risks of algorithmic bias. AI systems trained on historical judicial data inevitably encode the patterns, including the discriminatory patterns, embedded in that data. The widely documented case of the COMPAS recidivism prediction tool in the United States, which was found to produce racially disparate risk scores, illustrated in stark terms the potential for AI to systematically disadvantage vulnerable groups within the justice system. Similar concerns have arisen in the European context, where predictive justice tools have been deployed in France, Estonia, and the Netherlands, prompting legislative and regulatory responses whose adequacy remains contested. For Ukraine, which is simultaneously undertaking a comprehensive digitalization of its judicial system under the e-Court programme and aligning its regulatory framework with EU standards as part of its accession process, the legal challenges posed by AI in court proceedings are both practically urgent and strategically consequential.

2. Analysis of recent research and publications.

The scholarly literature on artificial intelligence in judicial proceedings has expanded rapidly over the past decade, reflecting both the acceleration of technological deployment and the growing recognition among legal scholars that existing doctrinal frameworks are inadequate to address the novel challenges posed by algorithmic governance. The field is inherently interdisciplinary, drawing on procedural law, constitutional law, legal theory, computer science, and ethics, and the literature accordingly spans a wide range of methodological approaches.

The foundational legal-theoretical contribution to the field was made by Richard Susskind, whose *Tomorrow's Lawyers* (2013) and *Online Courts and the Future of Justice* (2019) established the conceptual framework within which much subsequent scholarship operates. Susskind argued that the digitalization of justice is not merely a question of procedural reform but a transformation of the very concept of access to justice, and that AI-powered systems have the potential to democratize legal services by reducing the cost and complexity of legal proceedings for ordinary citizens. This optimistic assessment has been subjected to sustained critical scrutiny by scholars who emphasize the risks of algorithmic bias, the erosion of procedural guarantees, and the democratic deficit inherent in delegating public power to privately developed technological systems.

The problem of algorithmic bias and its implications for judicial fairness has been examined most influentially in the context of the COMPAS tool. Julia Angwin and colleagues, in their 2016 investigative analysis published by ProPublica (*Machine Bias*), documented statistically significant racial disparities in COMPAS risk scores, triggering a wave of legal and scholarly responses. The subsequent decision of the Wisconsin Supreme Court in *State v. Loomis* (2016), which upheld the use of COMPAS scores in sentencing while acknowledging the defendant's inability to challenge the proprietary algorithm, crystallized the due process tension at the heart of AI-assisted adjudication and has since become one of the most cited cases in the comparative literature on AI and justice.

The European dimension of the problem has been examined in depth by a number of scholars. Antoine Garapon and Jean Lassègue, in *Justice Digitale* (2018), provided a comprehensive analysis of the implications of predictive justice for the French legal system, arguing that algorithmic decision-support fundamentally alters the epistemic foundations of judicial reasoning and risks reducing the individualized assessment of

cases to statistical aggregation. The ethical and legal framework for AI in the judiciary was subsequently developed at the institutional level by the European Commission for the Efficiency of Justice (CEPEJ), whose *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems* (2018) established five principles – respect for fundamental rights, non-discrimination, quality and security, transparency, and user control – that have become the principal normative reference point for European comparative scholarship.

The relationship between AI and the right to a fair trial under Article 6 ECHR has been examined by Nathalie Smuha and others in the context of the EU's regulatory approach to AI, including the AI Act (Regulation (EU) 2024/1689), which classifies AI systems used in the administration of justice as high-risk and subjects them to stringent requirements of transparency, human oversight, and conformity assessment. The implications of the AI Act for judicial systems across EU Member States and candidate countries have been analysed by Deeks, Ashley, and others, who identify the principal implementation challenges: the difficulty of defining the boundary between AI decision-support and AI decision-making in judicial contexts; the tension between transparency requirements and the protection of proprietary algorithmic systems; and the institutional capacity deficits that limit the ability of courts and litigants to exercise meaningful oversight.

The specific domain of AI-assisted document management in court proceedings, including automated document classification, extraction of legally relevant information, scheduling optimization, and electronic case file management, has received comparatively less attention in the legal literature than predictive justice, despite its more immediate practical relevance. Notable contributions include the work of Kevin Ashley on AI and legal reasoning, and studies conducted under the auspices of the European e-Justice initiative, which has documented the diverse approaches to court document automation across EU Member States. The Estonian experience with AI-assisted small claims adjudication, which generated significant international attention following its announcement in 2019, has been examined by Kaidi Künnapas and others as a test case for the limits of automated decision-making in judicial contexts.

In Ukrainian legal science, scholarly engagement with AI in court proceedings remains at an early stage, reflecting both the recency of significant AI deployment in the Ukrainian judicial system and the broader underdevelopment of legal informatics as a distinct field of academic inquiry. Contributions by O. Uhrynovska, V. Prymak, and colleagues have addressed the general framework of judicial digitalization, while the specific legal challenges of AI integration have been touched upon in the context of the e-Court reform programme launched under the Strategy for the Development of the Justice System of Ukraine for 2021–2023. A comprehensive legal-theoretical analysis of AI in Ukrainian court proceedings — one that systematically addresses the compatibility of existing procedural law with algorithmic tools, the constitutional dimensions of automated judicial processes, and the alignment with EU regulatory standards under the AI Act – remains absent from the scholarly record, constituting the principal gap that the present study seeks to address.

3. The purpose of the study is to study individual opportunities and advantages of using artificial intelligence in judicial document management (using the example of Ukraine), as well as to analyze the challenges and issues associated with the implementation of this new technology.

4. Presentation of the main material.

Judicial document flow in Ukraine, as of today, includes both paper and electronic formats, which is implemented through the Unified Information and Telecommunication Judicial System [2]. The purpose of implementing the Concept of the Program for the Informatization of Local and Appeal Courts and the Project for Building a Unified Judicial Information and Telecommunication System (hereinafter referred to as the Unified Judicial Information and Telecommunication System) is:

– to form a single information space for courts, bodies and institutions in the justice system;

– to improve and optimize the information and communication infrastructure of courts, bodies and institutions in the justice system, while significantly reducing budget costs for its maintenance;

– to ensure the availability of information for participants in the judicial process and maximum transparency and openness of the justice system for society [3].

On August 17, 2021, the High Council of Justice approved the Regulation on the Unified Judicial Information and Telecommunications System, which defines the Unified Judicial Information and Telecommunications System as a set of information and telecommunication subsystems (modules) that ensure the automation of the processes of the activities of courts, bodies and institutions in the justice system specified by law, including document flow, automated case distribution, exchange of documents between the court and participants in the trial, recording of the trial and participation of participants in the trial in the court session via video conference, preparation of operational and analytical reporting, provision of information assistance to judges, as well as automation of processes that ensure the financial, property, organizational, personnel, information and telecommunication and other needs of users of the Unified Judicial Information and Telecommunications System.

Paragraph 120 of Section V. Transitional Provisions, the Regulation "On the Procedure for the Functioning of Certain Subsystems of the Unified Judicial Information and Telecommunications System" approved by the High Council of Justice No. 1845/0/15-21 dated August 17, 2021, states that before the start of the operation of the electronic document management subsystem as part of the Unified Judicial Information and Telecommunications System, the registration of documents received at the court's address (including procedural documents that may be the subject of judicial review) is carried out in the ASDS in accordance with the Regulation on the Automated Court Document Management System, approved by the decision of the Council of Judges of Ukraine dated November 26, 2010 No. 30 (as amended), and the instructions on office management. Registration of documents in other bodies and institutions of the justice system is carried out according to the rules stipulated by the relevant documents and instructions on office management, in force prior to the approval of the above-mentioned Regulation. According to paragraph 122 of the Regulation on the ESITS, until the start of the functioning of all subsystems (modules) of the ESITS, cases are considered (formed and stored) in paper form. Documents received by the court in electronic form are printed out if such an opportunity is available in the court and attached to the materials of the paper case [2].

At the same time, this means that court employees spend time and resources (paper, office equipment, etc.) to produce and form a court case in paper form.

That is, at the moment, the phased implementation does not bring the expected results from the ESITS, rather, on the contrary, the simultaneous presence of both paper and electronic circulation complicates the situation, placing an even greater burden on judges and court staff, which in turn violates the fundamental right of a person and a citizen enshrined in Article 55 of the Constitution of Ukraine [4], which regulates unhindered access to justice. According to the catalog of legal positions of the Constitutional Court of Ukraine 4.3.9.1 "The right to judicial protection, guaranteed by Article 55 of the Constitution of Ukraine, and all components of this right, in particular those that ensure access to court and determine the scope and content of the procedural rights of participants in procedural relations, must be practical and effective, and not theoretical and illusory" [5].

As practice shows, access to court is not really practical and efficient enough. Processing both paper and electronic documents requires time and resources. This means that judges and court staff spend more time processing and coordinating documents, which can lead to delays in resolving cases.

The move to electronic document circulation can also create additional difficulties for people who do not have access to the internet or do not have digital skills. This can complicate their ability to access justice, as they may have problems submitting or receiving electronic documents.

On October 18, 2023, Law of Ukraine 3200-NX entered into force in terms of amendments to the Code of Civil Procedure, the Code of Civil Procedure, and the Code of Administrative Offenses and provides that the following categories of persons must register their electronic offices in the Electronic Court: [6] lawyers, notaries, state and private executors, arbitration managers, judicial experts, state authorities, other state bodies, local governments, other legal entities (of all forms of ownership). Other persons register their electronic offices voluntarily.

Documents are received by the court through the "Electronic Court" service and procedural documents are sent from the court to the user's electronic office automatically. However, the responsible employee of the court's office must first review the submitted statement of claim and other documents, in particular, check whether all files are opened properly, whether attachments are scanned qualitatively, etc., and in case of improper registration, reject it with an indication of the reason.

This, in turn, creates an unclear and uncertain algorithm of actions for a court employee in the event of detecting a damaged electronic document, i.e. whether to refuse registration or leave it to the court's discretion in the event of, for example, the absence of a certain appendix or evidence.

The authenticity of an electronic document is certified in accordance with the Law of Ukraine "On Electronic Documents and Electronic Document Management". [7] For judges, the "Electronic Court" provides the "Judge's Office" service, with the help of which judges can review documents in the case, form court decisions, and perform other necessary actions provided for by procedural legislation.

Paper documents provided by the participants in the case during the court session and attached by the court to the case materials are entered by the responsible person into the "Electronic Recordkeeping" module in the general procedure immediately after the end of the court session or the announcement of a break in it. That is, the responsible court employee must scan the document, process it and perform actions to transfer it to the electronic office, that is, the court employee has full access to the case materials even at the stage of applying to the court. It should be noted that the regulatory acts do not properly regulate the procedural status of such an employee. [8]

So as a result, we get a partial implementation of electronic justice where judges are additionally obliged to distinguish at the stage of considering the issue of opening proceedings, whether a person is a public or private form of ownership, to separate private and public law persons and the corresponding consequences of the lack of registration of such persons in the ESITS subsystem. In one case, to leave without action, and in others, to open proceedings. (CPC of Ukraine, CAS of Ukraine, CPC of Ukraine).

It should be noted that the staff must analyze incoming documents through the ESITS, distinguishing the type of procedural document, that is, actually process the content and attribute the document to a particular type and subsequently transfer it to the court for consideration.

In addition, one should not forget about the official electronic mailbox of the court, which, in accordance with the Regulations on the Procedure for Using Local Computer Network Resources in the State Judicial Administration of Ukraine, Territorial Departments of the State Judicial Administration of Ukraine, Local and Appeal Courts of General Jurisdiction [9] is also processed by the relevant employee of the court staff.

As for individuals, the right to send and receive documents in paper form remains possible. Again, with further processing by the relevant court employee.

It is worth saying that the implementation date of the "Electronic Archive" module remains unknown, that is, everything that is added to the electronic case will eventually have to be printed and transferred to the paper archive for storage in accordance with the current instructions on court records [10].

That is, the task in the long term is to maximally transfer the court's document flow to an electronic format, but in practice it still looks like the existence of electronic and paper document flow in parallel, which accordingly increases the workload on court employees, and the terms when the electronic format will be used have not been determined. In addition, court employees also process incoming correspondence that arrives at the court, that is, the above-mentioned work requires a huge amount of human resources and time, even taking into account the fact that some of the documents are in electronic format.

However, it is worth noting certain elements of automation, such as automatic generation of court summonses in accordance with the scheduled date of the court session. Automatic sending of procedural documents to the parties, if there is an electronic office and SMS messages. Construction of statistical reporting based on cases in the court database.

The electronic justice system as a way of organizing state power using information networks is designed to ensure the functioning of government bodies in real time and make daily communication with them as simple and accessible as possible for citizens, legal entities, and non-governmental organizations. That is, to ensure unhindered access to justice guaranteed by Article 55 of the Constitution of Ukraine and Article 6 of the European Convention on Human Rights.

Summing up the real state of affairs, we can conclude that the proposed Unified Information and Telecommunications System actually has the functions of document digitization, and limited automation and no analytical capabilities that would facilitate the work of court staff, and the partial introduction and constant postponement of the start of work of the listed modules, on the contrary, greatly complicated it, which in turn led not to improvement, but, in some cases, to deterioration in the implementation of the human and citizen's right to access justice. Since a significant part of the judicial process has not yet been "digitized" and it is impossible to remotely access the entire case of some categories. At the same time, it is worth emphasizing that the lack of access to computer technology and the Internet for a significant part of the population generally makes it impossible to use the concept of "court in a smartphone."

With the development of computational linguistics and computer science, the rapid development of intelligent machines began, which are capable of performing tasks that usually require human intelligence [15]. Legal regulation of AI in Ukraine is quite limited, currently, in particular, there is a concept for the development of artificial intelligence in Ukraine, approved by the Cabinet of Ministers Resolution No. 1556-r dated 02.12.2020. [1] In which the definition of artificial intelligence was first proposed as an organized set of information technologies, with the use of which it is possible to perform complex complex tasks by using a system of scientific research methods and algorithms for processing information obtained or independently created during work, as well as create and use your own knowledge bases, decision-making models, algorithms for working with information and determine ways to achieve the set tasks.

The concept also identifies priority areas in which the tasks of the state policy for the development of the field of artificial intelligence are implemented, namely: education and vocational training, science, economy, cybersecurity, information security, defense, public administration, legal regulation and ethics, justice.

To achieve the goal of the Concept in the field of justice, the following tasks should be ensured: further development of existing technologies in the field of justice (Single Judicial Information and Telecommunications System, Electronic Court, Single Register of Pre-trial Investigations, etc.);

– implementation of advisory programs based on artificial intelligence, which will open access to legal advice to wide segments of the population;

– prevention of socially dangerous phenomena by analyzing available data using artificial intelligence;

– determination of necessary measures for the resocialization of convicts by analyzing available data using artificial intelligence technologies;

– rendering court decisions in cases of minor complexity (by mutual consent of the parties) based on the results of the analysis carried out using artificial intelligence technologies, the state of compliance with the law and judicial practice. Provided that the procedure for rendering a decision (or a draft decision, or variants of draft decisions) using AI is legally enshrined.

The development and implementation of artificial intelligence technologies in the judicial systems of leading countries in the world contributed to the need to develop uniform principles and rules for their use. In December 2018, the European Commission for the Efficiency of Justice adopted the "Ethical Charter" on the use of artificial intelligence in judicial systems and their environment [11], which was the first step of the European Commission for the Efficiency of Justice to promote the responsible use of AI in the European judicial system in accordance with the values of the Council of Europe, such as:

– registers in the process of administering justice;

– non-discrimination, namely the prevention of any discrimination between individuals or groups of individuals;

– quality and security, concerning the processing of judicial decisions and data in a secure technological environment;

– the principle of "under user control";

– transparency, impartiality and fairness [11].

The potential for AI in the field of judicial document management promises to change the paradigm of the work of courts and the court. Kicking off the widespread use of artificial intelligence in the legal field.

One of the oldest AI technologies that can and should be implemented into an existing system, in our opinion, is optical character recognition (OCR), an electronic process used to capture information from printed, handwritten, or typed text. Its origins date back to the early 20th century in "reading machines" for the blind and devices used to encode telegraph messages. The United States Postal Service has been using OCR, rather than humans, to sort mail for at least a decade. Smartphone apps use the same basic technology to capture information from paper checks that are deposited digitally. With increasingly advanced OCR, it is now possible to decipher handwriting to identify the payee and amount, as well as the bank information, routing code, and account number encoded at the bottom of paper checks—the few that are still written. Of course, OCR is one of those AI technologies that has become so widespread that many experts no longer consider it AI. In Palm Beach County, Florida, OCR is used to scan incoming electronic documents for automatic filing. The system checks the case number and extracts and collates the document title along with other relevant information, which is then automatically fed into the court's case management system. [12] In Palm Beach County, Florida, AI-powered software classifies and files electronic documents that are received electronically. The court started with three types of low-risk, high-volume cases, gradually expanding the variety and complexity of cases as it gained experience using robotic process automation (RPA or Bot) technology. The bots, each with a name and username, classify incoming electronic filings, extract information from marked fields, and log them into the court's case management system. Today, 68 types of cases are automatically logged, representing nearly a third of all electronic filings in Palm Beach County. When the court first launched the system, humans reviewed 100% of the bots' work to confirm its accuracy (human "in the loop"). This turned out to be more about reassuring people than quality assurance: bots make fewer mistakes than human clerks, and bot errors are ultimately an indicator of a human programming or setup error. Once errors are caught and corrected (human "in the loop"), the bot never repeats that error (which most humans would not be able to say for themselves). Humans now review 15% of all filings that were logged by either a bot or a human. As bot handlers became more proficient in using the software, the bots were given increasingly complex tasks. Using "learning by example," the bots learned to recognize and process certain types of submissions that have additional requirements. The bots find information about the judge assigned to these cases and automatically send the appropriate documents (a human "out of the loop"). [12]

As we can see, AI can help automate and facilitate many processes related to the processing of court documents, from searching and analyzing legal information to automatically classifying and archiving documents. That is, a huge part of the work currently performed by court staff, including paper work, can be completely automated and accelerated thanks to the ability to analyze and read documents. In a matter of seconds, an incoming document can be qualified and attached to an electronic file, immediately notifying the presiding judge of the case.

In our opinion, the use of AI in the document flow system of the public sector, the court and the functioning of judicial institutions in general in Ukrainian conditions will be able to improve and simplify the work of employees, namely in the system:

1. Document flow automation: automatic generation of documents; document analysis; document translation; text recognition; electronic archive.

2. Support for judges and other participants in the judicial process: forecasting the outcomes of cases; selection of precedents; preparation for court hearings; text-based speech evaluation; data visualization.

3. Increasing the accessibility of justice: creating online services; automated translation; creating chatbots.

4. Increasing the efficiency and transparency of the judicial system: analysis of case law; monitoring of court cases; assessment of corruption risks; increasing public reporting.

5. Other opportunities: using robots for routine tasks; using virtual reality.

It is important to note that the implementation of AI in Ukrainian courts will require careful planning, coordination and resource provision in order to take into account the ethical aspects and risks associated with the use of AI in the judicial system.

Given the above, it is worth noting that in Ukraine today there are numerous legal and practical prerequisites for the implementation of elements of artificial intelligence (AI) in justice. In parallel, the implementation of AI in Ukrainian justice should adhere to the basic principles laid down in the Ethical Charter for the Use of AI in the Judicial System and its Environment, as well as in the White Paper [13] on Artificial Intelligence, which regulates the framework that can be used to ensure that the development and application of AI takes place in a way that promotes the public good, protects the rights and freedoms of citizens, and encourages innovation and economic development.

It is important to note that the introduction of AI into the judicial process is possible only if its technical level guarantees: strict observance of fundamental human rights; prevents any form of discrimination between individuals or groups of individuals; ensures transparency, impartiality and fairness in the consideration of cases; protects the confidentiality of electronic communications and the processing of personal data; guarantees technical and software reliability and security, both for individuals and for society as a whole.

5. Conclusions.

Based on the above, the following can be summarized:

The use of artificial intelligence in the judicial process at the present stage should not be the creation of a new model of relations based on granting workers the authority to apply the law, but the organic inclusion of digital technologies into the existing model of judicial proceedings.

The introduction of artificial intelligence into judicial activity is a matter of time, and the issue of theoretical development of the use of such an innovation remains open. This could be the first step towards building a legal model for using a "robot" as a judge in cases with a simple plot of the dispute.

Using artificial intelligence to identify and analyze patterns in existing decisions, predict future "patterns" of decisions, and create innovative tools to achieve ambitious improvements in fair trial.

It is important to consider that it is currently completely impossible (and even undesirable) to completely exclude humans from the judicial decision-making system. Artificial intelligence systems must be constantly monitored, trained, and optimized - just like human processes - to ensure appropriate results.

References:

1. Cabinet of Ministers of Ukraine. (2020, December 2). Pro skhvalennia Kontseptsii rozvytku shtuchnoho intelektu v Ukraini [On approval of the Concept for the development of artificial intelligence in Ukraine] (Order No. 1556-r). https://zakon.rada.gov.ua/laws/show/1556-2020-%D1%80#Text

2. High Council of Justice of Ukraine. (2021, August 17). Pro zatverdzhennia Polozhennia pro poriadok funktsionuvannia okremykh pidsystem Yedynoi sudovoi informatsiino-telekomunikatsiinoi systemy

[On approval of the Regulation on the procedure for the functioning of certain subsystems of the Unified judicial information and telecommunication system] (Decision No. 1845/0/15-21). https://zakon.rada.gov.ua/rada/show/v1845910-21#Text

3. State Judicial Administration of Ukraine. (2022, June 14). Pro zatverdzhennia haluzevoi Prohramy informatyzatsii mistsevykh ta apelliatsiinykh sudiv i proektu pobudovy Yedynoi sudovoi informatsiino-telekomunikatsiinoi systemy na 2022–2024 roky [On approval of the sectoral Programme for informatization of local and appellate courts and the project for the construction of the Unified judicial information and telecommunication system for 2022–2024] (Order No. 178). https://zakon.rada.gov.ua/rada/show/v0178750-22#Text

4. Verkhovna Rada of Ukraine. (1996, June 28). Konstytutsiia Ukrainy [Constitution of Ukraine] (Law No. 254к/96-VR). Vidomosti Verkhovnoi Rady Ukrainy, 30, Art. 141.

5. Constitutional Court of Ukraine. (n.d.). Kataloh yurydychnykh pozytsii Konstytutsiinoho Sudu Ukrainy. Dostup do sudu [Catalogue of legal positions of the Constitutional Court of Ukraine. Access to court]. https://ccu.gov.ua/storinka-knygy/4391-dostup-do-sudu

6. Verkhovna Rada of Ukraine. (2020, December 8). Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo oboviazkovoi reiestratsii ta vykorystannia elektronnykh kabinetiv v Yedynii sudovii informatsiino-telekomunikatsiinii systemi abo yii okremii pidsystemi (moduli), shcho zabezpechuie obmin dokumentamy [On amendments to certain legislative acts of Ukraine regarding mandatory registration and use of electronic accounts in the Unified judicial information and telecommunication system] (Law No. 1081-IX). https://zakon.rada.gov.ua/laws/show/3200-20#Text

7. Verkhovna Rada of Ukraine. (2003, May 22). Pro elektronni dokumenty ta elektronnyi dokumentoobih [On electronic documents and electronic document circulation] (Law No. 851-IV). Vidomosti Verkhovnoi Rady Ukrainy, 36, Art. 275. https://zakon.rada.gov.ua/laws/show/851-15#Text

8. Shevchenko, A. V. (2019). Pravovyi status pratsivnykiv aparatu sudu [Legal status of court staff employees]. Prykarpatskyi yurydychnyi visnyk, 2(4(29)), 198–202. https://doi.org/10.32837/pyuv.v2i4(29).463

9. State Judicial Administration of Ukraine. (2013, December 17). Pro zatverdzhennia Polozhennia pro poriadok vykorystannia resursiv lokalnoi obchysliuvalnoi merezhi v Derzhavnii sudovii administratsii Ukrainy, terytorialnykh upravlinniakh Derzhavnoi sudovoi administratsii Ukrainy, mistsevykh ta apelliatsiinykh sudakh zahalnoi yurysdyktsii [On approval of the Regulation on the procedure for the use of local area network resources in the State Judicial Administration of Ukraine] (Order No. 164). https://zakon.rada.gov.ua/rada/show/v0164750-13#Text

10. State Judicial Administration of Ukraine. (2019, August 20). Pro zatverdzhennia Instruktsii z dilovodstva v mistsevykh ta apelliatsiinykh sudakh Ukrainy [On approval of the Instructions on records management in local and appellate courts of Ukraine] (Order No. 814). https://zakon.rada.gov.ua/rada/show/v0814750-19#n1748

11. Council of Europe, European Commission for the Efficiency of Justice (CEPEJ). (2018). European ethical charter on the use of artificial intelligence in judicial systems and their environment. Council of Europe. https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c

12. Joint Technology Committee (JTC). (2020). Introduction to AI for courts (Version 1.0). Conference of State Court Administrators; National Association for Court Management; National Center for State Courts. https://ncsc.contentdm.oclc.org/digital/collection/tech/id/1191/

13. European Commission. (2020, February 19). White paper on artificial intelligence — A European approach to excellence and trust (COM(2020) 65 final). https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf

14. Heorhiievskyi, Yu. V. (2020). Propozytsii shchodo pravovoho zabezpechennia zakhystu informatsii u Yedynii sudovii informatsiino-telekomunikatsiinii systemi [Proposals on legal support for information protection in the Unified judicial information and telecommunication system]. Yurydychnyi naukovyi elektronnyi zhurnal, 3, 204–208. https://doi.org/10.32782/2524-0374/2020-3/49

15. Wikipedia. (n.d.). Shtuchnyi intelekt [Artificial intelligence]. https://uk.wikipedia.org/wiki/%D0%A8%D1%82%D1%83%D1%87%D0%BD%D0%B8%D0%B9_%D1%96%D0%BD%D1%82%D0%B5%D0%BB%D0%B5%D0%BA%D1%82

16. Bielov, D. M., & Bielova, M. V. (2023). Shtuchnyi intelekt v sudochynstvi ta sudovykh rishenniakh, potentsial ta ryzyky [Artificial intelligence in court proceedings and judicial decisions: potential and risks]. Naukovyi visnyk UzhNU. Seriia «Pravo», 78(4/2), 315–320. https://dspace.uzhnu.edu.ua/server/api/core/bitstreams/fafa59db-d18b-4044-84f6-dff66b3102a3/content

Oleksandr Tegza,
Postgraduate Student, Department of Constitutional Law and Comparative Law,
Faculty of Law,
Uzhhorod National University
ORCID: 0009-0004-9501-1606

LEGAL REGULATION OF RENTAL RELATIONS AND ITS IMPACT ON REAL ESTATE INVESTMENT ATTRACTIVENESS IN THE UNITED STATES

Vitychuk Mykhailo

DOI: https://doi.org/10.61345/1339-7915.2026.1.24

Annotation. The purpose of this study is to examine the legal regulation of rental relations in the United States and to determine its influence on the investment attractiveness of the real estate market. The study focuses on the institutional features of the American legal system, including the federal structure of regulation, the distribution of powers between federal, state and local authorities, and the role of judicial practice in shaping landlord–tenant relations.

The methodological basis of the study is formed by a combination of general scientific and special legal research methods. The research is based on doctrinal legal analysis, comparative legal analysis and elements of the law and economics approach. The study also involves the analysis of academic literature, judicial doctrines, federal legislative acts and analytical reports concerning housing policy and the functioning of the rental housing market in the United States.

Results. The research demonstrates that legal regulation of rental relations constitutes an important institutional factor influencing the investment attractiveness of real estate. The federal nature of the U.S. legal system leads to substantial differentiation of regulatory regimes among states and municipalities, which creates varying investment conditions across regional markets. Judicial doctrines, particularly the implied warranty of habitability, play a significant role in shaping the balance between landlords' obligations and tenants' rights, affecting the operational costs and legal risks associated with property ownership. At the same time, regulatory mechanisms such as rent control, eviction procedures and tenant protection standards influence investors' behavior and the structural development of the housing market.

Conclusions. The study concludes that the predictability of the legal environment, effective protection of property rights and stability of regulatory policy represent key determinants of investment attractiveness in the rental real estate sector. The interaction between legal regulation and economic conditions forms a complex institutional framework that significantly influences the development and long-term stability of the rental housing market in the United States.

Key words: legal regulation, rental relations, real estate market, investment attractiveness, housing policy, United States.

1. Introduction.

The regulation of rental relations is an important element of the legal framework governing the real estate market and plays a significant role in shaping investment attractiveness. Investors in the real estate sector interact not only with physical assets but also with the legal environment that determines the stability of income, the level of regulatory risks, and the predictability of contractual relations. Legal rules governing rental relations influence the protection of property rights, the balance between landlords and tenants, and the overall functioning of the housing market.

The United States provides an illustrative example for examining the relationship between rental regulation and investment attractiveness. Due to the federal structure of the state, the regulation of rental relations is characterized by significant diversity, since key rules are established at the federal, state, and local levels. Differences in eviction procedures, rent control mechanisms, housing standards, and other legal requirements create varying conditions for investment activity in different jurisdictions. Therefore, the analysis of the legal regulation of rental relations in the United States makes it possible to better understand how legal factors influence the investment attractiveness and development of the real estate market.

2. Analysis of scientific publications.

The issues of legal regulation of rental relations and the functioning of the real estate market have been widely studied in modern legal and economic literature. A significant number of scientific works are devoted to the influence of regulatory policy on the housing market, the development of rental housing, and the investment attractiveness of real estate. In particular, research by A. Saiz demonstrates that the supply of housing is significantly influenced by a combination of geographical and regulatory constraints, including zoning rules and land use regulations, which may limit the development of housing construction and affect rental prices. Other scholars, such as E. Glaeser and J. Gyourko, emphasize the role of regulatory restrictions and zoning policies in shaping housing affordability and the structure of the housing market.

A separate group of studies focuses on the impact of tenant protection mechanisms and rent control policies on market dynamics. In particular, R. Diamond, T. McQuade and F. Qian analyze how the expansion of rent control regulations affects tenants, landlords, and investment incentives in the housing market. At the same time, legal scholars such as M. Glendon and P. Franzese examine the evolution of landlord–tenant law and the role of judicial doctrines, including the implied warranty of habitability, in shaping modern rental relations. Despite the considerable number of studies devoted to housing policy and rental regulation, the comprehensive analysis of the relationship between legal regulation of rental relations and the investment attractiveness of the real estate market in the United States remains insufficiently explored in legal scholarship.

3. The aim of the work.

The legal regulation of rental relations in the United States represents an important institutional factor influencing the investment attractiveness of residential and commercial real estate. The aim of the work is to analyze the legal regulation of rental relations in the United States and to determine its impact on the investment attractiveness of the real estate market. Particular attention is paid to the institutional features of the American legal system, including the federal structure of regulation, the role of state and local legislation, and the influence of judicial doctrines on landlord–tenant relations. The study also seeks to identify the key legal mechanisms that shape the balance between landlords' and tenants' rights and influence the behavior of investors in the rental housing market.

4. Review and discussion.

In this area, an investor operates not only with the physical asset itself but also with the predictability of cash flow, compliance costs, the duration of enforcement procedures, and the level of legal risk within a particular jurisdiction. In this sense, rental relations constitute the core operational framework of an investment, since they determine the speed at which the asset generates income, the effectiveness of legal protection available to the owner, and the costs arising from housing quality requirements, anti-discrimination standards, and lease termination procedures.

A distinctive feature of the United States is the multi-level nature of its legal regime, which follows from its federal structure. The absence of a single federal code governing rental relations means that the principal parameters of leasing are defined by state law and, in some cases, further specified by municipal or county regulations. As a result, an investor must assess not an abstract «U.S. market,» but rather the specific

legal profile of a particular state, including lease rules, eviction procedures, security deposit regulation, habitability standards, and the practical trajectory of court disputes. From an investment perspective, this differentiation is significant because housing supply depends not only on market demand but also on legal and structural constraints.

Empirical studies show that housing supply is largely shaped by a combination of physical and regulatory limitations, which means that the legal environment affects not only the rules of tenancy but also the broader conditions of investment, including market scarcity and the long-term dynamics of rents [1, p. 1255–1256].

For this reason, the regulation of rental relations in the United States functions as a systemic determinant of investment attractiveness, as it sets the parameters of income predictability and risk management. This issue is particularly visible in jurisdictions where regulation directly affects owners' incentives and market behavior. Empirical research on rent control demonstrates that stronger tenant protection may simultaneously benefit incumbent tenants while influencing the supply of rental housing, thereby creating a specific profile of risks and incentives for landlords and investors [2, p. 3365; 10, p. 129–130]. Accordingly, the investment value of rental real estate cannot be reduced to nominal ownership rights alone; it also depends on the regulatory burden imposed on the management and monetization of the asset.

The federal nature of the U.S. legal system determines the overall architecture of rental regulation. Most rules governing the conclusion of lease agreements, the parties' obligations, rent adjustments, deposit requirements, and termination procedures are established at the state level. Federal law intervenes primarily in matters of nationwide importance, including anti-discrimination, access to housing, and federal rental assistance policies. In practical terms, this means that the legal regime of tenancy may differ substantially from one state to another. Such differences are reflected in notice periods, the maximum amount of security deposits, repair obligations, and restrictions on rent increases. From the standpoint of investment strategy, this makes a prior legal assessment of the relevant jurisdiction an indispensable stage of due diligence. Studies in the economics of real estate confirm that regulatory differences between states and cities are among the key factors shaping the spatial distribution of investment and the affordability of housing [3, p. 3].

A certain degree of partial unification nevertheless exists in U.S. rental law through the use of model legislative acts. The best known of these is the Uniform Residential Landlord and Tenant Act, which was designed as guidance for state legislatures and contributed to the formation of baseline standards governing the rights and obligations of landlords and tenants [4]. Although this Act is not binding at the federal level, its provisions have been adopted or adapted in a considerable number of states, thereby creating a degree of consistency within the legal framework. The significance of such model legislation lies not only in normative harmonization but also in the reduction of transaction costs. Investors operating in several regional markets gain the possibility of using comparable contractual models and standardized approaches to asset management. In economic terms, such hidden standardization improves the operational efficiency of investment portfolios and reduces legal uncertainty.

Another fundamental feature of U.S. rental regulation is the decisive role of judicial practice. Case law does not merely interpret statutes; it also shapes a substantial part of the behavioural standards applicable to lease relations. Scholarly research has demonstrated that modern landlord-tenant law emerged through the gradual development of judicial doctrines that transformed the traditional conception of leaseholds as purely property-based arrangements into a more complex system of reciprocal obligations [5, p. 504]. One of the most important examples is the doctrine of the implied warranty of habitability. This doctrine requires the landlord to provide premises fit for human habitation even where such an obligation is not expressly stated in the lease. Legal scholarship rightly regards this doctrine as one of the central instruments of tenant protection, although its practical implementation may be complicated by procedural barriers and the limited awareness of tenants regarding their rights [6, pp. 20–21].

The introduction of the implied warranty of habitability substantially changed the economic model of rental relations. Owners are required to internalize the costs of maintaining the premises in proper condition, carrying out repairs, and modernizing infrastructure. Although this increases operational expenditures, it

also contributes to a more stable and predictable housing market. From an investment perspective, legally enforceable quality standards strengthen tenant confidence and, over the long term, enhance the liquidity and resilience of rental assets. This development reflects the broader transformation of American lease law, where the lease agreement is no longer treated as a mere transfer of possession but rather as a complex obligatory relationship structured by both contractual autonomy and mandatory statutory standards [5, pp. 503–505].

The lease contract remains the central legal mechanism through which rental relations operate in the United States. Through the contract, the parties determine the conditions of use, payment obligations, liability for damage, maintenance duties, and grounds for termination. At the same time, freedom of contract in residential leasing is limited by mandatory legal requirements that cannot be waived by agreement, particularly with regard to minimum housing conditions, the return of deposits, and eviction procedures. Such limitations are intended to preserve a reasonable balance between landlords' and tenants' interests and to ensure the stable functioning of the housing market. In this regard, U.S. law treats housing not only as an object of private circulation but also as a socially significant good, which justifies the existence of anti-discrimination guarantees and minimum standards of habitability. The Fair Housing Act is a key federal instrument in this sphere, prohibiting discrimination in housing on grounds such as race, colour, religion, sex, familial status, and national origin.

At the same time, tenant protection mechanisms inevitably affect the incentives of market participants. Excessive regulatory rigidity may reduce investment activity, whereas a balanced model can preserve social stability without destroying market incentives. Empirical studies of rent control confirm that tighter rent regulation may alter the structure of the housing stock and influence owners' decisions to retain, convert, or sell rental property [2, p. 3365; 8, p. 3]. Conversely, the removal of rent control has also been shown to reshape market behaviour and property values, which indicates that rent regulation remains one of the most sensitive legal variables for investors in the housing sector [10, pp. 129–131]. Thus, long-term investment attractiveness depends not on the absolute predominance of either landlord or tenant interests, but on the existence of a legal framework that is stable, intelligible, and economically sustainable.

Procedural regulation of lease termination is of particular importance for the investment attractiveness of rental real estate in the United States. For a landlord, it is not sufficient merely to possess a formal right to terminate the lease; what is decisive is the practical ability to recover possession of the property within a reasonable period and in compliance with due process requirements. U.S. law generally subjects eviction to strict procedural rules, and even minor defects in notice or timing may lead a court to dismiss the landlord's claim [7, p. 24]. From an investor's standpoint, the importance of eviction procedures lies not only in the legal possibility of reclaiming the premises, but also in the time required to enforce that right. Lengthy proceedings may result in lost rental income, increased maintenance costs, and reduced liquidity of the asset. For this reason, institutional investors attach great importance to the procedural legislation and judicial practice of a particular jurisdiction before entering a regional market.

Procedural predictability is therefore one of the most important determinants of investment attractiveness in the rental housing sector. An investor may adapt to relatively high taxes or strict maintenance standards, but uncertainty as to the duration of litigation and the risk of prolonged inability to repossess the premises creates much more serious threats to investment planning. Research in housing policy likewise shows that long-term investment in rental housing depends substantially on the clarity of regulatory rules, the availability of judicial protection, and the predictability of public housing policy [9, p. 12]. Where legal rules remain stable and their judicial application is reasonably consistent, investors are better able to forecast future cash flows, evaluate project payback periods, and secure long-term financing. This partly explains why institutional actors, including pension funds and real estate investment vehicles, remain active in the U.S. rental market.

The protection of property rights forms another fundamental condition for the functioning of the real estate market and for the attractiveness of investment in rental assets. In the United States, this principle has a constitutional foundation and is reinforced by developed judicial remedies. Effective legal protection significantly reduces legal risk, since the investor may rely on judicial redress in the event of unlawful interference with ownership or use rights. Legal scholarship has repeatedly emphasized that U.S. real

estate regulation traditionally seeks to preserve a balance between public interests and the rights of owners, thereby preventing excessive interference with economic activity [8, p. 3]. This balance is especially relevant in the context of rent regulation, because measures presented as social regulation may, under certain conditions, generate effects comparable to regulatory takings. For investors, the significance of such doctrines lies in the fact that legal certainty regarding the limits of state intervention directly influences confidence in long-term investment strategies.

Tax regulation also affects investment decisions in the real estate sector. In the United States, the taxation of rental income is structured in a way that often allows owners to deduct maintenance costs, depreciation, interest payments, and other operational expenses. Such mechanisms reduce the effective tax burden and improve the profitability of investment in rental housing. Economic analysis demonstrates that tax subsidies and related fiscal instruments may substantially influence investment structures and redirect capital toward particular segments of the housing market [11, p. 729]. At the same time, not only the level of taxation but also the stability of tax rules matters. Investors in rental real estate typically operate with long time horizons, and abrupt changes in tax policy may significantly alter the financial profile of investment projects. Conversely, a predictable tax regime facilitates long-term market development and supports broader access to financing.

An additional element of investment attractiveness is risk management. Investors in the U.S. real estate market commonly rely on insurance products covering property damage, third-party liability, and business interruption. Together with legal due diligence, such instruments reduce exposure to both operational and regulatory risk. A careful pre-acquisition review of title, existing lease agreements, technical conditions, and the relevant local regulatory framework remains standard practice in the American market. This allows investors to identify legal and financial risks at an early stage and to make more informed decisions. In broader terms, the combination of legal predictability, financial safeguards, and professional asset management forms the basis for relatively stable returns at an acceptable level of risk, which is precisely what makes rental real estate an attractive investment class.

A characteristic feature of the U.S. rental market is the substantial differentiation of legal regulation between states and even municipalities. States retain broad powers in housing policy and land-use regulation, and as a result, investors face divergent requirements concerning lease terms, eviction procedures, housing maintenance standards, and rent regulation. Research in real estate economics confirms that regulatory constraints, especially zoning and land-use controls, materially affect housing supply and market structure [1, p. 1254; 3, p. 3]. Restrictions on construction and burdensome approval procedures may limit the expansion of the housing stock and increase rental prices, thereby altering investor behaviour and redirecting capital toward other regions. Conversely, more liberal jurisdictions may stimulate development and attract investment by allowing faster project implementation and greater flexibility in rent setting. This is why geographic diversification has become a common strategy among large investors operating in the U.S. housing sector.

In this respect, regional variation in legal regulation should not be viewed solely as a problem. It also reflects a form of regulatory competition among states and municipalities, allowing investors to select jurisdictions with the most favourable balance between risk and return. At the same time, such diversity reinforces the importance of precise legal analysis, because the investment attractiveness of rental real estate in the United States depends not on a uniform national model, but on the concrete interaction between local legal rules, judicial practice, fiscal policy, and market conditions. Accordingly, the U.S. experience demonstrates that rental regulation influences investment attractiveness not only through direct legal constraints, but also through its effect on market structure, transaction costs, and the predictability of asset management over time.

5. Conclusions.

This study demonstrates that the legal regulation of rental relations constitutes a fundamental institutional factor shaping the investment attractiveness of real estate in the United States. Unlike purely economic determinants, legal regulation directly affects the stability of rental income, the distribution of risks between

market participants, and the predictability of asset management over the long term. Consequently, investors in the real estate sector must evaluate not only market indicators but also the legal environment governing rental relations within a particular jurisdiction.

One of the defining characteristics of the U.S. regulatory framework is its federal structure, under which the principal rules governing lease agreements, eviction procedures, deposit requirements, and housing standards are established primarily at the state level and often supplemented by local regulations. This multi-level system produces substantial variation in regulatory regimes between states and municipalities, thereby creating different investment conditions across regional markets. As a result, legal analysis of the relevant jurisdiction becomes an essential component of investment decision-making in the rental housing sector.

The study also confirms the significant role of judicial doctrines and case law in shaping the modern structure of landlord–tenant relations. Doctrines such as the implied warranty of habitability have transformed the traditional conception of leaseholds from a purely property-based arrangement into a more complex system of reciprocal obligations. While such doctrines increase the operational responsibilities of property owners, they simultaneously contribute to the formation of minimum housing standards and greater trust in the rental market, which may strengthen its long-term stability.

At the same time, regulatory instruments such as rent control, eviction procedures, tenant protection standards, and zoning policies exert a substantial influence on the behaviour of investors and the structural development of the housing market. Empirical research indicates that changes in these regulatory mechanisms can alter the incentives of property owners, affect housing supply, and reshape the structure of rental markets. Therefore, the investment attractiveness of rental real estate depends not only on property rights protection but also on the overall balance between regulatory restrictions and economic incentives.

The findings of this study indicate that the predictability and consistency of the legal environment play a decisive role in maintaining investment activity in the rental housing sector. Stable legal rules, coherent judicial practice, and transparent regulatory policies reduce legal uncertainty and allow investors to plan long-term projects, attract financing, and manage assets more efficiently. Conversely, excessive regulatory volatility or procedural uncertainty may significantly increase investment risks and weaken market development.

The U.S. experience demonstrates that the interaction between legal regulation and economic conditions forms a complex institutional framework that determines the functioning and long-term stability of the rental real estate market. Effective protection of property rights, balanced tenant protection mechanisms, and a predictable regulatory environment together create the legal foundations necessary for sustainable investment in rental housing.

References:

1. Saiz, A. (2010). The geographic determinants of housing supply. *The Quarterly Journal of Economics*, *125*(3), 1253–1296. https://dash.harvard.edu/bitstream/handle/1/12336468/Saiz_QJE_2010.pdf

2. Diamond, R., McQuade, T., & Qian, F. (2019). The effects of rent control expansion on tenants, landlords, and inequality. *American Economic Review*, *109*(9), 3365–3394. https://doi.org/10.1257/aer.20181289

3. Glaeser, E. L., & Gyourko, J. (2002). *The impact of zoning on housing affordability* (NBER Working Paper No. 8835). National Bureau of Economic Research. https://www.nber.org/system/files/working_papers/w8835/w8835.pdf

4. National Conference of Commissioners on Uniform State Laws. (1972). *Uniform residential landlord and tenant act*. https://www.uniformlaws.org

5. Glendon, M. A. (1974). The transformation of American landlord-tenant law. *Boston College Law Review*, *23*(3), 503–535. https://lira.bc.edu/en/downloads/g25g0-xfx56/23_3_503.pdf

6. Franzese, P. A., Gorin, A., & Guzik, D. J. (2016). The implied warranty of habitability lives. *Rutgers University Law Review*, *69*, 1–46. https://www.rutgerslawreview.com/wp-content/uploads/2017/07/Franzese-Gorin-Guzik-The-Implied-Warranty-of-Habitability-Lives-69-Rutgers-UL-Rev-1-2016.pdf

7. Freedman, A. M. (2021). Eviction sealing. *Hastings Law Journal*, *73*. https://www.hastingslawjournal.org/wp-content/uploads/D-Article-Freedman.pdf

8. *Review*, *8*(3). https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1388&context=elr

9. U.S. Government Accountability Office. (2018). *Rental housing: As federal rental assistance programs expand, HUD should improve data on tenant outcomes* (GAO-18-637). https://www.gao.gov/assets/gao-18-637.pdf

10. Sims, D. P. (2007). Out of control: What can we learn from the end of Massachusetts rent control? *Journal of Urban Economics*, *61*(1), 129–151. https://doi.org/10.1016/j.jue.2006.06.004

11. Poterba, J. M. (1984). Tax subsidies to owner-occupied housing: An asset-market approach. *The Quarterly Journal of Economics*, *99*(4), 729–752. https://www.nber.org/system/files/working_papers/w1032/w1032.pdf

Mykhailo Vitychuk,
Real Estate Lawyer
ORCID: 0009-0008-6951-0910

PARTIES EMPOWEREMENT IN INHERITANCE CONTRACTS: COMPARATIVE PERSPECTIVES FROM NATIONAL AND EUROPEAN LAW

Vozniakovska Kristina, Kiriiak Oksana

DOI: https://doi.org/10.61345/1339-7915.2026.1.235

Annotation. This study examines the evolving judicial approach to inheritance contracts, highlighting a shift toward empowering parties while balancing fairness, legal certainty, and contractual autonomy. Courts increasingly employ a combination of traditional doctrines and modern evidentiary techniques to evaluate performance, non-performance, and material breaches, allowing nuanced, context-sensitive adjudication. European jurisprudence, particularly the ECtHR and CJEU, provides comparative guidance, reinforcing principles of proportionality, protection of legitimate expectations, and respect for fundamental rights. The convergence of national and European standards fosters a coherent, predictable, and equitable framework for resolving inheritance disputes. By integrating these approaches, judicial practice not only safeguards individual rights but also supports the stable development of succession law in line with contemporary European norms. Ultimately, this approach demonstrates that contractual autonomy and equitable oversight are complementary, reinforcing both legal certainty and social justice in the domain of inheritance law.

Key words: inheritance contracts, contractual empowerment, comparative european jurisprudence, contractual autonomy, european succession law.

1. Introduction.

Inheritance contracts occupy an increasingly central and multifaceted position within the framework of contemporary succession law, functioning not merely as instruments of property transfer but as sophisticated legal mechanisms that reconcile private autonomy with public law imperatives. These contracts represent a deliberate exercise of individual volition, whereby parties articulate and structure the disposition of rights and obligations in anticipation of succession events, while simultaneously subjecting their agreements to the constraints imposed by overarching legal norms. This dual function situates inheritance contracts at the intersection of personal freedom and regulatory oversight, requiring courts to navigate the delicate balance between respecting contractual autonomy and ensuring the equitable treatment of heirs, beneficiaries, and other affected stakeholders. In this context, judicial practice has evolved to emphasize the empowerment of contracting parties, recognizing that the enforceability of rights and obligations must be guided not only by rigid doctrinal rules but also by principles of fairness, predictability, and proportionality.

Modern adjudication in inheritance law increasingly relies on a sophisticated synthesis of traditional doctrinal principles and contemporary evidentiary methodologies. Courts are called upon to evaluate performance, partial performance, non-performance, and material breaches in a manner that is sensitive to the factual, relational, and economic circumstances of each case. Such context-sensitive assessment extends beyond formalistic compliance, allowing judicial reasoning to accommodate the complexities inherent in familial and contractual relationships, including issues of intent, expectation, and reliance. By integrating doctrinal rigor with evidentiary flexibility, courts create an adjudicative environment that supports nuanced, equitable, and legally coherent outcomes, reinforcing the legitimacy of judicial oversight while preserving the parties' capacity to structure their succession arrangements according to personal objectives.

Furthermore, the evolution of inheritance contract jurisprudence cannot be fully understood without reference to European legal standards, which provide a rich comparative framework for national courts.

The jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) has been particularly influential in shaping domestic approaches, offering principles of proportionality, protection of legitimate expectations, and respect for fundamental rights as interpretive guides. By aligning national practice with these supranational norms, courts achieve greater coherence and predictability, enhancing both the doctrinal integrity and the social legitimacy of their decisions. This transnational dialogue fosters the gradual harmonization of legal standards, ensuring that inheritance disputes are adjudicated consistently while remaining responsive to the diverse needs of parties within different jurisdictions.

The convergence of national and European legal frameworks reflects a broader trend toward the development of a coherent, socially attuned, and doctrinally sophisticated system for regulating inheritance contracts. It underscores the capacity of succession law to reconcile multiple, sometimes competing, objectives: the protection of individual rights, the preservation of family and economic stability, and the promotion of legal certainty and fairness. In this sense, inheritance contracts function as focal points for the intersection of personal agency, judicial discretion, and European legal principles, exemplifying the dynamic evolution of succession law in the twenty-first century. By integrating these considerations, modern courts contribute not only to the resolution of disputes but also to the broader project of legal development, creating a framework in which contractual autonomy and equitable oversight coexist as mutually reinforcing elements of a principled, predictable, and human-centered system of inheritance governance.

2. Analysis of scientific publications.

The doctrine on inheritance contracts and succession law has been elaborated by numerous Ukrainian and international scholars, reflecting a broad spectrum of legal analysis from domestic normative frameworks to comparative perspectives.

Among Ukrainian authors, Iryna Dikovska (2019) provides a detailed examination of conflict-of-laws issues arising from inheritance contracts, particularly evaluating the applicability of EU succession regulation principles to Ukrainian private international law contexts. Other work underscores the need to reconcile national legal practice with supranational frameworks (Goncharova, 2021). Yuliia Trufanova and Khrystyna Yatsenko (2022) analyze the harmonization of inheritance agreements with European Union legal standards, highlighting regulatory gaps in domestic law compared to EU jurisdictions where inheritance contracts are extensively regulated. Marta Kravchyk and Olha Tur advance this comparative analysis by characterizing the legal nature and essential terms of inheritance contracts in Ukraine and the EU, pointing to doctrinal differences and the necessity for clearer normative definitions (2021).

Ukrainian civilists such as O. Ye. Kukharyev (2020) explore the broader doctrinal foundations of succession law, including universal succession and the role of legal constructs within inheritance relations, which frame the context for contractual dispositions in succession (2016). Additional domestic contributions clarify the delimitation between inheritance contracts and related civil transactions, such as inter vivos lifetime maintenance agreements, emphasizing the contract's distinct civil-law identity (M. Toporkova et al. 2025).

In the foreign legal scholarship, comparative succession law has been a vibrant field. Works compiled by K.G.C. Reid, M.J. de Waal, and R. Zimmermann (2015; 2020) form part of a collective comparative research agenda on succession law norms across jurisdictions, tracing doctrinal evolution and highlighting transnational trends.

Studies on "Erbvertrag" (inheritance contract) within German law illustrate deep doctrinal roots for contractual succession arrangements in continental systems, contrasted with other civil-law traditions where such contracts occupy different legal statuses (Zaluski, 2017). Classical comparative legal scholarship, such as the comprehensive treatment of succession law in M. Załucki comparative overview, situates the institution of inheritance agreements within broader historical and comparative contexts, emphasizing the importance of cross-jurisdictional analysis in understanding modern inheritance provisions.

Collectively, these Ukrainian and foreign scholarly contributions demonstrate an expanding research frontier that interrogates both the doctrinal foundations and practical implementations of inheritance contracts, their integration with European legal norms, and their comparative legal significance within accession and harmonization processes.

Methodology of the Study. The present study employs a rigorous doctrinal and comparative legal methodology, designed to provide a multidimensional understanding of inheritance contracts and the evolving judicial framework governing them. Central to the analysis is a doctrinal examination of national case law, through which the research identifies prevailing principles, emerging trends, and the reasoning applied by courts in disputes concerning inheritance contracts. This approach is complemented by a comparative analysis of European jurisprudence, with particular attention to decisions of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), allowing national practices to be situated within broader European legal standards. Analytical-synthetic methods are further applied to explore the complex interplay between contractual autonomy, fairness, and legal certainty, facilitating the integration of doctrinal insights into a coherent framework for both practical and theoretical application. In addition, the study undertakes a systematic evaluation of the evidentiary and interpretative techniques employed by courts, emphasizing the balance between individual interests and overarching public legal norms. By combining these complementary approaches, the methodology ensures a comprehensive, nuanced, and context-sensitive examination of inheritance contracts, highlighting both their doctrinal significance and their practical implications within contemporary succession law.

3. The primary aim of this research is to analyze the contemporary judicial approach to inheritance contracts, focusing on how courts balance contractual autonomy, legal certainty, and fairness, while incorporating European comparative perspectives. To reach this goal we developed the following tasks: 1) Examine the key principles governing inheritance contracts in national and European jurisprudence, 2) Analyze how courts assess performance, non-performance, and material breaches in inheritance agreements, 3) Identify the role of European case law (ECtHR and CJEU) in shaping domestic adjudication, 4) Evaluate the extent to which current judicial practice safeguards individual rights while supporting the stable development of succession law, 5) Propose doctrinal insights for harmonizing contractual autonomy with equitable oversight in inheritance disputes.

4. Review and discussion.

Judicial practice in disputes arising from contractual inheritance relations remains at the stage of gradual formation and conceptual refinement. This is largely determine the relative novelty of the inheritance contract as a legal institution within Ukrainian civil law, as well as its still limited – though steadily expanding – practical application. Unlike traditional mechanisms of succession, which are deeply rooted in doctrine and jurisprudence, the inheritance contract represents a comparatively recent normative construct, the interpretative contours of which continue to evolve through case law. As noted in comparative scholarship (K. G. Reid et al., 2011: 92), succession contracts constitute a distinctive legal mechanism whose modern doctrinal framework has developed comparatively late and continues to raise interpretative challenges within contemporary European private law systems (Reid et al, 2011).As a result, courts are not merely applying established precedents but are actively engaged in shaping the doctrinal foundations and methodological approaches that will define the future trajectory of this institution.

In quantitative terms, disputes stemming from inheritance contracts do not constitute a substantial portion of the overall judicial caseload. Nevertheless, their qualitative complexity is disproportionately high. Such cases are typically characterized by multilayered factual matrices, intricate evidentiary issues, and the interplay of proprietary and personal non-property elements. The hybrid legal nature of the inheritance contract – situated at the intersection of contract law and succession law – further complicates judicial assessment, as it requires courts to reconcile principles of freedom of contract with the protective logic traditionally inherent in inheritance regulation. As it was mentioned by A. Kohler (2015: 23) a small intellectual curiosity hides here. Succession contracts feel modern not because contracts are new – they are ancient – but because private law historically distrusted binding agreements about future death.

Roman law largely rejected them. Modern European civil codes cautiously reintroduced them, which is why courts today still refine their contours. In legal evolution, even death takes time to settle its paperwork (Kohler, 2015: 23).This structural duality demands from the judiciary a heightened level of analytical rigor and doctrinal sensitivity.

Consequently, in resolving these disputes, courts increasingly move beyond a purely formalistic or textual interpretation of contractual clauses. Instead, they engage in a more comprehensive and principled analysis, taking into account the underlying purposes of the agreement, the legitimate expectations of the parties, and the broader general principles of civil law, including good faith, reasonableness, proportionality, and fairness. Such an approach reflects a broader тенденція within contemporary Ukrainian jurisprudence toward value-oriented adjudication, where the resolution of private-law disputes is guided not only by literal statutory provisions but also by systemic coherence and the axiological foundations of the legal order.

A characteristic tendency of contemporary Ukrainian judicial practice lies in its deliberate effort to maintain an equitable balance between the autonomy of the parties' will and the imperative to protect the weaker party to the legal relationship. Within the framework of inheritance contracts, this weaker party is frequently the transferor of property – often an elderly individual or a person situated in a condition of heightened social and existential vulnerability. Such individuals may be dependent on care, emotional support, or material assistance, and thus may enter into contractual arrangements under circumstances that raise legitimate concerns regarding the genuineness and independence of their consent. Against this backdrop, courts increasingly recognize that formal equality of the parties does not necessarily guarantee substantive fairness, particularly where disparities in age, health, social capital, or bargaining power are evident.

Judicial oversight in these cases is therefore not directed toward curtailing the principle of freedom of contract as such, which remains a cornerstone of private law. Rather, its purpose is to prevent the distortion of contractual autonomy into a vehicle for abuse of rights or a mechanism of unilateral dominance. As has been observed in European private law scholarship (Hondius & Janssen, 2010:21-22), the doctrine of abuse of rights operates precisely to ensure that private autonomy is not exercised in a manner contrary to its social function or fundamental principles of justice.

In assessing the validity and enforceability of inheritance contracts, courts scrutinize not only the formal compliance of the agreement with statutory requirements but also the broader context in which it was concluded. This includes evaluating the presence of undue influence, exploitation of vulnerability, informational asymmetry, or manifest imbalance in reciprocal obligations. Through such a contextual and principled approach, the judiciary seeks to ensure that contractual freedom operates within the boundaries of good faith, fairness, and proportionality, thereby safeguarding both the integrity of private autonomy and the dignity of individuals who may be structurally disadvantaged within the contractual relationship as it was highlighted by O. Lando & H. Beale (2000:73).

Particular significance in contemporary judicial practice is attached to the assessment of the performance or non-performance of obligations in their dynamic development rather than in isolation within discrete factual episodes. Courts increasingly proceed from the understanding that contractual relations arising from an inheritance contract are inherently continuous and relational in nature, often extending over a considerable period of time and encompassing a complex set of reciprocal expectations. Accordingly, judicial evaluation is not confined to identifying a single breach as a formally ascertainable факт, but instead entails a comprehensive examination of the overall pattern of conduct demonstrated by the parties throughout the lifespan of the contractual relationship.

In this context, courts take into account the systematic character of violations, their duration, underlying causes, and the degree to which such conduct has affected the achievement of the fundamental purpose of the inheritance contract. The intensity and persistence of non-performance, the presence or absence of good faith efforts to remedy shortcomings, and the proportionality between the breach and the legal consequences sought are all subjected to careful scrutiny (Lando Beale, 2000: 249-254). This methodological approach reflects an appreciation of the teleological dimension of inheritance contracts, which are typically

aimed not merely at the transfer of property, but at securing care, maintenance, or other forms of personal support for the transferor during their lifetime.

By adopting this dynamic and purpose-oriented mode of analysis, courts are able to transcend rigid formalism and avoid mechanical reliance on the literal wording of contractual clauses. Instead, they seek to ascertain the substantive reality of the legal relationship and to ensure material justice in circumstances where a purely textual interpretation would fail to capture the true balance of rights and obligations between the parties. Such an approach enhances doctrinal coherence and reinforces the broader commitment of private law adjudication to fairness, proportionality, and the protection of legitimate expectations.

The aforementioned judicial practice is consonant with broader European tendencies in the evolution of succession and contract law, within which the court is increasingly perceived not merely as an organ of formal norm application, but as an active guarantor of a fair balance of interests. Contemporary European private-law discourse has progressively moved beyond a rigidly positivist paradigm, embracing instead a model of adjudication grounded in proportionality, good faith, and the protection of legitimate expectations. In this framework, judicial intervention is not regarded as an encroachment upon private autonomy, but as a necessary corrective mechanism designed to preserve the integrity of consensual arrangements and to prevent structural imbalances from undermining substantive justice.

Ukrainian courts are gradually internalizing and operationalizing these methodological orientations. Through case law, they are shaping an emergent doctrinal understanding in which the inheritance contract is conceptualized as a complex and highly personalized legal construct. It is no longer viewed solely as a technical instrument for the posthumous transfer of assets, but rather as a relational and value-laden arrangement that integrates elements of private autonomy, social responsibility, and heightened standards of good faith. Such a reconceptualization reflects an appreciation of the inheritance contract's dual character: it embodies the freedom of individuals to structure their proprietary relations according to their will, while simultaneously implicating ethical considerations related to care, dependency, and intergenerational solidarity.

By embedding these principles into judicial reasoning, Ukrainian jurisprudence contributes to the formation of a doctrinal model in which contractual freedom operates within a normative environment structured by fairness, proportionality, and social sensitivity. The inheritance contract, in this perspective, emerges as a sophisticated legal mechanism requiring nuanced interpretative approaches and a contextual evaluation of the parties' conduct. This trajectory not only aligns domestic practice with European legal developments but also strengthens the systemic coherence of Ukrainian private law by harmonizing autonomy with responsibility and formal legality with substantive justice.

In conclusion, judicial practice in disputes arising from inheritance contracts, although still in the process of formation, reveals a discernible and consistent trajectory toward contextual and value-oriented interpretation. Courts increasingly move beyond a purely formalistic reading of contractual provisions, instead engaging in a comprehensive assessment of the parties' intentions, the underlying purpose of the agreement, and the broader principles of fairness, good faith, and proportionality. Such an interpretative paradigm enables a more effective protection of the rights and legitimate interests of the parties, ensuring that the contractual mechanism of succession operates in a manner consistent with fundamental civil law principles.

This evolving approach contributes to strengthening confidence in the contractual model of succession as a viable alternative to testamentary disposition. At the same time, it establishes doctrinal and practical foundations for the further development of the institution of inheritance contracts within Ukrainian civil law, particularly in light of the progressive harmonization of national legislation and jurisprudence with contemporary European legal standards (Duta & Herler 2016:12).

One of the central – and at the same time most debated – issues in judicial practice concerning contractual inheritance relations lies in determining the threshold of material breach, that is, establishing the conditions under which non-performance or improper performance of obligations may be regarded as sufficiently serious to justify the application of civil law remedies, most notably the termination of an

inheritance contract. The complexity of this task stems from the specific nature of the inheritance contract as a long-term legal relationship, within which the assessment of the parties' conduct cannot be reduced to an isolated instance of breach. Rather, it necessitates a comprehensive evaluation of the entirety of the parties' interactions, the duration and character of their cooperation, and the overall balance of contractual expectations.

As O. V. Nestertsova-Sobakar observes, the obligations of the acquirer under an inheritance contract give rise not only to conventional grounds for liability, comparable to those found in other contractual arrangements, but also to distinct legal consequences intrinsically linked to the moment of the alienator's death or to the fulfillment of conditions specifically determined by the contract itself. This dual dimension of responsibility – combining general contractual principles with succession-related contingencies – further complicates the judicial determination of materiality and calls for a nuanced, context-sensitive approach capable of reconciling contractual autonomy with the protective function of inheritance law (2016: 165).

Summarizing the approaches developed in Ukrainian judicial practice, it is possible to identify a number of relatively stable criteria employed in determining the materiality of a breach. Foremost among these is the systematic nature of the violation, which indicates not an incidental or technical failure in the performance of obligations, but rather a persistent pattern of bad-faith conduct. Courts tend to distinguish between isolated shortcomings and sustained non-compliance, recognizing that the latter more convincingly demonstrates a fundamental disruption of the contractual equilibrium.

Single or minor deviations, as a rule, are not deemed sufficient to warrant the application of the most severe civil law remedies, particularly termination, unless they produce a cumulative adverse effect that substantially undermines the purpose of the agreement. In this respect, judicial reasoning reflects an effort to preserve contractual stability while simultaneously safeguarding the legitimate expectations of the parties, thereby aligning the assessment of material breach with broader principles of proportionality and fairness in private law adjudication.

A second significant criterion concerns the duration of non-performance or improper performance of obligations, since it is precisely the prolonged character of a breach that may indicate a de facto loss of interest in achieving the contractual purpose or a disregard for the essential expectations of the other party. Unlike momentary or technical lapses, sustained non-compliance may demonstrate a structural failure in the execution of the agreement and, consequently, a substantive disturbance of the contractual balance.

In the context of inheritance contracts – where obligations frequently assume a continuous or periodic nature, such as care, maintenance, or personal support – the temporal dimension of a breach acquires particular evidentiary weight. The persistence of inadequate performance over time may not only aggravate its practical consequences but also serve as a persuasive indicator of bad faith or unwillingness to fulfill the agreed-upon duties. Accordingly, courts tend to attribute heightened significance to the duration of the violation when assessing its materiality, especially where the contractual relationship is built upon ongoing personal involvement and trust.

A general trend observable in judicial practice is the gradual abandonment of a rigidly formalistic approach under which any deviation from the contractual terms would automatically qualify as a material breach. Instead, courts increasingly rely on evaluative categories, particularly the principles of good faith, reasonableness, and fairness, which enable a more flexible and context-sensitive legal response tailored to the specific circumstances of each case.Such principles have become central methodological tools in contemporary European private law, allowing courts to balance contractual autonomy with equitable considerations (von Bar & Clive 2009: 181-187).

Through the application of these principles, courts engage in a nuanced balancing of the parties' interests, seeking to prevent both the abuse of rights by a party who formally invokes a breach in pursuit of strategic advantage and the disregard of genuinely adverse consequences resulting from the counterparty's improper conduct. This shift reflects a broader movement toward substantive justice in private law adjudication, whereby the qualification of a breach as material depends not merely on textual non-compliance, but on its actual significance within the relational and normative structure of the contract.

Accordingly, the judicial approach to determining the materiality of breach in inheritance contracts is characterized by a contextual and value-oriented orientation, aligning with contemporary European standards of contract and succession law. Rather than adhering to rigid formalism, courts adopt an interpretative framework that integrates normative principles with a careful assessment of the factual matrix of each dispute, thereby ensuring that legal qualification reflects substantive justice as well as doctrinal coherence.

This approach contributes to the development of a model of liability that is both flexible and predictable. Within such a framework, the termination of an inheritance contract is conceived as an exceptional remedy, permissible only where there is clear evidence of a profound erosion of trust and a demonstrable impossibility of achieving the underlying purpose of the legal relationship. By reserving dissolution for cases involving a fundamental disruption of the contractual equilibrium, judicial practice reinforces the stability of succession arrangements while safeguarding the legitimate expectations of the parties.

A particular degree of complexity in the sphere of succession law lies in the proper establishment of the fact of performance or improper performance of an inheritance contract, as this determination directly conditions the possibility of imposing civil liability or securing judicial protection of an infringed right. Given the specific nature of inheritance contracts – often characterized by long-term, personal, and trust-based obligations – the evidentiary process may involve not only documentary proof but also the assessment of conduct over time, patterns of interaction, and the broader relational context in which the agreement was executed.

Contemporary national judicial practice consistently underscores that the burden of proof rests with the party advancing the claim, that is, with the party alleging the existence of a breach or non-performance of contractual obligations. This allocation of evidentiary responsibility constitutes a fundamental procedural principle, ensuring a fair distribution of procedural duties and safeguarding the equality of arms between the parties to the dispute. By adhering to this standard, courts reinforce both procedural fairness and the doctrinal coherence of civil adjudication in the domain of inheritance law.

At the same time, both legislation and judicial practice allow for the admission of an exceptionally broad range of evidence, among which written documents, electronic data carriers, witness testimony, and expert opinions occupy a central role. Of particular importance are circumstantial or indirect forms of evidence, which enable the court to draw reasoned inferences regarding the fulfillment or non-fulfillment of contractual obligations when direct proof is either absent or insufficient.

This evidentiary approach assumes heightened significance in cases involving the performance of personal, non-property obligations, as such duties are inherently subjective and individually defined, often resisting verification through formal documentation alone. In these contexts, courts must rely on a comprehensive assessment of behavioral patterns, corroborative testimony, and other contextual indicators to establish whether the parties have met their contractual responsibilities, thereby ensuring both the practical enforceability of the inheritance contract and the protection of the legitimate expectations of all involved parties.

A particular challenge in the field of succession law lies in the proper establishment of whether an inheritance contract has been duly performed or improperly executed, as this determination directly affects the ability to hold a party liable or to secure protection of a violated right. Contemporary national judicial practice consistently emphasizes that the burden of proof rests on the party asserting the claim – that is, the party alleging the existence of a breach or non-performance of contractual obligations.

This principle is fundamental to ensuring a fair allocation of procedural responsibilities and upholding procedural equality between the parties to the dispute. By assigning the evidentiary burden to the claimant, courts promote both the integrity of the adjudicative process and the equitable treatment of participants, thereby reinforcing the procedural foundations necessary for effective enforcement and protection of rights under inheritance contracts (Walter, 2015: 23-29).

Both legislation and judicial practice permit the use of an exceptionally broad spectrum of evidence, among which written documents, electronic data carriers, witness testimony, and expert opinions occupy a central role. Of particular significance are indirect or circumstantial forms of evidence, which enable the

court to draw reasoned conclusions regarding the fulfillment or non-fulfillment of obligations when direct proof is either absent or insufficient.

This evidentiary consideration becomes especially pertinent in cases involving the performance of personal, non-property obligations, as such duties are inherently subjective and often cannot be substantiated solely through formal documentation. In these circumstances, courts must rely on a holistic assessment of behavioral patterns, corroborating testimony, and other contextual indicators to determine whether the contractual obligations have been appropriately executed, thereby ensuring both the enforceability of inheritance contracts and the protection of the legitimate expectations of all parties involved.

The Supreme Court, through its jurisprudence, establishes stable legal benchmarks for lower courts by articulating principles that promote a consistent approach to the evaluation of inheritance disputes, while simultaneously allowing space for the individualization of each specific case. For instance, in the decision of the Grand Chamber of the Supreme Court dated 26 June 2024 in case No. 686/5757/23, the Court emphasized that, in instances where the deadline for accepting an inheritance has been missed, it is crucial to consider the heir's freedom of will alongside the need for a balanced approach to the proportionality of rights and obligations between the parties – particularly in circumstances where the testator's intent constitutes the sole basis for succession. This reasoning underscores the Court's commitment to harmonizing respect for testamentary autonomy with equitable treatment in succession proceedings.

Among the specific legal conclusions of the Supreme Court, particular attention should be given to the decision of the Joint Chamber of the Cassation Civil Court dated 10 April 2023 in case No. 591/1419/20, which clarified that only the parties to an inheritance contract – the alienator or the acquirer – are entitled to initiate a claim for its termination on the grounds of improper performance of obligations. Should other individuals, such as heirs, incur expenses resulting from such improper performance, they may seek reimbursement of those costs in accordance with the general provisions of the Civil Code of Ukraine. This ruling underscores the principle that enforcement of contractual remedies remains within the exclusive domain of the contractually bound parties, while third parties' claims are addressed through the broader framework of civil liability.

In its jurisprudence, the Supreme Court establishes stable legal benchmarks for lower courts by articulating principles that promote a consistent approach to the assessment of inheritance disputes, while simultaneously allowing room for the individualization of each case. The Court emphasizes that the expectation of a right to inherit is not absolute or automatically enforceable; rather, it may be protected by law within the framework of contractual and statutorily established obligations. This approach enables a balanced reconciliation of the private interests of heirs with overarching principles of fairness, ensuring that succession law operates in a manner that is both predictable and equitable.

The Supreme Court places particular emphasis on the inadmissibility of formalistic or automatic application of sanctions in cases of breach of an inheritance contract. Jurisprudence demonstrates that courts are obliged to conduct a detailed assessment of the actual consequences of a breach, to evaluate the proportionality between the extent of the violation and the claims asserted, and to take into account the specific characteristics of the legal relationship as well as the circumstances of the particular inheritance dispute. This approach helps to prevent disproportionate restrictions on the parties' rights and ensures that judicial decisions are both adequate and fair, aligning with contemporary standards of procedural evaluation and the protection of civil rights.

At the same time, the benchmarks established by the Supreme Court contribute to the development of doctrinal approaches in inheritance law, particularly regarding the determination of the limits of liability for breach of contractual obligations and the balancing of heirs' rights with the effective performance of contractual provisions. Such a judicial position not only strengthens legal certainty but also promotes consistent interpretation and application of the law, thereby significantly enhancing the predictability of court decisions in the field of succession law.

European legal systems exhibit a marked convergence in approaches to determining liability in the context of contractual inheritance relations. In most continental European jurisdictions, a compensatory concept of liability predominates, whereby sanctions are primarily aimed at redressing losses rather than punishing

the defaulting party (Schutze, 2021: 83-90). Termination of an inheritance contract is therefore regarded by courts as an exceptional and extraordinary measure, the application of which necessitates a careful assessment of the specific circumstances of each case.Jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights (ECtHR) indirectly shapes the development of national standards, emphasizing several critically important principles: legal certainty, proportionality of remedies, and the protection of the parties' legitimate expectations. These principles collectively inform a balanced and coherent approach to succession disputes, aligning national practices with broader European norms and reinforcing the predictability and fairness of judicial outcomes in the field of inheritance law.

In particular, in the case of Quilichini v. France, the European Court of Human Rights (ECtHR) held that discriminatory treatment in inheritance rights among heirs, arising from changes in national legislation, constitutes a violation of the prohibition of discrimination in conjunction with the right to peaceful enjoyment of possessions (Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1) where there is no objectively and reasonably justified relationship between the legislative aim and the outcome of its application (ECHRCaseLaw). This ruling underscores the critical importance of balancing legislative intent with equitable treatment of heirs, reinforcing the principle that succession law must respect both procedural fairness and substantive equality in line with fundamental human rights standards.

Another landmark precedent is Marckx v. Belgium, in which the Court did not find a direct violation of the right to property (Article 1 of Protocol No. 1) but recognized that restrictions on inheritance rights outside of marriage, absent adequate legal protection, could produce unacceptable consequences for equality and respect for private and family life (Article 8 read in conjunction with Article 14). This decision highlights the necessity of safeguarding heirs' rights in a manner that respects both non-discrimination and the integrity of family relationships, reinforcing the principle that succession law must harmonize legal certainty with fundamental human rights protections.

Overall, judicial practice demonstrates a flexible approach to the evaluation of evidence in the context of succession relations, combining classical and traditional methods of proof with modern forms of information gathering and behavioral assessment. At the same time, courts carefully scrutinize the reliability and significance of each piece of evidence, paying particular attention to the logical correlation between the available evidence and the claims asserted. This enables the formation of a comprehensive and well-reasoned judicial assessment regarding the performance of an inheritance contract.

Such an approach not only safeguards the rights of the parties but also contributes to the development of evidentiary doctrine in succession law, highlighting the role of judicial practice in establishing consistent standards for the evaluation of evidence and reinforcing principles of procedural fairness(Roberts & Delmas-Marty 2000:41-48; van Rhee & Uzelac 2012:83-90).

In this context, the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights indirectly shapes the development of national standards in inheritance law. Through their decisions, these bodies emphasize critically important principles – namely, legal certainty, proportionality of measures, and protection of the parties' legitimate expectations. The application of these principles in national practice helps to balance the interests of heirs, the performance of contractual obligations, and the stability of legal relationships, which is fundamental to the development of civil law.

Accordingly, European trends establish a legal framework that encourages a measured and reasoned approach to the application of liability measures, promoting the unification of doctrinal foundations and practical standards, as well as enhancing the predictability of judicial outcomes in contractual inheritance relations. This orientation guides national courts toward upholding principles of fairness, protecting human rights, and ensuring the effective functioning of the legal order.

5. Conclusions.

In conclusion, judicial practice concerning inheritance contracts has increasingly evolved to emphasize the empowerment of the contracting parties, ensuring that their respective rights and obligations are

interpreted and enforced in a manner that carefully balances fairness, legal certainty, and contractual autonomy. Courts are no longer confined to rigid, formalistic analyses; instead, they employ a sophisticated combination of traditional legal doctrines and modern evidentiary approaches, allowing them to assess performance, partial performance, non-performance, and material breaches in a way that accounts for the specific circumstances and intentions of the parties involved. This context-sensitive adjudication reflects a broader trend toward recognizing the complexity and individuality of contractual arrangements within the realm of succession law, where the interplay of personal, familial, and economic interests often demands more than a purely mechanical application of rules.

European jurisprudence, particularly the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), provides a rich source of comparative guidance that complements national legal practice. These courts reinforce fundamental principles such as proportionality, the protection of legitimate expectations, and the respect for human rights, which are increasingly influential in shaping domestic judicial reasoning. By drawing upon these European standards, national courts are better equipped to reconcile the often competing demands of contractual freedom, equitable treatment of heirs and beneficiaries, and societal expectations of justice. This harmonization of national and European legal principles contributes to the development of a coherent, predictable, and doctrinally sound framework for the resolution of disputes arising from inheritance contracts.

Furthermore, the contemporary approach to inheritance contracts reflects an ongoing commitment to safeguarding both individual and collective interests. By integrating modern interpretative techniques and comparative legal insights, courts not only ensure that contractual obligations are enforced fairly but also foster legal certainty that benefits all stakeholders. This dual focus promotes the protection of individual rights while simultaneously supporting the stable and gradual development of succession law in line with evolving European norms and values. In this way, judicial practice transcends mere dispute resolution, serving as a mechanism for reinforcing trust in the legal system, preserving the integrity of contractual arrangements, and guiding the evolution of inheritance law toward a more balanced and socially responsive model. Ultimately, this sophisticated and multi-layered approach strengthens the overall predictability, fairness, and legitimacy of inheritance law, demonstrating that contractual autonomy and equitable oversight are not mutually exclusive but mutually reinforcing principles.

References:

1. Dikovska, I. (2019). Conflict of laws regulation of contractual dispositions upon death: Should Ukraine follow the EU's approach? Zbornik Pravnog Fakulteta u Zagrebu, 69(3), 377–409. https://doi.org/10.3935/zpfz.69.3.03

2. Dutta, A., & Herrler, S. (2016). EU succession regulation (No 650/2012): A commentary. C.H. Beck; Hart Publishing.

3. Goncharova, A. (2021). European inheritance certificate. Krakowskie Studia Małopolskie, 1(29).

4. Hondius, E., & Janssen, A. (2010). The abuse of rights in European private law. Cambridge University Press.

5. Köhler, A. (2015). European succession law. C.H. Beck.

6. Kravchyk, M., & Tur, O. (2021). Osoblyvosti ukladennia spadkovogo dogovoru za zakonodavstvom Ukrainy ta zakonodavstvom krain Evropeiskogo Soiuzu [Peculiarities of concluding an inheritance agreement under the legislation of Ukraine and the legislation of the European Union]. Visnyk Lvivskogo Universytetu. Seriia: Pravo – Visnyk of the Lviv University. Series: Law.

7. Kukharyev, O. Y. (2020). Dogmatic construction of universal legal succession in the field of inheritance law. Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav – Bulletin of Kharkiv National University of Internal Affairs, (3). https://doi.org/10.32631/v.2020.3.04

8. Kukharyev, O. Y. (2016). Do pytannia schodo zabezpechennia vykonannia spadkovogo dogovory pislis smerti vidchuzhuvacha [On ensuring performance of an inheritance contract after the death of the alienor] (Unpublished manuscript). https://doi.org/10.21564/2414-990x.134.73047

9. Lando, O., & Beale, H. (Eds.). (2000). Principles of European contract law: Parts I and II. Kluwer Law International.

10. Nestertsova-Sobakar, O. V. (2016). Spadkove pravo Ukrainy [Inheritance law of Ukraine]. Alerta.

11. Reid, K. G. C., de Waal, M. J., & Zimmermann, R. (Eds.). (2020). Comparative succession law: Volume III: Mandatory family protection. Oxford University Press. https://doi.org/10.1093/oso/9780198850397.001.0001

12. Reid, K. G. C., de Waal, M. J., & Zimmermann, R. (Eds.). (2015). Intestate succession (Comparative succession law series, Vol. 2). Oxford University Press.

13. Roberts, P., & Delmas-Marty, M. (2000). Evidence across Europe. Oxford University Press.

14. Schütze, R. (2021). European Union law. Oxford University Press.

15. Toporkova, M., Puhach, A., Sukhorebra, T., Khlystik, M., & Polyukhovych, O. (2025). Substantive law governing the aspects of protecting the right to inheritance: Ukrainian model and EU experience. Cadernos de Dereito Actual, (30). https://cadernosdedereitoactual.es/index.php/cadernos/article/view/1363

16. Trufanova, Y., & Yatsenko, K. (2022). Inheritance agreement: Harmonization with the law of the European Union. Aktualni problemy prava – Actual Problems of Law, (2). https://doi.org/10.35774/app2022.02.115

17. von Bar, C., & Clive, E. (2009). Principles, definitions and model rules of European private law: Draft Common Frame of Reference (DCFR). Sellier European Law Publishers.

18. van Rhee, C. H., & Uzelac, A. (2012). European civil procedure. Intersentia.

19. Walter, C. (2015). The law of evidence in Europe. Oxford University Press.

20. Załucki, M. (2017). Introduction. In Uniform European inheritance law: Myth, dream or reality of the future. AFM Publishing House.

Kristina Vozniakovska,
Doctor of Science (Law), Full Professor,
Chernivtsi Law Institute of National University "Odesa Law Academy",
(Chernivtsi, Ukraine)
E-mail: christjachristja@gmail.com
ORCID: 0000-0002-0351-7107

Oksana Kiriiak,
Associate Professor
Associate Professor at the Private Law Department of
Yuriy Fedkovych Chernivtsi National University
(Chernivtsi, Ukraine)
E-mail: o.kiriyak@chnu.edu.ua
ORCID: 0000-0001-8850-805X

IMPLEMENTATION OF CIVIL SERVICE PRINCIPLES AS A CONDITION FOR EFFECTIVE PUBLIC ADMINISTRATION

Yesimov Serhiy

DOI: https://doi.org/10.61345/1339-7915.2026.1.26

Annotation. Based on current legislation, this article provides a comprehensive examination of the implementation of civil service principles as a prerequisite for effective public administration. The roadmap for public administration reform regarding Ukraine's accession to the European Union under Cluster 1, «Foundations of the EU Accession Process», calls for improving the effectiveness of public administration, which is directly linked to the civil service, including the principles embedded in this legal institution and the norms of European standards for public administration. The implementation of these principles in the activities of the civil service requires a scientific rationale, which underscores the relevance of the topic. The object of the study is the social relations that exist in the sphere of public administration and the civil service. The subject of the study is the provisions of current legislation and the regulatory acts of the European Union regarding public administration and the civil service. The methodological framework consists of general and specific methods for studying legal phenomena, including the systemic, structural-functional, comparative-legal, and formal-legal approaches, among others. It is noted that the principles of the civil service, as a functional foundation, form the general basis for the legal regulation of civil service relations, as enshrined in the provisions of the Law of Ukraine «On the Civil Service». The following principles are examined: the priority of human and civil rights and freedoms; the stability of the civil service; interaction with public associations and citizens; professionalism and competence; and the protection of civil servants from unlawful interference in professional activities and integrity. A comprehensive analysis of general legal and sector-specific principles within the civil service system makes it possible to identify new trends in the development of this legal institution and to propose scientifically grounded approaches to implementing these principles with the aim of enhancing the effectiveness of public administration through the meritocratic principle and the principle of integrity in procedures, the digitalization of public service and human resources management, in accordance with European standards and principles of public administration.

Key words: integrity, European standards, legal regulation, system of principles, digitalization.

1. Introduction.

Issues related to the quality of the state mechanism, the effectiveness and efficiency of public authorities, and the achievement of key management objectives by public administration have always been of concern to the scientific community, government officials themselves, and ordinary citizens. This is perhaps the most complex and problematic issue in the context of interaction between individuals and legal entities with public authorities. Its complexity is due to several factors: the multiplicity and diversity of state tasks and functions, the nature of the system of values protected by law, which public administration is aimed at ensuring, the complexity of the set of criteria designed to assess the effectiveness of public administration, and the specifics of their perception by various subjects of social relations.

2. Analysis of scientific publications.

The principles of public service have been studied by: V. B. Averianov, V. M. Bevzenko, Y. P. Bitiak, V. V. Galunko, V. V. Zuy, R. V. Igonin, D. P. Kalayanov, R. A. Kalyuzhny, L. V. Koval, T. O. Kolomoets, V. K. Kolpakov,

A. T. Komziuk, O. V. Kuzmenko, M. V. D. M. Lukyanets, R. S. Melnyk, R. V. Myronyuk, O. M. Muzychuk, V. I. Olefir, O. I. Ostapenko, S. V. Petkov, D. V. Pryimachenko, A. O. Sobakar and other scientists. The implementation of the provisions of the Roadmap on the Rule of Law in the context of ensuring the negotiation process for Ukraine's accession to the European Union under Cluster 1, «Foundations of the EU Accession Process», involves conducting theoretical and legal research aimed at incorporating these requirements into national legislation.

3. The purpose of this work – a study on the Implementation of Civil Service Principles as a Prerequisite for Effective Public Administration.

4. Review and discussion.

The effectiveness of public administration can be broken down into various types of effectiveness: legal regulation, law enforcement, specific branches and levels of government, specific administrative functions, and public administration in various areas of life. The principles of public service are directly interrelated with specific elements, areas, and functions of public administration, creating a methodological and legal foundation for ensuring efficiency and effectiveness, which corresponds to the results-based management model.

Results-based public administration is a model of public administration and the public administration cycle based on it, in which the results of administration are not determined by its ultimate goal but, being directed toward a detailed system of carefully calculated intermediate goals and results, are defined as the means of ensuring the implementation of public administration.

Results-based public management allows for the differentiation of management effectiveness – as a comprehensive category with a multitude of legal, economic, social, organizational, and other criteria – into a set of lower-order effectiveness categories.

The essence and primary purpose of the principles of public service lie in the fact that they form, in a certain way, a «general approach» to the regulation of public service relations, being socially and culturally conditioned [1, p. 783].

The principle of stability in the civil service is directly linked to the predictability of public administration, the certainty of decisions made by public authorities, and the adoption of European approaches to addressing issues related to the interaction between individuals and legal entities and government agencies.

A separate component of the stability and sustainability of the civil service should be considered the continuity of civil service, guarantees of service tenure in the absence of violations of prohibitions and restrictions during service, or other conditions that make service tenure impossible.

A similar mechanism exists for other types of service, such as service in the National Police. Introducing such a provision for civil servants would reflect not only the principle of service stability but also the principle of unity among various types of civil service.

Given the reform of the civil service in the context of Ukraine's association with the European Union and changes in the structure of government bodies, the proposed mechanism is intended to strengthen the social and legal guarantees for civil servants [2]. The principle of accessibility of information about the civil service is clearly evident in the development of a cross-cutting institution of modern public administration – digitalization.

Information and communication technologies offer new opportunities for obtaining information about the civil service, expand access to it, and raise awareness among individuals and legal entities regarding the civil service and its various components, while strengthening feedback between civil servants and non-governmental entities [3].

The principle of interaction with public associations and citizens is changing under the influence of digital transformation. Such interaction is shifting to the digital environment, which should be viewed

as a principle of citizen and civil society institution participation in public administration. The system of interaction between the civil service, represented by civil servants, and public associations and citizens reflects citizens' involvement in state governance and their participation in addressing the tasks of public authorities' day-to-day activities in the performance of administrative functions.

The issue of public participation in governance is a matter of establishing the extent of such participation, ensuring the effective functioning of the mechanism, and improving the forms of interaction between the branches of government and the public. The principle of public service under consideration influences the effectiveness of administrative procedures for citizen interaction with public authorities, including in digital format [4].

The effectiveness of administrative procedures drives the effectiveness of the following areas of public administration: administrative and judicial appeals; administrative jurisdiction; state control and oversight; and the permitting system.

Systematicity, comprehensiveness, and the regulatory anchoring of the process are an important part of the concept of public administration effectiveness. The culture of professional activity among civil servants (hereinafter «civil servants»), including the building of trusting relationships between civil servants and various segments of the population, should be considered one of the principles of the civil service. The proposed principle, and the principle of professionalism enshrined in legislation, serve as a value and guiding principle for the public administration system, the foundation of which is the optimal and effective interaction of public authorities with individuals and legal entities—an interaction built on trust in the state as represented by its bodies and their officials, that is, representatives of the public service institution [5].

The principle of professionalism and competence of civil servants affects the effectiveness of public administration and the quality of individual administrative functions and forms. The professionalism and competence of civil servants are intended not only to ensure compliance with established procedures for the provision of administrative services, to identify the needs of service recipients, and to evaluate them for the further improvement of service delivery mechanisms, the expansion of the range of such services, and the enhancement of accessibility for consumers.

Taking these factors into account ensures the effectiveness of public administration by incorporating the views of individuals and legal entities into the decision-making process, thereby justifying the recognition of such decisions as collaborative, coordinated, and reflective of both private and public interests.

Individuals, in the context of their interaction with the civil service, represent an important part of civil society, and the implementation of this principle of the civil service serves the purpose of providing civil society with information about the activities of public authorities [6].

The principle of protecting civil servants from unlawful interference in their professional activities is intended to demonstrate a certain level of effectiveness of anti-corruption mechanisms. This confirms the approach, grounded in legal science, to the effectiveness of the executive branch as a phenomenon formed by the systemic interaction of its two components—legality and effectiveness.

The system of anti-corruption prohibitions and restrictions in the civil service established by law is reasonably regarded as an instrument of state anti-corruption policy [7].

The principle of protecting civil servants from unlawful interference in their professional activities is ensured by regulations governing the conduct of official investigations, in which the civil servant is the weaker party, necessitating additional safeguards for their status.

Current legislation contains certain flaws that undermine these guarantees.

The principle of the primacy of human and civil rights and freedoms, as a principle of public service, is present throughout the entire public administration system, serving as the guiding principle for the organization and functioning of this system, as well as the goal and value toward which it is directed [8, p. 201].

Compliance with this principle is evidenced by the assessment of specific functions of public administration, among which state control and supervision can be highlighted. The optimization of the state's control and

oversight mechanisms and the licensing system, the liberalization of administrative liability, the development of individualized administrative penalties, and other trends in public law regulation are logically linked to the realization of human and civil rights and freedoms in interaction with public authorities.

Currently, there is no established link between civil service reform and budgetary, administrative, judicial, and military reforms, local self-government reform, and other transformations in the sphere of public administration. The connection between civil service reform and the reform of state control and supervision is not evident, although the latter has a significant impact on the development of the civil service institution.

The public-law institution of the civil service is an institution based on interaction with civil society institutions.

The public-law institution of the civil service is an institution based on interaction with civil society institutions. Such engagement with the public constitutes the essence of official legal relationships, within which two dimensions of interaction can be distinguished: internal and external. The latter is dominant, while the former is effectively designed to serve the latter.

The concept of effectiveness as it applies to the civil service institution can be examined from several perspectives. One can discuss the effectiveness of the substantive administrative and procedural administrative norms that constitute this institution. There are grounds to distinguish between the quality of coherence, the effectiveness of the relationship, and the joint application within this institution of norms of varying orientations. A change in this relationship is one aspect of the development of the institution under consideration. The strengthening of a civil servant's legal liability reflects the trend toward the dominance of administrative-jurisdictional norms within the structure of the norms comprising the institution under study; expanding the list of prohibitions and restrictions during civil service will increase the total volume of substantive administrative norms – the norms that constitute the content of a civil servant's legal status.

The comprehensiveness and specificity with which the principles of civil service are enshrined in the regulatory framework governing official activities determine the effectiveness of the organization and functioning of the institution under consideration.

The effectiveness of the legal framework governing the civil service determines the effectiveness of departmental regulation of employment relationships. The latter is highly comprehensive, multifaceted, and naturally reflects the specific nature of the organization and conduct of civil service in various public authorities.

The effectiveness of legal regulation of the civil service entails a certain level of proper, that is, uniform and predictable, law enforcement. The legal codification of civil service principles and their implementation in law enforcement are prerequisites for the effectiveness not only of the civil service institution but also of public administration.

The tools for assessing effectiveness vary depending on the form, sphere, scope of activity, and functions of the public administration body. The principles of civil service organization are incorporated into the principles for building a rational system of government bodies. The principles of civil service organization provide the scientific foundation for organizing the civil service and building a rational system of government bodies.

If the civil service is viewed as an organizational and legal institution within the system of state organization, then the principles of the civil service must reflect both the general principles of the organization and activities of the state and the specific principles inherent only to the institution of the civil service.

The interconnection between the civil service and local government service helps foster the integrity and functional and purpose-driven unity of the public service institution, which serves as the cornerstone of the entire public administration system's effectiveness.

The link between the principles of the civil service and the effectiveness of public administration is the connection between the civil service and the stability and sustainability of public authority, including its

political component. In this sense, the principle of stability of the civil service shapes and develops the principle of sustainability of political authority in a certain way.

The implementation of civil service principles as a prerequisite for the effectiveness of public administration can be clearly demonstrated through the resolution of current civil service issues and their relationship to public administration challenges.

In our view, the challenges facing the civil service include: the quality of professional training, which does not sufficiently meet the needs of the civil service's development; a weak link between performance evaluations and the quality of service delivery; the use of outdated technologies in human resources management; an aging civil service workforce and a lack of young people entering the service; the lack of a scientifically grounded and tested methodology for applying European Union standards on the civil service; the lack of a direct link between the reform of the civil service and other areas of administrative reform in the context of European integration; and insufficient transparency in the civil service, which contributes to bureaucracy and corruption.

The assessment of certain trends and challenges in the development of the civil service institution varies across different periods of state-building associated with the implementation of the Association Agreement between Ukraine and the European Union and the relevant regulatory documents adopted in this regard [9]. An analysis of the public-law institution of the civil service and the identification of its links to the principles of public administration and administrative law confirm this thesis [10, p. 80].

The civil service and its principles serve as a means of achieving the goals of public administration and ensuring its effectiveness. The set of civil service principles constitutes a system of principles. They ensure the integrity and unity of the civil service institution, which supports the public administration system.

The system of civil service principles functions as a subsystem of the civil service institution and, simultaneously, as a subsystem of the systemic set of public administration principles and its lower level—the set of principles governing the functioning of the executive branch, among which the principle of efficiency is fundamental. Civil service principles influence public administration based on results.

The cyclical nature of this approach allows us to distinguish, within the effectiveness of public administration, the concept of effectiveness as it applies to specific functions and areas of administration. The principles of the civil service are reflected in the principles of public administration.

The category of civil service effectiveness can be examined from the perspective of the effectiveness of: the norms constituting this institution; the relationship between norms; the enshrinement of civil service principles in legislative acts; subordinate regulation; and law enforcement. The enshrinement and implementation of civil service principles can be viewed as a prerequisite for the effectiveness of public administration.

5. Conclusions.

Characterizing the inseparable relationship between public service and public administration and the role of public service principles in ensuring its effectiveness, it should be noted that public service principles are quite stable and allow for the formation of a professional public service corps, which is ultimately designed to ensure the proper level of quality and effectiveness of public administration.

The principles of public service influence the effectiveness of public administration through the following factors: the principles of public service are included in the principles of building a system of state bodies; the development of the institution of public service and the principles of public service as its subsystem stimulates the connection between various public authorities, their procedural and organizational commonality, and internal unity in the context of the institution of public authority; the principles of public service influence the resolution of pressing issues in public administration. The implementation of the principles of public service should be carried out in the context of resolving issues of public administration, implementing administrative reform, and ensuring the smooth and effective functioning of the state apparatus under the legal regime of martial law.

References:

1. Sobakar, A. O. (2023). Pryntsypy derzhavnoi sluzhby yak osnovni zasady praktychnoi realizatsii zavdan ta funktsii derzhavy [Principles of civil service as basic principles of practical implementation of state tasks and functions]. Yurydychnyi naukovyi elektronnyi zhurnal – Legal Scientific Electronic Journal, (4), 781–784. http://www.lsej.org.ua/4_2023/193.pdf

2. Verkhovna Rada of Ukraine. (2014, September 16). Pro ratyfikatsiiu Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soyuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhniimy derzhavamy-chlenamy, z inshoi storony: Zakon Ukrainy No. 1678-VII [On the ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other hand: Law of Ukraine No. 1678-VII]. https://zakon.rada.gov.ua/laws/show/1678-18

3. Kovaliv, M. V., Yesimov, S. S., & Yarema, O. H. (2022). Informatsiine pravo Ukrainy: navchalnyi posibnyk [Information law of Ukraine: A textbook]. Lviv.

4. Verkhovna Rada of Ukraine. (2022, February 17). Pro administratyvnu protseduru: Zakon Ukrainy No. 2073-IX [On administrative procedure: Law of Ukraine No. 2073-IX]. https://zakon.rada.gov.ua/laws/show/2073-20

5. Verkhovna Rada of Ukraine. (2015, December 10). Pro derzhavnu sluzhbu: Zakon Ukrainy No. 889-VIII [On the civil service: Law of Ukraine No. 889-VIII]. https://zakon.rada.gov.ua/laws/card/889-19

6. Cabinet of Ministers of Ukraine. (2025, March 21). Pro zatverdzhennia planu zakhodiv z realizatsii u 2025-2026 rokakh Natsionalnoi stratehii spryyannia rozvytku hromadianskoho suspilstva v Ukraini na 2021-2026 roky: Rozporiadzhennia Kabinetu Ministriv Ukrainy No. 246-r [On the approval of the action plan for the implementation in 2025–2026 of the National Strategy for the Promotion of Civil Society Development in Ukraine for 2021–2026: Order of the Cabinet of Ministers of Ukraine No. 246-r]. https://zakon.rada.gov.ua/laws/show/246-2025-%D1%80

7. Verkhovna Rada of Ukraine. (2014, October 14). Pro zapobihannia koruptsii: Zakon Ukrainy No. 1700-VII [On the prevention of corruption: Law of Ukraine No. 1700-VII]. https://zakon.rada.gov.ua/laws/card/1700-18

8. Halay, V. O. (2024). Zastosuvannia mizhnarodnykh standartiv vprovadzhennia pryntsypiv publichnoi sluzhby v Ukraini [Application of international standards for implementing the principles of public service in Ukraine]. State University of Western Paraná (Unioeste). https://doi.org/10.54929/monograph-06-2024-05-01

9. European Commission. (n.d.). Ukraina na shlyakhu vstupu do YES [Ukraine on the path to EU accession]. https://commission.europa.eu/topics/eu-solidarity-ukraine/ukraines-path-towards-eu-accession_uk

10. Pukhtetska, A. A. (2012). Ponyattya ta pryntsypy yevropeiskoho administratyvnoho prava [Concepts and principles of European administrative law]. Naukovi zapysky NaUKMA. Yurydychni nauky – Scientific Notes of NaUKMA. Legal Sciences, 129, 78–81. http://nbuv.gov.ua/UJRN/NaUKMAun_2012_129_19

Serhiy Yesimov,
Candidate of Law, Professor,
Professor of the Department of Administrative and Legal Disciplines
Lviv State University of Internal Affairs
E-mail: esimov_ss@ukr.net
ORCID: 0000-0002-9327-0071

VISEGRAD JOURNALON HUMAN RIGHTS – № 1, 2026

Publisher:

Uzhhorod National University
Faculty of Law
Kapituľna, 26 Uzhhorod

Public organization
«LEX PRO OMNES»
Mierová, 2529 Humenné

Public organization
«Association of International Educational
and Scientific Cooperation»
Kapituľna, 26 Uzhhorod

ISSN 1339-7915

Layout :
Ivanna Polianska