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Yaroslav Kushnir, Svitlana Litovka-Demenina, Iryna Lehan, Zhanna Vasylieva-Shalamova, Kateryna Voitenko

RULE OF LAW, HUMAN RIGHTS, AND INSTITUTIONAL TRANSFORMATION IN TIMES OF GLOBAL AND NATIONAL CHALLENGES

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The contemporary world is experiencing a convergence of global and national crises that profoundly test the resilience of legal systems, democratic institutions, and the very foundations of the rule of law. Armed conflicts, technological disruption, climate change, pandemics, economic instability, and rapid digitalization have generated unprecedented challenges for states and societies alike. In this context, the rule of law and human rights are no longer abstract normative ideals but practical benchmarks for institutional sustainability, social trust, and political legitimacy. This special issue of *JANUS.NET e-journal of International Relations* is devoted to examining how legal systems respond, adapt, and transform under conditions of heightened stress, uncertainty, and structural change.

The central premise of this special issue is that the rule of law, human rights protection, and institutional transformation are inseparable processes, particularly in times of crisis. Emergency governance, martial law, digital governance, environmental degradation, and armed conflict often necessitate extraordinary measures. However, without adequate legal safeguards, transparency, accountability, and proportionality, such measures risk eroding democratic institutions and undermining public trust. The contributions gathered here explore these tensions through doctrinal analysis, comparative perspectives, empirical data, and normative reflection, offering a multidimensional understanding of legal transformation in both national and international contexts.

A significant part of this issue focuses on the impact of war and emergency governance on constitutional order and fundamental rights, with particular attention to the Ukrainian experience as a paradigmatic case. The article *"The Theoretical Foundations and Practical Implementation of the Priority of the Rule of Law in Times of War"* provides a comparative and empirical assessment of how democratic states preserve legal stability under martial law. It demonstrates that judicial independence, parliamentary oversight, and proportionality of restrictions are decisive factors in preventing democratic backsliding. Complementing this analysis, *"International Humanitarian Law and Human Rights During the War in Ukraine"* addresses the systemic violations of international humanitarian law and underscores the urgent need for updated accountability mechanisms, including the establishment of a Special Tribunal for the crime of aggression.

The constitutional dimension of crisis governance is further explored in *"Constitutional Control in Eastern European Countries: Models, Effectiveness and Development Prospects"*, which offers a rigorous comparative analysis of constitutional courts as guardians of democratic order. By identifying patterns of political capture and institutional resilience, the article highlights constitutional justice as a key safeguard against the erosion of the rule of law. Historical depth is added by *"Constitutional Evolution of Democracy: A Comparative Analysis of European and Ukrainian Legal Frameworks (18th–20th Centuries)"*, which situates contemporary constitutional challenges within the broader tradition of European democratic thought and Ukrainian constitutionalism.

Another major thematic cluster addresses institutional reform and public trust, particularly within the justice system. The article *"Judicial Reform as a Factor in Increasing Public Trust in Justice"* demonstrates that digitalization, procedural efficiency, and institutional independence are essential but insufficient without adequate funding and кадрова стабільність. Closely related, *"The Role of Mediation in the Criminal Justice System"* explores alternative dispute resolution as a tool for enhancing efficiency and fairness, revealing institutional gaps that limit its effectiveness in transitional legal systems. Together, these studies emphasize that institutional reform must be systemic, data-driven, and grounded in professional integrity.

The special issue also engages with the protection of individual rights across diverse branches of law, reflecting the expanding scope of human rights in contemporary legal systems. Family law, criminal procedure, labor law, intellectual property, and data protection are examined not as isolated domains, but as interconnected fields where human dignity, access to justice, and legal certainty are at stake. Articles such as *"Applied Dimensions of the Implementation of Family Law Rights"* and *"Theoretical and Applied Aspects of Criminal Law and Procedural Ensuring the Right to Defense"* reveal how procedural inefficiencies, resource asymmetries, and legislative gaps directly affect the realization of fundamental rights. The labor law study on flexible and remote employment highlights emerging social risks in the digital economy, while the analysis of personal data sovereignty underscores the growing tension between technological innovation and privacy protection.

A forward-looking dimension of the issue is provided by contributions addressing digitalization and artificial intelligence. *"The Algorithmic Rule of Law: Institutionalizing*

Accountability and Human Oversight in AI-Driven Legal Systems" proposes a conceptual framework for integrating AI into legal decision-making without sacrificing accountability, explainability, and human control. This article resonates with broader debates on fourth-generation human rights and digital autonomy explored in *"The Evolution of the Doctrine of Freedoms"*, which calls for normative consolidation of emerging digital and cognitive rights at both national and international levels.

Environmental protection and sustainable development constitute another critical axis of this special issue. Articles on environmental liability, administrative responsibility for environmental offences, bioenergy governance, and critical infrastructure protection reflect the growing recognition that environmental security is inseparable from national security and human rights. In particular, *"The Liability for Environmental Damage in the Global Climate Crisis"* situates post-war reconstruction within the framework of environmental justice and "green reconstruction," emphasizing the need for integrated international and national legal responses.

The international dimension of institutional transformation is further enriched by analyses of European legal integration, UN collective security, and international cooperation in forensic psychology. These contributions demonstrate that institutional crises at the international level – such as the paralysis of the UN Security Council – have direct implications for national legal systems and the protection of human rights. The erosion of collective security mechanisms not only weakens international law but also normalizes impunity, making domestic rule-of-law safeguards even more critical.

Taken together, the articles in this special issue offer a comprehensive and interdisciplinary exploration of how legal systems confront global and national challenges. They reveal that resilience is not achieved through the suspension of law, but through its adaptation – guided by constitutionalism, human rights, and institutional accountability. The diversity of topics and methodologies reflects the complexity of contemporary legal transformation and underscores the need for dialogue between theory and practice, national and international law, tradition and innovation.

This special issue aims to contribute not only to academic debate but also to policy-making and institutional reform. By identifying structural weaknesses, comparative lessons, and normative pathways, it seeks to support the development of legal systems capable of withstanding crisis without sacrificing democratic values. In times when the rule of law is most vulnerable, rigorous scholarship becomes an essential form of institutional defence.

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APPLIED DIMENSIONS OF THE IMPLEMENTATION OF FAMILY LAW RIGHTS BY SUBJECTS OF DOMESTIC RELATIONS

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Abstract

The right to family relations is a crucial aspect of legal regulation that influences both citizens' welfare and the social order of society. Family rights encompass the property and non-property rights of spouses, parents, children, and other family members, which must be ensured through effective legal mechanisms and state support. In Ukraine, the Constitution and the Family Code guarantee the protection of family, childhood, and parenthood, yet their practical implementation faces multiple challenges. According to Ukrainian court statistics for 2023–2024, family disputes represent 23% of all civil cases, primarily concerning alimony recovery (38%), determination of a child's residence (22%), and deprivation of parental rights (15%). The average duration of such cases is 4.4 months, exceeding procedural deadlines. A comparative analysis with Latvia reveals substantial differences in the regulation of family and adoption issues. Key problems include legislative gaps in defining the status of de facto spouses, procedural inefficiencies, difficulties in assessing risks of domestic violence, limited access to legal aid, and excessive workloads of child welfare services. Judicial practice of the Supreme Court of Ukraine and the European Court of Human Rights establishes important principles regarding state interference and the best interests of the child. To enhance

protection of family rights, it is necessary to create specialized family courts, expand mediation, digitize services, strengthen professional training, and integrate European human rights standards into national legislation.

Keywords

Legal protection mechanisms, parental responsibility, child custody cases, judicial practice, alternative dispute resolution.

Resumo

O direito às relações familiares é um aspeto crucial da regulamentação jurídica que influencia tanto o bem-estar dos cidadãos como a ordem social da sociedade. Os direitos familiares abrangem os direitos patrimoniais e não patrimoniais dos cônjuges, pais, filhos e outros membros da família, que devem ser garantidos através de mecanismos jurídicos eficazes e do apoio do Estado. Na Ucrânia, a Constituição e o Código da Família garantem a proteção da família, da infância e da parentalidade, mas a sua aplicação prática enfrenta múltiplos desafios. De acordo com as estatísticas judiciais ucranianas para 2023-2024, os litígios familiares representam 23% de todos os processos civis, principalmente relativos à recuperação de pensões alimentícias (38%), determinação da residência de um filho (22%) e privação dos direitos parentais (15%). A duração média desses processos é de 4,4 meses, excedendo os prazos processuais. Uma análise comparativa com a Letónia revela diferenças substanciais na regulamentação das questões familiares e de adoção. Os principais problemas incluem lacunas legislativas na definição do estatuto dos cônjuges de facto, ineficiências processuais, dificuldades na avaliação dos riscos de violência doméstica, acesso limitado à assistência jurídica e cargas de trabalho excessivas dos serviços de proteção à criança. A prática judicial do Supremo Tribunal da Ucrânia e do Tribunal Europeu dos Direitos Humanos estabelece princípios importantes relativos à interferência do Estado e ao interesse superior da criança. Para reforçar a proteção dos direitos da família, é necessário criar tribunais especializados em família, expandir a mediação, digitalizar os serviços, reforçar a formação profissional e integrar as normas europeias em matéria de direitos humanos na legislação nacional.

Palavras-chave

Mecanismos de proteção jurídica, responsabilidade parental, casos de custódia de menores, prática judicial, resolução alternativa de litígios.

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APPLIED DIMENSIONS OF THE IMPLEMENTATION OF FAMILY LAW RIGHTS BY SUBJECTS OF DOMESTIC RELATIONS

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Introduction

One of the most important areas of legal regulation is the exercise of family rights by members of family relationships, as the significance of this issue directly affects the well-being of millions of citizens and the social stability of society. The current situation of changing traditional family models, increasing population mobility, and the consequences of globalization are creating new challenges for legal systems, which must ensure the effective protection of the rights of all family members. The issue of exercising family rights is highly heterogeneous: the legal status of various types of subjects of family relations is studied, as well as effective mechanisms of protecting violated rights are being created, which presupposes the detailed scientific research of the theoretical and practical bases of their use. According to Smith (2025), there is a need to re-examine the limits of the family law in accordance with the shifts in the social structure of families that can no longer fit the existing legal system. The author of the study writes that modern family law does not have to rely on the formal legal construct but approach to the real needs of the families with all their diversity.

This strategy can be especially relevant to legal systems that are in the process of reform et alignment to the European standards. George (2025) develops this concept by viewing family law as a social policy tool that should not only respond to conflicts that have arisen, but also prevent problems in family relationships by creating a favorable legal framework.

Barker and Casla (2024) examine the international aspect of family rights protection to study how Article 10 of the International Covenant on Economic, Social and Cultural

Rights protects and assists families. The authors argue for the need to consolidate family rights at the constitutional and legislative levels, as well as to ensure the successful functioning of the mechanism for their implementation and the allocation of the necessary resources to assist vulnerable families. In Article 8 of the European Convention on Human Rights, the Council of Europe (2020) systematizes the principles of protecting the right to respect for family life, which are binding on member states and serve as an example for other countries' legal systems to follow.

In its study on family-oriented policies, UNICEF (2021) points to the need to create conditions that allow family responsibilities to be combined with work, which directly affects the ability of parents to exercise their rights and responsibilities towards their children. The issue is particularly relevant in the context of the COVID-19 pandemic and its impact on family life, which has exposed the vulnerabilities of family support systems.

Eekelaar and George (2020) provides a detailed study of family law and family policy, as well as a systematization of the modern approach to regulating family relations in different legal systems and the identification of common trends and characteristics of national models. The authors demonstrate that the success of legal regulation is based on a balance between the role of the state and the independence of the family, on the role of protecting vulnerable relatives and preserving family cohesion.

Although there is a significant amount of research devoted to certain aspects of family rights, the actual application of these rights by members of family relationships has not been studied in detail. The existing literature focuses mainly on the theoretical and legal study of family law norms or the study of judicial practice in specialized niches of cases. At the same time, we do not have any in-depth studies that combine theoretical achievements, analysis of normative standards, and facts about the practice of exercising family rights as such.

Strategic gaps in the scientific sphere are also related to the fact that there is still a lack of literature addressing issues such as the accessibility of mechanisms for protecting the family rights of different population groups, the effectiveness of state bodies in protecting family rights, and the impact of socio-economic factors on the realization of rights. Particularly relevant is the problem of adapting legal mechanisms to modern realities, such as the digitization of services provided, the creation of alternative dispute resolution measures, and the introduction of European standards into the national legal system.

This study aims to conduct an in-depth examination of the pragmatic features of the implementation of family rights by members of relationships by studying the theoretical foundations and system, mechanisms for the implementation and protection of rights, identifying systemic problems, and developing scientifically sound proposals that should be used to improve the legal regulation and practice of applying family law norms.

To achieve this goal, the following tasks must be performed: to consider the theoretical foundations and legal nature of the exercise of family rights; to study the system of legal regulation of family relations at the national and international levels using a comparative legal method; to study the main problems of the exercise of family rights and propose ways to solve them with reference to international experience.

The research hypothesis is that the effectiveness of the exercise of family rights is determined not only by the quality of legislative regulation, but also by the work of institutional mechanisms, access to legal aid, the level of legal culture in society, and socio-economic factors that open up or limit opportunities for family relations through the practical activities of various categories of participants in family relations.

Literature review

Research into how participants in family relationships exercise their family rights can be characterized as interdisciplinary and involving a variety of methodological approaches. An analysis of the scientific literature allows us to identify several key areas of research: theoretical and legal understanding of the essence of family rights, research into the mechanisms of their implementation, research into law enforcement issues, and the search for ways to improve legal regulation.

Ferrer-Riba (2023) addresses the theoretical and practicable elements of family rights in the realm of social changes through the lens of the evolution of the notion of parental responsibility in the digital one. The scholar states that the conventional view of the rights and responsibilities of parents should be revised, in order to consider the recent problems concerning child safety on the Internet, digital literacy, and privacy of the personal data concerning minors. Ferrer-Riba makes the point that it is necessary to create an equilibrium between the right of parents to raise their children in the light of their own personal beliefs and the right of children to independence in the digital area, which is particularly significant during adolescence. This method enables the classic notion of parental responsibility to be broadened to make more new elements that may not have been formerly controlled by law.

The protection of children rights as per the international standards is organized in the General Comment No. 26 (United Nations Committee on Economic, Social and Cultural Rights, 2023) on the rights of children in the light of climate change and environmental issues. The document stipulates the roles that states have on safeguarding the rights of children against environmental risks and on the involvement of children in environmental decisions and the provision of a secure environment in order to have children grow up. This approach suggests the extension of the idea of family rights beyond the intimate legal ties and up to the right to a healthy environment as an element of the right to proper family upbringing.

In the monograph on the legal regulation of family relations, Cherneha (2022b) provides the main research on the mechanism through which this legal regulation should work in a legal environment in Ukraine and its opportunities, functions, and structure. The author classifies the elements of the mechanism of legal regulation consisting of legal norms, legal relations, acts of realization of rights and obligations, legal responsibility, and discusses how they interact during the process of regulation of family relations. Cherneha claims that the operation of the mechanism has several issues, which are: flaws in the regulatory framework, inadequacy of legal regulation of particular elements of family relations, and ineffectiveness of family law obligations implementation.Particular

emphasis is placed on the potential of the mechanism, which can be ensured by improving legislation, raising the legal culture of the population, and optimizing the activities of law enforcement agencies.

Cherneha et al. (2022c) examine children's rights and their legal protection, comparing normative guarantees of children's rights in Ukrainian legislation. The authors classify children's rights and emphasize non-property rights (the right to family upbringing, the right to know one's parents, the right to communicate with parents and relatives, the right to protection) and property rights (the right to maintenance, the right to housing, the right to property). The study shows that the legislative unification of children's rights in Ukraine is generally in line with international standards, but there are problems with the practical implementation of these rights in Ukraine, in particular, whether children are adequately represented in processes that concern them and whether mechanisms for protecting their rights from violation are effective.

Cherneha et al. (2022d) is a comparative study of Ukraine and Latvia, which describes the forms and methods of protecting family rights in Ukraine. The authors distinguish between substantive legal methods of protection (definition of rights, cessation of actions that violate rights, restoration of the status quo ante, fulfillment of obligations) and procedural legal methods (judicial protection, administrative protection, notarial protection). The comparative analysis shows similarities and differences between national practices for protecting family rights, namely: greater formality of procedures in the Latvian model and greater flexibility of Ukrainian legislation in defining means of protection. The study emphasizes that an alternative method of resolving family conflicts should also be established, namely mediation, through which family relationships can be preserved and joint decisions can be made.

Analyzing the sources of family law, Vatras (2020) examines the regulatory framework of family relations and explores its hierarchy and interaction. Among the main sources of constitutional guarantees of family rights, the author mentions the Constitution of Ukraine, the Family Code of Ukraine as a special codified act, international treaties as a source of international standards, subordinate normative acts, judicial practice, and legal custom. In an attempt to regulate family relations, Vatras emphasizes that it is extremely important to eliminate different sources of law and ensure their systemic unity.

Hunter et al. (2021) discuss family justice issues in child contact cases based on empirical studies of court practice in England, which identified problems related to the assessment of risks in cases of suspected domestic violence or other types of threats to the child. The authors show that courts often face a dilemma of what to do to ensure that such a parent's right to contact with the child does not expose the child to the risk of harm. According to Hunter and co-authors, to prevent risks, a standardized risk assessment protocol should be implemented, the involvement of expert psychologists in complex cases should be mandatory, and parent support programs should be created to reduce risks. These conclusions can be applied to other legal systems, as the issue of rights versus interests is universal in the field of family law.

An analysis of the scientific literature shows that researchers are increasingly interested in the practical aspects of exercising family rights, international standards, and

comparative law. At the same time, there is a lack of research on the effectiveness of certain mechanisms for protecting rights in different legal systems, socio-economic factors that may affect the ability to exercise family rights, and how legal regulation can be adapted to contemporary issues, in particular, the digitalization and globalization of family relations. It is these gaps that define the topicality of the present research and its orientation at synthesising the theoretical analysis and empirical data on the practice of exercising family rights.

Materials and methods

This research was done through formidable methodology to examine the facts on the exercise of the family rights by parties in family relationships. The study was based on the use of numerous data sources to ensure the reliability and validity of the results obtained.

The empirical data of the study consisted of various sets of legal sources:

- The regulatory framework consisted of international documents, namely the Convention on the Rights of the Child (United Nations, 1989), the European Convention on Human Rights (Council of Europe, 1950), and General Comment No. 26 (United Nations Committee on Economic, Social and Cultural Rights 2023). The Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996), in particular Articles 51 and 52 on family rights, the Family Code of Ukraine (Verkhovna Rada of Ukraine, 2002), the Civil Code of Ukraine (Verkhovna Rada of Ukraine, 2003) and the Law of Ukraine "On Preventing and Combating Domestic Violence" (Verkhovna Rada of Ukraine, 2018) were part of the national legislation.

- Case law materials covered decisions, in particular the decision in Strand Lobben and Others v. Norway (European Court of Human Rights, 2019) of the European Court of Human Rights on parental rights and state interference in family life. National case law included decisions of the Supreme Court of Ukraine in family cases (in particular, case No. 757/54751/18-ц (Supreme Court of Ukraine, 2021a) on deprivation of parental rights and No. 372/504/19 (Supreme Court of Ukraine, 2021b) on compensation for child support). The selected decisions were taken from the Unified State Register of Court Decisions depending on their precedential value and role in answering the research questions.

- The sources of statistical information were the official reports of the State Judicial Administration of Ukraine for 2023–2024 (form No. 1-c), which contain quantitative data on the consideration of family cases, and the assessment of the situation of children in Ukraine, developed by UNICEF Ukraine (2024), which contains demographic and social indicators of family relations.

The methodological framework included a number of complementary approaches. Systematic analysis of normative legal acts, interpretation of legal provisions, and classification of types of family rights were carried out using a formal legal (dogmatic) approach.

The comparative legal method made it possible to conduct a comparative legal analysis, namely to compare Ukrainian family law with the standards and practices of the European Union, Latvia, and other European countries. The comparison was based on the mechanisms for the implementation of family rights, procedural guarantees, and enforcement mechanisms.

The historical and legal approach traced the regulation of family rights in Ukraine from 2002 (adoption of the Family Code) to 2023, including the 2018 law on domestic violence.

The analysis of judicial practice was also an important methodological element. The systematic analysis of court decisions was carried out in several stages: (1) selection of representative cases; (2) grouping of cases by legal issues; (3) identification of patterns in judicial reasoning; (4) derivation of legal principles and norms; (5) assessment of judicial consistency. A total of 87 court decisions on the exercise of rights were reviewed, of which 12 cases were examined in detail as illustrations of practical problems.

Judicial statistical data were subjected to statistical analysis. The volume and structure of family cases were described statistically, and trend analysis revealed temporal patterns in 2020-2024. No inferential statistical tests were performed because complete data were used.

Results

Theoretical foundations for exercising the family rights of participants in family relationships

The exercise of family rights is a complex legal phenomenon that should be carefully considered from a theoretical point of view. The concept of family rights implies the possibilities provided for and defined by law, according to which participants in family relations must act in a certain way in order to satisfy their individual property and non-property needs in the family. The basic principles of protection of the family, childhood, motherhood, and fatherhood are provided for in Articles 51 and 52 and form the basis for their protection, since protection is a constitutional duty of the state (Verkhovna Rada of Ukraine, 1996). These provisions are the normative basis for the entire system of family rights in Ukraine and emphasize its special significance for society.

The category of family rights provides for more active involvement of legal entities in exercising the powers granted to them by law. According to Lind (2024), parental responsibility and parenthood are not only abstract legal concepts, but also specific forms of legal practice, as a result of which the rights and obligations of representatives of family relations are exercised. This proves the complex nature of family rights, which are constantly linked to specific duties and responsibilities.

Participants in family relations constitute a specific type of legal entity. According to Morgan (2021), the concept of parenthood encompasses not only biological relationships but also legal status, which determines access to possible rights and claims regarding the child. Table 1 systematizes the list of the main groups of participants in family relations and their basic rights based on the current legislation of Ukraine.

Table 1. Classification participants family relationships and their fundamental rights

Category participants	Basic personal non-property rights	Basic property rights
Married couple	The right to motherhood/ fatherhood, the right to respect for dignity, the right to physical and mental protection	The right to common compatible ownership, right to maintenance, right to division of property
Parents	The right to education child, the right to communicate with the child, the right to determine places residence child	The right to manage property child, right to representation property interests child
Children	The right to family upbringing, the right to know one's own parents, the right to communicate with parents and relatives, the right to protection from violence	Right to maintenance from parents, right to housing, right to inheritance
Other family members (grandparents, siblings, etc.)	The right to communicate with the child, the right to participate in upbringing	The right to maintenance under certain conditions, the right to inheritance

Source: compiled by the author on basis analysis of the Family Code of Ukraine (Verkhovna Rada of Ukraine, 2002) and the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996).

The legal nature of the exercise of family rights is determined by various aspects. First, family rights are personal and, as a rule, inextricably linked to the person who holds them. According to Daly (2018), children's autonomy in court proceedings cannot be viewed through the lens of the right to be heard, as this is a broader concept that implies the child's ability to influence decisions affecting their life. This provision is particularly important given how children's rights must evolve in line with changes in their age and maturity, as some of them may change.

Secondly, family rights are never exercised in contravention of the principle of the inviolability of other people's rights and the interests of the child. Barnes Macfarlane (2024) also notes that in court proceedings related to neglect of duties towards children, questions always arise about the need to balance the rights of different parties. The first factor to consider when resolving any family disputes is the best interests of the child, and this is not contrary to international standards on children's rights.

Thirdly, many family rights must be exercised with the support of the state and the development of appropriate mechanisms for their implementation. In a comparative analysis of the constitutions of European states, Arsic and Jerinic (2024) show that constitutionally enshrined support for the family provides the legal basis on which the social protection system for the family is developed. The state not only regulates family relations but also guarantees the creation of conditions for the full realization of family rights.

International standards are of great importance for the development of national policies regulating family rights. International documents such as the Convention on the Rights of the Child (United Nations, 1989) and the European Convention on Human Rights (Council of Europe, 1950) establish minimum standards of protection that states must adopt in their national legislation. The range of issues addressed by these standards is very broad: on the one hand, the right against discrimination of children based on any grounds; on the other hand, the right to family life and non-interference in the personal affairs by the state authorities without any theory.

Therefore, the constitutional provisions, international principles, and the achievements of theology provide the theory of the exercise of family rights. It is possible to define family rights as complex, which are closely connected with the personality of the individual possessing them, which should be necessary to organize the interests of the different parties involved in the interaction and which should help the state to make sure that they are successfully implemented. Interpretation of these theoretical principles is a condition of studying the practical mechanisms of the implementation of the family rights and determining the issues of their application in the current situation.

Legal regulation of family rights in Ukraine and in the international context

Utilization of constitutional norms, specific family law, civil law. and the international standards dictate the legal regulation of the exercise. of family rights in Ukraine as multi-level. The main normative act in the field of family relations is the Family Code of Ukraine (Verkhovna Rada of Ukraine, 2002), which regulates the emergence, exercise, and termination of family rights in their entirety. The Code reflects the fundamental principles of family law, such as the priority of family upbringing of children in the best interests of the child, the equality of women and men in family relations, and the inadmissibility of arbitrary interference in family life.

A supporting role is played by the Civil Code of Ukraine (Verkhovna Rada of Ukraine, 2003), which should be taken into account in the case of family relations regulated by the Family Code or which should be considered by analogy. Such special and general legal regulation provides greater protection of the rights of family members, primarily in relation to property and the means of protecting violated rights.

An important step towards strengthening the protection of family members was the adoption of the Law of Ukraine "On Preventing and Combating Domestic Violence" (Verkhovna Rada of Ukraine, 2018), which proposed a comprehensive system of measures to combat domestic violence. The legislation provides for systems to identify and prevent domestic violence, provide assistance to victims, and punish perpetrators. Most significant is the introduction of restrictive measures that make it possible to protect victims of violence fairly quickly without lengthy court proceedings.

This law was supplemented in 2023 by the Law of Ukraine "On Amendments to the Laws of Ukraine on Strengthening Social Protection of Children and Support for Families with Children" (Verkhovna Rada of Ukraine, 2023), which expanded the guarantees of

children's rights and strengthened the means of their implementation. This legislative act reflects current trends in the development of family law towards more active state assistance to families and ensuring adequate conditions for children.

Cherneha et al. (2022d) conduct an analytical comparison of legislation regulating family relations in Ukraine and the Republic of Latvia, which confirmed the existence of similarities and differences in the means of implementing family rights. Table 2 shows the main differences between legal regulation in the two jurisdictions.

Table 2. Comparative analysis of legal regulation family rights in Ukraine and Latvia

Regulatory aspect	Ukraine	Latvia
Codification	Separate Family Code (2002)	Inclusion of norms in the Civil Code
Marriage age	18 years old (with the possibility of reduction to 16)	18 years old (no exceptions)
Recognition actual marriages	Not automatically recognized	Registered partnership
Shared property married couple	Shared mode compatible default property	Property separation regime with the possibility of agreement
Adoption same-sex couples	Forbidden	Allowed under certain conditions
Child participation in court proceedings processes	From 14 years old mandatory consideration of opinion	Active participation since the age of 12

Source: adapted from Cherneha et al. (2022a)

Rusinova (2025) analyzes European family law, which establishes important parameters for cooperation between countries on family-related issues. EU regulations on jurisdiction, recognition, and enforcement of decisions in family matters have formed the legal basis for the settlement of international family conflicts, which is particularly relevant in the context of increasing population mobility.

The case law of the European Court of Human Rights is important for establishing criteria for the protection of family rights. The decision in Strand Lobben and Others v. Norway (European Court of Human Rights, 2019) established important principles regarding the rights of parents in relation to the need to protect children from potential harm. The Court emphasized that removing a child from the family and restricting parental rights is the most drastic form of state intervention in family life, which can only be fully justified in exceptional circumstances that pose a threat to the life or health of the child.

An analysis of national legislation reveals significant gaps in the law. Table 3 systematizes the identified gaps in legislation and their practical consequences.

Table 3. Gaps in legal regulation implementation family rights in Ukraine

Regulatory scope	Gap	Practical consequences
Alternative forms families	Absence regulation of de facto marriage	Exposure actual property rights partners
Paternity	Unclear regulation father's involvement in upbringing after divorce	Conflicts of communication with children
Adoption	Duration and complexity procedures	Children remain without family for a long time environment
Homemade violence	Insufficiency implementation control mechanisms restrictive prescriptions	Repeated violence of victims persons
International family disputes	Inefficiency mechanisms return of illegally exported children	Long-lasting divorce children with one of parents

Source: compiled by the author based on analysis case law and national legislation

Thus, the legal regulation of family rights in Ukraine can be considered quite complex and multi-layered, although it needs further improvement to bring it into line with European standards. A comparative analysis shows the successes of Ukrainian legislation, as well as areas in which reforms are needed, particularly in the sphere of alternative family life, adoption practices, and the effectiveness of mechanisms for protection against domestic violence.

Practical aspects of exercising and protecting family rights

The effective functioning of family rights is organized in the form of a system of interrelated actions, actions of authorized persons, and actions of state bodies that stimulate and guarantee rights. Practical considerations can be discussed in order to prove the effectiveness of legislative norms and highlight problematic issues related to their application.

Statistical data provided by the State Judicial Administration of Ukraine (2024) show that the number of court cases related to the protection of family rights is quite high. In 2023, more than 156,000 civil cases were heard, and approximately 23% of them were family-related cases in courts of first instance. The most common categories are cases concerning the recovery of alimony (38%), determination of the child's place of residence (22%), deprivation of parental rights (15%), and division of joint property of spouses (18%). Table 4 shows how family cases are distributed across each category.

The forms and methods of protecting family rights have been systematized by Cherneha et al. (2022a), and there is a difference between jurisdictional and non-jurisdictional mechanisms for protecting family rights. Jurisdictional mechanisms include judicial protection, administrative protection through guardianship, guardianship powers, and notarial protection through the certification of agreements. Other non-jurisdictional forms include self-protection, mediation, and appeals to human rights organizations. The success of these mechanisms is largely determined by citizens' awareness of their rights and access to legal assistance.

Krasytska (2025) examines in detail the issues of problematic legal regulation and law enforcement of family rights protection measures. The researcher emphasizes that the main obstacles to successful protection are citizens' lack of awareness of procedural mechanisms, the length of court proceedings, high court costs, and the low qualifications of some judges on certain family law issues. Such issues are especially acute in those cases when the intervention is required in order to defend the rights of children.

The Supreme Court of Ukraine has its case law that establishes key legal posts on the use of the norms of family law. In its decision of September 22, 2021, in case No. 372/504/19 (Supreme Court of Ukraine, 2021b) clearly defined the principles by which the amount of alimony is determined and emphasized that the court must take into account not only the financial situation of the person paying alimony, but also the actual needs of the child, the level of inflation, and the minimum subsistence level. The court noted that child support should ensure the child a decent quality of life necessary for physical, mental, spiritual, moral, and social development.

Table 4. Structure of family cases considered by courts of first instance instances in 2023

Case category	Number of cases	Interest from general quantities	Medium duration consideration (months)
Penalty child support	13.680	38%	2.3
Definition places residence child	7.920	22%	4.7
Deprivation parental rights	5.400	15%	5.2
Divide joint property of spouses	6.480	18%	6.8
Installation paternity	1.440	4%	3.5
Others family disputes	1.080	3%	4.1
Together	**36.000**	**100%**	**4.4**

Source: composed by the author on basis data from the State Judicial Administration of Ukraine (2024)

Another landmark decision was the Supreme Court's ruling of January 13, 2021, in case No. 757/54751/18-ц (Supreme Court of Ukraine, 2021a) on the deprivation of parental rights. The court ruled that deprivation of parental rights is an extreme measure that should only be applied in cases of culpable unlawful actions by parents and exclusively in the interests of the child. The main conclusion is that it must be proven that the preservation of parental rights poses a real threat to the life, health, or moral development of the child.

An assessment of the situation of children in Ukraine provided by UNICEF Ukraine (2024) indicates serious problems with the implementation of children's rights. Table 5 shows the main indicators of the situation of children and their access to protection of their rights.

Table 5. Indicators of the situation of children and access to protection their rights in Ukraine (2024)

Indicator	Value	Dynamics compared to 2020
Children who are under guardianship states	94.300	-12%
Children in foster care families	15.780	+34%
Cases home violence of children (registered)	4.520	+28%
Children who received free of charge legal help	8.940	+45%
Appeal to authorities guardianship and care	32.100	+18%
Cases of deprivation parental rights	5.400	+7%

Source: adapted from UNICEF Ukraine (2024)

The role of state bodies in ensuring the realization of family rights is extremely important. Child welfare agencies pay attention to the observance of children's rights and provide them with assistance in the form of counseling, as well as participate in court proceedings, representing the interests of children. Child welfare services play the role of integrating the efforts of various institutions in the field of child protection. However, in most cases, their activities are hampered by a lack of funds, overworked specialists, and a lack of interagency coordination.

Procedural issues relating to the exercise of family rights are governed by both procedural and substantive law. A distinctive feature of family cases is that in cases involving children, child protection authorities must be involved, court hearings are held in camera to ensure confidentiality, and reconciliation procedures may be applied. However, as practice shows, procedures need to be simplified, particularly in matters of child support and visitation rights.

Thus, the implementation of family rights has demonstrated both successes and shortcomings in practice. Statistical data and judicial practice show that judicial protection mechanisms are actively used, but there are difficulties related to the length of the process, access to legal aid, and the effectiveness of state bodies in the field of family rights protection.

Problems in exercising family rights and ways to solve them

Research into the application of family law and the exercise of family rights reveals a complex systemic problem that hinders the effective exercise and preservation of the rights of persons involved in family relationships. These problems include gaps in legislation, shortcomings in law enforcement procedures, organizational and financial constraints on the activities of authorized bodies, as well as socio-economic aspects that affect the right to exercise rights.

In their article on the study of barriers to family justice, Hunter et al. (2021) note that one of the most difficult aspects is the issue of risk assessment in cases involving contact with children. Courts are often faced with a dilemma: whether to grant the father the right to communicate with the child or to protect the child in case they may be harmed. This is particularly difficult in cases where there are signs of domestic violence or alcohol or drug abuse. The lack of training for judges in psychological and social assessment forces them to make decisions that are not always in the best interests of the child.

Krasytska (2025) summarizes the problematic issues of legal regulation and ensuring methods of protecting family rights and identifies several important groups of problems. First, due to the lack of legislation regulating new types of family relationships, in this case the lack of legal status for common-law spouses, the property rights of representatives of long-term relationships who have not registered their marriage are not protected. Second, procedural mechanisms are imperfect, as evidenced by the excessive length of proceedings, the difficulty of proving the circumstances in family conflicts, and the lack of opportunities to ensure immediate protection of violated rights.

According to statistics prepared by the State Judicial Administration of Ukraine for 2023 (State Judicial Administration of Ukraine, 2023), there are systemic problems. The average duration of family cases is 4.4 months, which significantly exceeds the time limits provided for by procedural law. The studies of the higher court appeals are taken in one quarter of the cases, which signifies the inconsistency of the application of legislation to the courts and the lack of adequate justification of the court decisions.

An analysis of the situation of children in Ukraine conducted by UNICEF Ukraine (2024) shows that there are serious problems with ensuring children's rights. The fact that the number of reported cases of domestic violence against children increased by 28% to the level of 2020 indicates not only a deterioration in the situation, but also an increase in awareness and willingness to seek help. However, the response mechanisms are not effective enough, as child protection services are overloaded, there is a lack of temporary accommodation for affected children, and the various child protection agencies do not coordinate their activities properly.

Table 6 systematizes the main problems in the implementation of family rights by category and proposes specific ways to solve them based on an analysis of national practice and international experience.

Table 6. Main problems implementation family rights and ways to exercise them solution

Problem category	Specific manifestations	Proposed solutions
Legislative gaps	Absence regulation of de facto marriage; vagueness criteria deprivation parental rights	Application amendments to the Family Code regarding settlement of the status of unregistered partners; specification reasons limitation parental rights
Procedural disadvantages	Duration processing time (average 4.4 months); complexity of adoption procedures	Introduction simplified procedures in uncontested cases; digitalization document management; creation specialized family courts
Disadvantages law enforcement	Unequal case law; insufficient motivation solutions	Conducting systematic training judges; development methodical recommendations Supreme Court; ensuring participation psychologists in matters concerning children
Organizational problems	Overload organs burns; insufficient interdepartmental coordination	Magnification numbers specialists of the affairs services children; creation the only one informational systems accounting cases violation of children's rights
Economical barriers	High judicial costs; limited access to legal assistance	Expansion systems free of charge legal relief; release from court fee in cases of protection of children's rights
Social factors	Low legal awareness population; stigmatization requests for help	Carrying out informational campaigns; creation available consulting centers; development institute family mediation

Source: compiled by the author based on Hunter et al. (2021), Krasytska (2025), State Judicial Administration of Ukraine (2023), UNICEF Ukraine (2024)

International experience proves the effectiveness of a number of methods for solving this problem. In particular, the creation of specialized family courts in most European countries has reduced the length of proceedings and improved the quality of court decisions thanks to the specialization of judges. The emergence of other forms of dispute

resolution, such as family mediation, also contributes to reaching compromises and reducing the burden on the judicial system.

One area of focus is improving the training and professional development of specialists working in the field of family rights protection. This is not only relevant to the judges, but also to the child welfare workers, psychologists, and social workers. A multidisciplinary strategy of conflict resolution in the family which involves specialists in different fields will enable the interests of all the parties including the children to be considered better.

The administrative and judicial service of the sphere of relations within the family can be made considerably more accessible and efficient with the introduction of their digitalization. The electronic registry, web-based systems where the applications and appeals can be registered, electronic systems of documents management between various agencies will assist in accelerating the process and eliminating all the bureaucratic obstacles.

Thus, the failure to coordinate a legislative change, organizational change, professional development, the use of modern technologies, and the assimilation of the best practices of other countries necessitates the multifaceted approach to the implementation of the family rights. Unless rigorous efforts are implemented in all these spheres, there will be no chance to create a proper mechanism of securing and safeguarding family rights in Ukraine.

Discussion

The outcomes of the examination of the practical implications of the introduction of family rights by the actors of family relations prove the multidimensionality of the given law area and its complexity, et also the aspects that should be corrected the most, both on the legislative and practical levels. The findings prove the hypothesis that the success of the application of family rights is not necessarily determined by the quality of regulatory frameworks only, but also by the work of institutional mechanisms, access to legal assistance, and legal culture in society.

The gaps in legislation identified in the research, like the fact that the law does not control de facto relationships of marriage and the flaws in the process of adopting a child, are in line with the findings of Smith (2025), who claims that the limitations of the family law are also one of the problems that should be reconsidered in the given situation. This is because the conventional method of defining family and family relations are not mirrors of social reality since there are numerous forms of the family life which ought to be legally acknowledged and safeguarded (Smith, 2025). Our example work on the example of the Ukrainian legal system also supports this thesis, as the fact that unregistered partnerships are not regulated causes a legal grey zone and places the property rights of many citizens in danger.

This theoretical method of our family law as a social policy instrument suggested by George (2025) can be reflected in the light of the problems we have defined in terms of the access to justice, as well as the efficiency of state organizations in the defense of

family rights. George claims that family legal system cannot be considered a reactive system in resolving conflicts, but a proactive system, which assists in supporting families and preventing issues. Our study results, in particular, the analysis of UNICEF statistics showed the growth of the number of cases of domestic violence, which supports the idea that the national system does not have enough preventive mechanisms to ensure the protection of family rights, which is why the methods that George applies to the Ukrainian situation are applicable.

Comparative study of the Ukrainian and European laws demonstrates that there are great disparities in their approach to the regulation of some areas referring to the family relationships. To some extent, these variations can be attributed to the dissimilarities in legal traditions, but they also indicate varying levels of maturity of the legal systems and their suitability to the modern social conditions.The more lenient approaches of European jurisdictions to the recognition of other types of families, in particular, show potential guidelines for changing Ukrainian legislation.

Cherneha's (2022b) monographic study on the mechanism of legal regulation of family relations provides a theoretical basis for interpreting the practical results obtained. Cherneha critically analyzes the organization, functioning, and capabilities of the legal regulation mechanism, formulating its main components and the relationships between them. Our empirical data on judicial practice and statistical results of family case proceedings confirm Cherneha's conclusions regarding the existence of systemic problems in the functioning of this mechanism, in particular, shortcomings in the regulatory framework, procedures, and organizational work of the relevant state bodies.

In particular, it is important to compare the results of the study with those of Hunter et al. (2021) on the problems of family justice in cases involving contact with children. Hunter and co-authors refer to the example of the English court system to prove that it is difficult to assess the risks and balance the rights of parents and the safety of children. Research into Ukrainian judicial practice reveals the same problems, which also indicates that these challenges are common to other legal systems. At the same time, despite the fact that risk assessment procedures and special training for judges have been developed in the UK, these mechanisms are still under development in Ukraine, resulting in a higher level of inconsistency in court decisions.

An analysis of the European Court of Human Rights' decision in Strand Lobben and Others v. Norway (European Court of Human Rights, 2019) allows us to contextualize national practice within the framework of European human rights standards. The ECHR has set high standards for justification in cases of state interference in family life and emphasized the exceptional circumstances of actions such as removing a child from the family. The comparison with the Ukrainian experience shows that procedural guarantees to parents in the given situation should be strengthened and the extent of justification of the decisions by the bodies of guardianship and courts should be raised.

The practical importance of the research is the definition of particular areas of concern that should be tackled on the legislative and institutional levels. The legal regulation, mechanisms of work, and structure of the activities of the authorized bodies are

recommended through the analysis of the empirical data and consideration of best practices abroad.

Future research covers a number of areas. First, it is necessary to carefully examine the effectiveness of other means of resolving family conflicts, in particular mediation, which can be an important complement to court proceedings. Second, it is necessary to study how the process of digitalization affects the accessibility and quality of services in the field of family relations. Third, the topic of introducing European standards for the protection of family rights into national legislation and practice should be studied separately, especially given Ukraine's intentions to integrate into Europe.

Thus, the study proves the expediency and importance of a comprehensive approach to improving the system for the implementation and protection of family rights, which should be a combination of measures taken by the legislative branch, the judicial system, state bodies, and even civil society.

Conclusions

An analysis of the practical nature of the exercise of family rights by participants in family relations allows us to draw the following conclusions.

First, theoretical analysis has shown that the exercise of family rights is a complex legal phenomenon, which is determined by the fact that it is a personal phenomenon, inextricably linked to the interests of the child, and requires support from the state. Persons classified in family relations are spouses, parents and children, as well as other family members, and each of them is granted a certain set of personal non-property and property rights.

Second, research on legal regulation has revealed a multi-level system of norms, such as constitutional provisions, special family legislation, and international norms. A comparative study with European jurisdictions revealed several similar approaches, as well as several key differences in the regulation of certain aspects of family relations, particularly with regard to the recognition of non-traditional family forms and adoption processes.

Thirdly, research into practical issues with reference to statistical data and judicial practice has shown that there are a significant number of family issues, among which cases concerning the recovery of alimony (38%), determination of the child's place of residence (22%), and deprivation of parental rights (15%) predominate. The average duration of case consideration is 4.4 months, which indicates the inefficiency of procedures.

Fourth, systemic problems with the implementation of family rights have been identified: gaps in legislation regulating the status of common-law spouses, the time spent on case consideration, the lack of training for specialists in risk assessment in cases involving children, the inability to obtain the services of a lawyer, and the overload of guardianship courts.

The originality of the study is scientific, as it is based on an in-depth examination of the relationship between theoretical concepts, the regulatory framework, and the application of family law norms using a comparative legal approach and court statistics.

The practical value of the findings is that the scientifically reasonable recommendations have been drawn to enhance the legislation and practice in the sphere of family rights protection, namely: the establishment of specific family courts, the evolution of mediation, and the digitalization of the services in the given field.

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THE THEORETICAL FOUNDATIONS AND PRACTICAL IMPLEMENTATION IN THE PRIORITY OF THE RULE OF LAW IN TIMES OF WAR

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Abstract

The rule of law under martial law is one of the most complex and urgent issues of modern legal science, as it defines the limits of permissible restrictions on human rights and the degree of state responsibility for upholding democratic principles in times of extreme threats. This topic requires balancing security, legal certainty, and compliance with international human rights standards. The study aims to identify and characterize the constitutional, judicial, and administrative mechanisms that ensure the rule of law under martial law. The methodological framework includes comparative legal, systemic, institutional, and analytical methods, as well as generalization of statistical data from the World Justice Project, V-Dem, Freedom House, and Transparency International. The results show that the effectiveness of legal institutions in wartime depends on judicial independence, legislative transparency, and the proportionality of legal restrictions. A comparative analysis revealed that democratic states with strong constitutional control mechanisms (e.g., Germany, France, Poland) preserve legal stability, while excessive power concentration undermines the rule of law (e.g., Hungary, Vietnam). The Ukrainian experience demonstrates that military measures can coexist with adherence to international humanitarian norms and parliamentary oversight. The practical significance of the study lies in identifying models of legal stability applicable for improving martial law legislation, developing public monitoring mechanisms, and preventing abuse of emergency powers.

Keywords

Environmental protection, criminal offenses, rule of law, martial law, constitutional control.

Resumo

O Estado de direito sob a lei marcial é uma das questões mais complexas e urgentes da ciência jurídica moderna, pois define os limites das restrições permitidas aos direitos humanos e o grau de responsabilidade do Estado pela defesa dos princípios democráticos em tempos de ameaças extremas. Este tema requer um equilíbrio entre segurança, certeza jurídica e conformidade com as normas internacionais de direitos humanos. O estudo visa identificar e caracterizar os mecanismos constitucionais, judiciais e administrativos que garantem o Estado de direito sob a lei marcial. O quadro metodológico inclui métodos jurídicos comparativos, sistémicos, institucionais e analíticos, bem como a generalização de dados estatísticos do World Justice Project, V-Dem, Freedom House e Transparency International. Os resultados mostram que a eficácia das instituições jurídicas em tempo de guerra depende da independência judicial, da transparência legislativa e da proporcionalidade das restrições legais. Uma análise comparativa revelou que os Estados democráticos com fortes mecanismos de controlo constitucional (por exemplo, Alemanha, França, Polónia) preservam a estabilidade jurídica, enquanto a concentração excessiva de poder compromete o Estado de direito (por exemplo, Hungria, Vietname). A experiência ucraniana demonstra que as medidas militares podem coexistir com a adesão às normas humanitárias internacionais e à supervisão parlamentar. O significado prático do estudo reside na identificação de modelos de estabilidade jurídica aplicáveis para melhorar a legislação da lei marcial, desenvolver mecanismos de monitorização pública e prevenir o abuso dos poderes de emergência.

Palavras-chave

Proteção ambiental, infrações penais, Estado de Direito, lei marcial, controle constitucional.

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Introduction

The issue of the rule of law under martial law is of particular relevance in the modern world, where military conflicts, emergencies and global crises change the established legal guidelines. The rule of law is the foundation of a democratic state, ensuring the stability of the legal system, equality of all before the law and predictability of the actions of the authorities. However, in times of military threats, this principle is severely tested, as the state is forced to restrict certain rights and freedoms for security reasons while trying to maintain legal balance. It is at such moments that the real quality of democratic institutions and the stability of the constitutional order are revealed.

The relevance of this study stems from the need to understand how the system of legal guarantees is transformed during martial law, what institutional mechanisms ensure a balance between governmental powers and protection of citizens, and how effectively international standards are integrated into national legal practice. The theoretical value of the work lies in the disclosure of the relationship between constitutional control, judicial independence and compliance with international humanitarian norms that form the basis of the modern legal order. The practical significance of the study is determined by the possibility of using its findings to improve martial law legislation, to form effective safeguards against abuse of emergency powers and to ensure real protection of human rights even in conditions of limited freedoms. An analysis of current research shows that

the scientific community is increasingly interested in the problems of legal regimes of martial law. The works of Binder et al. (2025), Mészáros (2024) and Dang and Hoang (2024) emphasize the risks of concentration of power and undermining democratic control mechanisms. Kelbia et al. (2025), Honcharenko (2024) and Grynchak and Grynchak (2022) conduct a comparative analysis of the constitutional systems of different countries, demonstrating the varying degrees of readiness of legal institutions for crisis situations. Ukrainian researchers Korentsov (2024), Prytyka et al. (2022) and Nakonechna& Novosad (2023) focus on the problems of observance of the administrative and legal status of citizens and the proportionality of restrictions during martial law. Despite the existence of a large number of studies, the issue of integrating international humanitarian standards into national legal regimes, as well as assessing the sustainability of democratic institutions in prolonged crisis conditions, remains insufficiently developed. Thus, *the problem of the study* is the contradiction between the need to ensure the security of the state and the preservation of the rule of law in emergency conditions. A comprehensive assessment of the effectiveness of constitutional and judicial mechanisms for controlling emergency powers, as well as an analysis of local legal resilience at the community level, remains an *unfilled scientific niche*.

The purpose ofthe study is to clarify the theoretical, legal and practical mechanisms for ensuring the rule of law under martial law, to identify the risks of abuse of emergency powers and to characterize the instruments of legal control and balance between security and human rights.

Analysis of Recent Research and Publications

An analysis of recent research and publications demonstrates a wide range of approaches to the study of the rule of law and legal regimes under martial law. Modern scholarly works pay attention to the monitoring of the current legislation during martial law (Ahapova& Ivanchuk, 2023), the administrative and legal regime of martial law (Bezkrovniy, 2024), as well as the assessment of human rights protection practices in times of emergency (Binder et al., 2025; Krotiuk, 2025). The studies by Kondos (2024), Dang and Hoang (2024) and Condos (2024) raise the issues of colonial rule and challenges to law and order in emergencies, in particular, on the example of the COVID-19 pandemic. A significant number of publications are devoted to a comparative analysis of constitutional mechanisms for ensuring the rule of law during martial law in different countries (Kelbia et al., 2025; Grynchak & Grynchak, 2022; Honcharenko, 2024). In the Ukrainian context, the problems of applying martial law and its impact on the administrative and legal status of citizens are discussed (Korentsov, 2024; Kramarchuk, 2025), as well as the protection of fundamental human rights (Kuchyk et al., 2023; Nakonechna& Novosad, 2023).

Particular attention is paid to the mechanisms of international humanitarian law and the role of the judiciary in protecting rights under martial law (Paskar, 2023; Nijs, 2024), as well as to the local and regional dimensions of state resilience in times of armed aggression (Melnykovska&Sokhey, 2025). Analysis of international practice also

demonstrates negative examples of abuse of emergency powers that undermine the rule of law (Mészáros, 2024). Contemporary research emphasizes the need to balance security with the preservation of human rights in wartime, and emphasizes the importance of constitutional oversight and international standards during martial law (Stadnik &Buravska, 2022; Statsenko, 2025; Yatsun, 2024). Modern research also emphasizes the importance of balancing the public interest of the state with the protection of human rights in wartime. In particular, Prytyka et al. (2022) emphasize the protection of civil, property and labor rights even under martial law, as well as the challenges of ensuring a fair trial. Lupu and Wallace (2024) examine the specifics of international humanitarian law and support for foreign fighters, which is of direct relevance to the regulation of legal issues in the armed conflict zone. Novitskyi (2025) focuses on the peculiarities of the rule of law in modern conditions, emphasizing the practical aspects of its implementation. Won (2025) analyzes the issue of emergency powers in the context of the COVID-19 pandemic, which opens the way for a comparative analysis with martial law and its impact on human rights. These works add to the general understanding of the challenges to the rule of law in extreme conditions, demonstrating the need for a comprehensive and systematic approach to legal regulation.

Continuing the analysis of recent studies, it is worth noting that additional sources focus on the role of administrative courts in protecting human rights during martial law (Paskar, 2023), as well as on the local and regional dimensions of Ukraine's resilience in the fight against Russian aggression (Melnykovska&Sokhey, 2025). The issue of legal restrictions, in particular, restrictions on the right to movement under martial law, is important on the example of Ukrainian practice (Marushak, 2023). Emphasis is placed on international aspects, in particular, international humanitarian law and its application in wartime (Nijs, 2024), as well as on the negative consequences of abuse of emergency powers for the rule of law (Mészáros, 2024). Recent publications also consider the challenges of implementing constitutional mechanisms in times of emergency in different countries, highlighting lessons for Ukraine (Honcharenko, 2024; Kelbia et al., 2025). Particular attention should be paid to the analysis of practices of human rights restrictions in the context of martial law, with an emphasis on the problems of uncontrolled expansion of mobilization powers (Statsenko, 2025) and ways to overcome them (Nakonechna& Novosad, 2023).

Based on the above, it can be stated that despite significant progress in research, the issues of the optimal balance between ensuring the security of the state and preserving the rights and freedoms of citizens in wartime remain unresolved. There is also a lack of in-depth analysis of practical mechanisms to control the use of emergency powers and prevent their abuse.

Research Methods

The study was conducted in 2024-2025 by the author on the basis of an interdisciplinary approach using official statistics from international organizations and the results of modern scientific publications. The main sources of empirical data were the open reports

of the World Justice Project (2021, 2023, 2024), V-Dem Institute (2024a, 2024b), Freedom House (2024) and Transparency International (2024), which contain comparative indicators of the rule of law, democracy and anti-corruption effectiveness in more than 140 countries. The information base was also based on scientific articles by recognized experts in the field of constitutional and administrative law, international humanitarian law and human rights published in professional journals such *as Oslo Law Review*, *International Journal of Constitutional Law*, *Amazonia Investiga*, *Problems of Legality*, etc. The methodological basis was formed by the comparative legal method – for comparing the mechanisms of ensuring the rule of law in different states; the systemic method – for analyzing the interrelationships between the legal, institutional and social elements of the martial law regime; the analytical method – for interpreting international indices and statistics; the institutional method – for identifying the role of judicial and constitutional bodies in ensuring control over emergency powers; and the structural and functional approach – for classifying the main elements of the martial law regime. The obtained data were systematized in tables and diagrams created by the author, which reflect comparative results and allow assessing the interdependence between security measures and the preservation of legal guarantees in wartime.

Research Results

The problematic aspects of the application of martial law, in particular in Ukraine, are quite multifaceted and complex. First, the key challenge is balancing the need to ensure national security and protect the administrative and legal status of citizens. Often, martial law provisions provide for temporary restrictions on rights and freedoms related to movement, assembly, the right to work, and other basic freedoms (Korentsov, 2024). These restrictions can create significant pressure on the population, complicating their normal daily life and administrative processes. The second important aspect is the risk of abuse of emergency powers of the authorities arising from unclear legislative regulation or the lack of effective mechanisms to control their implementation (Mészáros, 2024). All of this can lead not only to violations of fundamental human rights, but also to the demystification of systemic problems in public administration. At the same time, the administrative and legal status of citizens is changing under the influence of martial law, which complicates the operation of the usual rules of administration and law. The application of the special regime is often accompanied by restrictions on legal procedures, such as access to a fair trial, which increases the level of legal uncertainty for citizens (Prytyka et al., 2022). The third problematic issue is the discrepancy between the provisions of military legislation and international human rights standards. Some national regulations are not able to fully ensure compliance with international humanitarian law, which requires enhanced judicial oversight and better consolidated procedures (Kuchyk et al., 2023; Paskar, 2023). As a result, citizens may find themselves in a situation where their rights remain mere declarations rather than guaranteed labor or social guarantees.

It is important to add to the issue of the impact of martial law on the labor rights and property status of citizens. Restrictions related to mobilization, changes in the operation of enterprises, and measures to protect against security threats create additional

obstacles to the stable functioning of the labor market and business (Nakonechna& Novosad, 2023). This poses a threat to social instability for vulnerable populations, which requires additional regulation and social protection from the state. Summarizing, it can be stated that the problems of applying martial law have deep legal, social and administrative roots. Overcoming them requires clearer legislative coding of restrictions, introduction of effective control and constitutional mechanisms, as well as adaptation of national legislation to international human rights standards (Kelbia et al., 2025; Honcharenko, 2024). Only a systematic and multicomponent approach will make it possible to protect not only state security but also the rights of citizens in the emergency conditions of martial law.

Table 1. Mechanisms for the protection of fundamental human rights in the context of martial law

Protection mechanism	Description	Examples and specifics of application
International humanitarian law	A body of international law governing behavior in armed conflicts.	It ensures the protection of civilians, the prohibition of torture, and humanitarian assistance (Nijs, 2024).
Constitutional control	Judicial review of the constitutionality of martial law measures in relation to human rights.	Protection from illegal restrictions, refutation of unconstitutional norms (Krotiuk, 2025).
Administrative courts	Consideration of citizens' complaints against the actions of administrative bodies during martial law.	They protect the right to a fair trial and prevent abuse of power (Paskar, 2023).
International human rights institutions	Mechanisms of the UN, ECHR and other human rights monitoring bodies.	They accept individual complaints and monitor the situation with rights violations (Kuchyk et al., 2023).
Legislative restrictions	Temporary restrictions on rights and freedoms provided for by martial law.	They regulate movement, assembly, and information activities (Marushak, 2023).
Monitoring and evaluation of legislation	Analyzing the compliance of martial law norms with human rights standards and improving them.	Constant review of laws, elimination of discriminatory norms (Ahapova& Ivanchuk, 2023).

Source: created by the author based on (Ahapova& Ivanchuk, 2023; Krotiuk, 2025; Kuchyk et al., 2023; Marushak, 2023; Nijs, 2024; Paskar, 2023)

The protection of fundamental human rights is critical during martial law, when states introduce emergency measures to ensure security. One of the key instruments of such protection is international humanitarian law, which regulates minimum standards of behavior during armed conflicts and guarantees the inviolability of fundamental human rights even in emergency situations. At the same time, the role of judicial systems, in particular administrative courts, is crucial in ensuring proper control over the application

of restrictions and protection of citizens' rights. The complex of protection mechanisms can best be summarized through a comparative overview of the key approaches and instruments presented in Table 1.

Thus, modern mechanisms for the protection of fundamental human rights in the context of martial law are based on a combination of international humanitarian law, effective judicial practice, state legislation and international control. They are aimed not only at minimizing the negative consequences for human rights in times of emergency, but also at preserving the rule of law and public trust in legal institutions. It is important to emphasize that the success of these mechanisms depends on their implementation in national law, proper judicial independence and the activities of international organizations. Continuous monitoring and adaptation of legislation helps to reduce the risks of abuse and violations, which is especially important for countries undergoing martial law.

The rule of law under martial law is of particular importance, as it is in times of emergency that states face a dilemma between the need to ensure security and the preservation of fundamental human rights and freedoms. Constitutional mechanisms for guaranteeing the rule of law should prevent the usurpation of power, ensure judicial control over the actions of the executive branch of government, and harmonize national norms with international standards. A comparative analysis of the experience of different countries allows us to identify optimal models of interaction between the branches of government in a state of emergency or martial law, to identify effective safeguards against the abuse of emergency powers, and to trace trends in constitutional reform aimed at strengthening the rule of law (Kelbia et al., 2025; Honcharenko, 2024; Mészáros, 2024).

In order to systematize the approaches introduced in different countries, Table 2 provides a comparative analysis of the constitutional mechanisms for ensuring the rule of law under martial law.

A comparative analysis of the constitutional mechanisms for ensuring the rule of law shows that the success of the legal regime during martial law depends not only on the existence of formal control institutions, but also on their real independence and ability to limit the extraordinary powers of the executive branch. European countries with a developed culture of constitutionalism demonstrate a higher level of legal balance between security and freedom, while countries with hybrid or centralized models face the risk of undermining the principle of separation of powers. Ukraine, despite the objective challenges of war, continues to maintain basic guarantees of constitutional control, which confirms its commitment to European standards of the rule of law (Kelbia et al., 2025; Honcharenko, 2024).

Table 2. Comparative analysis of constitutional mechanisms for ensuring the rule of law under martial law

Country	Main constitutional mechanism	Key elements of control	Peculiarities of implementation during martial law	Effectiveness / challenges
Ukraine	Constitutional Court, parliamentary oversight, martial law decrees of the President with subsequent approval	Judicial control, restrictions on term extension, parliamentary monitoring	President can declare martial law only with the consent of the Verkhovna Rada; judiciary remains operational	Constitutional stability is preserved, but there is a risk of executive power expansion (Korentsov, 2024; Statsenko, 2025)
Poland	Constitutional tribunal and "state of emergency" mechanism	Parliament has the right to control the validity of emergency measures	Limitation of terms and scope of emergency powers	Effective parliamentary oversight, but slow response of the judiciary (Grynchak & Grynchak, 2022)
Hungary	Emergency powers of the government under the 2020 constitutional amendment.	Limited parliamentary oversight, increased role of the government	Use of the state of emergency for political concentration of power	Violation of the principle of separation of powers, undermining confidence in the courts (Mészáros, 2024)
Germany	"Grundgesetz (Basic Law) – Articles 115a-115l	The Federal Constitutional Court controls the legality of government actions	Emphasis on maintaining parliamentary oversight even in times of war	High level of stability and legal certainty (Kelbia et al., 2025)
France	Constitutional Council, "état d'urgence" regime	President initiates state of emergency, but parliament can limit it	The Constitutional Council assesses the legality of government decisions	Balance between speed of decisions and legal control (Honcharenko, 2024)
United Kingdom	Unwritten constitution, parliamentary sovereignty	Judicial precedent and parliamentary oversight	Emergency powers are realized through acts of parliament	High flexibility, but dependent on political culture (Binder et al., 2025)
USA	US Constitution, judicial review of the Supreme Court	Division of powers between Congress and the President, "War Powers Resolution"	President acts within the framework of congressional delegated powers	Clear system of checks and balances, but controversy over executive orders (Lupu & Wallace, 2024)

Israel	Basic laws and judicial review by the Supreme Court	The Court controls the proportionality of restrictions on rights	During martial law, the Court actively intervenes in executive decisions	A positive example of active judicial review (Binder et al., 2025)
Vietnam	Socialist model of control – party responsibility and government centralization	No independent constitutional court	Emergency measures are adopted centrally without judicial review	High level of efficiency but low legal transparency (Dang & Hoang, 2024)

Source: created by the author on the basis of (Binder et al., 2025; Dang & Hoang, 2024; Grynchak & Grynchak, 2022; Honcharenko, 2024; Kelbia et al., 2025; Korentsov, 2024; Lupu & Wallace, 2024; Mészáros, 2024; Statsenko, 2025)

During martial law, the state authorities receive expanded powers to ensure national security, mobilize resources and protect citizens. However, the granting of such extraordinary powers is always accompanied by risks of abuse, ranging from political concentration of power to restrictions on civil rights and arbitrary interpretation of laws. The main challenge is to find a balance between the effectiveness of government decisions and preservation of democratic guarantees. Emergency powers can be justified only if they are legally proportionate, time-limited and subject to parliamentary control. The experience of different countries shows that the abuse of such instruments often leads to the erosion of constitutional principles, usurpation of power and undermining public trust in the state (Mészáros, 2024; Honcharenko, 2024; Statsenko, 2025). To summarize the main challenges and proposed mechanisms for overcoming them, Figure 1 provides a structured visualization of the problems and ways to resolve them based on a comparative analysis of international practice.

Thus, the main threat in the field of emergency powers is the gradual normalization of military restrictions, when temporary measures become permanent practices of public administration. To prevent this, it is necessary to create an effective system of checks and balances that combines internal constitutional control and external international monitoring. The introduction of transparent procedures, clear terms of emergency acts and regular parliamentary reporting will help to preserve the rule of law even in times of war. Ukraine's experience in recent years can serve as an example of gradual strengthening of democratic governance in times of crisis (Kelbia et al., 2025; Honcharenko, 2024).

The resilience of the state in wartime is formed not only at the central level, but primarily in the local and regional dimensions. It is these levels that ensure the viability of communities, the maintenance of public order, the functioning of infrastructure and the provision of basic services to the population in the face of constant threats. In the Ukrainian context, the military resilience of communities is manifested in the ability of local authorities to coordinate actions between military structures, humanitarian missions, businesses, and volunteers.

Figure 1. Challenges and ways to resolve the abuse of emergency powers during martial law

Key challenges:	Ways to resolve the issue:
Concentration of power in executive bodies. The government has excessive powers to make decisions without parliamentary approval, which weakens the principle of separation of powers (Mészáros, 2024). Reduced transparency of government decisions. Some decisions are made behind closed doors, without public scrutiny, creating a risk of violating citizens' rights (Dang & Hoang, 2024). Weakening of judicial control. Judicial institutions are often limited in their jurisdiction or operate under administrative pressure (Krotiuk, 2025). Political manipulation of military restrictions. Use of a state of emergency to suppress opposition or control the media (Binder et al., 2025).	Strengthening parliamentary oversight. Introducing mandatory periodic reports by the government to parliament on decisions made under martial law (Honcharenko, 2024). Limiting the duration of emergency powers. Setting time limits with the possibility of extension only with parliamentary approval (Kelbia et al., 2025). Enhancing the role of the constitutional court. Granting the court powers to review acts adopted during martial law (Krotiuk, 2025). International monitoring and standardization. Using the recommendations of the Council of Europe, the UN, and the OSCE to harmonize national legislation (Yatsun, 2024). Transparent communication with the public. Ensuring public access to decisions made under martial law through open government portals (Ahapova& Ivanchuk,2023).

Source: created by the author on the basis of (Ahapova& Ivanchuk, 2023; Binder et al., 2025; Dang & Hoang, 2024; Honcharenko, 2024; Kelbia et al., 2025; Krotiuk, 2025; Mészáros, 2024; Statsenko, 2025; Yatsun, 2024)

At the same time, the exercise of such powers is accompanied by a number of legal restrictions, including on freedom of movement, information activities, and public gatherings. These restrictions are intended to guarantee security, but they should be applied proportionately and should not undermine the foundations of the democratic system (Melnykovska&Sokhey, 2025; Marushak, 2023; Nakonechna& Novosad, 2023).

Table 3 presents a comparative description of local and regional aspects of Ukraine's resilience in wartime, highlighting key legal restrictions, their consequences, and ways to balance security and human rights.

Ukraine's local and regional resilience during martial law demonstrates a high level of adaptability and interaction between civil society and the government. At the same time, the introduction of legal restrictions, especially on movement, creates additional social challenges, ranging from violations of labor rights to the isolation of certain communities. The balance between security and human rights is achieved through constant monitoring of restrictions, a flexible approach to their application, and the development of digital governance tools. The decentralized model of governance and the active role of communities remain key factors in preserving the rule of law even in emergency situations (Melnykovska&Sokhey, 2025; Nakonechna& Novosad, 2023).

In the current conditions of war, an empirical study of the rule of law is of particular importance, as it allows us to trace real changes in institutional indicators that reflect the

quality of public administration and the degree of protection of citizens' rights. The study was conducted on the basis of publicly available official sources and international reports, including the World Justice Project (2021, 2023, 2024) and Varieties of Democracy (V-Dem Dataset, 2021-2023), as well as analytical reviews by Freedom House (2024) and Transparency International (2024). These organizations systematically collect data based on combined surveys of legal experts, civil society representatives, national statistical agencies, and open government reports. For example, the World Justice Project annually covers more than 214,000 respondents and about 3,500 experts in 142 countries using a standardized questionnaire of eight indicators: limited government, absence of corruption, open government, fundamental rights, security, regulatory activity, civil and criminal justice (World Justice Project, 2024). The V-Dem data is compiled by more than 4,000 researchers who assess electoral, liberal, deliberative, and participatory democracy using multidimensional models (V-Dem Institute, 2024b). The data was selected for Ukraine, Poland, and Hungary for 2021-2024, which made it possible to trace the dynamics of legal indicators in a country under martial law and compare it with European countries with different levels of constitutional stability.

An analysis of statistical indicators suggests that Ukraine maintains relatively stable positions in global rule of law rankings even in the face of a full-scale war. According to the World Justice Project, the overall rule of law index decreased from 0.51 in 2021 to 0.47 in 2023, but increased to 0.49 in 2024, indicating gradual institutional adaptation. For comparison, in 2024, Poland's index was approximately 0.61, and Hungary's was 0.43 (World Justice Project, 2024). According to the V-Dem index of electoral democracy (v2x_polyarchy), Ukraine had a score of 0.415 in 2023, which is lower than Poland's 0.73 and Hungary's 0.63 (V-Dem Institute, 2024b; Our World in Data, 2024). These values demonstrate that despite martial law and temporary restrictions on rights, the level of democratic practices and legal culture remains moderately stable.

As can be seen from Table 1, the Rule of Law Index in Ukraine demonstrates a wave-like dynamics – first, a decline under the influence of hostilities, and then a gradual recovery in 2024.

The data show that even under martial law, Ukraine has not lost the basic institutional foundations of the rule of law. Although some indicators – such as restrictions on rights and freedoms, independence of the judiciary, or the level of corruption risks – have deteriorated in the short term, the overall trend shows that legal institutions are resilient. The score of 0.49 in 2024 demonstrates that the state mechanisms of legal control, parliamentary oversight and civic monitoring continue to function despite the extraordinary challenges. This confirms that it is possible to maintain a balance between security and human rights even in times of deep crisis, which is consistent with the findings of analytical reports by Freedom House (2024) and Transparency International (2024). Thus, the quantitative indicators of international organizations confirm that Ukraine is forming a unique model of legal stability that combines legal restrictions with the desire to preserve democratic values and legal balance.

Table 3. Local and regional dimension of Ukraine's resilience in wartime and related legal constraints

Level / Aspect	Key elements of resilience	Types of legal restrictions	Impact on communities	Mechanisms for balancing rights and security
Local level (communities)	Self-organization of the population, activities of volunteer headquarters, local resource mobilization	Temporary bans on mass events, control of movement between communities	Restrictions on social activity, but increased security	Local coordination councils involve the public in decision-making (Melnykovska&Sokhey, 2025)
Regional military administra-tions	Evacuation management, distribution of humanitarian aid, control of transport corridors	Access control, curfews, document checks	Slowing down logistics and economic activity	Flexible permitting procedure for strategic transportation (Marushak, 2023)
Transportation infrastructure	Ensuring the movement of military, refugees, and humanitarian goods	Restrictions on interregional travel, checkpoints	Temporary reduction of population mobility	Electronic system of route approvals, military commandant's offices as security regulators
Economic sustainability of the regions	Support for critical infrastructure enterprises, business relocation	Restrictions on free movement of labor, export regulation	Decline in economic activity in frontline regions	State programs to support relocated enterprises (Nakonechna& Novosad, 2023)
Information security	Prompt information, countering disinformation	Censorship of military news, ban on filming military facilities	Restriction of freedom of expression, but reduction of information risks	Information centers at the IAA and content verification systems (Ahapova& Ivanchuk, 2023)
Social sustainability	Provision of basic services, support for internally displaced persons	Restrictions on freedom of movement in dangerous areas	Psychological burden and migration challenges	Implementation of humanitarian corridors and digital passes (Marushak, 2023)
International cooperation at the regional level	Cooperation with international partners, grant programs for local recovery	Regulatory restrictions on the involvement of foreign volunteers in combat zones	Delays in the implementation of recovery projects	Simplification of visa and customs procedures for humanitarian missions (Lupu & Wallace, 2024)

Source: created by the author based on (Ahapova& Ivanchuk, 2023; Lupu & Wallace, 2024; Marushak, 2023; Melnykovska&Sokhey, 2025; Nakonechna& Novosad, 2023)

Table 4. Rule of Law Index (WJP) in Ukraine in 2021-2024

Year	WJP index	Rank among countries	Commentary
2021	0.51	74/139	stable period before the war
2022	0.50	-	slight decrease due to the introduction of martial law
2023	0.47	89/142	minimum value for the years of observation
2024	0.49	88/142	the beginning of the restoration of stability

Source: created by the author based on World Justice Project (2021, 2023, 2024), V-Dem Institute (2024b), Freedom House (2024), Transparency International (2024)

Ensuring a balance between state security and preserving the rights and freedoms of citizens during martial law is a complex but critical task that requires a systematic approach and responsible policy. First, a clear legislative framework should be introduced to define the limits of emergency powers that can be used during martial law, taking into account international human rights standards. This includes ensuring that the restrictions are temporary, proportionate and strictly accountable for any abuse, as well as that they are subject to ongoing monitoring by independent institutions and the public. Second, the development and strengthening of constitutional and judicial oversight institutions should be a priority. The judicial system should have the necessary independence and resources to effectively review cases related to violations of rights during martial law. It is important to ensure quick access to legal protection for citizens, to create specialized mechanisms for reviewing such cases, which will allow not only to establish the facts of violations, but also to respond to them properly. Third, maximum transparency and public control over the actions of the authorities in wartime should be ensured. Regularly informing the public about the restrictions imposed, their grounds and duration, as well as public reporting by the responsible authorities, will help to increase trust and prevent corruption and abuse. The involvement of civil society organizations, human rights structures and international partners in monitoring the situation is extremely effective.

Finally, it is necessary to invest in training and professional development of civil servants and law enforcement officials to ensure that the principles of the rule of law are upheld even in extreme circumstances. It is important to foster a culture of legal responsibility, tolerance and respect for human rights as the basic principles of state policy. The introduction of such measures will help maintain a balance in which national security is ensured while not violating the fundamental rights and freedoms of citizens, which is the key to the long-term stability and development of the state.

Discussion

The results obtained confirm the difficulty of finding a balance between national security and preservation of human rights during martial law. According to a number of researchers, emergency powers can be justified only under conditions of clearly defined temporality and proportionality, as well as in the presence of effective parliamentary and judicial control (Binder et al., 2025; Mészáros, 2024). At the same time, some authors, such as Dang and Hoang (2024), argue that even under severe restrictions, democratic institutions are able to adapt to crisis conditions, provided that the government is open and civil society is involved. In the context of Ukraine, this is confirmed by international reports that demonstrate the stability of key legal indicators despite the large-scale challenges of war (World Justice Project, 2024; V-Dem Institute, 2024a).

A comparison of the constitutional models of different countries shows significant differences in the degree of independence of the judiciary and parliamentary control during the state of emergency. European countries, such as Germany and France, demonstrate the effectiveness of the system of checks and balances through constitutionally enshrined mechanisms for verifying the legality of government decisions (Kelbia et al., 2025; Honcharenko, 2024). Hungary, on the other hand, shows an example of the gradual erosion of the rule of law due to the concentration of power in the hands of the executive (Mészáros, 2024). In this context, the Ukrainian model looks intermediate: despite significant challenges, it preserves the functioning of parliamentary oversight, the Constitutional Court, and the basic elements of judicial independence (Korentsov, 2024; Statsenko, 2025).

A number of scholars (Ahapova& Ivanchuk, 2023; Paskar, 2023; Krotiuk, 2025) emphasize that the real effectiveness of the rule of law in wartime is determined not so much by legal formulas as by the level of public trust in legal institutions. It is trust that becomes a critical factor in legal sustainability, which is consistent with sociological trends that show that Ukraine maintains a moderately high level of legal awareness and public control, even under martial law. Other researchers, such as Lupu and Wallace (2024), draw attention to the international dimension of the rule of law, emphasizing that the support of international partners and external monitoring have a significant impact on the stability of domestic legal institutions.

The contradictions between the positions of different groups of authors lie primarily in the interpretation of the limits of permissible restrictions on human rights. Some scholars believe that severe restrictions are inevitable to ensure national security (Marushak, 2023; Nakonechna& Novosad, 2023), while others emphasize that even in a crisis, the state has no right to go beyond international humanitarian law standards (Nijs, 2024; Kuchyk et al., 2023). The empirical evidence presented confirms that Ukraine is trying to comply with these standards, ensuring that legal restrictions are controlled and reversible.

At the same time, the analysis showed certain contradictions between the formal existence of legal guarantees and their practical implementation. As noted by Mészáros (2024), even democratic institutions can gradually lose their effectiveness in the case of

"normalization" of emergency powers, when temporary measures become permanent. For Ukraine, this danger is also relevant, as the war creates conditions under which emergency governance tools can become commonplace. However, as the experience of local communities shows (Melnykovska&Sokhey, 2025), local resilience and public participation remain safeguards against the usurpation of power and excessive centralism.

Thus, the results of the study confirm that the rule of law under martial law is a multidimensional phenomenon that encompasses the legal, institutional and social levels. Its preservation depends on a combination of effective legal mechanisms, political accountability and the active role of civil society. However, the restrictions imposed during the war leave a number of open questions, including the limits of legal control, guarantees of judicial independence, and the long-term implications for democratic development. These aspects require further interdisciplinary research that combines legal analysis with sociological, political and psychological approaches to provide a holistic understanding of the rule of law in extreme circumstances.

Conclusions and Prospects for Further Research

The study reveals the complex nature of the rule of law under martial law as a dynamic system which combines legal, institutional and social components. Its scientific novelty lies in the comprehensive comparative analysis of the constitutional mechanisms of different states, which demonstrate that the effectiveness of the legal regime of martial law is determined not only by legislative provisions, but primarily by the actual functioning of the system of checks and balances. The Ukrainian experience confirms that it is possible to preserve the basic principles of the rule of law even in times of military threats, but reveals a number of problems, including the risks of normalizing emergency powers, fragmentation of judicial control, and a lack of parliamentary oversight. The practical significance of the findings lies in the possibility of using the identified patterns to improve national legislation on human rights restrictions, develop effective monitoring mechanisms, and strengthen local legal resilience. At the same time, the study faced limitations related to the incompleteness of open data, rapid changes in the legal framework, and the varying levels of availability of international benchmarks. Further research should be directed at developing models for assessing the proportionality of legal restrictions, studying the impact of martial law on trust in judicial institutions, and analyzing the interaction between state and civil society structures in maintaining the rule of law during crisis situations. Thus, the study lays the groundwork for the formation of a strategy for the legal stability of the state, which is centered on the individual, his or her rights and the value of democratic principles even in the most extreme conditions.

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JUDICIAL REFORM AS A FACTOR IN INCREASING PUBLIC TRUST IN JUSTICE

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Abstract

The article examines the stages of development of the judicial system of Ukraine in 2010-2024 in the context of institutional reforms, digital transformation and procedural modernization. The dynamics of key indicators of the efficiency of judicial proceedings are analyzed – the level of funding, staffing, average duration of case consideration, the share of electronic proceedings and rule of law indices. Based on a comparative analysis of data from Ukraine and the countries of the European Union (Poland, the Czech Republic, Romania), the main trends that determine structural changes in the sphere of justice are identified.The results of the study show that during the period under study, there was a significant reduction in the duration of case consideration (by 22%), an increase in the completion rate to 0.91, as well as the active implementation of digital technologies – in particular, the "Electronic Court" system, which ensured the submission of more than 35% of claims in electronic form. At the same time, there is a shortage of judicial personnel (more than 28% of vacant positions) and an insufficient level of financing of the judiciary (0.38% of GDP), which limits the sustainability of reforms.The paper proves that the digitalization of the judicial system is a key factor in increasing its efficiency, transparency and citizens' trust in the judiciary. Strengthening the institutional independence of judges, ensuring financial autonomy and forming professional integrity are identified as the main conditions for the further development of justice in Ukraine

in accordance with European standards of the rule of law.The methodological basis of the study is the principles of systemic, comparative and statistical analysis. The work uses official data from international organizations and the State Judicial Administration of Ukraine. The results obtained have practical significance for developing strategies for reforming the judiciary, optimizing funding and improving e-justice.

Keywords

Judicial system, rule of law, digitalization of justice, judicial reform, efficiency of judicial proceedings, trust in the judiciary.

Resumo

O artigo examina as etapas de desenvolvimento do sistema judicial da Ucrânia em 2010-2024 no contexto das reformas institucionais, da transformação digital e da modernização processual. É analisada a dinâmica dos principais indicadores da eficiência dos processos judiciais – o nível de financiamento, o quadro de pessoal, a duração média da apreciação dos processos, a percentagem de processos eletrónicos e os índices do Estado de direito. Com base numa análise comparativa dos dados da Ucrânia e dos países da União Europeia (Polónia, República Checa, Roménia), são identificadas as principais tendências que determinam as mudanças estruturais na esfera da justiça. Os resultados do estudo mostram que, durante o período em análise, houve uma redução significativa na duração da apreciação dos processos (em 22%), um aumento na taxa de conclusão para 0,91, bem como a implementação ativa de tecnologias digitais – em particular, o sistema «Tribunal Eletrónico», que garantiu a apresentação de mais de 35% das reclamações em formato eletrónico. Ao mesmo tempo, há uma escassez de pessoal judicial (mais de 28% dos cargos vagos) e um nível insuficiente de financiamento do poder judicial (0,38% do PIB), o que limita a sustentabilidade das reformas. O artigo prova que a digitalização do sistema judicial é um fator-chave para aumentar a sua eficiência, transparência e confiança dos cidadãos no poder judicial. O reforço da independência institucional dos juízes, a garantia da autonomia financeira e a formação da integridade profissional são identificados como as principais condições para o desenvolvimento da justiça na Ucrânia, de acordo com os padrões europeus do Estado de direito. A base metodológica do estudo são os princípios da análise sistémica, comparativa e estatística. O trabalho utiliza dados oficiais de organizações internacionais e da Administração Judicial do Estado da Ucrânia. Os resultados obtidos têm significado prático para o desenvolvimento de estratégias de reforma do poder judicial, otimização do financiamento e melhoria da justiça eletrónica.

Palavras-chave

Sistema judicial, Estado de direito, digitalização da justiça, reforma judicial, eficiência dos processos judiciais, confiança no poder judicial.

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Introduction

In modern democratic states, the judiciary is one of the main institutions for ensuring the rule of law, protecting the rights and freedoms of citizens, and maintaining the stability of public administration. The effectiveness of the functioning of the judicial system determines the level of legitimacy of the state, since it is through the mechanisms of justice that the social need for justice, equality before the law, and accountability of government to citizens is realized.

In Ukraine, the problem of trust in the judiciary remains one of the most urgent and at the same time the most complex. Since 2014, judicial reform has become a strategic priority of state policy, which is confirmed by the adoption of a number of regulatory legal acts: the Law of Ukraine "On the Judiciary and the Status of Judges" (Verkhovna Rada of Ukraine, 2016), amendments to the Constitution of Ukraine regarding justice, the creation of the High Council of Justice, the High Qualification Commission of Judges and the High Anti-Corruption Court. These steps were aimed at ensuring the independence of the judiciary, increasing its transparency and strengthening the responsibility of the judiciary.

However, as evidenced by the official analytical reports of the Consultative Council of European Judges (2024) and the Basel Institute on Governance (2024), Ukraine still faces a number of institutional challenges. According to the report by CEPEJ (2024), indicators of trust in the judiciary in Ukraine remain lower than in most European Union countries. For comparison: the average level of public trust in courts in EU countries exceeds 50%, while in Ukraine this indicator fluctuates within 25-30%. This lag is explained not only by

historical distrust of state institutions, but also by insufficient transparency of judicial procedures, the duration of court proceedings and the low level of communication between the judicial system and society.

The problem of trust in justice is complex. It encompasses not only organizational and legal aspects, but also socio-psychological factors, in particular the perception of the court as an impartial and effective arbiter. In this context, judicial reform should be considered not as a separate legislative or administrative measure, but as a systemic policy of modernization of the entire institutional architecture of justice – from personnel selection to mechanisms of accountability and control.

International standards play an important role in shaping a positive image of the judiciary. The documents of the Council of Europe, the Organization for Economic Cooperation and Development (OECD) and the Venice Commission have repeatedly emphasized that judicial independence is a basic condition for economic development and citizens' trust in the state. According to analytical data from the World Bank (2024), countries with high indicators of judicial independence demonstrate more stable GDP growth, lower levels of corruption, and higher investment attractiveness.

In this context, scientific substantiation of judicial reform is necessary as a key factor in increasing public trust in justice through the analysis of official statistical and international data.

Literature Review

The issue of judicial reform, its impact on the efficiency of justice and the level of public trust in judicial institutions is a subject of constant attention of both domestic and foreign scholars. Research in this area covers theoretical and legal, institutional, socio-economic and managerial aspects of judicial reform.

One of the key areas of modern scientific discussions is the identification of institutional factors of trust in justice. According to the conclusions of experts from OECD (2024; 2025),trust in the courts is formed primarily through the stability of the legal environment, the independence of judges, the effectiveness of disciplinary procedures and the transparency of appointments to the judicial system. The OECD emphasizes that in countries with high rule of law indicators (e.g. the Netherlands, Denmark, Finland), the stability of the judicial system is directly correlated with citizens' trust in the state and the level of economic development.

According to analytical reports of CEPEJ (2024) and Kalliris and Alysandratos (2023), the main indicators of the efficiency of the judiciary are the duration of court proceedings, the workload on judges, the level of automation of processes, the financing of the judicial system and independence from political influence. Comparative analysis of data shows that in Central and Eastern European countries that have successfully implemented judicial reforms (Estonia, Lithuania, Poland by 2016), the indicator of trust in courts increased by 15-20 percentage points after the introduction of e-justice mechanisms and open access to court decisions.

The issue of the relationship between the institutional independence of the courts and economic development has been studied in the works of the World Bank within the framework of the Worldwide Governance Indicators (World Bank, 2024). The reports emphasize that countries with high indices of rule of law and control of corruption demonstrate more stable growth of gross domestic product (GDP) and higher level of investment attractiveness. Thus, judicial independence and transparency of judicial procedures are recognized as critical prerequisites for economic stability and democratic development.

In the works of Venice Commission (n.d.) emphasized that effective judicial reform requires a balanced model of judicial governance – with a clear division of powers between the High Council of Justice, the parliament and the executive branch. The Commission has repeatedly drawn Ukraine's attention to the need to ensure transparency in the selection of judges, create an effective integrity verification mechanism and introduce clear criteria for the career growth of judges.

In Ukrainian scientific literature, the issues of judicial reform are studied in the context of ensuring the rule of law, combating corruption, and increasing the efficiency of justice. In particular, in the works of Lashyn et al. (2023), Zabokrytskyy (2020), Teremetskyi et al. (2023), Yara andSologub(2024): KrushynskyiandDankova (2022) and Zhukevych et al. (2025) examine the problems of personnel renewal of the judicial system, transparency of disciplinary procedures and interaction of the judiciary with civil society. In the works of Kryvytskyi (2024), Sereda et al. (2024) and Pomaza-Ponomarenko et al. (2024) emphasized that a sustainable increase in trust is possible only with the systematic digitalization of judicial processes and public monitoring of judges' decisions.

Some attention in modern research has also been paid to the digital transformation of the judiciary. According to the CEPEJ (2021), European Union (2025), Krushynskyi (2025) and Fabri (2023) electronic justice services (e-Court, e-Filing, online broadcasts of hearings) significantly reduce the level of distrust of citizens, as they ensure the openness of processes, accessibility of information and reduce the duration of case consideration. These conclusions confirm the practical feasibility of implementing an electronic court in Ukraine, which is gradually covering all regions since 2020. Thus, the analysis of scientific and official sources allows us to conclude that judicial reform has a comprehensive impact on citizens' trust in justice. It is not limited to regulatory changes, but covers organizational, technological and ethical aspects of the activities of courts. A high level of public trust is formed only under the conditions of a combination of the independence of the judiciary, the transparency of its procedures and effective communication with citizens, which is confirmed by both European and world experience.

Materials and Methods

The methodological basis of the study is a systemic, institutional, and comparative-analytical approaches that allow us to identify the patterns of the impact of judicial reform on the level of public trust in justice in Ukraine in the context of European standards.

The work used exclusively official statistical sources and analytical reports of international organizations, in particular:

- CEPEJ (2024). Analytical reports 2016-2024, containing data on the financing of the judicial system, the number of judges, the average duration of case consideration, the level of automation and openness of justice in European countries;

- World Bank (2024). Rule of law and corruption control indicators used to assess the effectiveness of legal institutions in international comparison;

- OECD (2025). Official statistics on the effectiveness of public administration, judicial independence and access to justice in the OECD countries D;

- State Judicial Administration of Ukraine (2024). Data on the financing of the judiciary, the workload on judges, the number of cases considered, the duration of proceedings and the digitalization of judicial processes (2016-2024);

- High Council of Justice of Ukraine (2024).Report of the State Judicial Administration of Ukraine (2024).

To assess trends in the field of justice, a comparative analysis of the main statistical indicators of Ukraine and the countries of Central and Eastern Europe (Poland, Lithuania, Romania, Czech Republic), which have similar conditions of legal modernization, was conducted. This allows us to determine the dynamics of changes and position Ukraine in the European context.

Research methods include:

1. Comparative legal analysis, which was applied to study the content of judicial reforms in various EU countries, their regulatory framework and implementation results.

2. Statistical analysis aimed at processing quantitative indicators of justice efficiency – financing of the judicial system (% of GDP), average duration of case consideration, number of judges per 100 thousand population, share of electronic proceedings.

3. Trend analysis used to study the dynamics of official European indicators Commission for the Efficiency of Justice and World Bank for 2010 – 2024.

4. A systemic approach that allows considering judicial reform as a component of the general policy of public administration aimed at establishing the principle of the rule of law.

All data were summarized in comparative tables and visualized in the form of graphs to better reflect the dynamics of changes. Particular attention was paid to the correlation between institutional indicators and qualitative results of reforms.

Research Results

The development of the judicial system of Ukraine during 2010-2024 is characterized by a phased reform process, accompanied by changes in the legislative framework, financial support, staffing structure and the degree of digitalization of justice. The main trends were formed under the influence of European standards of justice (CEPEJ, Venice Commission) and internal reforms aimed at increasing the independence of judges and public trust.

The level of funding for the judiciary is an indicator of the state's ability to guarantee effective justice. In 2010, funding amounted to only 0.34% of GDP, which indicated an insufficient level of support for institutional infrastructure. Starting from 2016, after the creation of new institutions, such as the High Council of Justice and the Public Integrity Council, funding for the judicial system increased to 0.48% of GDP (2018). This allowed for an increase in judges' salaries, modernization of court premises and partial implementation of digital services.

However, since 2022, there has been a decrease in funding to 0.38% of GDP due to military spending, which has negatively affected the stability of staffing and investments in judicial infrastructure. For comparison, according to CEPEJ (2021), Venice Commission (n.d.), the average financing of judicial systems in EU countries is 0.41-0.45% of GDP, i.e., Ukraine remains below the average European level. One of the biggest problems remains the shortage of judicial personnel. If in 2010 there were about 8300 judges working in Ukraine, then in 2024 there will be only 5100, while more than 2000 positions remain vacant. This means that almost 30% of courts are working understaffed, which leads to excessive workload – more than 500 cases per judge annually (compared to 230-250 in EU countries).

The reason for the staff shortage is the long process of qualification assessment, the migration of judges in connection with the reform and the low level of public trust, which makes it difficult to renew the corps. The presence of vacant positions directly affects the terms of consideration of cases and the overall quality of justice, creating the risk of overloading judges and reducing motivation. The efficiency of justice is assessed through the average duration of consideration of cases, the ratio of considered and unconsidered proceedings, as well as the level of automation of processes. According to the CEPEJ (2022), Venice Commission (n.d.), the average duration of civil cases in Ukraine decreased from 268 days in 2010 to 210 days in 2023, indicating an increase in procedural efficiency by 22%.

Following the introduction of the new version of the procedural codes (the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine, and the Code of Administrative Procedure of Ukraine) in 2017, there was a certain decrease in the number of pending cases. According to the State Judicial Administration of Ukraine (2024), the completion rate (the ratio of resolved cases to the total number) increased from 0.82 in 2015 to 0.91 in 2023. This indicator is approaching the level of Central and Eastern European countries, in particular Poland (0.93) and the Czech Republic (0.94).

However, the problem of uneven workload between courts of different instances remains: if in local courts it is 450-480 cases per year, then in appellate courts this figure reaches over 700. Such imbalances indicate the need to optimize the court network and redistribute the functional workload. A significant achievement in recent years has been the introduction of the "Electronic Court" system and the expansion of online access to court decisions. While in 2010, submission of documents was carried out exclusively in paper form, in 2024 more than 35% of all claims were filed electronically, and 90% of court decisions are published in an open register.

Table 1. Comparative analysis and trends in judicial system indicators in Ukraine and EU countries

Indicator	Ukraine 2010	Ukraine 2024	Poland 2024	Czech Republic 2024	Romania 2024	Trend
Court financing, % of GDP	0.34	0.38	0.43	0.39	0.45	Slight increase, below EU level
Number of judges per 100 thousand people	18.7	12.5	25.4	24.6	20.1	Staff reduction
Average duration of case consideration, days	268	210	185	170	190	Gradual reduction
Share of electronic proceedings, %	0	35	38	45	33	Active digitalization
Vacancies of judges, % of total number	5.2	28.4	4.8	3.1	6.5	Critical load

Source: based on Council of Europe data by CEPEJ (2022, 2024), OECD (2025), European Union (2025) and Basel Institute on Governance (2024).

The growth of digitalization contributes to reducing corruption risks, reducing waiting times and increasing the transparency of judicial procedures. For comparison: in Poland the share of electronic proceedings is 38%, in the Czech Republic – 45%, in Romania – 33%. Thus, Ukraine is approaching the average level of digital integration of EU countries, although the pace of development depends on stable funding and technical support.

The data shows that positive dynamics are observed primarily in the digitalization of judicial proceedings and the reduction of case processing times, while staff shortages and limited funding remain key barriers to the stability of the system. Compared to EU countries, Ukraine demonstrates a similar pace of procedural changes, but does not reach the level of structural balance and staffing.

Thus, the period 2010-2024 can be characterized as a stage of forming the foundations of an independent, digitalized, but still institutionally vulnerable judicial system. Gradual positive changes in financing, duration of case consideration and transparency of processes create the basis for increasing public trust, but achieving stability requires staff renewal, sustainable funding and completion of reforms of the institutional governance of the judiciary.

The concept of trust in the judiciary is one of the key indicators of a country's democratic maturity. According to international research, the level of trust in the judicial system is directly correlated with the indices of the rule of law, judicial independence and control of corruption, which are measured by the World Bank. Bank, OECD and Transparency

International. According to World Bank (2024), Ukraine is gradually improving its position in the Rule ranking of Law Index: in 2010 the indicator was 0.33; in 2015 – 0.39; in 2023 – 0.46 (on a scale from 0 to 1). This indicates a 40% strengthening of the rule of law over the past 13 years. For comparison, in 2023 Poland had an indicator of 0.74, the Czech Republic – 0.78, Romania – 0.67, i.e., Ukraine is still at the stage of forming stable legal institutions.

The gradual growth of the index is associated with key reforms:

2016: creation of the High Council of Justice, responsible for personnel policy and disciplinary procedures;

2017: adoption of a new version of procedural codes, which standardized the procedure for considering cases and introduced the principle of "reasonable time";

2020 – 2023: implementation of electronic justice and open registers of court decisions.

In parallel, according to OECD (2025), Ukraine increased its Judicial Independence from 41 points in 2015 to 49 points in 2023 (on a scale of 0 – 100). This indicates a moderate but steady strengthening of the independence of the judiciary, especially in the area of personnel decisions and financial autonomy of the courts.

One of the determining factors of public trust is the ability of the courts to ensure fairness and impartiality. According to the analytical report by GRECO (2024), Ukraine has implemented over 65 % of the recommendations on preventing corruption in the judicial system, which is significantly higher than in 2016 (less than 30% implementation). The main achievements relate to the transparency of the selection of judges and disciplinary liability. An important step was the introduction of the Public Integrity Council, which participates in the qualification assessment of judges. According to the High Council of Justice (2024), during 2017-2023, almost 300 candidates were not allowed to be appointed due to a negative opinion of the council. This contributed to the cleansing of the judicial corps and increased public trust in the appointment procedures.

At the same time, there is a decrease in the level of corruption perception in the justice sector. Control Index of Corruption (Worldwide) Governance Indicators, 2023) increased from 0.26 in 2010 to 0.43 in 2023, reflecting reduced administrative pressure and increased transparency of funding (Table 2).

Thus, increasing trust in justice in Ukraine is the result of a combination of three factors:

1. Institutional renewal – the creation of new judicial governance bodies that ensured transparency in the appointment of judges.

2. Procedural modernization – adoption of new versions of procedural codes and reduction of case processing times.

3. Digitalization – implementation of the "Electronic Court", online access to decisions and transparency of disciplinary procedures.

Table 2. Comparative dynamics indices supremacy rights, independence judicial authorities and control corruption in Ukraine and countries Central Eastern Europe (2010–2023)

Indicator	Ukraine 2010	Ukraine 2024	Poland 2024	Czech Republic 2023	Romania 2023	Trend
Rule of Law Index (World Bank (0–1)	0.33	0.48	0.72	0.79	0.69	Gradual improvement
Judicial Independence (OECD, 0–100)	41	52	63	74	60	Strengthening institutional independence
Control of Corruption (World Bank (0–1)	0.26	0.45	0.68	0.80	0.66	Reducing corruption pressure

Source: compiled from World Bank (2024), OECD (2025), Basel Institute on Governance (2024).

However, despite the positive dynamics, the level of actual public trust in the courts remains below potential, as public expectations regarding the complete renewal of the judicial corps and the elimination of corrupt practices are being realized gradually. For a stable growth of trust, not only a normative but also a value-based renewal of judicial culture, the formation of professional ethics of judges, accountability and openness are necessary. The results obtained indicate that judicial reform in Ukraine has a gradual positive effect on the formation of public trust in justice.

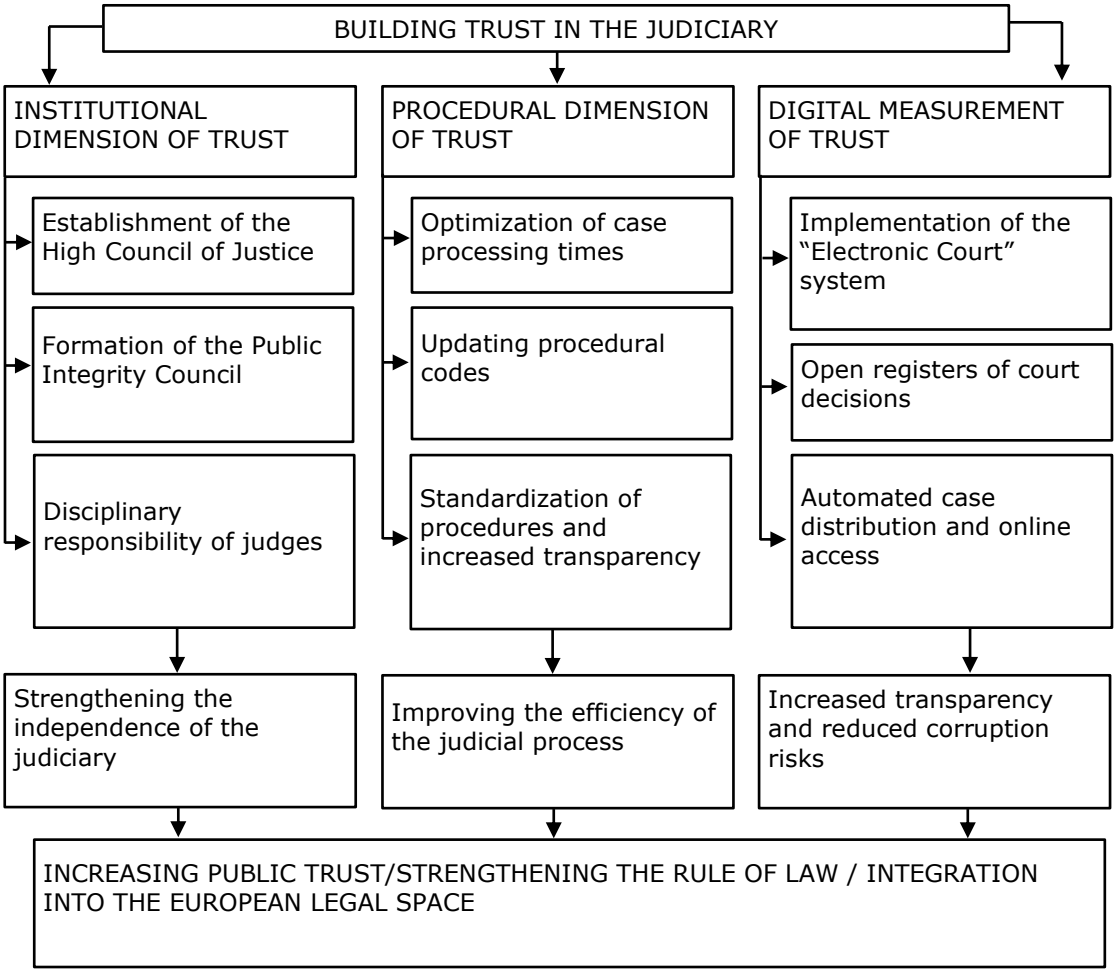
The growth of international indices of the rule of law, judicial independence, and corruption control is objective evidence of institutional progress. At the same time, incomplete personnel procedures, uneven digital integration of courts, and insufficient financial autonomy leave risks that could slow down the dynamics of change.

Thus, trust in justice is formed not only through regulatory changes, but also through the stability of their practical application, which requires a long-term state policy of supporting the judiciary.

The process of building trust in the judiciary in Ukraine in 2010-2024 is complex and encompasses three interrelated dimensions: institutional, procedural, and digital(Figure 1).

Each of them plays an independent but complementary role in the formation of a modern model of justice that meets European standards of the rule of law. The institutional component determines the management structure and personnel policy of the courts, the procedural component determines the quality and speed of the administration of justice, and the digital component determines the openness and transparency of judicial procedures. Their interaction creates the basis for increasing citizens' trust in the judicial system, which is one of the key indicators of the democratic maturity of the state.

Figure 1. Structural and functional scheme of building trust in the judiciary of Ukraine



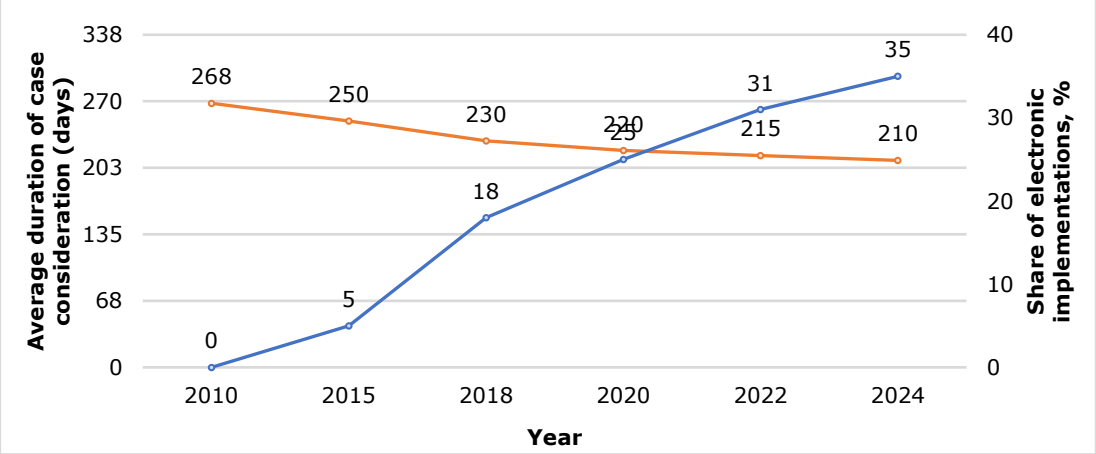
Source: compiled by authors

The proposed structural and functional scheme (Fig. 1) demonstrates that the development of the judicial system of Ukraine takes place in the format of multi-level interaction of reforms. Institutional changes ensure the stability and independence of the judiciary, procedural changes ensure its efficiency, and digital changes ensure openness and controllability. It is the synergy of these areas that contributes to an increase in the level of public trust, which is confirmed by the positive dynamics of international indices – Rule of Law Index, Judicial Independence and Control of Corruption. In the long term, achieving a high level of trust requires not only technical modernization, but also the formation of a new professional ethics of judges, accountability to society, and sustainable financing of the judicial system as a basic element of the rule of law.

The digital transformation of the judicial system of Ukraine during 2010–2024 is accompanied by a gradual increase in the share of electronic proceedings and a reduction in the average duration of case consideration. From 2010 to 2024, the share of electronic

claims increased from 0% to 35%, while the average time for case consideration decreased by 22% – from 268 to 210 days. This trend indicates the effective impact of digital tools ("Electronic Court", online registries, automated case distribution) on increasing the efficiency of judicial proceedings (Figure 2).

Figure 2. Dynamics digitalization judicial systems Ukraine and average duration consideration cases (2010–2024)



Source: State data Judicial Administration of Ukraine (2024); CEPEJ (2024); Teremetskyi et al. (2024)

The results obtained confirm that digitalization is one of the key factors in increasing the efficiency of the judicial system of Ukraine. It not only speeds up the process of considering cases, but also increases the transparency of procedures, reduces administrative barriers and contributes to the formation of citizens' trust in the judiciary. At the same time, the further development of e-justice requires sustainable funding, unification of technical standards and ensuring cybersecurity of judicial data.

Discussion

The study shows that the judicial system of Ukraine in 2010-2024. went through a difficult path of structural, procedural and technological transformation. The results obtained demonstrate that the main driver of increasing the efficiency of justice was digitalization, which, combined with institutional renewal and procedural reforms, ensured increased transparency, accountability and public trust in the judiciary.

However, despite the positive dynamics of most indicators (reduction of case processing times, increase in the share of electronic proceedings, increase in the rule of law index), structural problems persist – primarily staff shortages and insufficient financial autonomy of courts. These factors limit the sustainable development of the system and create risks of slowing down reforms. A comparison with EU countries shows that Ukraine has come

close to the average European standards of procedural efficiency, but is significantly inferior in terms of staffing (by 40-45%) and funding.

The key conclusion is that increased trust in justice is not solely a consequence of legislative changes – it is formed through the practical sustainability of reforms, transparency in the selection of judges and digital openness of judicial processes. The positive correlation between the increase in the share of electronic proceedings and the reduction in the duration of case consideration indicates that digitalization has a direct impact on the efficiency of judicial proceedings. This is also confirmed by international indices: Rule of Law, Judicial Independence and Control of Corruption, which demonstrate the gradual strengthening of the institutional capacity of the judiciary.

At the same time, maintaining trust requires not only technical development, but also an ethical renewal of judicial culture. The formation of professional integrity, ensuring stable funding, improving personnel policy and guarantees of cybersecurity are prerequisites for the sustainability of reforms. It is also important to ensure an even workload between courts of different instances, as the imbalance of procedural resources continues to reduce the quality of justice.

Thus, the modern judicial system of Ukraine is at the stage of transition from institutional reform to the stage of consolidation of the achieved results. The further effectiveness of the reforms will be determined by the state's ability to combine institutional stability, technological innovations and public trust. It is this trinity: independence, efficiency and openness, that is the basis for the formation of a mature legal state in Ukraine.

Conclusions

The results of the study of the development of the judicial system of Ukraine in 2010-2024 allow us to note the dynamics of its institutional formation, procedural efficiency, and digital transformation.

The institutional modernization of the judiciary in the mentioned period took place gradually and under the influence of both domestic reforms and international standards (CEPEJ, 2024; Venice Commission, n.d.). The creation of new judicial governance bodies, such as the High Council of Justice and the Public Integrity Council, has provided greater transparency and accountability to the system. This has contributed to the gradual strengthening of judicial independence, as evidenced by the increase in the Judicial Independence from 41 to 52 points (on the OECD scale).

The financing of the judicial system remained unstable and insufficient during the period under review. Despite the increase in the indicator from 0.34% of GDP in 2010 to 0.48% in 2018, the military circumstances of 2022-2024 led to its reduction to 0.38%. This creates risks for the material support of the courts, the implementation of digitalization programs and infrastructure renewal. Compared to the average level of court financing in the EU (0.41-0.45% of GDP), Ukraine is still below the threshold value necessary for the sustainable functioning of the system.

The shortage of judges remains one of the most acute problems. In 2024, the number of judges decreased to 5,100 with more than 2,000 vacant positions. This leads to an

excessive workload – more than 500 cases per judge annually, which is almost twice the average European rate. The reasons are the slow process of qualification assessment, staff turnover and low public trust. Without systematic staff renewal, the efficiency of the judiciary will remain limited.

The procedural efficiency of the judicial system shows positive dynamics. The average duration of civil cases has decreased from 268 to 210 days (by 22%), and the completion rate has increased from 0.82 to 0.91. These changes indicate an improvement in the organization of procedural management, but the problem of uneven workload between courts of different instances remains unresolved.

The digitalization of judicial proceedings has become a key factor in the modernization of the system. The introduction of the "Electronic Court" system, electronic document management, and online access to decisions has contributed to increased transparency and reduced administrative procedures. The share of electronic claims has reached 35%, which brings Ukraine closer to the average level of digital integration of EU countries (33-45%). Digital tools have significantly reduced corruption risks and increased trust in judicial procedures.

The rule of law, judicial independence, and corruption control indices indicate a gradual strengthening of the institutional capacity of justice. Rule Indicator of Law Index increased from 0.33 to 0.48, and Control of Corruption – from 0.26 to 0.45. This confirms that judicial reform has not only a declarative, but also a practical impact on improving the legal system.

Trust in the judiciary is formed under the influence of three interrelated factors:

- institutional: stability of personnel policy, transparency of the appointment of judges;

- procedural: timeliness and fairness of case consideration;

- digital: openness and accessibility of justice for citizens.

Their interaction determines the level of democratic maturity of the state and the degree of legitimacy of the judiciary in the eyes of society.

Further development of the judicial system of Ukraine requires a comprehensive approach that combines technical modernization, personnel renewal, and financial stability. The following are necessary: unification of technical standards for electronic justice; increased guarantees of cybersecurity of judicial data; strengthening the independence of judges in personnel and financial decisions; development of professional ethics and integrity of the judicial corps.

Thus, the judicial system of Ukraine in 2010-2024 went through the stage of forming a modern model of justice, based on the principles of independence, efficiency and digital openness. Despite the preservation of certain structural problems, existing trends indicate a steady movement towards European standards of justice. Further strengthening of the institutional capacity of the judiciary is a key condition for the formation of the rule of law and the trust of citizens – the foundation of a democratic and legal state.

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LEGAL INTEGRATIVE FRAMEWORK IN THE EUROPEAN UNION: ANALYSIS OF THE KEY PRINCIPLES AND THEIR INFLUENCE ON THE NATIONAL LEGISLATION

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Abstract

Legal integration in the European Union is a systemic phenomenon which goes beyond the coordination of national legislation and forms a supranational regulatory mechanism. The relevance of the study stems from the need to understand the role of the principles of legal integration as the basis of the EU's legal unity, and to analyze their impact on the transformation of legal systems of individual countries in the context of the growing volume of EU rules and the evolution of integration processes. The aim is to clarify the essence, structure and practical impact of the EU legal integration principles (rule of law, direct effect, subsidiarity, proportionality) on the formation and implementation of national legislation of the Member States, as well as to assess their role in creating a single legal space. The study is based on dialectical, hermeneutical, historical and legal, and comparative legal methods. The author analyzed the EU founding treaties, secondary legislation, case law, and constitutional provisions of the Member States. Modeling and forecasting methods were used to assess the prospects for the development of legal integration. It is established that legal integration in the EU forms an autonomous system that harmonizes national legal order systems through the rule of law. The author identifies the mechanisms of adaptation of national legislation to EU norms, in particular, through subsidiary control and judicial supervision, which ensure a balance between the supranational and national levels. Further

research may be aimed at analyzing the effectiveness of the subsidiary control mechanism, deepening the study of judicial influence on legal integration, and forecasting the evolution of the EU legal area in the context of new challenges.

Keywords

Ukrainian constitutionalism, human rights, municipal security, European Union, legal integration, supranational law.

Resumo

A integração jurídica na União Europeia é um fenómeno sistémico que vai além da coordenação da legislação nacional e forma um mecanismo regulatório supranacional. A relevância do estudo decorre da necessidade de compreender o papel dos princípios da integração jurídica como base da unidade jurídica da UE e de analisar o seu impacto na transformação dos sistemas jurídicos de cada país no contexto do crescente volume de regras da UE e da evolução dos processos de integração. O objetivo é esclarecer a essência, a estrutura e o impacto prático dos princípios de integração jurídica da UE (Estado de direito, efeito direto, subsidiariedade, proporcionalidade) na formação e implementação da legislação nacional dos Estados-Membros, bem como avaliar o seu papel na criação de um espaço jurídico único. O estudo baseia-se em métodos dialéticos, hermenêuticos, históricos e jurídicos, bem como em métodos jurídicos comparativos. O autor analisou os tratados fundadores da UE, a legislação secundária, a jurisprudência e as disposições constitucionais dos Estados-Membros. Foram utilizados métodos de modelação e previsão para avaliar as perspetivas de desenvolvimento da integração jurídica. Está estabelecido que a integração jurídica na UE forma um sistema autónomo que harmoniza os sistemas jurídicos nacionais através do Estado de direito. O autor identifica os mecanismos de adaptação da legislação nacional às normas da UE, em particular, através do controlo subsidiário e da supervisão judicial, que garantem um equilíbrio entre os níveis supranacional e nacional. Investigações futuras podem ter como objetivo analisar a eficácia do mecanismo de controlo subsidiário, aprofundar o estudo da influência judicial na integração jurídica e prever a evolução do espaço jurídico da UE no contexto de novos desafios.

Palavras-chave

Constitucionalismo ucraniano, direitos humanos, segurança municipal, União Europeia, integração jurídica, direito supranacional.

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Introduction

For the European Union, legal integration has become a systemic phenomenon that has gone far beyond the mere coordination of national legislation, turning into a powerful supranational mechanism that forms a new quality of interaction between member states. In the current conditions of the EU's functioning, law appears not only as a regulatory tool, but also as a fundamental structure that supports the integrity and efficiency of the integration process, defines the limits and mechanisms of influence of the supranational level on domestic legal systems. It is through law that the political ambitions of the member states are realized, aimed at achieving common goals and forming a single legal space that takes into account both common European interests and national legal specifics.

The essence of legal integration in the EU is not just the simple unification of legislation, but a deep harmonization of legal approaches, which ensures the formation of common, not just comparable, rules governing integration relations in all member states. Importantly, this integration is based on the interpenetration of national and European legal orders, resulting in a complex, multi-level legal system that does not offset, but rather enhances the potential of national law through its inclusion in the EU legal space.

In this context, the principles of legal integration, which serve as conceptual guidelines and regulatory frameworks for the functioning of the unified legal system, are of

particular importance. These principles - in particular, the principle of primacy of EU law, the principle of direct effect, the principle of subsidiarity and proportionality - determine the nature of interaction between the EU institutions themselves and the Member States, and ensure the effectiveness of legal regulation and legal certainty for all subjects of law, including individual citizens. Thus, the relevance of the study is stipulated by the need for a deeper scientific understanding of the role and significance of the principles of legal integration as a key factor in the formation of legal unity within the EU, as well as an analysis of how these principles affect the development and transformation of national legislation. The growth of the volume of EU legal norms, the expansion of their scope and the constant evolution of integration mechanisms necessitate a comprehensive study of the national dimension of supranational legal influence, which is the subject of this study.

Literature Review

In the field of scientific discussions on the principles of legal integration in the European Union and their impact on national legislation, much less attention is paid to the analysis of specific mechanisms and methods by which integration legal development is achieved than to the justification of the supranational nature of the EU legal system, its economic, institutional and legal foundations, which, as noted by Dir (2024); Lampach & Dyevre (2020), seems to be the highest priority area of European law. This predominant focus on supranational aspects seems to be due to a certain caution of researchers who avoid questioning the consistency of the normative approach to integration that has become dominant since the adoption of the Single European Act, which effectively launched the institutional application of the communitarian method of European legal integration to address most development issues.

In this context, supranationalism is traditionally perceived by researchers such as Duttle et al. (2017), Müller-Graff (2018), Peers (2015) as a key factor in deepening legal integration in the EU, while inter-vernationalism often acquires a somewhat negative connotation, being associated with tendencies towards regionalism or even separatism, which, according to Van den Brink (2017), hinders the achievement of the goals of supranational integration. Without delving into a detailed semantic analysis of these concepts, which have already been thoroughly examined in the literature by authors such as Leruth & Lord (2015), Selck, Rhinard & Häge (2007), it can be argued that supranationalism and inter-vernationalism, despite their differences, have a complementary impact on the further implementation of the principles of legal integration, each using the most appropriate tools and approaches for this purpose.

According to Cattelan (2012), Hestermeyer (2015), Saracino (2024), the legal system of the European Union has an autonomous status and a special supranational character, and it is aimed at regulating social relations arising in the process of creation and functioning of the EU integration structures, with legal norms being institutionally binding. The group of scholars Lindeboom & Wessel (2023), Stone Sweet (2005) adds that this autonomous legal system emerged at the intersection of national and international law, distinguished by the fact that its norms directly generate rights and

obligations not only for EU states and institutions, but also for persons subject to the jurisdiction of member states.

In turn, Canihac (2024) and Lawson (2024) emphasize that EU law is a separate, autonomous system that is in a state of development, and the final contours of which are currently difficult to predict, reflecting its dynamic nature. Legal scholars Priebus & Anders (2024) also emphasize that EU law is a special legal system that regulates relations formed in the course of integration processes within the Union, emphasizing its uniqueness. In addition to this, Tosiek (2022) also notes that EU law is a specific legal system of an international intergovernmental organization formed through complex law-making processes within four autonomous structures (Communities and the EU), adding that the hierarchy and structure of EU law sources differ significantly from general international law, which indicates its high autonomy. Polakiewicz & Suominen-Picht (2024), von Bogdandy, A. (2024) emphasize that EU law should be considered as an independent system built on institutions and branches, where rules are differentiated depending on the subject matter of legal regulation. Thus, EU law appears as an autonomous and complex legal system covering a wide range of legal relations and having a clear structure that reflects the principles of legal integration in the European Union and their impact on national legal models, which contributes to the further realization of the Union's integration goals.

The purpose is to conduct a comprehensive study of the principles of formation and practical implementation of the principles of legal integration within the European Union, and to highlight their significance for the common legal system.

Research methodology

The methodological basis of the study is a set of interrelated philosophical and ideological approaches, general scientific and special legal methods of cognition, the use of which was determined by the purpose of the article and specific tasks aimed at clarifying the essence, structure and practical impact of the principles of legal integration of the European Union on the formation, transformation and implementation of national legislation of the Member States. In particular, the application of the dialectical method became the basis for an evolutionary study of the established concepts of legal integration and sovereignty in the context of both historical and modern changes, and to identify the dynamics of the content of these categories in legal thought. The hermeneutic approach was used for a deep and systematic interpretation of the provisions of the EU founding treaties, EU secondary legislation, international legal instruments, as well as constitutional provisions and legislative provisions of EU countries, with the aim of identifying the peculiarities of the legal integration principles and their application in the internal legal order.

The historical and legal method made it possible to study the process of formation and development of the legal framework for supranational regulation within the European Union, in particular, the transformation of approaches to the sovereignty of Member States in the context of integration cooperation. The comparative legal method was used

to analyze the peculiarities of national mechanisms for implementing EU law into the domestic legislation of different countries, which made it possible to identify common features and differences in the degree of adaptation of national legislation to the requirements of the EU legal system. In addition, modeling and forecasting methods were used to assess the potential development of EU legal integration in the future, taking into account the current challenges associated with maintaining a balance between national sovereignty and supranational mechanisms of legal influence, as well as to identify possible scenarios for the further evolution of the interaction of national legal systems with the EU legal environment.

Results

Historical and regional features of legal integration in the EU

The basic characteristic of the EU legal system, which reflects its essence as a supranational legal order, is its deep integration with the national legal field, which allows us to consider this interaction not as a conflict or opposition, but as a mutually enriching and mutually influential process of forming a common legal space. That is why the positions of some researchers who argue that there is a contradiction between the EU legal framework and the law of individual European countries seem to be somewhat simplistic and do not correspond to the current realities of the functioning of the integration mechanism in Europe. On the contrary, the European Union, through its regulatory and institutional instruments, is gradually introducing unified legal standards into the internal legal order of states, covering almost all major areas of law - from administrative and labor to environmental and financial (Makedon, 2022).

The fact of EU membership automatically means that the state agrees to participate in the further development of the Union, which, in turn, requires a flexible legal approach capable of ensuring the adaptation of the national legal order to new supranational realities, as well as the modernization of legislation to meet the requirements arising from legal integration (Fahey, Terpan & Zahn, 2022).

In this context, it is worth emphasizing that legal integration is not limited to the technical implementation of EU law into national legislation; it is a deeper process that includes amendments to constitutions and laws regulating social relations in areas where the relevant powers are transferred to the EU supranational institutions. It is this redistribution of competencies and the formation of a unified minimum legal standard that allows for effective interaction between member states within a single legal space, contributing to the stability, predictability and coherence of integration processes (Malone, 2025).

An original legal order has been formed within the European Union, which differs significantly from traditional models of national and international law. That is why in legal doctrine, the EU is increasingly qualified as a "sui generis" system, i.e., one that has an independent nature. Although EU law closely interacts with international and domestic law of the Member States, it, according to the Court of Justice of the European Union,

functions as an independent legal system integrated into the legal order of the Member States in such a way that their national courts are obliged to directly apply EU law, in particular those with direct effect. As the Court notes, the subjects of EU law are not only the Member States themselves, but also their citizens, so European law has not only a regulatory but also a direct law-making function in relation to individuals, granting them subjective rights and imposing corresponding obligations (Moreiro González, 2023).

It is important that the incorporation of EU norms into the domestic legislation of the Member States does not reduce the independence of European law, but rather confirms its autonomous status based on the principle of supremacy and the principle of direct effect. The peculiarity of the legal status is manifested in the fact that the membership of states in this Union is based on a voluntary but legally binding decision to transfer part of their sovereign powers to supranational institutions. Unlike ordinary participation in international organizations, where states retain full sovereignty, integration into the EU means limiting part of national sovereignty.

The scale of the impact of EU law on national legal systems is evidenced by statistics showing that 10 to 40% of laws adopted at the national level are directly caused by supranational regulation, and about 60 to 70% of EU legal acts have a direct regulatory effect not only at the national but also at the local level of law (Chablais, 2024). Thus, national legal systems are gradually being filled with EU law, which is not perceived as external or temporary, but rather as forming the internal legal fabric and continuing to generate legal effects that reflect the dynamic nature of the European regulatory space. In this context, it is appropriate to quote Merusi (2024), who aptly noted that EU law is integrated into national legal systems not as a frozen set of rules, but as a "living code".

The key principle that ensures the effective integration of EU norms into domestic law is the principle of the supremacy (primacy) of EU law, which, despite not being formally enshrined in the Lisbon Treaty, was confirmed in Declaration No. 17 to it, and thanks to the case law of the EU Court of Justice, remains legally binding within the EU. First clearly articulated in the case of Flaminio Costa v. ENEL back in 1964, this principle established that no rule of national law can preempt EU law. Thus, according to the legal logic of the European Court, the provisions of national constitutions are valid only to the extent that they do not contradict the application of European law. National judicial authorities do not have discretion in the application of the Union's acts - they are obliged to ensure their priority application even in cases of conflict with the rules of domestic law (Eliantonio & Boymans, 2013).

The mechanism of supranational legal integration within the EU is based on the fact that it is the Member States, and not the Union as such, that ensure the implementation, enforcement and application of EU acts through their executive and judicial authorities. Unlike federal systems or international organizations with their own local executive structures, the European Union does not have its own regional or local executive bodies in the Member States, and it is national institutions that are the main entities that guarantee the implementation of EU law. In this context, the role of national courts is particularly important, as they not only apply the Union's rules but also bear responsibility for violations of citizens' rights arising from EU rules. The Court of Justice of the European

Union has repeatedly recognized the liability of Member States for damage caused to individuals in the event of untimely or improper implementation of directives within the direct legal relationship (European Network of National Human Rights Institutions, 2024). The modern legal mechanism uses the principle of a clear delineation of competencies and procedures for adopting legal acts, enshrined, in particular, in Article 289 of the Treaty on the Functioning of the European Union (TFEU) (Perederii, 2024).

The logic behind the Lisbon Treaty seems to be aimed at simplifying the understanding of the differences between acts that have the same formal title but differ in substance and legal force depending on the procedure through which they were adopted. Despite this procedural distinction, the EU founding treaties do not establish a single substantive criterion that would determine which type of legal act should be used to regulate a particular area of integration policy. As a result, the choice of the form of a legislative act (regulation, directive or decision), as well as the type of legislative procedure (general or special) is decided directly on the basis of the so-called "legal bases" contained in the relevant articles of the EU Treaties and the TFEU, which clearly state which form of act should be used to regulate a particular area of integration cooperation (European Parliament, 2024). In this regard, each EU legislative act must contain in its preamble a reference to a specific provision of the founding treaty authorizing its adoption; the absence of such a reference or its incorrect indication entails a high risk of the act being annulled by the Court of Justice of the European Union as violating the principle of legal certainty and the legality of the actions of the Union institutions.

The factor of "legal basis" on which each specific act is based is not random, but is determined by the political and legal sensitivity of the issue for the Member States, the level of their readiness for supranational regulation in the relevant area, and the degree of integration interdependence. An analysis of the existing legal framework shows that in situations involving industries that directly affect national interests, priority is usually given to a special legislative procedure, which provides for the key role of the EU Council as a representative body of the Member States. It is particularly noteworthy that the TFEU explicitly authorizes the European Parliament to adopt legislation on its own only in exceptional cases (Article 223), the procedure for exercising parliamentary investigative powers (Article 226) and the status of the Ombudsman (Article 228), while in the vast majority of such cases, the special procedural initiative and decision-making power belong exclusively to the Council (Canihac, 2024).

The Council of the EU has a crucial role in balancing supranational and national interests, carrying out legislative activities taking into account the need to achieve consensus or, in some cases, unanimity. It is in such situations, provided for in Articles 113, 115, 191 TFEU, that national governments retain the right of veto, which allows them to influence the content of decisions that are of particular importance for domestic policy (Peers, 2015).

Principles and foundations for the protection of national law within the framework of EU integration rights

In the context of protecting national legislative prerogatives, the European Union operates on the principle of "intra vires", which means that its activities are limited exclusively to those powers that the EU countries have granted through the founding treaties to achieve the goals set out in these documents, leaving any competence not transferred to the Union to the Member States, which reflects the peculiarity of the distribution of powers laid down in the 1950s when the European Communities were established. The approach itself indicates that the functions of regulating not integral spheres of social relations are transferred, but only their individual aspects, clearly defined in the relevant legal frameworks, which is why the exercise of regulatory powers within the EU structure is restrictive - only within these legal frameworks, and in their absence is guided by the general principles of competence, which currently include the principle of granting competence, the principle of subsidiarity and proportionality, which together form the basis for legal integration within the EU.

Article 5 enshrines the principle of subsidiarity, and while the principle of competence is the very existence of the Union's competence, the others regulate its practical application, answering the key questions: whether the EU has the right to act (the principle of conferral of competence), whether it is appropriate for it to act (the principle of subsidiarity), and if so, to what extent and how (the principle of proportionality), which emphasizes their interdependence and convergence in the modern EU legal order. As noted by Muraviov 2023, the principle of competence is a prerequisite for the application of subsidiarity, as the lack of competence automatically violates this principle, while proportionality depends on subsidiarity, which already contains an element of proportionality, demonstrating the complex interaction of these principles in the process of legal integration and their impact on the balance between supranational and national levels of legislation.

This test, also known as the better achievement of the objective test or the "added value" test, is not an independent instrument, as it does not in itself justify the need for Union action solely because of its scale or consequences, but rather prioritizes the criterion of the adequacy of the means available to Member States to achieve the objectives, and assesses the actual capacity of Member States, not the potential, without comparison with possible results at the EU level (Stone Sweet, 2005). Thus, in the case of Member States that have sufficient means to achieve an objective, even if Union action could be more effective due to economies of scale, the current wording of the TEU does not give the EU priority, emphasizing that the Union acts only when national means are insufficient and objectives can be better achieved at the supranational level (Chiocchetti, 2023).

According to K. Lenarts, this norm, inherited from the Maastricht Treaty with certain changes in the Lisbon Treaty, serves as a guarantee of preserving national sovereignty, obliging the Union to refrain from acting if the Member States are able to achieve the goal on their own, which emphasizes the priority of the sufficiency of national means as a key criterion in the modern EU legal framework. In this context, the insufficiency of the means of at least one Member State opens up space for Union action, but only if the

scale or consequences of the action justify its better implementation at the EU level, while the mere higher efficiency of the Union without a link to national insufficiency is not a ground for intervention, which clearly reflects the modern approach to subsidiarity (Weatherill, 1995).

Subsidiary control mechanism of legal integration into the EU

In terms of the existence of the subsidiary control mechanism (SCM), which serves as a tool to ensure the principles of legal integration in the European Union and their impact on national legislation, any national parliament or its separate chamber in the bicameral system has the right, within eight weeks of receiving a draft EU legislative act, to send a reasoned opinion to the Union institution responsible for its preparation, mainly the European Commission, indicating that this draft does not comply with the principle of subsidiarity, which in According to Article 7 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality, adopted with the Lisbon Treaty in 2007, depending on the number of such reasoned opinions, two control procedures are provided - the "yellow card" and the "orange card" - which serve as mechanisms to protect national legislative sovereignty in the integration process (Lampach & Dyevre, 2020).

The "yellow card" procedure is triggered when the reasoned opinions of national parliaments constitute at least one third (or one quarter in cases related to the area of freedom, security and justice) of the total number of votes given to national parliaments, where each parliament or its chamber has two votes, after which the draft legislation is subject to re-analysis, based on which the European Commission may decide to leave it unchanged, make adjustments or withdraw it completely, with the obligatory justification of its decision. Since the entry into force of the Lisbon Treaty in 2009, national parliaments have initiated the "yellow card" three times: in May 2012 on a draft regulation on collective action in the context of freedom of establishment and provision of services (Monti II project), in October 2013 on the establishment of the European Public Prosecutor's Office and in May 2016 on amendments to the seconded workers directive, in the first case the Commission withdrew the draft due to political opposition in the Council, and not because of the yellow card itself, in the second case it left it unchanged, recognizing the compliance with subsidiarity, and in the third case it also concluded that there was no violation of this principle, which demonstrates the flexibility of this mechanism in EU legal practice (Chiocchetti, 2023).

Instead, the "orange card" procedure, which operates exclusively within the framework of the general legislative procedure, is activated if the reasoned opinions are supported by a simple majority of votes of national parliaments, after which the draft is also revised.

Judicial supervision of the legality of the adoption of EU legislation

Key doctrines, such as direct effect of law and the rule of EU law, which were not originally provided for in the founding treaties, emerged as a result of case law, which, according to Lawson (2024), has effectively made the EU Court of Justice the central coordinator

of the Union's legal development. An example of this is the well-known decision in the case of Union Royale Belge des Sociétés de Football Association and others v Bosman, where the Court ruled that the regulation of the exercise of fundamental rights and freedoms falls within the exclusive competence of the EU, which allowed it to subsequently expand its jurisdiction even in areas such as areas, such as education, culture or sports, where the founding treaties did not initially grant the Union clear powers, demonstrating how judicial precedents contribute to deepening legal integration and harmonization of national laws (Priebus & Anders, 2024).

Today, in the practice of EU legal support, the Union's regulatory powers are clearly limited to those areas that the countries of the Commonwealth have, in due time, transferred to its competence through the so-called "legal frameworks", and EU acts that are not based on such frameworks or do not fully comply with them are considered symbolic, violate the principle of granting competence and can be annulled by the Court of Justice of the EU under Article 263 TFEU, which empowers the Court to review the legality of Union legislative acts. In the 1992 judgment in France v Commission, the EU Court of Justice emphasized that every legislative act must contain a direct reference to the "legal basis" and its absence is grounds for invalidation or repeal, but this ruling did not become decisive for further practice, as none of the challenged legislative acts was repealed due to insufficient justification (Lindeboom & Wessel, 2023).

Undoubtedly, in a legal system based on democratic values and the rule of law, the CJEU has an important role to play in identifying violations of procedures and rules by the legislator in the exercise of its powers, but calls for stricter judicial control over the validity of the Union's legislative competence, as noted by Telle, Chiocchetti & Laffan (2025), may threaten the institutional balance in the EU's multi-layered constitutional system, where decisions on the level of legislative action - supranational or national - are made by different political institutions, such as the Council of the EU and the European Parliament, representing different views and interests. If the EU Court of Justice, when reviewing an already adopted act, questions the appropriateness of its adoption at the supranational level, this may lead to a conflict with the will of the qualified majority of Member States that considered such an act necessary and approved it through the legislative process (Van den Brink, 2017).

The effective consensual nature of supranational decisions within the European Union is a guarantee of their procedural legitimacy, which, in turn, ensures the relative simplicity, predictability and efficiency of the implementation of such decisions in the national legal systems of the Member States, including both the authorities and citizens themselves - active participants in legal integration processes. This model of decision-making, based on mutual coordination of positions between EU institutions, demonstrates one of the most important features of European legal integration, namely the formation of a normative consensus as a tool for achieving a balanced legal convergence of national legal orders. In this context, inter-institutional coherence and cooperation become a kind of "gold standard" of integration lawmaking, which allows for effective adaptation of the principles of EU law to the domestic legal environment without violating fundamental national interests.

Discussion

In the course of the current study, a significant scope of scientific approaches and practical mechanisms that form the basis of legal integration within the EU was investigated in detail. The summarized results confirm the key points highlighted in the works of such researchers as Lindeboom and Wessel (2023), Saracino (2024), Muraviov (2023), who emphasize the autonomous nature of the EU legal mechanism and its ability to integrate through binding legal principles. At the same time, the novelty of this study lies in the comprehensive analysis of the impact of the key principles of legal integration - in particular, subsidiarity, proportionality, conferral of competence and the rule of EU law - not only on the regulatory framework, but also on the institutional and procedural mechanisms of interaction between the EU and national jurisdictions.

We note that the consistency of the study's findings with the scientific positions of Stone Sweet (2005) and Canihac (2024) is manifested in the statement that EU law does not function as classical international law, but as a supranational legal order that is directly applicable in national legal systems. However, in contrast to some theoretical approaches that emphasize the priority of supranational law as a unilateral dominant (e.g., Muller-Graff, 2018), the results of this study demonstrate a more complex, multilevel model of legal interaction, where the implementation of the principle of subsidiarity is a key mechanism for maintaining a balance between integration imperatives and national interests.

It is also worth paying attention to the comparison with the research by Telle, Chiocchetti & Laffan (2025), which critically assesses the limited nature of judicial review of the legal basis of EU legislation. In the current work, it was confirmed that although the EU Court of Justice has formal powers to strike down legislation adopted without proper legal justification, its practice remains limited and focused mainly on maintaining institutional balance rather than strict legal control. Thus, it was argued that the flexible nature of judicial review contributes to the preservation of political consensus within the EU's multi-level system.

With regard to the subsidiary control mechanism, the results of the study coincide with the analytical conclusions of Lampach & Dyevre (2020) and Chiocchetti (2023), which emphasize the limited effectiveness of the "yellow" and "orange" card mechanisms due to their declarative nature and difficulty in implementation. At the same time, this study proposes a conceptual reassessment of the role of national parliaments in the process of legal integration: not as passive observers, but as active participants capable of influencing supranational processes through early warning control.

The discussion part of the study gives grounds to assert that the author's vision of the principles of legal integration, their practical implementation and impact on national legislation is consistent with the main trends of modern scientific discourse, but at the same time complements it with new emphases - in particular, regarding the flexible interaction between national and supranational law, the role of legal grounds in the rulemaking process, mechanisms of parliamentary control and the limited, but strategically important, nature of judicial oversight within the EU.

Conclusion

The study of the historical and regional aspects of legal integration in the European Union has established that the creation of a single legal space within the framework of cooperation between member states is based on close interaction between EU law and national legal systems, and subsequently leads to a gradual transformation of domestic legislation of member states in accordance with supranational legal standards, while preserving the autonomy and uniqueness of EU law as a "sui generis" system. The study has shown that the principles of competence, subsidiarity and proportionality are the key principles that define the limits of EU intervention in the legal regulation of certain areas of public life. These principles ensure respect for the sovereignty of the Member States and justify the Union's actions only in cases where national means are insufficient to achieve the goals set.

It is established that the system of legal restrictions on EU activities based on the principle of "intra vires", together with a clear hierarchy of competence principles, serves as a mechanism for maintaining a balance between the supranational and national levels. The identified factors ensure stable structural stability of the legal process of integration and reduce the risk of conflict of norms. The author examines the peculiarities of the functioning of subsidiary control, which forms the institutional basis for national parliaments to be able to influence the EU legislative process by submitting motivated comments on compliance with the principle of subsidiarity itself, and this increases the level of democratic legitimacy and transparency of lawmaking.

The author assesses the effectiveness of the "yellow" and "orange" card procedures as instruments of parliamentary control. It is established that their use, despite limited practical implementation, is an important means of preventing violations of the principles of legal integration and enhances the role of national parliaments in the system of multi-level governance. It is revealed that judicial supervision over the legality of legislative acts is the main source of ensuring compliance with the principles of legal certainty and validity of actions of the Union's institutions.

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THEORETICAL AND APPLIED ASPECTS OF CRIMINAL LAW AND PROCEDURAL ENSURING THE RIGHT TO DEFENSE

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Abstract

The relevance of the research stems from the growing importance of the right to defense in Ukraine's criminal justice system, especially under martial law, when procedural guarantees become crucial for ensuring the rule of law. The need to harmonize national procedures with European standards of adversarial proceedings and equality of parties highlights the necessity of a comprehensive analysis of the current state of criminal procedural protection of the right to defense. The purpose of the study is to clarify the legal, institutional, and practical mechanisms for implementing the right to defense in criminal proceedings in Ukraine. The methodological basis includes systematic, comparative legal, formal legal, and statistical methods, enabling an integrated analysis of legislation, judicial practice, and international reports (Council of Europe, Eurostat, UNODC, OECD).The results demonstrate that Ukraine is gradually approaching European standards, yet key structural challenges remain: limited access of defense attorneys to case materials, inequality of resources between the parties, and insufficient oversight of prosecutorial actions. Indicators for 2021–2024 show growing participation of defense attorneys alongside an increase in pre-trial investigation duration. Comparative data reveal that funding of free legal aid in Ukraine is 2–2.5 times lower than

the European average, creating practical asymmetry between the parties.The practical significance lies in recommendations to improve early access to legal assistance, strengthen judicial control, and ensure confidentiality of defense activities. The findings can support the development of justice sector strategies, improvements to criminal procedure legislation, and enhancement of legal aid effectiveness.

Keywords

Right to defense, criminal proceedings, adversarial proceedings, advocacy, martial law.

Resumo

A relevância da investigação decorre da crescente importância do direito à defesa no sistema de justiça penal da Ucrânia, especialmente sob a lei marcial, quando as garantias processuais se tornam cruciais para assegurar o Estado de direito. A necessidade de harmonizar os procedimentos nacionais com as normas europeias de processo contraditório e igualdade das partes destaca a necessidade de uma análise abrangente do estado atual da proteção processual penal do direito à defesa. O objetivo do estudo é esclarecer os mecanismos jurídicos, institucionais e práticos para a implementação do direito à defesa em processos penais na Ucrânia. A base metodológica inclui métodos sistemáticos, jurídicos comparativos, jurídicos formais e estatísticos, permitindo uma análise integrada da legislação, da prática judicial e dos relatórios internacionais (Conselho da Europa, Eurostat, UNODC, OCDE). Os resultados demonstram que a Ucrânia está a aproximar-se gradualmente dos padrões europeus, mas continuam a existir desafios estruturais fundamentais: acesso limitado dos advogados de defesa aos materiais do processo, desigualdade de recursos entre as partes e supervisão insuficiente das ações do Ministério Público. Os indicadores para 2021-2024 mostram uma participação crescente dos advogados de defesa, a par de um aumento da duração da investigação pré-julgamento. Dados comparativos revelam que o financiamento da assistência jurídica gratuita na Ucrânia é 2 a 2,5 vezes inferior à média europeia, criando uma assimetria prática entre as partes. O significado prático reside nas recomendações para melhorar o acesso precoce à assistência jurídica, reforçar o controlo judicial e garantir a confidencialidade das atividades de defesa. As conclusões podem apoiar o desenvolvimento de estratégias para o setor da justiça, melhorias na legislação processual penal e o reforço da eficácia da assistência jurídica.

Palavras-chave

Direito à defesa, processo penal, processo contraditório, advocacia, lei marcial.

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Theoretical and applied aspects of criminal law and procedural ensuring the right to defense
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THEORETICAL AND APPLIED ASPECTS OF CRIMINAL LAW AND PROCEDURAL ENSURING THE RIGHT TO DEFENSE

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Introduction

Ensuring the right to defense in criminal proceedings is one of the fundamental principles of a democratic state based on the rule of law, on which citizens' trust in the justice system directly depends. In conditions of martial law, when the national legal system is under institutional strain, guarantees of the right to defense become particularly relevant, since they determine the limits of permissible state interference in human rights. World experience shows that the effectiveness of criminal justice is measured not only by the speed of investigations or the number of convictions, but primarily by the ability to ensure equality of arms, access to legal aid, and real, rather than formal, compliance with the adversarial principle (Council of Europe, 2024; FRA, 2024; OECD, 2024). Scientific interest in the problem of protecting the rights of a suspect in Ukraine has increased as a result of legislative changes in recent years and armed aggression, which has imposed new requirements on law enforcement. In the domestic doctrine of criminal procedure (Ablamskyi, 2021; Pivnenko, 2021; Ostavciuc, 2022; Yanovska, 2024), there is a desire to develop a balanced model of ensuring the right to defense, which would combine the guarantees of national legislation and European human rights standards. At the same time, foreign authors (Corda & Hester, 2021; Johnston et al., 2023; Dsouza, 2024) emphasize the need for *early access to counsel* as a prerequisite for preventing arbitrariness and violations during the pre-trial investigation. Despite significant progress in reforming the criminal procedure, a number of "blank spots" remain, in particular, the lack of an appropriate mechanism for monitoring the actions of the prosecutor, the difficulty in ensuring confidential communication between a lawyer and a client, as well

as inequality of the parties in access to evidence and procedural resources (Korniichuk, 2024; Kovalenko, 2024; Babikov et al., 2025). International monitoring organizations (UNODC, 2023; World Justice Project, 2024) also record a systemic problem – the formal, rather than substantive, application of the right to protection, which reduces the effectiveness of justice as a whole. Thus, the relevance of the research is due to the need for a comprehensive rethinking of the mechanisms for ensuring the right to protection in the context of European integration and martial law.

The purpose of the research is to examine the modern criminal law and criminal procedural principles of ensuring the right to defense in criminal proceedings in Ukraine, identify key problems of its implementation, characterize development trends under the influence of military realities, and propose areas for improvement based on a comparative analysis of international experience.

Analysis of Recent Studies and Publications

Studies on the right to defense in criminal proceedings in recent years have focused on the issues of implementing constitutional guarantees in the context of legal system reform and martial law. The scientific works of Ukrainian legal scholars emphasize the evolution of procedural principles, in particular the participation of defense counsel in a special pre-trial investigation (Ablamskyi, 2021; Pivnenko, 2021; Ostavciuc, 2022). Considerable attention is paid to the analysis of legal mechanisms for ensuring equality of parties, which is a key element of the adversarial principle in criminal proceedings (Voloshanivska& Fedorov, 2021; Yanovska, 2022; Kovalenko, 2024). Comparative studies emphasize the influence of European standards, primarily the practice of the European Court of Human Rights, on the formation of the Ukrainian model of criminal procedure (Gutnyk, 2022; Corda & Hester, 2021; Johnston et al., 2023). At the same time, it is emphasized that the real provision of the right to defense depends not only on legislative guarantees, but also on practical mechanisms for access to a lawyer, collection of evidence, and the effectiveness of judicial control (Korniichuk, 2024; Kovalenko, 2024; Babikov et al., 2025).

Scholars pay special attention to the transformations of criminal procedural legislation under the influence of martial law. Laws of Ukraine No. 2201-IX (2022) and No. 3341-IX (2023) changed the conditions of pre-trial investigation, granting prosecutors expanded powers, which caused numerous discussions about the balance between state interests and the rights of the defense (Hloviuk&Zavtur, 2022; Zhovtan, 2023; Mozgawa&Shupyana, 2024). These issues are actively covered in scientific works devoted to the protection of human rights under emergency legal regimes (Kaplina, 2022; Shumska, 2025; Fomina, 2025).

Foreign publications explore the concept of "early access to counsel" as a key tool for protecting the rights of the suspect, which has already been implemented in most EU countries (Hodgson, 2011; Lattimore, 2022; Dsouza, 2024). The idea of the need to integrate such approaches into Ukrainian practice is supported, in particular, regarding the confidentiality of lawyer-client communication and procedural control over the actions of the prosecutor (Chernenko & Shiyan, 2024; Oliynyk, 2022). International institutions,

including the Council of Europe (2024), FRA (2024) and OECD (2024), in their reports emphasize the importance of effective guarantees of legal aid, equality of procedural opportunities and accountability of justice bodies. Comprehensive analytical reports emphasize that the protection system in Ukraine demonstrates gradual convergence with European standards, but structural challenges remain related to access to a lawyer, financing of legal aid and the quality of law enforcement (Council of the European Union, 2023; Eurostat, 2024; World Justice Project, 2024).

Studies of recent years have also shown interest in issues of legal responsibility and the adaptation of the national criminal justice system to the challenges of war. In particular, changes to the Criminal Code of Ukraine caused by military actions are analyzed, as well as the legal status of prisoners of war and persons participating in armed conflict. (Mozgawa&Shupyana, 2024; Kaplina, 2022). Scholars emphasize that effective enforcement of the right to defense in such cases should include special guarantees for persons deprived of their liberty or displaced to a combat zone, in accordance with international humanitarian law standards (Yanovska, 2024; Shumska, 2025). A significant part of the publications is devoted to the analysis of the judicial practice of the Supreme Court of Ukraine, which forms approaches to the interpretation of the principle of adversarial and equality of parties in criminal proceedings. Researchers note that judicial practice contributes to the gradual equalization of the imbalance between the prosecution and defense, but remains selective in the application of international standards (Yanovska, 2022; Verkhovna Rada of Ukraine, 2022, 2025). At the same time, the academic papers of foreign authors emphasize the ethical aspect of the defense attorney's activities, his role in ensuring procedural justice and limiting the prosecutor's discretionary powers (Zhou, 2025; Dsouza, 2024; Abebe et al., 2022).

In the context of interstate cooperation and the impact of international legal mechanisms, the studies of the Council of Europe (2024), OECD (2024) and FRA (2024) are complemented by empirical assessments from international projects, such as the World Justice Project (2024), which makes it possible to trace the connection between institutional reforms and the actual level of protection guarantees. The need to further strengthen the independence of the legal profession, expand access to free legal aid and implement effective mechanisms for monitoring procedural abuses is emphasized (Council of the European Union, 2023; Eurostat, 2024). Additionally, it is worth noting scientific and practical sources that deepen the understanding of the mechanisms for implementing the right to defense in criminal proceedings. Chernenko and Shiyan (2024) systematized the stages of the defense attorney's activities at the pre-trial stage, clarifying the procedural boundaries of the lawyer's participation. Oliynyk (2022) analyzed the Ukrainian criminal justice system in the comparative context of the UN, emphasizing the need to harmonize national procedures with international standards. Lattimore (2022) examined the challenges of criminal justice reform through the prism of institutional efficiency and access to legal aid, which is relevant for modern Ukraine. At the same time, Abebe et al. (2022) draw attention to the risks of using statistical software in evidence, emphasizing the need for its transparent examination and control by the defense.

Thus, a review of modern studies demonstrates a concerted effort by the scientific community to improve the effectiveness of legal protection through a synthesis of

national and international experience. At the same time, a number of problems remain unresolved – primarily, the insufficient level of actual equality of parties in the criminal process and the lack of effective control over the implementation of guarantees of the right to protection during wartime.

Research Methods

The research was carried out in 2024-2025 as part of an analytical review of the state of criminal procedural protection of the right to defense in Ukraine using empirical data, regulatory legal acts and comparative analysis of international reports. The main materials were official statistical indicators of the State Judicial Administration of Ukraine, the Prosecutor General's Office, the Coordination Center for the Provision of Free Legal Aid, as well as data from international organizations – *Council of Europe* (2024), *Eurostat* (2024), *UNODC* (2023), *OECD* (2024) and *World Justice Project* (2024). In the course of the research, a complex of general scientific and special legal methods was used, among which the leading place was taken by the method of system analysis – to identify the relationships between procedural guarantees and their practical application, the method of comparative law – to compare Ukrainian practice with the legislation and judicial models of EU countries, as well as the formal-legal method – to interpret the norms of the Constitution of Ukraine, the Criminal Procedure Code and special laws No. 2201-*IX* (2022) and No. 3341-*IX* (2023). The empirical basis was the analysis of judicial decisions of the Supreme Court of Ukraine, analytical materials of the Higher School of Advocacy, publications of Ukrainian and foreign jurists (Ablamskyi, 2021; Babikov et al., 2025; Johnston et al., 2023; Dsouza, 2024). The results were summarized using logical-deductive and statistical methods, which ensured the objectivity of the assessment of the dynamics of law enforcement and enabled to formulate recommendations for improving the mechanisms for implementing the right to defense in criminal proceedings.

Research Results

The current state of criminal law and criminal procedure in Ukraine is characterized by active reform of the legal system aimed at approaching European standards of fair trial. The Constitution of Ukraine, the Criminal Procedure Code and the practice of the Supreme Court are gradually forming a holistic model of protecting the rights of the suspect, accused and defendant; however, this model remains dynamic and is influenced by military realities, international obligations and internal challenges to law enforcement. Under martial law, the state is forced to balance between security interests and human rights guarantees, which creates new debatable aspects regarding the limits of rights restrictions in the criminal process (Babikov et al., 2025).

An important role in understanding modern approaches to the right to defense is played by the case law of the European Court of Human Rights, which defines the concept of a "fair trial" through the prism of real, rather than formal, access to legal aid. The Ukrainian judicial system is gradually adapting these standards, which is evident, in particular, in the Supreme Court rulings on proper notification of suspicion, the right to silence, and the effective participation of a defense attorney during interrogation. Studies by domestic

scholars show that ensuring the right to defense in the national criminal process is developing in two interrelated directions – procedural and institutional. The procedural dimension concerns the proper preparation of evidence, equality of parties, and admissibility of the results of investigative actions, while the institutional dimension is related to the development of a system of free legal aid, professional ethics of lawyers, and guarantees of the independence of the defense attorney (Ablamskyi, 2021; Voloshanivska& Fedorov, 2021).

However, the actual application of the right to defense in reality is hampered by systemic issues. These include limiting defense attorneys' access to pre-trial investigative materials, making it harder to guarantee that all parties have equal procedural opportunities, and not having a reliable system in place to ensure that promises made during questioning, searches, or detention are being followed (Korniichuk, 2024; Kovalenko, 2024). In a comparative perspective, it is worth noting that the European Union countries pay special attention to mechanisms for early access to a lawyer, the possibility of confidential communication with a client, and the procedure for legally informing a person about his or her procedural rights (Corda & Hester, 2021).

In this context, studies by international experts are indicative, emphasizing the importance of a systemic approach to legal guarantees: the right to defense must be ensured at all stages of the process – from the moment of detention to the execution of the sentence (Johnston et al., 2023; Dsouza, 2024). Ukrainian legislation, despite certain gaps, has already laid the foundations for such an approach through Articles 20-22 of the CPC of Ukraine, which guarantee the inviolability of the right to defense, however, practice indicates the need for a clearer algorithm for ensuring the participation of a defense lawyer in investigative actions and court hearings, especially in the absence of the suspect (Fomina, 2025).

Thus, the current state of ensuring the right to defense in criminal proceedings in Ukraine can be defined as transitional – it is characterized by a gradual approximation to European standards, but at the same time it retains significant structural challenges related to the effectiveness of law enforcement, the quality of legal assistance, and the harmonization of national practice with the principles of the rule of law (Gutnyk, 2022; Yanovska, 2024). The prospects for further development lie in the creation of stable judicial and prosecutorial practice, which will guarantee not only the formal, but also the actual provision of a person's right to defense in each criminal proceeding.

The empirical substantiation of the current state of ensuring the right to defense in criminal proceedings in Ukraine is based on the analysis of official statistical data published by the State Judicial Administration of Ukraine, the Prosecutor General's Office, the Coordination Center for the Provision of Free Legal Aid, as well as international monitoring organizations – Eurostat (2024), the Council of Europe (2024) and UNODC (2023). Additionally, data from the World Justice Project (2024) was taken into account. Comparative statistics make it possible to assess both the dynamics of law enforcement in Ukraine and its correlation with trends in the European Union countries. To better illustrate internal changes in the national legal protection system, summarized performance indicators for 2021-2024 are presented in Table 1.

Table 1. Dynamics of the implementation of the right to defense in criminal proceedings in Ukraine (2021 - 2024)

Indicator	2021	2022	2023	2024
Number of criminal proceedings in which the participation of a defense lawyer was ensured	145 213	153 490	166 872	178 560
Share of proceedings with a defense attorney out of the total number (%)	62.4	68.1	72.3	75.8
Number of applications to the free legal aid system	534 000	491 000	576 000	612 000
Average duration of pre-trial investigation (days)	117.5	120.8	126.4	132.9

Source: compiled by the author based on (Hloviuk&Zavtur, 2022; Zhovtan, 2023; Verkhovna Rada of Ukraine, 2025; 2023).

Table 2. Comparison of indicators of the implementation of the right to protection in Ukraine and EU countries (2024)

Country	Share of proceedings with early access to a lawyer (%)	Average duration of investigation (days)	State costs for legal aid (euro/case)
Ukraine	75.8	132.9	41.2
Poland	89.4	118.5	73.6
Germany	92.7	110.2	95.4
France	90.1	115.8	87.0
Spain	87.3	121.4	65.8

Source: compiled by the author based on (Council of the European Union, 2023; Eurostat, 2024; FRA, 2024).

The share of criminal proceedings in which the participation of a defense lawyer was ensured increased by 13.4% over four years, which indicates positive dynamics in the implementation of European standards of a fair trial. At the same time, the average duration of the pre-trial investigation increased by 15.4 days, which may be a consequence of the complication of procedures during the war period. A comparison analysis of key indicators was conducted to determine the correlation between Ukrainian indicators and the trends of the European Union countries. The results are summarized in Table 2.

Ukraine demonstrates a gradual approach to European standards, but the financing of the legal aid system remains 2-2.5 times lower than the average European level. This causes an asymmetry between formal guarantees and real possibilities of protection. Ukraine's standing in global rankings and monitoring studies was examined in order to comprehend the global context of the establishment of the right to protection institution. This is shown in Table 3.

Table 3. International Access to Justice Indices (2022-2024)

Indicator	2022	2023	2024
Criminal Justice Accessibility Index (Ukraine's place among 142 countries)	59	55	52
Impartiality of Criminal Process Index (0-1 score)	0.46	0.49	0.52
Share of persons who received free legal assistance upon detention (%)	66	69	71

Source: compiled by the author based on (UNODC, 2023; World Justice Project, 2024; OECD, 2023).

Over the past three years, Ukraine has risen seven positions in the global ranking of access to criminal justice, which confirms the positive impact of the reforms. However, the share of persons who actually receive free legal aid is still 17 percentage points lower than the average level in the EU countries. Thus, the above statistical indicators make it possible to conclude that Ukraine is demonstrating gradual movement towards strengthening the guarantees of the right to defense, but this progress is uneven and requires strengthening the mechanisms for the practical implementation of the procedural rights of the defense. That is why further analysis is focused on studying the principles of adversarial and equality of arms as basic tools for ensuring a fair trial.

In criminal proceedings, the principles of adversarial proceedings and equality of arms are fundamental guarantees of a fair trial. They provide that the prosecution and defense have equal opportunities to present their positions, evidence, motions, and objections, and that the court impartially evaluates the arguments of both sides (Verkhovna Rada of Ukraine, 2025). However, in practice in Ukraine, the implementation of these principles faces numerous difficulties, which have become especially acute in the conditions of martial law after 2022. For the purpose of systematizing key issues, regulatory changes of 2022-2025 were considered, in particular, the Law of Ukraine No. 2201-IX of April 14, 2022 "On Amendments to the Criminal Procedure Code of Ukraine Regarding the Conduct of Criminal Proceedings under Martial Law" and the Law No. 3341-IX of August 23, 2023 "On Amendments to the Criminal Procedure Code of Ukraine Regarding the Peculiarities of Pre-Trial Investigation of Crimes Against the Fundamentals of National Security, Peace, Human Security and International Law" (Verkhovna Rada of Ukraine, 2022; Verkhovna Rada of Ukraine, 2023). Additionally, analytical materials of the High School of Advocacy were analyzed, which highlighted the novelties of criminal proceedings during martial law and the Supreme Court's clarifications on the application of relevant provisions (Hloviuk&Zavtur, 2022). In the context of protecting the rights of the parties in the pre-trial investigation, special attention was paid to the problem of limited access of the defense party to investigation materials, which was disclosed in professional comments to Article 255 of the Criminal Procedure Code of Ukraine (Zhovtan, 2023). Thus, the principles of adversarial and equality of parties remain not only legal, but also practical challenges for the Ukrainian criminal process (Verkhovna Rada of Ukraine, 2023; 2025), which require further improvement of the regulatory framework and mechanisms of judicial control (See Table 4).

Table 4. Problematic aspects of implementing the principles of adversarial proceedings and equality of parties in criminal proceedings under martial law

No.	Problem/challenge	Source (CPC norm / legislative change / practice)	The essence of the problem	Potential consequences for the defense
1	Limited access to pre-trial investigation materials	Article 255 of the CPC, criticism in professional literature	The defense is sometimes not informed about the conduct of secret investigative (search) actions or loses the opportunity to familiarize themselves with their results	Complicating the preparation of objections or motions, violating equal conditions of adversarial proceedings
2	Uneven use of prosecutorial powers	Law No. 2201-IX (Chapter IX-1 of the Criminal Procedure Code)	Martial law conditions give the prosecutor the opportunity to authorize certain investigative actions without the intervention of the investigating judge, which weakens control by the defense	Risk of abuse, lack of balance between prosecution and defense
3	Changes in the calculation of pre-trial investigation deadlines	Law No. 3341-IX of 23.08.2023 (Part 8, Article 615 of the Criminal Procedure Code)	An exception has been introduced: the term "is not calculated" in proceedings concerning certain crimes (Articles 437-439, Part 1 of Article 442)	Prolonged delays in pre-trial proceedings, which create unequal conditions for defense
4	Incomplete response to change of jurisdiction/loss of materials due to hostilities	Letter of the Supreme Court dated 03.03.2022 No. 1/0/2-22, norms of the Code of Criminal Procedure 615	In cases where case materials are not transferred or are lost due to hostilities, the investigating judge is guided by an incomplete set of documents	The defense is forced to deal with incomplete information, which makes it difficult to prepare objections
5	Insufficient clarity in appealing the actions of the prosecutor/investigator	Part 4 of Article 615, additions and clarifications to the CPC	Procedures for appealing prosecutorial actions or inactions during wartime remain insufficiently detailed	Defense may experience legal uncertainty, which affects the speed of response
6	Declarative nature of the principle of equality of parties	Constitutional provisions on equality, but practical inconsistency	Although the law guarantees equal rights of parties (Article 22 of the CPC), in practice access to resources, experts, and evidence is often unequal	The defense is in a more vulnerable position, especially in cases involving state prosecution
7	Abuse of prosecutorial	Works of legal scholars on Article 255 of the CPC	The prosecutor may decide to destroy information, items or	The inability of the defense to verify

	decisions to destroy evidence		documents without proper notification to the defense	or challenge such actions
8	Lack of guarantees regarding the use of a lawyer in the early stages	General principles of the CPC (Article 7), practice and comments of lawyers	In some cases, detentions or interrogations occur without timely access to protection	Contradicts international standards, reduces the effectiveness of protection

Source: compiled by the author based on (Verkhovna Rada of Ukraine, 2022; 2023; Zhovtan, 2023; Hloviuk&Zavtur, 2022)

The table illustrates that the key challenges to implementing the principle of adversarial proceedings and equality of parties in the criminal process of Ukraine are not only the formal existence of norms on equal rights of the parties, but also their actual provision in conditions of martial law. The regulatory changes of 2022-2025 largely adapted the process to wartime circumstances (for example, through Section IX-1 of the Code of Criminal Procedure, the peculiarities of calculating deadlines, the expansion of the prosecutor's powers), but they also created new "risk zones" for the defense. The main problems include the restrictions on access to pre-trial investigation materials, the ability of the prosecutor to act without proper control, disproportionate terms of proceedings, loss of materials due to hostilities, and the lack of clear mechanisms for appealing individual decisions. Further legislative and practical efforts should prioritize strengthening the guarantees of protection in addition to "military" adjustments. Some examples of this include a more transparent process for appealing prosecutorial decisions, alerting the defense to all procedural actions, and outlawing the destruction of evidence without the defense's consent. Thus, the implementation of the principle of adversarial proceedings and equality of arms should become not a declaration, but an integral component of fair criminal proceedings even under martial law.

The institution of the participation of a defense attorney in the pre-trial investigation and trial is a key element of the implementation of the constitutional right of a person to defense, which guarantees compliance with the principles of adversarial proceedings, equality of parties and fairness of criminal proceedings.

The effectiveness of the participation of a defense attorney is determined not only by the formal enshrining of this right in legislation, but also by the practical possibility of its implementation – in particular, in the field of collecting evidence, participation in investigative (search) actions, access to case materials and the process of interaction with pre-trial investigation bodies (Ablamskyi, 2021; Kovalenko, 2024). In recent years, Ukraine has seen significant progress in the development of legal mechanisms regulating the powers of a defense attorney. However, a number of problems remain related to the practical implementation of these mechanisms in the context of both the national judicial system and international standards (Voloshanivska& Fedorov, 2021; Gutnyk, 2022).

Table 5. The effectiveness of the institution of defense counsel's participation in pre-trial investigation and trial

No.	Performance indicator	Current status of implementation	Main problems
1	Defense attorney's access to pre-trial investigation materials	Guaranteed by Article 221 of the CPC, but limited due to delays or refusals of investigators	Lack of clear deadlines for granting access, formal nature of decisions
2	The right of the defense attorney to initiate the collection of evidence	Articles 93, 99 of the CPC allow the defense to submit evidence, but their assessment by the courts is often subjective	Judges sometimes rule evidence inadmissible due to "insufficient procedural form"
3	Possibility of participationof a defense attorney in investigative actions	The norms of the CCP give the right to be present, but the practice depends on the investigator	Insufficient awareness or deliberate failure to notify about the action
4	Guarantees of confidential communication with the client	Guaranteed by law, but limited in places of pre-trial detention	Lack of control over confidentiality
5	Equality of arms in the process of proof	It is declared in Article 22 of the CPC, but in practice the prosecutor has greater access to resources	Imbalance between the prosecution and the defense
6	International standards of advocacy participation	Partially established through the implementation of ECHR case law	Insufficient adaptation to martial law conditions

Source: compiled by the author based on (Ablamskyi, 2021; Korniichuk, 2024; Kovalenko, 2024; Pivnenko, 2021; Fomina, 2025; Gutnyk, 2022; Yanovska, 2024; Voloshanivska& Fedorov, 2021; Johnston et al., 2023; Babikov et al., 2025).

The table below provides a comparative analysis of key indicators of the effectiveness of the defense attorney's participation in the criminal process of Ukraine, taking into account the results of research by scholars and generalizations of judicial practice. (See Table 5).

As can be seen from Table 2, the effectiveness of the institution of the participation of a defense attorney in criminal proceedings in Ukraine remains selective. Although the legislation formally guarantees equal procedural rights, their practical implementation depends on the integrity of investigators, prosecutors and judges. Issues of access to case materials, proactive collection of evidence and ensuring real equality of the parties remain problematic. The situation is further complicated by the limited level of application of international standards during wartime, when some guarantees are temporarily narrowed.

Thus, further improvement of this institution requires not only clarification of legislative norms, but also changes in approaches to law enforcement, strengthening of ethical and

professional standards of the legal profession, as well as integration of Ukrainian practice into the European system of guarantees of the right to defense.

Recommendations for improving mechanisms for ensuring the right to protection in criminal proceedings, taking into account international experience (EU countries, USA) and Ukrainian realities of the transitional justice period. First of all, it is advisable to implement some best practices of the European Union and the United States into the Ukrainian criminal procedure system, adapting them to the context of martial law and transitional justice. For example, in EU countries, the institution of early access to counsel is widespread, i.e. the right of a suspect to consult with a lawyer immediately after detention and before the first interrogation, without unreasonable delays. Such a mechanism serves as a strong safeguard against coercion to testify and guarantees a balance between state coercion and the individual's right to defense. In parallel, Ukraine should introduce a rule on confidential communication between a lawyer and a client even before interrogation, with practical guarantees (for example, mandatory audio or video recording of the interrogation with the exclusion of outsiders), as implemented in some jurisdictions of the USA and the EU. In addition, a mechanism for automatic judicial control over refusals or delays in access to a lawyer should be created, with the obligation of the investigator or prosecutor to provide a substantiated written motivation that can be appealed. The legislation should clearly define the period within which the investigator must provide the defense attorney with access to the case materials (for example, no later than 24-48 hours from the moment of the request), and failure to comply with this requirement should be accompanied by sanctions for the investigator or prosecutor (for example, disciplinary liability or exclusion of certain evidence).

Secondly, it is necessary to strengthen institutional guarantees and resources for defense so that the practical participation of the lawyer becomes real, not formal. In particular, it is advisable to expand and strengthen the network of free legal aid and guarantee that in complex criminal cases the public defender has access to resources (experts, professional services, permission to travel to the scene of the incident, etc.). A deterrent obstacle to full defense in Ukraine is the limited access to financial, laboratory or technical means, which is often important in complex cases (for example, with economic or military elements). Therefore, it is necessary to legislatively and procedurally provide for the right of the lawyer to initiate and conduct expert examinations ("counter-expert examinations"), independent investigative actions (with the consent of the investigating judge), to involve private experts and to have a guaranteed budget for such actions in the budget of the justice bodies. Another important element is to improve the interaction between the defense attorney and the investigative authorities: establish a mandatory regime of joint planning of investigative actions with advance notice, determination of the scope of procedures (when the lawyer can be present, grounds for refusal, etc.), as well as the introduction of judge control or an automatic system of randomization of participation. In American systems, public protocols of interaction between the defense and the prosecutor's office are often used to minimize the subjective decisions of investigators, and this can serve as a model for Ukraine. Such an approach, combined with ongoing training of judges, prosecutors, and lawyers on ECHR/US standards and monitoring through independent institutions (GPU, government human rights agencies),

will contribute to the fact that the right to defense becomes a de facto guarantee, not a declaration.

Discussion

The results of the research indicate that ensuring the right to defense in criminal proceedings in Ukraine remains a dynamic process that combines positive legislative developments with the presence of significant practical limitations. The position of most Ukrainian authors (Ablamskyi, 2021; Korniichuk, 2024; Kovalenko, 2024) is that the national model of criminal proceedings is gradually moving towards European standards, but the effectiveness of these guarantees largely depends on the level of their actual application. A similar approach is also observed in the studies of Gutnyk (2022) and Yanovska (2024), who emphasize that the practical content of the adversarial principle often remains declarative, since the parties to the process do not have equal access to evidence and procedural resources.

At the same time, another group of researchers (Babikov et al., 2025; Fomina, 2025; Mozgawa&Shupyana, 2024) draws attention to the fact that under martial law, the state has an objective right to introduce temporary restrictions to ensure public safety. In their opinion, these changes are justified from the standpoint of the need to preserve statehood, even if they somewhat narrow the possibilities of defense. Such an interpretation is controversial since it contradicts European standards, according to which even in times of emergency the state cannot deprive a person of the basic guarantees of a fair trial (Council of Europe, 2024; FRA, 2024).

Supporting a more moderate position, authors, analyzing the practice of the ECHR (Corda & Hester, 2021; Johnston et al., 2023; Dsouza, 2024), propose to consider the right to defense as a balance between security interests and procedural rights of the individual. They believe that it is through the introduction of mechanisms for early access to counsel that real equality of parties can be ensured even in crisis conditions. This vision corresponds to the results of the study by Oliynyk (2022), which emphasizes that Ukraine should move from a formal to a substantive interpretation of defense guarantees by introducing mandatory judicial control over denials of access to a lawyer.

While foreign researchers (Lattimore, 2022; Zhou, 2025) tend to systematically analyze the functional effectiveness of the institution of protection, Ukrainian authors, as a rule, focus on procedural and institutional gaps. Thus, Voloshanivska and Fedorov (2021) note that even the presence of detailed procedures does not guarantee equal opportunities for the parties due to uneven application of law. This is confirmed by statistical data (Eurostat, 2024; World Justice Project, 2024), which indicate an improvement in formal indicators, but the gap between the norm and practice remains.

The contradictions between the positions of scholars can be explained by different theoretical emphases: supporters of the formalized approach assess effectiveness through changes in legislation, while the institutional school considers access to justice as part of a broader socio-legal system. A comparison of both approaches shows that the legal model of protection can be effective only if it is implemented in practice through clear procedures, an ethical lawyer culture and adequate funding (OECD, 2024).

Thus, the results obtained confirm the hypothesis that Ukraine is in a transitional stage of developing an effective criminal defense system. Although reforms contribute to harmonization with European standards, significant structural challenges remain – primarily insufficient equality of parties, limited access of defense attorneys to evidence, and an imbalance of procedural powers. In view of this, further studies should be aimed at identifying optimal mechanisms for adapting the right to defense to martial law conditions, strengthening control over the actions of the prosecutor, and expanding institutional guarantees for advocacy.

Conclusions and Prospects for Further Studies

The conducted research revealed that the system of criminal law and criminal procedure ensuring the right to defense in Ukraine is at the stage of essential transformation, when legislative reforms are only partially implemented in real law enforcement practice. The combination of military challenges and obligations to international partners necessitates the search for a balance between state security interests and guarantees of personal rights, which determines the relevance of further scientific studies in this area. The novelty of the obtained results lies in the systematic combination of a comparative analysis of European practices with national mechanisms of criminal procedure, which made it possible to identify key points of imbalance – primarily in the area of defendant's access to case materials, control over the actions of the prosecutor and financing of legal aid. A comparison of expected and actual results showed that the positive dynamics of statistical indicators do not always reflect the real level of compliance with the principles of adversarial and equality of parties. The practical significance of the study lies in formulating specific proposals for improving the institution of protection, in particular, the introduction of the *early access to counsel* mechanism, mandatory standards of confidential communication between a lawyer and a client, and the creation of an independent mechanism for monitoring the actions of pre-trial investigation bodies. At the same time, the identified limitations of the research are related to the lack of empirical data on the regional differentiation of law enforcement practices and the lack of a comprehensive analysis of the effectiveness of free legal aid during martial law.

Further studies should be directed at assessing the impact of changes to the Code of Criminal Procedure of Ukraine on the quality of judicial control, examining models of lawyer participation in the pre-trial process according to international standards, and determining indicators of real equality of parties in criminal proceedings. The analysis of digital tools for recording procedural actions, in particular electronic protocols and platforms for interaction between lawyers and judicial authorities, is also promising. It is the integration of legal, technological, and ethical approaches that will ensure the formation of a stable system of guarantees of the right to defense that will meet both national and European standards of justice.

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LIABILITY FOR CAUSING PROPERTY LOSSES IN THE COURSE OF BUSINESS ACTIVITIES

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Abstract

The relevance of the study lies in the need to improve mechanisms for compensating damages arising from breaches of civil and commercial obligations during the full-scale armed conflict in Ukraine. Existing legal provisions do not always ensure effective or consistent recovery of damages, creating risks for legal certainty and economic stability. The objective is to develop a theoretically grounded concept of a unified compensatory mechanism in Ukrainian civil and commercial law that would enhance the efficiency of damages recovery and improve law enforcement practice. The research is based on an interdisciplinary methodological approach using the dialectical method to examine the relationship between contractual and tort liability; formal legal and comparative methods to identify systemic links and conflicts in current legislation; legal modeling to formulate a unified compensation mechanism; and structural-functional analysis to determine problems and prospects for reform. The findings reveal key contradictions between the Civil Code and Economic Code of Ukraine in regulating compensation for damages. The absence of a unified approach to the correlation between "damage" and "losses," unclear boundaries of contractual and tort liability, and imperfect

mechanisms for compensating moral damages and damages caused by lawful actions of public authorities undermine the effectiveness of law enforcement. Based on structural and functional analysis, the study proposes a comprehensive system of improvements aimed at harmonizing civil and commercial law, unifying approaches to determining the composition of compensation, and creating an effective mechanism for compensating business losses in accordance with the rule of law and European standards. The proposed recommendations can enhance the efficiency of damages compensation, ensure greater coherence in judicial practice, and strengthen the systematic character of civil and commercial relations in Ukraine.

Keywords

Compensation for damages, regulation, compensatory mechanism, law enforcement, legal aspects.

Resumo

A relevância do estudo reside na necessidade de melhorar os mecanismos de compensação por danos decorrentes do incumprimento de obrigações civis e comerciais durante o conflito armado em grande escala na Ucrânia. As disposições legais existentes nem sempre garantem uma recuperação eficaz ou consistente dos danos, criando riscos para a segurança jurídica e a estabilidade económica. O objetivo é desenvolver um conceito teoricamente fundamentado de um mecanismo compensatório unificado no direito civil e comercial ucraniano que aumentaria a eficiência da recuperação de danos e melhoraria a prática de aplicação da lei. A investigação baseia-se numa abordagem metodológica interdisciplinar que utiliza o método dialético para examinar a relação entre a responsabilidade contratual e a responsabilidade civil; métodos jurídicos formais e comparativos para identificar ligações e conflitos sistémicos na legislação atual; modelagem jurídica para formular um mecanismo de compensação unificado; e análise estrutural-funcional para determinar problemas e perspetivas de reforma. As conclusões revelam contradições fundamentais entre o Código Civil e o Código Económico da Ucrânia na regulamentação da indemnização por danos. A ausência de uma abordagem unificada à correlação entre «danos» e «perdas», os limites pouco claros da responsabilidade contratual e extracontratual e os mecanismos imperfeitos de indemnização por danos morais e danos causados por ações legais das autoridades públicas comprometem a eficácia da aplicação da lei. Com base na análise estrutural e funcional, o estudo propõe um sistema abrangente de melhorias com o objetivo de harmonizar o direito civil e comercial, unificar as abordagens para determinar a composição da indemnização e criar um mecanismo eficaz para indemnizar as perdas comerciais, de acordo com o Estado de direito e as normas europeias. As recomendações propostas podem aumentar a eficiência da indemnização por danos, garantir uma maior coerência na prática judicial e reforçar o caráter sistemático das relações civis e comerciais na Ucrânia.

Palavras-chave

Indemnização por danos, regulamentação, mecanismo de compensação, aplicação da lei, aspetos jurídicos.

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LIABILITY FOR CAUSING PROPERTY LOSSES IN THE COURSE OF BUSINESS ACTIVITIES

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Introduction

In today's context of socio-economic transformations and digitalization of the legal system of Ukraine, ensuring the efficient functioning of civil and economic relations is becoming a key factor of economic stability. Breach of contractual and tort obligations creates economic risks for both business entities and individuals, which necessitates the improvement of mechanisms for compensation for losses. Therefore, effective regulation of liability is of particular relevance in times of war, when legal certainty and speed of compensation procedures are increasingly important.

The theoretical and practical aspects of liability for breach of obligations have been considered by a number of domestic and foreign authors. For example, Daryaie et al. (2024) analyzed the general principles of damages and compensation mechanisms in civil law, emphasizing the importance of a systematic approach to establishing causal relationships and determining the amount of damages. Modern Ukrainian scholars draw attention to the need to integrate contractual and tort liability into a single compensatory mechanism, which allows for more effective law enforcement and reduces the number of litigations (Melnyk et al., 2023; Nishchymna& Andrushchenko, 2024; Prilensky, 2021; Zhegulyn, 2021).

At the same time, the practice of applying civil and commercial law shows that there are significant differences in determining the amount of damages, criteria for their compensation, and recovery procedures. This is due to uneven interpretation of the rules by courts, different approaches to damage assessment, and insufficient integration of modern digital technologies into the processes of proof and compensation. Such

challenges require a comprehensive scientific study aimed at developing a unified compensation mechanism capable of taking into account both contractual and tort aspects of liability, ensuring a balance of interests of the parties.

The purpose of the article is toformulate a theoretically grounded concept of a single compensation mechanism in the civil and commercial law of Ukraine, which would increase the efficiency of damage compensation and improve law enforcement practice. The objectives of the study include: systematization of the provisions of the Civil and Commercial Codes of Ukraine on liability for breach of obligations; analysis of the practice of application of these provisions by courts; identification of problematic aspects in determining the amount of damages; and development of proposals for integrating contractual and tort liability into a single compensation mechanism.

Literature Review

There is an urgent need for a comprehensive scientific understanding of the specifics of the application of the new civil and commercial legislation of Ukraine within the framework of economic legal relations, particularly in the context of a full-scale war and deep socio-economic transformation of society, during the period of adaptation to the European standards of private law and the acquis communautaire of the European Union (EU). This problem has a twofold nature: on the one hand, there are significant difficulties in interpreting the latest codifications, and on the other hand, there is an obvious lack of case law on certain aspects of their application.

The discourse on the peculiarities of regulating liabilities for damages in the context of business activities is becoming particularly relevant. For example, Melnyk et al. (2023) emphasize that civil liability for damage in the field of economic activity becomes especially relevant in times of war, when labor market transformations and increased labor migration create additional risks for business. The authors point out that the legal aspects of human resources management and security of economic systems should be flexible so that businesses can maintain their viability despite material and legal changes. Thus, their conclusions confirm the need to improve legal mechanisms for compensation, introduce clear rules of liability and a systematic approach to regulating economic relations in a crisis. Thus, the traditional legal understanding perceives these relations as intra-civil, regulated by the provisions of the Civil Code of Ukraine (further – CCU). However, part 2 of Article 9 of the Civil Code of Ukraine expressly states that «peculiarities of regulation of property relations in the field of economic activity may be established by law», which opens up space for specific regulatory regulation. Thus, according to part 2 of Article 4 of the Commercial Code of Ukraine, «the peculiarities of regulation of property relations of business entities are determined by this Code» (VRU, 2025a; 2025b). Thus, these legal provisions require law enforcement authorities to carefully identify the institutional features of regulation laid down in the Commercial Code in each branch of private law used in the framework of economic activity. This need is driven by practical pragmatism: parties to commercial disputes will actively appeal to the provisions of the Commercial Code, which may either increase the scope of compensation for damages (for victims) or limit it (for the entities that caused the damage).

During the period of Soviet statehood, the institute of civil liability in commercial legal relations was not clearly distinguished in the scientific literature, but civil and commercial law researchers identified characteristic features of the application of liability in the context of production and economic legal relations as opposed to typical consumer relations. For example, Berman (1947) highlighted the specifics of civil liability rules for damage to collective farm property – in particular, he justified shortened limitation periods for disputes between socialist organizations in the interests of strengthening financial and planning discipline and stimulating the prompt exercise of property rights of such organizations. Rudden (1967) and Sirianni (2020) also noted that when a socialist organization is recognized as a victim, its freedom to choose the method of compensation is limited: compensation must be consistent with the functional goals of the organization, the nature of its property and planned tasks – today, this is consistent with the requirements of the owner or his authorized body.

In the modern foreign discourse, the issue of civil liability is addressed in different ways. For example, Van Dunné (1999) raises the complex issue of compensation for pure economic losses arising without direct physical damage to property or a person. Based on a comparative analysis of civil and common law, the author proves that in continental systems liability for such losses is generally recognized, albeit with reservations, while in common law it is traditionally rejected and allowed only in exceptional cases. The author emphasizes the political arguments («floodgates argument») and the new use of the classical categories of causation and negligence.

The expansion of the scope of liability in tort law was the subject of a separate study by Priest (1991), who showed that since the 1970s in developed economies there has been a sharp increase in the scope of liability, which has had a profound impact on the markets for goods and services. The scholar argues that modern tort law, being based mainly on non-economic principles, has led to significant dysfunctions in the insurance sector and caused serious market distortions. At the same time, he critically assesses the reform initiatives of the late twentieth century, pointing out their limited ability to eliminate the root causes of the expansion of tort liability.

Instead, in modern Ukrainian scholarship, civil liability for damage caused in the course of economic activity in Ukraine is viewed through the prism of a complex multi-level regulatory array which combines both universal provisions of private law and specialized regulatory structures focused on certain sectors of economic activity. In particular, it is noted that the key sources are the Civil Code and the Commercial Code of Ukraine, as well as a number of special laws that detail the procedure for compensation for damage in certain areas of economic activity, thereby ensuring the complexity of legal regulation (Nishchymna& Andrushchenko, 2024). This approach guarantees the protection of the rights of victims and is also intended to formulate standards of responsible business behavior in a competitive marketplace.

Within the doctrinal discourse, several key forms of liability are distinguished. For example, non-contractual (tort) liability is associated with damage caused by negligence or intentional acts, and a necessary condition for its occurrence is the presence of a causal relationship between the act and the resulting damage (Zhegulyn, 2021). Contractual liability, in turn, is caused by the breach of specific obligations arising under

civil law agreements; in scientific works, it is often illustrated by examples of transportation relations, when, for example, a passenger is liable for damage caused to the carrier (Prilensky, 2021). The issue of compensation mechanisms is essential in this regard. They include both voluntary and mandatory forms of compensation, in particular by filing a civil lawsuit in criminal proceedings or using state mechanisms for financing compensation payments, which indicates the active role of the state in ensuring the restoration of violated rights (Lapkin et al., 2019).

The issue of the effectiveness of compensation is also considered in the context of economic analysis of law. The study by Daryaie et al. (2024) emphasizes that the effectiveness of compensation mechanisms largely depends on their economic rationality and ability to minimize transaction costs. The authors conclude that it is the combination of legal and economic criteria that allows creating an optimal model for restoring the violated rights of victims and ensuring a balance of interests of all participants in economic relations.

In the context of technological transformations, liability for personal data breaches attracts special attention of scholars. Cheng (2025) argues that in the «era of big data», traditional principles of tort law are not able to fully ensure adequate protection of individual rights. He proposes a model of combining the principle of guilt and the presumption of guilt as a single system of imputation of harm, while recognizing the need to develop the compensatory and preventive-punitive function of civil liability. This approach allows to harmonize the doctrine of liability with new social and technological realities.

The question of civil liability for environmental factors that cause damage is equally important. Alwreikat and Qtaishat (2025), analyzing the experience of Jordan, Egypt, and France, argue that in the field of e-waste management, the most effective concept is the objective theory of liability, which eliminates the need to prove the guilt of the person causing the damage. This approach strengthens the legal mechanisms for environmental protection and integrates the issue of waste recycling and disposal into the broader context of achieving sustainable development goals.

In the Ukrainian regulatory space, many economic and legal mechanisms of compensatory liability are covered in the Explanation of the Supreme Arbitration Court of Ukraine «On some issues of the practice of resolving disputes related to compensation for damage» No. v_215800-94 of 29.12.2007 (VRU, 2007c), which was subsequently clarified by the Presidium of the Supreme Economic Court of Ukraine in the Recommendations of the Presidium of the Supreme Economic Court of Ukraine «On Amendments and Additions to the Explanation of the Presidium of the Supreme Arbitration Court of Ukraine dated 01.03.1994 N 02-5/215 «On Some Issues of Practice of Dispute Resolution Related to Compensation for Damage» No. va239600-07 dated 29.12.2007) (VRU, 2007a). These documents explicitly emphasize the need to take into account the special provisions of the Commercial Code, in particular Article 249(3), Article 39(1), Article 153(1), Article 159(1), Article 162(3), Article 178(2), Article 216(2) (as an example), as well as the method of calculating damages under Article 225(6) of the Commercial Code of Ukraine (VRU, 2025b).



However, in accordance with Article 225 of the Civil Code of Ukraine as it currently exists, as amended, it includes only the following components of damages: the cost of lost, damaged or destroyed property; additional expenses (penalties, additional work, materials, etc.); lost profits; and material compensation for non-pecuniary damage, if provided for by law. It is worth noting that part 2 of this article establishes that the law may impose restrictions on civil liability for certain types of economic obligations. The price criteria for calculating damages are outlined in paragraphs 3–4, and they are contingent on the date of the claim's voluntary satisfaction or the claim's filing, with the option to consider the price on the day of the decision. Instead, paragraphs 5-7 of Article 225 of the Civil Code of Ukraine were repealed by the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the Protection of Investors' Rights» No. 289-VIII dated January 1, 2023 (VRU, 2023).

Thus, the current legal framework of Ukraine in the field of civil liability for damage caused in the course of economic activity, on the one hand, creates a fairly developed and multicomponent system of protection of victims' rights, and on the other hand, demonstrates the existence of a number of challenges in terms of practical law enforcement, especially in the area of proper compensation and the effectiveness of enforcement mechanisms. The evolution of economic relations, including in high-risk sectors, highlights the need for further reforms aimed at strengthening institutional guarantees of fair compensation and establishing the principles of good faith and legal certainty in the business sector.

Materials and Methods

The study's methodology is founded on the fact that the issue of civil liability for damages in the realm of economic activity is interdisciplinary. These methods were used during the study:

- the dialectical method was used to identify internal contradictions in the relationship between contractual and tort liability and their development in the modern private law doctrine. This approach made it possible to reveal the evolution of the compensatory mechanism and to outline the patterns of its transformation in the context of economic turnover;

- the formal legal method was used to analyze the regulatory body of civil and commercial legislation of Ukraine (the Civil Code of Ukraine, the Commercial Code of Ukraine, special laws and regulations). It made it possible to clarify the systemic links between the norms, determine their hierarchy, and identify gaps and conflicts in legal regulation;

- the comparative legal method was used to compare the provisions of civil and commercial legislation on compensation for damages (in particular, Articles 22, 623, 1166-1194 of the Civil Code of Ukraine and Articles 174, 222, 224-226 of the Commercial Code of Ukraine). This method made it possible to identify differences in the categories of «damage» and «losses», as well as the specifics of economic tort;

- the method of legal modeling was applied to the formation of the concept of a single compensatory mechanism of private law, within the framework of which an institutionally

coordinated design integrating contractual and tort elements is proposed as the basis for law enforcement practice;

- the method of structural-functional analysis was used to identify key issues and prospects for their resolution in the area of compensation for damages in economic relations. This approach allowed the author to identify internal contradictions of the current legislation (in particular, the Civil Code and the Commercial Code of Ukraine), classify them by type and propose targeted areas of improvement which will ensure consistency of intercontractual and tort structures and practical implementation of the principle of full compensation for damage.

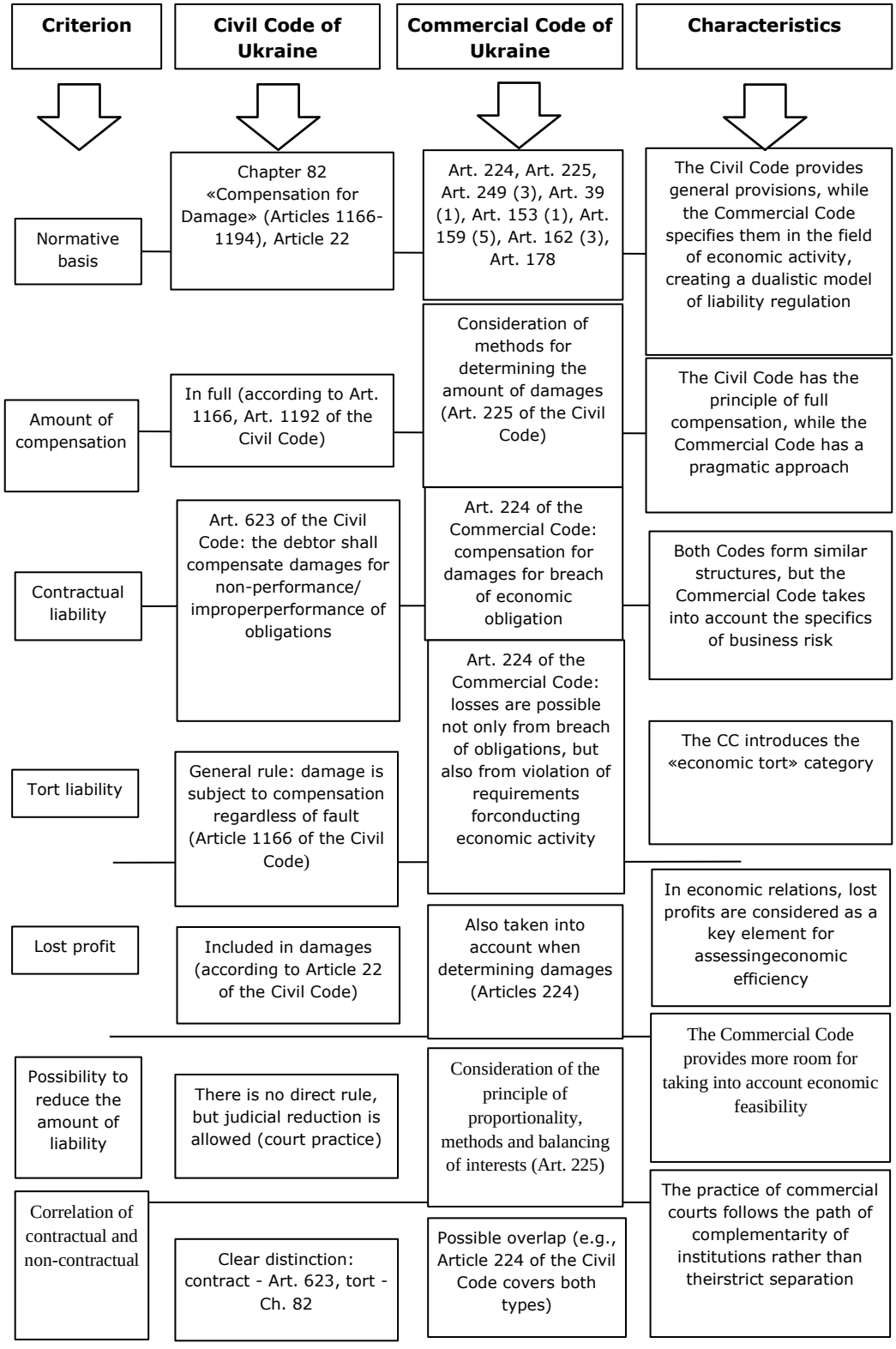
Results

The issue of civil liability for damage caused within the framework of economic activity is a key one in the private law doctrine, as it combines both elements of contractual obligations and tort remedies. It is not by accident that Ukrainian court practice in the early 1990s brought attention to the necessity of a thorough process for settling disagreements pertaining to damages compensation. Thus, in the Explanation of the Supreme Arbitration Court of Ukraine «On some issues of practice of resolving disputes related to compensation for damages» No. v_215800-94 dated 29.12.2007 (VRU, 2007c) (as further amended in the Recommendations of the Presidium of the Supreme Economic Court of Ukraine «On Amendments and Additions to the Explanation of the Presidium of the Supreme Arbitration Court of Ukraine dated 01.03.1994 N 02-5/215 «On some issues of the practice of resolving disputes related to compensation for damages» No. va239600-07 of 29.12.2007) (VRU, 2007a), it was emphasized that it is necessary to take into account special provisions of the Commercial Code of Ukraine (part. 3, Article 249, Article 39(1), Article 153(1), Article 159(5), Article 162(3), Article 178(2), Article 216(2)), as well as the methods of determining the amount of losses in the field of business provided for in Article 225(6) of the Commercial Code of Ukraine (VRU, 2025b).

These acts laid the foundation for further law enforcement practice, but left a number of open questions related to the correlation between the concepts of «loss» and «damage», as well as the limits of application of contractual and tort constructions. The modern doctrine recognizes that the institute of damages as a result of breach of obligation and the institute of damage as a tort phenomenon have different normative origins, but in practice their interaction is inevitable.

The law enforcement practice has also developed an approach according to which a clear distinction should be made between (1) the debtor's duty to pay for losses caused by not performing or performing improperly an obligation (Article 623 of the Civil Code of Ukraine) and (2) non-contractual damage, which is regulated in Chapter 82 of the Civil Code of Ukraine (Articles 1166-1194) (VRU, 2025a).

Figure 1. Comparative Characteristics of the Application of Civil Law and Commercial Law Regulations on Liability for Damage in the Course of Business Activities



Source: compiled by the author on the basis of VRU (2025a; 2025b)

The importance of this matter is substantiated by the fact that Chapter 82 of the Civil Code of Ukraine contains only a general rule on compensation for damages «in full» (Article 1166), but does not define in detail either the components of compensation, the possibility of its reduction, or the procedure for compensation for lost profits. Instead, commercial law (Articles 224, 225, 249 of the Commercial Code of Ukraine) expressly establishes the possibility of compensation for damages both in case of breach of an obligation and in case of non-compliance with «established requirements for conducting business activities», which in fact covers the tort liability of business entities (VRU, 2025b).

A participant in economic relations who violates an economic obligation or established requirements for conducting economic activity must, therefore, reimburse the entity whose rights or legitimate interests have been violated for the losses resulting from the violation, as per part 1 of Article 224 of the Commercial Code of Ukraine.

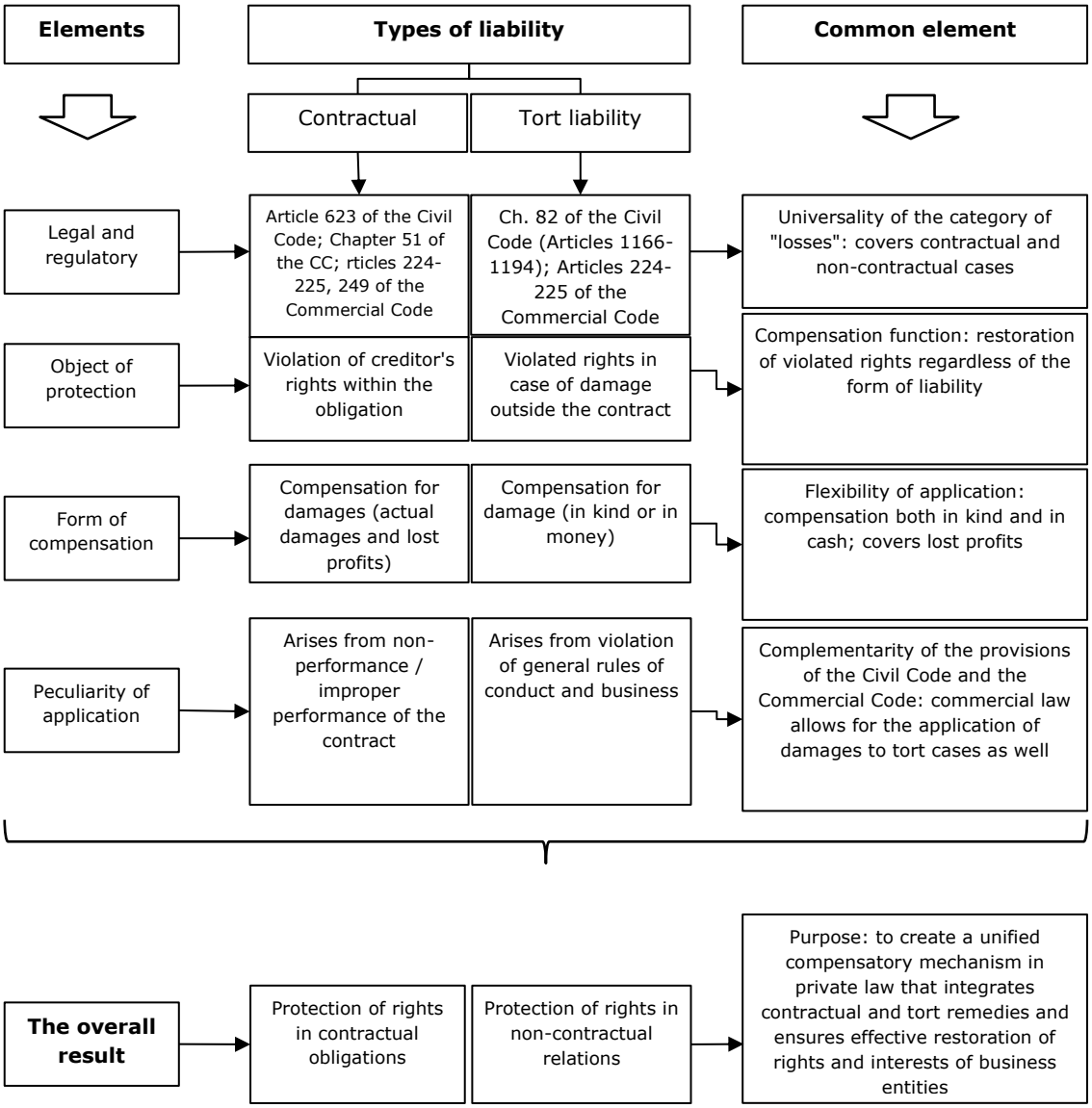
This provision demonstrates an organic combination of contractual and tort elements, as damage can arise not only from the failure to fulfill a contract, but also from a violation of general business rules (VRU, 2025b). Additionally, Article 22 of the Civil Code of Ukraine defines «damages» as a universal category covering any violation of civil rights, and Article 1192 of the Civil Code provides for both compensation in kind and in monetary form (VRU, 2025a).

Therefore, the provisions of the Civil Code and the Commercial Code of Ukraine on recovery of damages for breach of obligations may (and should) be applied to relations for compensation for non-contractual damage in the field of business, but only to the extent that they do not contradict the provisions of Chapter 82 of the Civil Code of Ukraine (VRU, 2025a). This does not mean that contractual and tort liability are equated, instead, that private law has a single compensatory mechanism that makes it possible to fill in legal gaps and guarantees the efficient defense of business entities' rights and legitimate interests.

One of the most problematic issues in the field ofThe challenge of reflecting their sectoral specificity is among the most troublesome problems in the area of legal regulation of compensation for damage in economic relations is the problem of reflecting their sectoral specificity. The study of the The conclusions drawn from the analysis of current legislation's provisions of current legislation leads to the conclusion that theare that some reformers' proposals of some reformers regarding the abolition of to abolish the Economic Code of Ukraine as an separate law independent act and complete unification of fully unify its provisions with the provisions those of the Civil Code of Ukraine are both methodologically incorrect flawed and practically dangerous hazardous for the business sector community. Commercial legal relations, unlike purely civil ones, require the use of specialized tools focused on the professional sphere of business, which makes it impossible to identify the mechanisms of liability in civil and commercial law. Ignoring this specificity leads to the destruction of traditions established in commercial circulation, distortion of business loss compensation procedures and their replacement with general civil remedies that are formally acceptable but essentially inadequate and harmful to the business environment.

Ukrainian legislation provides for a number of Several provisions that directly indicate the special nature of Ukrainian legislation explicitly denote the unique nature of the institution of compensation for damage in the field of business. Thus, pursuant to Part 1 of Article 174 of the Commercial Code of Ukraine, an economic obligation may arise as a result of damage to a business entity or by the business entity itself. This indicates that liabilities for damages in such cases fall into the category of property and economic liabilities. At the same time, part 3 of Article 175 of the Civil Code of Ukraine explicitly states that damage caused by an individual who does not have the status of an entrepreneur cannot give rise to an economic obligation, which further confirms the autonomy and specialization of economic legal mechanisms (VRU, 2025b).

Figure 2. Scheme of a single compensatory mechanism in private law



Source: compiled by the author

The content and structure of such obligations indicate the existence of a separate tort institute of economic law, which, although it corresponds to civil law tort, is not identified with it. It is about a set of provisions that form the specifics of the economic law approach to determining and compensating for damage. In particular, part 1 of Article 222 of the Civil Code of Ukraine provides for the possibility of initiating a pre-trial settlement of a dispute over compensation for damage by the injured party, which reflects the economic law orientation towards discretion and balance of interests (VRU, 2025b). Compensation for non-pecuniary damage should be given special consideration. In the economic sector, it can only be considered a business entity's business reputation being violated, as opposed to the more general grounds outlined in Article 23 of the Civil Code of Ukraine (VRU, 2025a).

Another important difference is the regulation of liability of public authorities. While Article 393 of the Civil Code of Ukraine provides for compensation for damages only in case of unlawful decisions or actions, part 5 of Article 47 of the Commercial Code of Ukraine allows for recovery of damages even for lawful decisions that objectively led to negative property consequences for business entities (VRU, 2025a; 2025b). This provision clearly demonstrates the orientation of commercial legislation to protect business stability, rather than purely to formal compliance with the principle of legality.

No less significant is the expanded list of damages enshrined in Article 225 of the Commercial Code of Ukraine, which differs significantly from Article 22 of the Civil Code of Ukraine. Commercial law recognizes «lost income» as an element of damages that is calculated not in the abstract, buttaking into account economic specifics: by reducing the gross income of a business entity by the amount of gross expenses and depreciation (Article 142 of the Commercial Code of Ukraine) (VRU, 2025b). In contrast to the civil law approach, which defines lost profits as income that an individual could actually receive under normal circumstances, this sets apart the economic understanding of lost profits (Article 22(2) of the Civil Code of Ukraine) (VRU, 2025a).

Additionally, part 3 of Article 226 of the Civil Code of Ukraine provides for a special ground for reducing the amount of compensation: a business entity is denied the right to compensation for losses if it was promptly informed of a potential failure to fulfill an obligation and could have prevented the adverse consequences, but failed to do so. This provision has no analogues in civil law, which confirms the separateness of economic torts.

Significant peculiarities can be traced in the methods of determining damage. Instead of the universal approach of Art. 22 of the Civil Code of Ukraine, commercial law relies on special regulations. Thus, part 6 of Art. 225 of the Commercial Code of Ukraine provides for the use of methods approved by the Cabinet of Ministers of Ukraine (further – CMU), including, in particular, the Resolution of the CMU

«On Approval of the Methodology for Determining the Amount of Damage Caused by Unauthorized Occupation of Land Plots, Use of Land Plots for Other Purposes, Removal of Soil Cover (Fertile Soil Layer) without Special Permit» No. 963 of 25.07.2007 (VRU, 2007b); «On Taxes for Calculating the Amount of Damage Caused by Violation of the Legislation on the Nature Reserve Fund of Ukraine» No. 287-93-p of 03.04.1995 (VRU, 1995); and «On Taxes for Calculating the Amount of Damage Caused to Green Areas

within Cities and Other Settlements» No. 559-99-p of 29.02.2012 (VRU, 2012a). In the absence of modern methods, the Temporary Methodology for Determining the Amount of Damage from Breach of Economic Contracts, approved by the Order of the State Property Fund of Ukraine «On Approval of the Methodology for Determining the Damage and Amount of Damage Caused to Enterprises, Institutions and Organizations of All Forms of Ownership as a Result of Destruction and Damage to Their Property in Connection with the Armed Aggression of the Russian Federation, as well as Loss of Profit from the Impossibility or Obstacles to Conducting Economic Activity» (No. z1522-22 of 18.10.2022), may also serve as a guide. An additional element of the specialty of commercial law is the regime of double compensation for damage caused by violations of competition law, enshrined in part 2 of Article 55 of the Law of Ukraine «On Protection of Economic Competition» (VRU, 2024), which is completely alien to civil law. Thus, commercial law forms an autonomous compensatory mechanism within which compensation for damage acquires the characteristics of a special tort. This mechanism is not isolated from civil law, but it is also not reduced to its provisions, which leads to its consideration as a separate, institutionally justified form of civil liability in the field of business.

In addition, another conceptually complex problem, which is reflected in paragraph 9 of the Explanation of the Supreme Arbitration Court of Ukraine «On some issues of practice of resolving disputes related to compensation for damage» No. v_215800-94 of 29.12.2007 (VRU, 2007c), is the issue of determining the legal nature of damage caused in the field of business as a result of non-enforcement of a court decision. This issue is of practical and methodological importance, as it affects the limits of application of both tort and obligation constructions in commercial law. Therefore, first of all, it should be emphasized that a court decision as a legal fact may be recognized as the basis for a new obligation only in exceptional situations. These are, in particular, cases of restitution under an invalid disputed contract (Article 208 of the Commercial Code of Ukraine), when the court obliges the parties to return what they received under the contract; situations of recognizing a contract as concluded by a court decision (Article 187, Article 219 of the Commercial Code of Ukraine), as well as a number of other specific cases (VRU, 2025b). In such situations, the court decision does create a new obligation that did not exist before it was made. In most cases, however, judicial acts do not create new obligations, but rather ensure their enforcement by giving them the form of an enforcement document. For example, a decision to recover damages states the fact of a violation and determines its scope and procedure for compensation, while the obligation to compensate arises on the basis of a preliminary fact of an offense. This is further supported by the fact that, even prior to the court's ruling, the debtor is entitled to voluntarily make up the damages.

Based on this, it seems methodologically incorrect to define non-enforcement of a court decision as a tort. Within the meaning of Chapter 82 of the Civil Code of Ukraine (Article 1166), tort damage results from the violation of absolute rights of a person protected by the general prohibition of harm. In the case of non-enforcement of a court decision, it is not a violation of an absolute right, but rather the improper fulfillment of a specific obligation. Therefore, the legal basis for the creditor's claims in such a situation should be sought not in tort provisions, but in the rules on liability for breach of obligations -

Articles 623 and 625 of the Civil Code of Ukraine, as well as Chapter 25 of the Commercial Code of Ukraine. In particular, the concept of «court decision as a source of tort damage» negates the principle of full compensation for damage enshrined in Article 1166 of the Civil Code of Ukraine (VRU, 2025a). After all, tort compensation provides for continuous and systematic accounting of all losses of the injured party from the moment they occur until the moment of actual compensation. The reclassification of this obligation as a «judicial» obligation breaks the unity of the compensation process by introducing an external factor - the possibility or impossibility of enforcing a court decision.

The problem is further complicated by the position reflected in paragraph 9 of the Explanation of the Supreme Arbitration Court of Ukraine on damages (VRU, 2007c), according to which the court must determine whether it was actually possible to enforce the judgment at the time it was presented for enforcement. However, this provision seems questionable given the current substantive law. Pursuant to Article 1192 of the Civil Code of Ukraine, compensation for damages may be made in two forms - in kind or in cash. If compensation is made in cash, then pursuant to Article 625 of the Civil Code of Ukraine, the debtor is not released from liability for the inability to fulfill a monetary obligation (VRU, 2025a). Thus, a court review of the «possibility of fulfillment» would be contrary to the law.

A different situation arises when it comes to a court decision on compensation for damage in the form of transferring a specific thing or performing a certain action. Here, of course, the objective impossibility of performance may be relevant. However, it does not eliminate the debtor's obligation itself, but rather affects the procedure for its realization. In such cases, procedural rules apply, in particular, Article 33 of the Law of Ukraine «On Enforcement Proceedings» (No. 1404-VIII of 10.08.2025), which allows the court or enforcement body to grant a deferral or installment plan, as well as to change the method and procedure for fulfilling the obligation (VRU, 2025c). Thus, the legal qualification of non-enforcement of a court decision as tort damage is unacceptable from a doctrinal point of view and contrary to the system of national legislation. The only correct approach seems to be to qualify such legal relations as obligatory, with the appropriate application of the provisions of the Civil Code of Ukraine, the Economic Code of Ukraine and special laws.

It is impossible to overlook one of the most contentious topics when analyzing the problems of damages compensation in the field of economic relations: compensation for losses suffered by businesses as a result of illegal decisions, actions, or inaction on the part of local self-government bodies and public authorities.Even the Clarification of the High Commercial Court of Ukraine on compensation for damages emphasizes the unlawful actions of state enforcement officers as a basis for imposing tort liability. However, this issue does not exhaust the whole range of issues. Thus, in the field of land relations, numerous offenses arise due to the adoption of unlawful decisions by local governments, which necessitates amendments to the Law of Ukraine «On Local Self-Government» (No. 280/97-VR of 08.08.2025) (VRU, 2025d).

The current stage of development of Ukrainian legislation is characterized by a comprehensive regulatory framework for the institution of liability of public authorities for damage caused to business entities. Thus, the Economic Code of Ukraine contains a

number of provisions that directly define the grounds for such liability: Article 23(7), Article 40(7), Article 47(4-5), Article 74(6), Article 88(8), Article 147(3), Article 249(3), Article 255, Article 397(5-7) (VRU, 2025b). According to the Civil Code of Ukraine, damage caused by public authorities is covered by the provisions of Article 393 and special provisions of Articles 1173-1176, which expressly establish the liability of the state, the Autonomous Republic of Crimea and local self-government bodies for unlawful decisions, actions or omissions (VRU, 2025a). Additionally, Article 77 of the Law of Ukraine «On Local Self-Government» (VRU, 2025d) and Article 13(3) of the Law of Ukraine «On the State Tax Service» (VRU, 2012b) provide for the possibility of compensation for damage caused by the relevant authorities in the course of exercising their powers.

At the same time, despite the developed regulatory framework, a number of problems remain open. First of all, it is the issue of distinguishing between lawful and unlawful actions of officials, which is crucial for the emergence of the obligation to compensate for damage. The issue of personification of public authorities as independent subjects of civil liability is no less complicated, since they traditionally act on behalf of the state or a territorial community. The issue of jurisdiction is also controversial: the division of competence between commercial and administrative courts in disputes related to compensation for damage caused by the actions of public authorities. The mechanism of actual enforcement of funds from the state or local budget remains extremely problematic, which creates a conflict between the principle of full compensation for damage and the limitations of budget legislation.

Resolving these issues is an urgent need for the state in times of war, which also proclaims the development of entrepreneurship as one of its key priorities. A qualitative enhancement of the legislative framework is necessary to guarantee adequate compensation for damage caused by unlawful actions of public authorities, as indicated in Table 1.

Table 1. Key problems and prospects for their solution in the field of compensation for damage in economic relations

Problem	Essence of the problem	Proposed solution
Correlation of the concepts of «losses» and «damage»	In the Civil Code of Ukraine (Art. 22), damage is a universal category, while the Commercial Code (Arts. 224, 225, 249) treats losses as covering both contractual and tort cases, creating uncertainty over whether these concepts coincide or differ.	Introduce a legislative definition clarifying the relationship between "losses" and "damage," recognizing losses as a broader category that includes damage and lost profits, and amend Article 22 of the Civil Code of Ukraine to harmonize it with Article 225 of the Commercial Code of Ukraine.
Limits of application of contractual and tort structures	In practice, disputes often arise when damage is caused within existing contractual relations but outside the contract's scope (e.g., a contractor's negligent acts).	To codify in the Civil Code (e.g., Article 623) the presumption that the existence of a contract does not preclude tort liability where damage arises outside the performance of the contractual obligation, in line with § 280 BGB (Germany).

Lack of detail on the composition of compensation	Art. 1166 of the Civil Code contains a general rule on «full compensation», but does not detail the procedure for compensation for lost profits, the possibility of reducing compensation, etc.	Amend Chapter 82 of the Civil Code of Ukraine to provide for a structure of compensation similar to Article 225 of the Commercial Code of Ukraine: direct damage, lost profits, lost income, additional expenses, which will unify the practice.
Specifics of economic tort	In the Civil Code, tort is based on violations of absolute rights, whereas in the Commercial Code of Ukraine it centers on economic activity and professional risk, and the lack of a clear definition leads to methodological errors.	Recognize the autonomy of economic tort as a separate institution at the level of doctrine and law. To enshrine in the Civil Code the definition of «economic tort» as damage caused in the field of professional business activity, which differs from the tort of civil law.
Compensation for non-pecuniary damage in commercial law	The Civil Code of Ukraine (Article 23) recognizes a broad range of non-pecuniary losses, whereas commercial law allows them only for damage to business reputation, creating legal conflicts.	Enshrine in the Civil Code of Ukraine (Part 1 of Article 222) a provision that clearly defines that moral damages in economic relations are limited to violation of business reputation and special compensation for loss of business image.
Compensation for damages by lawful actions of public authorities	Article 393 of the Civil Code provides for liability for unlawful acts, while part 5 of Article 47 of the Commercial Code allows for recovery of damages even for lawful acts that have caused negative consequences, including a conflict of regulations.	A special institute of «compensation for legitimate damage» should be established at the legislative level, limiting it to cases where an act of a public authority has objectively caused losses for business.
Failure to enforce court decisions	Some scholars and courts equate the failure to enforce a court decision with a tort, although in fact it is an improper fulfillment of an obligation (Articles 623, 625 of the Civil Code; Chapter 25 of the Commercial Code).	Introduce in the Civil and Commercial Codes of Ukraine the rule that failure to enforce a court decision constitutes a breach of obligation, not a tort, to eliminate doctrinal contradictions and align with procedural law (Article 33 of the Law «On Enforcement Proceedings»).
Methods of determining damage	The Civil Code (Article 22) adopts a universal approach, whereas the Commercial Code (Article 225(6)) allows special methods approved by the CMU (Resolutions No. 963/2007, No. 287/1995, No. 559/2012), and the lack of a unified standard creates legal uncertainty.	Develop a single comprehensive methodology for assessing damage that combines civil and commercial approaches. Introduce mandatory forensic examination in cases where damage is determined by special methods.
Lack of a clear mechanism for recovering damages from the budget	Although the Civil Code (Articles 1173–1176) and the Commercial Code (Articles 23, 40, 47, 88, 147, 249, 255, 397) regulate state and local government liability, enforcement is often hindered by budget legislation.	Introduce a special procedure for enforcing compensation from the budget by creating a state fund to guarantee damages from authorities, in line with the rule of law and ECHR practice (Article 6 of the Convention).

Source: compiled by the author based on VRU (2021; 2025a; 2025b)

Discussion

This construction, as the analysis of legislation and its application practice shows, is not accidental, but is driven by the needs of economic circulation, where compensation for damage cannot be reduced to purely civil law instruments.

In this context, a paradox is revealed: attempts to unify civil and commercial regulation (through proposals to eliminate the Civil Code of Ukraine) come into conflict with the actual needs of economic circulation, where damage arises not only in the field of relations of obligation but also as a result of violation of general business rules. Unlike general civil torts, in commercial relations, the priority is to compensate for business losses, restore business reputation and maintain commercial stability. In fact, as the practice of other legal orders demonstrates (Van Dunné, 1999; Priest, 1991), ignoring the specifics of the economic context leads either to an excessive expansion of tort liability with undesirable market effects or to an excessive narrowing of compensation opportunities (the case of pure economic loss in common law).

The results of the study confirm the conclusion that there is a «single compensatory mechanism» in private law of Ukraine, which combines civil and commercial structures of compensation for damage. However, unlike the universal model of the Civil Code, commercial law instruments provide for an expanded range of damages, including lost income and special forms of non-pecuniary damage (in the context of business reputation), and allow for compensation even for lawful actions of public authorities. This situation significantly brings the Ukrainian model closer to the concept of «objective responsibility» that modern science is actively developing in the field of environmental risks and high-tech challenges (Alwreikat&Qtaishat, 2025; Cheng, 2025).

Comparing the results with foreign approaches reveals several important patterns. First, the effectiveness of compensation mechanisms is determined not so much by the degree of their formal universality as by their adaptability to the specifics of the market environment (Daryaie et al., 2024). Secondly, in the current environment, economic activity covers high-risk areas - from the digital economy to waste management - where the classical tort principles (fault, causation, full compensation) are insufficient. That is why the expansion of the limits of liability, which Priest (1991) noted in Western systems, takes on a new meaning in Ukraine: not as an «overload» of the legal order, but as a need for an adequate response to the complication of economic processes. Thirdly, the Ukrainian model of compensation for damages in commercial legal relations combines traditional tort elements with commercial legal functionality, creating a unique structure that can serve as a model for legal systems with similar socio-economic challenges. This is also confirmed by the analysis of law enforcement: the practice clearly distinguishes between cases of damages for failure to fulfill obligations and tort situations, but at the same time applies the same compensatory criteria (Articles 224, 225 of the Civil Code of Ukraine). This approach is consistent with the concept of «hybrid» obligations, which is increasingly seen in the doctrine as an adequate response to the current challenges of private law.

Thus, the discussion around civil liability in the field of economic activity demonstrates that the key challenge is not so much to find the boundaries between civil and commercial law as to develop a balanced compensation mechanism capable of ensuring legal

certainty, economic efficiency and fairness of compensation. In this sense, Ukraine's experience may be conceptually important for other transitional legal orders facing similar problems – fragmented regulation, lack of established practice, and rapidly changing economic and technological conditions.

Conclusions

This study demonstrates that the mechanisms of civil liability in Ukrainian commercial law form a single compensatory complex that combines contractual and tort remedies for damages. Such a system provides legal certainty, protects economic stability and is aimed at compensating both direct damage and lost profits arising from the breach of obligations.

In order to apply the provisions of the Ukrainian Civil and Commercial Codes, it is necessary to further harmonize methods for calculating damages and to more clearly regulate the relationship between contractual and tort liability, according to an analysis of the current legislation. The study notes that there is a need to improve the procedures for assessing damages, unify judicial practice, and adapt legal instruments to modern socio-economic and technological challenges, including digitalization and new forms of business activity.

The results obtained confirm that a unified compensation mechanism contributes to improving the efficiency of legal regulation, minimizing risks for business structures and making certain that the parties' interests are balanced. The practical significance of the study lies in the development of scientifically based recommendations for legislative initiatives and the development of law enforcement practice aimed at improving the system of compensation for losses and strengthening the legal security of commercial relations in Ukraine.

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FEATURES OF THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS FOR DESIGNATIONS ACCORDING TO THE LEGISLATION OF UKRAINE

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Abstract

Symbols that distinguish one business entity from another – such as signs, trademarks, and commercial or brand names – play a crucial role in ensuring fair competition and protecting consumer rights. Their proper use guarantees the declared origin and expected quality of goods, works, or services. The Convention Establishing the World Intellectual Property Organization (Stockholm, July 14, 1967) introduced an important distinction between "trademarks" and "designations." Under current Ukrainian legislation, designations may include words (including proper names), letters, numbers, images, colors, shapes of goods or packaging, and sounds, provided they are capable of distinguishing the goods or services of one person from those of another and can be represented in the Register with sufficient clarity to determine the scope of legal protection. Given these requirements, effective use and protection of designations necessitate a thorough understanding of how Ukrainian law regulates intellectual property rights in this area. The purpose of this article is to clarify the features of such protection by systematizing legislative provisions and relevant judicial practice. The methodological basis includes the documentary method, focused on analyzing court materials, and the formal-legal method, used to examine the legal positions of the Supreme Court concerning the protection of designations. The study leads to several conclusions: a designation itself is not an independent object of legal protection; it may acquire protection only when incorporated into a registered trademark; such protection is

limited by the rules applicable to marks; and, in special cases, courts may prohibit the use of a designation not as a trademark element but as a work of fine art.

Keywords

Intellectual property, trademarks, designations, legal protection, Law of Ukraine "On Protection of Rights to Signs for Goods and Services".

Resumo

Os símbolos que distinguem uma entidade empresarial de outra – tais como sinais, marcas registadas e nomes comerciais ou de marca – desempenham um papel crucial na garantia da concorrência leal e na proteção dos direitos dos consumidores. A sua utilização adequada garante a origem declarada e a qualidade esperada dos produtos, obras ou serviços. A Convenção que institui a Organização Mundial da Propriedade Intelectual (Estocolmo, 14 de julho de 1967) introduziu uma distinção importante entre «marcas registadas» e «designações». De acordo com a legislação ucraniana em vigor, as designações podem incluir palavras (incluindo nomes próprios), letras, números, imagens, cores, formas de bens ou embalagens e sons, desde que sejam capazes de distinguir os bens ou serviços de uma pessoa dos de outra e possam ser representadas no Registo com clareza suficiente para determinar o âmbito da proteção jurídica. Tendo em conta estes requisitos, a utilização e proteção eficazes das designações exigem uma compreensão profunda da forma como a legislação ucraniana regula os direitos de propriedade intelectual nesta área. O objetivo deste artigo é esclarecer as características dessa proteção, sistematizando as disposições legislativas e a prática judicial relevante. A base metodológica inclui o método documental, focado na análise de materiais judiciais, e o método formal-jurídico, utilizado para examinar as posições jurídicas do Supremo Tribunal relativamente à proteção das designações. O estudo leva a várias conclusões: uma designação em si não é um objeto independente de proteção jurídica; ela só pode adquirir proteção quando incorporada a uma marca registrada; tal proteção é limitada pelas regras aplicáveis às marcas; e, em casos especiais, os tribunais podem proibir o uso de uma designação não como elemento de marca, mas como obra de arte.

Palavras-chave

Propriedade intelectual, marcas registradas, designações, proteção jurídica, Lei da Ucrânia "Sobre a Proteção dos Direitos a Sinais para Produtos e Serviços".

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FEATURES OF THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS FOR DESIGNATIONS ACCORDING TO THE LEGISLATION OF UKRAINE

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Introduction

Salah Hassan Karim and Dr. Israa Khidir Khalil Alobaidy note that a well-known trademark is a unique trade for any commodity or service. It's usually a word, name, phrase, logo, symbol or image, or any combination of these signals which can be registered as a trademark. The well-known trademark is distinct from other intellectual property rights. As the well-known brand plays a significant role in economic growth, such has led to multiple infringements such as the forgery and imitation of the famous trademarks, which has become widespread (Salah Hassan Karim & Israa Khidir Khalil Alobaidy, 2024).

As G. Mykhailiuk notes, one of the main goals of marketing policy is to distinguish one's own products from similar products of competing manufacturers (Mykhailiuk, 2014). This becomes especially important in the conditions of the expected post-war Innovation and Investment Development of Ukraine (Kulikov et al., 2022; Nikonenko et al., 2022). Such differentiation may become necessary in information bases conducive to the development of an E-Commerce platform within modern socio-economic systems, operating amidst global digitalization and within legal constraints (Alazzam et al., 2023). Such differentiation can be achieved in various ways, but one of the oldest and most effective is the creation of a certain sign, name, symbol, which is depicted on the goods of this or that manufacturer, or under which this or that business entity performs work / provides services on the market. The above refers to the use of a commercial designation. Along

with the convenience and effectiveness of this marketing tool, which is also an object of intellectual property, the use of a commercial designation is associated with a group of risks that significantly limit the right of individuals to use certain commercial designations (Mykhailiuk, 2014).

The same article notes that the potential for separate legal protection for signs was provided in the Stockholm in World Intellectual Property Organization Convention of 1967, paragraph 8, Article 2, where point viii) of this article states that "intellectual property" includes rights relating to: literary, artistic and scientific works; performances of performers, phonograms and broadcasting; inventions in all spheres of human activity; scientific discoveries; industrial samples; trademarks, service marks, commercial names and designations, protection against unfair competition and all other rights resulting from intellectual activity in the fields of industry, science, literature or art (Convention, 1967). Also there was introduced the distinction between the concepts of "trademarks" and "designations".

At the same time, Leonid Belkin emphasizes that the protection of intellectual property rights to designation under the legislation of Ukraine is highly limited and has specific features. It is indicated that the exhaustive list of objects of intellectual property rights, which are subject to separate legal protection, is established in Part 1 of Article 420 of the Civil Code of Ukraine, including commercial (brand) names, trademarks (marks for goods and services). Thus, the designation is not defined as an independent object of legal protection (Belkin, 2019). Therefore, proper protection of the rights to use the relevant symbols (signs) is important and relevant. At the same time, a relatively small number of works are devoted to the issue of legal protection for designations (Mykhailiuk, 2014, 2015a, 2015b; Belkin, 2019; Rozghon, 2021). In addition, since the publication of these works, including the work of the co-author (Belkin, 2019), a number of new laws have been adopted, as well as new case law has been formed by the reformed Supreme Court. For example, on July 21, 2020, Law of Ukraine No. 815-IX "On Amendments to Certain Legislative Acts of Ukraine on Strengthening Protection and Protection of Rights to Trademarks and Industrial Designs and Combating Patent Abuse" was adopted (entered into force on August 16, 2020). Thus, there remains a large number of disputes in the specified area, which is connected with insufficient legal regulation of this area and confirms the relevance of this topic.

Presenting main materials

Civil law regulation of legal protection of designations

According to Part 1 of Article 492 of the Civil Code of Ukraine, a trademark can be any designation or any combination of designations that are suitable for distinguishing goods (services) produced (provided) by one person from goods (services) produced (provided) by other persons. Such designations can be, in particular, words, letters, numbers, pictorial elements, color combinations.

According to Part 1 of Article 1116 of the Civil Code of Ukraine, the subject of a commercial concession contract is the right to use objects of intellectual property rights

(trademarks, industrial designs, inventions, works, trade secrets, etc.), commercial experience and business reputation.

According to paragraph 1 Article 4 of the Law of Ukraine dated June 7, 1996 No. 236/96-VR "On Protection from Unfair Competition" it is illegal to use a name, commercial (brand name), trademark (a mark for goods and services), advertising materials, design of product packaging and periodicals, other designations without the permission (consent) of the business entity that previously started using them or similar designations in business activities, which has led or may lead to confusion with the activities of this business entity.

Thus, in the above-mentioned Part 1 of Article 420 of the Civil Code of Ukraine, as well as in the quoted norm of the Law of Ukraine "On protection against unfair competition", the concept of "trademark" was equated with the concept of "mark for goods and services". At the same time, trademarks are directly defined as the object of intellectual property law, and the designation has a derived meaning from the concept of "trademark".

According to Article 1 of the Law of Ukraine dated December 15, 1993 No. 3689 "On Protection of Rights to Marks for Goods and Services" (as amended until August 16, 2020), a mark is a designation by which goods and services of one person differ from goods and services of other persons; certificate – a certificate of Ukraine for a mark for goods and services. According to Part 2 of Article 5 of this Law, the object of a mark can be any designation or any combination of designations. Such designations may include, but are not limited to, words, including proper names, letters, numbers, pictorial elements, colors and combinations of colors, and any combination of such designations.

The term "trademark" is not used in this Law. Only upon adoption of the above-mentioned Law No. 815-IX dated July 21, 2020 in the text of the Law "On Protection of Rights to Marks for Goods and Services" the words "marks for goods and services" in all cases and numbers were replaced by the word "trademark" in the corresponding case and number; the words "registered mark" in all cases and numbers are replaced by the words "registered trademark" in the corresponding case and number; replace the word "mark" in all cases and numbers with the word "trademark" in the corresponding case and number. These changes entered into force on August 16, 2020. Under these conditions, the following legal regulation was introduced after August 16, 2020.

According to Article 1 of the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" (as amended after August 16, 2020), a trademark is a designation by which the goods and services of one person differ from the goods and services of other persons; certificate – Ukrainian trademark certificate. According to Part 2 of Article 5 of this Law, the object of a trademark can be any designation or any combination of designations. Such designations can be, in particular, words, including proper names, letters, numbers, pictorial elements, colors, shape of goods or their packaging, sounds, provided that such designations are suitable for distinguishing the goods or services of one person from the goods or services of others persons and suitable for their display in the Register in such a way that it is possible to determine the clear and precise scope of the legal protection provided.

Therefore, with this legal regulation, the provisions of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" began to formally correspond to the legal regulation under the Civil Code of Ukraine and the Law of Ukraine "On Protection from Unfair Competition" regarding the derivative meaning of the designation from the concept of "trademark".

At the same time, the peculiarities of legal regulation according to the previous legal protection have current significance, since the case law, which was compiled according to the previous legislation, is relevant even now, taking into account the terminological clarifications.

As noted in paragraph 59 of Resolution No. 12 of the Plenum of the Higher Economic Court of Ukraine dated October 17, 2012, "commercial courts need to keep in mind that the owner of the rights to a mark for goods and services has the right to prohibit other persons from using the same or similar to the degree of confusion with this mark is used only for those goods and services for which this mark is registered, or goods and services related to them. Therefore, in the case of the dispute over the termination of the violation of intellectual property rights for marks for goods and services, the commercial court should find out the list of goods and services for which the disputed marks are registered, and establish the actual circumstances of the use of the disputed marks by the defendants in the cases in terms of their actual image and the list of goods and services for which they are used".

Paragraph 4 of Clause 63 of the specified Resolution No. 12 dated October 17, 2012 states that, in particular, the introduction into civil circulation of designations that are identical or similar to the extent that they can be confused with marks is recognized as a violation of trademark rights.

Therefore, these clarifications confirm that, in the general case, designations do not have an independent status as an object of intellectual property.

In this regard, in particular, in the Resolution of November 8, 2022 in case No. 922/1966/18 of the Supreme Court as part of the panel of judges of the Commercial Court of Cassation, it is stated (Unified State Register of Court Decisions, 2025a).

> *"In itself, the "designation" is not an independent object with a status specially provided by law, which gives rise to certain rights and obligations, in connection with which it does not have specific (special) protection.*
>
> *According to competition legislation, namely, according to Article 4 of the Law of Ukraine "On Protection from Unfair Competition", the designation receives protection in competitive relations, and not as an independent object of intellectual property.*
>
> *The key, in this case, is the issue of good faith/bad faith in the use of such a designation by economic entities.*
>
> *The right to allow the use of a trademark (a sign for goods and services) and the right to prevent its improper use (or a designation similar to it), including*

prohibiting such use, are components of exclusive property rights to a trademark".

In the article (Belkin, 2019) the co-author also summarized the conclusions of the higher specialized court of the pre-reform period (2016-2017), according to which (conclusions) the legislation in general does not grant the right to protect the intellectual property right to designation, including the prohibition of its use. We are talking about the judicial reform of 2016–2017 in Ukraine, within the framework of which (reforms) the Supreme Court of Ukraine, higher specialized courts, as well as the procedure cassation review of cases.

However, there is an exception to the prohibition on independent protection of the designation. In accordance with Part 5 of Article 16 of the Law of Ukraine dated December 15, 1993 No. 3689 (as amended until August 16, 2020) "On Protection of Rights to Marks for Goods and Services" (taking into account the definition of the concept of "certificate" from Article 1 of this Law) certificate of Ukraine for a mark for goods and services gives its owner the exclusive right to prohibit other persons from using without his consent, unless otherwise provided by this Law:

- a registered mark for the goods and services specified in the certificate;

- a registered mark for goods and services related to those specified in the certificate, if as a result of such use it is possible to mislead about the person who produces goods or provides services;
- a designation similar to a registered mark in relation to the goods and services specified in the certificate, if as a result of such use, these designations and the mark can be confused;
- a designation similar to a registered mark in relation to goods and services related to those specified in the certificate, if as a result of such use it is possible to confuse the person who produces goods or provides services, or these designations and the mark can be confused.

Thus, the Law allowed the right holder the exclusive right to prohibit others from using, without the consent of that right holder, either a registered mark or a designation from that registered mark.

Instead, in accordance with Part 5 of Article 16 of the Law of Ukraine dated December 15, 1993 No. 3689 (as amended after August 16, 2020) "On Protection of Rights to Marks for Goods and Services" (taking into account the definition of the term "certificate" from Article 1 of this Law) certificate of Ukraine for a mark for goods and services gives its owner the exclusive right to prohibit other persons from using without his consent, unless otherwise provided by this Law:

- a designation identical to a registered trademark in relation to the goods and services specified in the certificate;

- a designation identical to a registered trademark, in relation to goods and services related to those specified in the certificate, if as a result of such use, this designation and the trademark can be confused, in particular, if an association of such a designation with the trademark may arise;

- a designation similar to a registered trademark in relation to the goods and services specified in the certificate, if as a result of such use these designations can be confused, in particular, if an association of such a designation with a trademark may arise;
- a designation similar to a registered trademark in relation to goods and services related to those specified in the certificate, if as a result of such use these designations may be confused, in particular, if an association of such designation with the trademark may arise.

Therefore, in this version of the law, the emphasis is on the protection of the right to use the designation, but on the condition that such designation is part of a registered trademark. On the other hand, the interested person is not obliged to prove the identity or similarity of the trademarks – it is enough to prove the identity or similarity of individual designations.

Thus, in case No. 924/526/22, the claim was satisfied by the decision of the commercial court of Khmelnytskyi region dated June 20, 2023. It was prohibited for "Agrain" LLC to use similar to registered trademarks word designation "AGRAIN" on the Internet on all web pages, in particular, at the link agrain.in.ua, facebook.com/agrain.ukraine, youtube.com/channel/UCkrpv-Sx8CquJdjBRkf1xGg; in advertising, in business documentation, in domain names, in particular, the domain name agrain.in.ua. The court of first instance agreed with the plaintiff's arguments about the similarity of the designation used by the defendant with the trademark. The plaintiff's trademarks according to the certificate dated November 25, 2020 consist of the verbal element "A GRAIN", which is executed in standard capital letters of the Latin alphabet and a dot after the first letter. The designation "AGRAIN" in all forms used by the defendant on the Internet, advertising and business documentation also consists of the verbal element "AGRAIN" in standard capital letters of the Latin alphabet. It is obvious that the designation used by the defendant, as well as the registered trademarks owned by the plaintiff, belongs to means of individualization. At the same time, the word mark "AGRAIN" used by the defendant is similar to the registered trademarks owned by the plaintiff to the extent that they can be confused.

Subsequently, the decision of the Economic Court of Khmelnytskyi Region was left unchanged by the Resolution of the North-Western Appellate Economic Court dated September 25, 2023. These court decisions are supported by the Resolution of November 30, 2023 in case No. 924/526/22 of the Supreme Court as part of the panel of judges of the Cassation Economic Court (Unified State Register of Court Decisions, 2025b).

Although the conclusion about the legality of the protection of the right to designation follows from the norm of a special law – Part 5 of Article 16 of the Law of Ukraine "On Protection of Rights to Marks for Goods and Services", but this conclusion does not contradict the Civil Code of Ukraine. In accordance with Part 1 of Article 495 of the Civil Code of Ukraine, intellectual property rights to a trademark are: 1) the right to use the trademark; 2) the exclusive right to allow the use of a trademark; 3) the exclusive right to prevent improper use of the trademark, including prohibiting such use; 4) other intellectual property rights established by law.

Therefore, the protection of property rights of intellectual property for designation as part of a trademark falls under the definition of "other property rights of intellectual property established by law", since these rights are established by law – Part 5 of Article 16 of the Law of Ukraine "On Protection of Rights to Marks for Goods and Services".

Instead, when protecting an intellectual property right for a designation as part of a mark for goods and services, the restrictions established for the protection of an intellectual property right for a mark for goods and services apply. In particular, according to the above norm, part 5 of Article 16 of the Law of Ukraine "On Protection of Rights to Marks for Goods and Services", the right to prohibit other persons from using without his consent, in particular, designation as part of the mark, is granted to the owner of this mark as an exclusive right.

It is crucial to recognize that the protection of designations under Ukrainian legislation does not operate in isolation but is fundamentally linked – or "nexused" – to the protection afforded to trademarks. This legal nexus implies that the exclusive rights granted under the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" apply to designations only as integral components of a registered trademark. In other words, while a designation in itself may lack independent legal protection, its incorporation into a trademark framework creates a binding relationship that dictates both the scope and limitations of legal remedies against infringement.

Such an approach is supported by judicial practice, wherein courts have consistently underscored that any dispute regarding a designation must be resolved by examining its relationship with the corresponding trademark. For instance, in the case decided on June 20, 2023, the courts examined whether the unauthorized use of a designation undermined the distinctiveness of the trademark as a whole. This perspective reinforces the understanding that the legal nexus is not merely a theoretical construct but a practical tool that shapes the enforcement of intellectual property rights. For example, in the Resolution dated June 19, 2018 of the Commercial Court of Cassation as part of the Supreme Court in case No. 910/17631/16 (Unified State Register of Court Decisions, 2025c), attention is absolutely rightly drawn to the illegality of the fact that the appellate court, which supported the plaintiff regarding the protection of his right to designation, which is used by this plaintiff, left out of consideration the basis of the claim defined by the plaintiff, namely, that in substantiation of the stated claims, the plaintiff referred to his right to use the mark for goods and services according to the certificate of Ukraine dated February 17, 2003 No. 29714, the owner of which is not the plaintiff, but a Third party. Therefore, the plaintiff did not have the authority to protect the right to the designations, which were part of the registered trademark, while the plaintiff was not the right owner of this trademark.

In the Resolution dated April 03, 2018 of the Commercial Court of Cassation as part of the Supreme Court in case No. 918/560/16 (Unified State Register of Court Decisions, 2025d) it is noted that "in view of the factual circumstances established in the case and taking into account the above legislative prescriptions, the appellate court reached the correct conclusion that according to the Agreement, the Company received a non-exclusive license (non-exclusive rights) to use the trademark according to the certificate

of Ukraine dated February 10, 2012, while the right to allow the use of the trademark and the right to prevent the improper use of the trademark, including prohibiting such use, are components of exclusive property rights to the trademark. The appellate court also came to the correct conclusion that under the terms of the Agreement, the Company was granted the right to act on behalf of the licensor and seek protection of its violated rights as the owner of a certificate for a mark for goods and services, while the Company filed this lawsuit as a plaintiff".

The Supreme Court specifically noted that the Company's reference to the fact that the appellate court did not investigate the circumstances regarding the similarity of the designation used in the production of products by the Company and the Enterprise, although this issue belongs to the subject of evidence in the case, is subject to rejection in view of the fact that circumstances established by the court regarding the Company's lack of right to file this claim with the court on its own behalf are an independent and sufficient reason for rejecting the claim regardless of other circumstances of the case.

It is also worth noting that if the right holder of a mark for goods and services believes that the designation from his mark is illegally used in another mark, then the method of protection in this case may not be a prohibition on the use of the mark, but the cancellation of the certificate for another mark.

Features of the use of trademarks, service marks, commercial names and designations that reproduce works of fine art.

A special case of the possibility of judicial prohibition of the use of designations is its prohibition not as part of a mark for goods and services, but as a work of fine art. The relationship between the principles of legal protection of intellectual property rights to trademarks, service marks, commercial names and designations, on the one hand, and the protection of rights to works of fine art, on the other hand, has not been studied at all. In the article (Belkin, 2019) the co-author also summarized the conclusions of the higher specialized court of the pre-reform period (2016–2017) according to which (conclusions) a special case of the possibility of a court prohibition on the use of a designations is such a prohibition not as part of a sign for goods and services, but as a work of fine art. We are talking about the judicial reform of 2016–2017 in Ukraine, within the framework of which (reforms) the Supreme Court of Ukraine, higher specialized courts, as well as the procedure cassation review of cases. The legislative basis of this conclusion is the norms of Part 4 of Article 6 of the Law of Ukraine "On Protection of Rights to Marks for Goods and Services". According to this norm (as amended until August 16, 2020), shall not be registered as signs designations that reproduce: industrial designs, the rights to which belong to other persons in Ukraine; names of works of science, literature and art known in Ukraine or quotes and characters from them, works of art and their fragments without the consent of the copyright owners or their successors; surnames, first names, pseudonyms and their derivatives, portraits and facsimiles of famous people in Ukraine without their consent.

For example, in case No. 18/89-10, which was considered at the first instance by the economic court of the Sumy region, the plaintiff demanded to prohibit the designations from producing products, using on the packaging of such products notations borrowed from the collection of works of fine art "Sketches and drawings of a mouse, several mice, sketches and drawings of packages for treated and untreated sunflower seeds with the image of a mouse", the intellectual property right of which (assemblage) belonged to the plaintiff. During the first consideration of the case by the court of cassation, in its Resolution dated March 22, 2011 (Unified State Register of Court Decisions, 2025e), the Supreme Economic Court of Ukraine found it erroneous that the courts of previous instances did not pay attention to the fact that an image, that has received legal protection as a trademark, can also be a work of fine art in the sense Article 1 of the Law of Ukraine dated December 23, 1993 No. 3792 "On Copyright and Related Rights" [a work of fine art is a sculpture, painting, drawing, engraving, lithograph, work of artistic (including stage) design, etc.]; in this regard, they did not analyze the provisions of the Civil Code of Ukraine, in accordance with Articles 440, 441, 443 of which the use of works must be carried out only with the consent of the owners of the relevant property rights, except for cases of lawful use of the work without such consent, established by this Code and other laws, and Law No. 3792 "On Copyright and Related Rights", in accordance with Article 15 of which the exclusive right to use the work by the author (or another person holding the copyright) allows him to use the work in any form and in any way; the exclusive right of the author (or other person who holds the copyright) to permit or prohibit the use of the work by others gives him the right to permit or prohibit, in particular, the reproduction of the works.

The Supreme Economic Court of Ukraine sent the case for reconsideration. During the re-examination of the case, the Supreme Economic Court of Ukraine in its Resolution dated January 13, 2015 recognized (Unified State Register of Court Decisions, 2025f) that the courts of previous instances did not fully comply with the instructions of the Resolution of the Higher Economic Court of Ukraine dated March 22, 2011. As a result, the Higher Economic Court of Ukraine independently made a decision to prohibit the defendant from using the mark for goods and services according to the certificate of Ukraine for a sign for goods and services as infringing the plaintiff's intellectual rights to works of fine art.

According to Part 4 of Article 6 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services" (as amended after August 16, 2020), designations that reproduce: industrial designs, the rights to which belong in Ukraine to other persons, are not registered as trademarks; names of works of science, literature and art known in Ukraine or quotes and characters from them, works of art and their fragments without the consent of the copyright owners or their successors; surnames, first names, pseudonyms and their derivatives, portraits and facsimiles of famous people in Ukraine without their consent.

Thus, in the Resolution dated September 27, 2023 in case No. 757/16255/20-ts, proceeding No. 61-2441sv23, of the Supreme Court as part of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation, it is stated (Unified State Register of Court Decisions, 2025g):

> *"According to paragraph 2 of the sixth part of Article 6 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services", reproducing the names of works of science, literature and art known in Ukraine or quotations and characters from them, works of art are not registered as marks and their fragments without the consent of the copyright holders or their successors.*
>
> *In accordance with paragraph 5 of the second part of Article 6 of the specified Law, designations that are misleading or may mislead regarding a product, service or a person who produces a product or provides a service cannot receive legal protection either...*
>
> *Violation of copyright and (or) related rights, which gives basis for the protection of such rights, including judicial rights, is the commission by any person of actions that violate the personal non-property rights of the subjects of copyright and (or) related rights, defined in articles 14 and 38 of the Law of Ukraine "On Copyright and Related Rights" and their property rights, defined in Articles 15, 17, 27, 39-41 of this Law, taking into account the conditions of use of objects of copyright and (or) related rights, provided for by Articles 21–25, 42, 43 of the Law...*
>
> *Given that there is a presumption of authorship in copyright, it must be rebutted by the defendant, that is, the person who, according to the author, violated his copyright, and such a person should not prove the presumption of authorship, since the said is presumed...*
>
> *However, the presumption of authorship of the plaintiff in this case was not refuted by the defendant. Therefore, the courts of previous instances came to a well-founded conclusion that the plaintiff has exclusive property rights to the work, including the exclusive right to grant permissions for use, processing and any other reproduction, and she did not grant the defendant PERSON_2 the right to use the name of the work, including the right to process and use it for registration as a mark for goods and services".*

The Supreme Court came to a similar conclusion in the Resolution (Unified State Register of Court Decisions, 2025h) dated March 4, 2020 in case No. 520/15449/16, proceeding No. 61-42206sv18, of the Supreme Court as part of the panel of judges of the First Judicial Chamber of the Cassation Civil Court.

Conclusion

Thus, regarding the features of the protection of intellectual property rights for designations according to the legislation of Ukraine the following conclusions can be reached:

- the designation is not an independent object of legal protection as an object of intellectual property;

- the designation may be the object of legal protection as an object of intellectual property if this designation is part of a registered mark for goods and services (trademark);
- such protection is provided with restrictions that apply to signs, namely: protection regarding the mark for goods and services (trademark) of use is granted to the right holders of this designation, in case of violation of the rights of the owner of this sign to fair economic activity and in relation to alternative objects of intellectual property that have not received proper legal protection;
- a special case of the possibility of a court prohibition on the use of a sign is such a prohibition not as part of a mark for goods and services (trademark), but as a work of fine art: if the designation and/or trademark reproduces the work of fine arts, the right to protection based on the Law of Ukraine dated December 15, 1993 No. 3689 "On the Protection of Rights to Marks for Goods and Services" is granted to the author of the work or to a person to whom the intellectual property right to such a work has been assigned, as a priority before the protection of a mark, even a registered one.

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INTERNATIONAL STANDARDS FOR THE USE OF FORENSIC PSYCHOLOGICAL EXAMINATIONS IN STUDYING THE MOTIVATIONAL STRUCTURE OF CRIMINALS: IMPORTANCE FOR COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES

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Abstract

Currently, no unified array of globally applicable standards for forensic psychological tests exist, in particular aimed at evaluation of criminal motivations, which determines the necessity for harmonization. International and national-scale professional organizations are making evident efforts in this domain, but still major obstacles exist due to disparities in legal systems, cultural contexts, and evaluation techniques. The research examines international standards directing forensic psychological assessment to reveal criminals' motivation and investigates expert systems that are applied inside law enforcement organizations and court institutions.

Comparative method and integrative review were employed to understand how international approaches merge with nation-states' expert practices. The authors presented evidence on the detrimental effect of 'scattered' standards in forensic psychological assessment demonstrated that forensic psychological examination procedures which follow international standards produce more reliable evidence and contribute to the improvement of international legal system cooperation. Ultimately, it has been demonstrated that a balance between mental health knowledge and legal integrity is necessary for the successful application of psychological testing in international justice. This balance can only be reached by openness, moral consistency, and interdisciplinary collaboration, guaranteeing that mental health knowledge positively advances justice, accountability, and human dignity. The research results contribute to further development of international protocols for expert collaboration in forensic psychological assessment, as well as improving appropriate experts' professional training and establishing evidence-based standards for criminal justice functioning.

Keywords

Psychological diagnosis; forensic psychological examination; motivation; psychology; international cooperation.

Resumo

Atualmente, não existe um conjunto unificado de normas aplicáveis globalmente para testes psicológicos forenses, em particular destinados à avaliação das motivações criminais, o que determina a necessidade de harmonização. Organizações profissionais internacionais e nacionais estão a envidar esforços evidentes neste domínio, mas ainda existem grandes obstáculos devido às disparidades nos sistemas jurídicos, contextos culturais e técnicas de avaliação. A investigação examina as normas internacionais que orientam a avaliação psicológica forense para revelar a motivação dos criminosos e investiga os sistemas especializados que são aplicados dentro das organizações policiais e instituições judiciais. Foram utilizados métodos comparativos e revisões integrativas para compreender como as abordagens internacionais se fundem com as práticas especializadas dos Estados-nação. Os autores apresentaram evidências sobre o efeito prejudicial de padrões «dispersos» na avaliação psicológica forense, demonstrando que os procedimentos de exame psicológico forense que seguem padrões internacionais produzem evidências mais confiáveis e contribuem para a melhoria da cooperação do sistema jurídico internacional. Em última análise, ficou demonstrado que é necessário um equilíbrio entre o conhecimento sobre saúde mental e a integridade jurídica para a aplicação bem-sucedida de testes psicológicos na justiça internacional. Este equilíbrio só pode ser alcançado através da abertura, da consistência moral e da colaboração interdisciplinar, garantindo que o conhecimento sobre saúde mental promova positivamente a justiça, a responsabilização e a dignidade humana. Os resultados da investigação contribuem para o desenvolvimento de protocolos internacionais para a colaboração de especialistas na avaliação psicológica forense, bem como para a melhoria da formação profissional de especialistas adequados e para o estabelecimento de normas baseadas em evidências para o funcionamento da justiça criminal.

Palavras-chave

Diagnóstico psicológico; exame psicológico forense; motivação; psicologia; cooperação internacional.

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INTERNATIONAL STANDARDS FOR THE USE OF FORENSIC PSYCHOLOGICAL EXAMINATIONS IN STUDYING THE MOTIVATIONAL STRUCTURE OF CRIMINALS: IMPORTANCE FOR COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES

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Introduction

Today, trends observed in criminal justice landscape show increasing interest in interdisciplinary research on criminal' personality traits through motivational factor analysis. The results from forensic psychological examination serve as vital evidence that enables experts to understand criminal psychological processes and evaluate offenders' mental states, emotional control, and social development. The absence of a logical and scientifically justified process might result in misconceptions, rights violations, or even unfair sentencing the need to address psychological assessment standards becomes even more evident. Meanwhile, the practice of using forensic psychological examinations faces challenges because different countries lack standardized methods and their procedures do not coordinate well, which hinders international law enforcement cooperation.

According to the widely adopted definition, "a psychological evaluation implies an assessment conducted by a qualified mental health professional to understand individual's mental health, cognitive function, and behavioral patterns, which can influence legal proceedings and sentencing outcomes" (Trenoweth & Moone, 2017).

These assessments have broad implications. They may influence choices about the appropriateness of rehabilitation programs, the severity of the sentence, or the necessity of specific interventions. For instance, a psychological assessment may identify underlying mental health conditions like anxiety, depression, or trauma that may have influenced the person's behavior. When crafting a sentence that not only punishes the offender but also aids in their rehabilitation, this information might be crucial. Moreover, in cases involving adolescents, the knowledge gathered from psychological assessments might assist in striking a balance between protection and punishment (Malvaso et al., 2024).

Organizations like the United Nations (UNODC), the American Psychological Association (APA), and the International Association of Forensic Psychology (IAFP) conceptually established some procedures for carrying out psychological testing during the criminal sentencing process on a global scale. These evaluations consistently stress how crucial it is to observe the values of justice and human rights. The application and function of forensic psychologists and psychiatrists vary, despite the underlying principles being similar, according to a comparative analysis of the legal systems of various nation-states. For instance, forensic psychologists in the U.S. evaluate criminal risk and culpability using standard tests like MMPI2, PCL-R, and HCR-20, whereas psychiatrists play a bigger role in France. This field is still in its early stages in Iran, calling for the creation of local psychometric tests, specialized training, and standards (Chaimowitz et al., 2025).

In the meantime, it has become evident in recent years that expert opinion can be prejudiced, as Rassin (2021) correctly points out, and it has been suggested that forensic psychologists might also be biased. In his research, the susceptibility of forensic psychological assessment of the suspect's mental state to the context effect – that is, the impact of unrelated material on expert opinion – was examined. Forensic psychology master's students were instructed to analyze a suspect's test results in a made-up double murder case. A version of the case with a neutral account of the murders was given to some attendees. A more explicit version was given to others. Participants in the latter condition appeared to be more concerned about the suspect's mental health than those in the former, even though the explicitness should not have had an impact on the forensic psychological examination. The author came to the conclusion that bias should be a focus of forensic psychological evaluation training programs. However, these studies also demonstrate the need for forensic psychological assessment frameworks to be unified, creating a canvas that would reduce the possibility of biases and enable accurate and efficient psychological testing as well as the assessment of criminals' motivations in international trials.

Fundamentally, the goal of forensic psychiatric evaluation is to offer impartial, scientifically sound information to support judicial decisions. Law enforcement officials and forensic psychologists are collaborating to use psychological science in criminal profiling. The goal of profiling is to determine the primary personality traits and behavioral traits of criminals based on their interactions during the crime. Based on analyzing trends and evidence, criminal profiling aims to develop broad profiles of

offenders, while forensic psychology, in turn, focuses its attention on diagnosing psychological problems, assessing risks, and determining competency through customized evaluations of individuals involved in judicial cases. Although forensic psychology and profiling have different goals and approaches, both are crucial for investigations and legal proceedings.

Three primary methods of reasoning are used for developing profiles: induction, abduction, and deduction. Rather than thinking of these as distinct forms of logic, it is preferable to think of them as distinct places along the logical continuum. To arrive at the best explanation (abduction) or only one that is based on universal laws or principles and cannot be refuted (deduction), we begin with various hypotheses about what might have happened or that might be true (induction) and use the scientific method to falsify each conclusion. Abduction is sometimes the best explanation for the evidence seen due to human behavior, evidential dynamics, or deliberate attempts to obstruct the investigation (known as staging, among other things). An inductive argument determines whether the conclusion is likely or an issue of probability by using supporting premises, such as empirical data or research. Although a strong inductive argument offers strong evidence for the conclusion, it is not perfect. In their study on behavioral consistency, Bateman and Salfati (2007) discovered that burying the body occurred 67.8% of the time, while transferring the body after the homicide occurred 61.1% of the time. While listed as high-frequency behaviors, these findings indicate that each will only be encountered about two-thirds of the time. As a result, investigators utilizing a profile that reports such statistical judgments may mistake probability for certainty. These tendencies do, however, occur in certain situations but not in others, which raises questions about the usefulness of this data as well as where criminal activity is consistent and inconsistent with studies. This might be particularly true when the degree of certainty is expressed ambiguously or generically, such as "the body will be hidden most of the time" (Petherick & Brooks, 2020). Although this argument is actually correct technically, it does not convey the precise degree of assurance. Thus, analyzing the motivations of criminals is of crucial nature for profiling process, and standardizing the framework and procedures for the examination represents the first step towards optimization of profiling accuracy. Expert evaluation of offender motivations enables successful identification of crime pattern and provides a foundation for developing prevention strategy in the field of violent and organized criminal offenses.

With this in mind, the research relevance grounds on the need to align domestic expert methods, applied in nation-states' practice, with international standards in the field. The scientific problem stems from the fact that there is no established system connecting forensic psychological examination theory with international criminal procedure standards, which impedes enhancing law enforcement capabilities and prevents strengthening international criminal justice partnerships.

Literature Review

Jadidi (2025) correctly points out that criminal justice in the contemporary societies is not merely dependent on crime and punishment, but the type and severity of punishment are also significantly influenced by the defendant's psychological, social, and personality traits. The court, police, attorneys, and other organizations focused on justice have direct contact with forensic psychology. To better understand the accused's mental condition and impose a more equitable punishment, the forensic psychologist provides the judge with specialized assessments.

At the same time, a range of scholars point out the phenomena of cognitive biases in forensic psychological assessment. According to Buongiorno et al. (2025), cognitive biases are a result of forensic psychiatry's intrinsic limitations. In particular, psychiatric evaluations, including forensic assessments, are particularly vulnerable to cognitive biases since they primarily rely on patients' subjective interpretations of their symptoms and self-reports. Additionally, a "cascade" effect that gradually modifies the judgment process can be produced by cognitive biases at many levels (Scarpazza & Ghidini, 2023).

A thorough evaluation of the literature on forensic mental health expert (FMHE) testimony and court decision-making was carried out by van Es et al. (2020). This review contains a total of 27 studies. Most of the research was done on fictitious jurors in the United States. The majority of research concentrated on sentencing guidelines or criminal liability. Research on criminal responsibility consistently revealed that psychotic defendants of violent, major crimes were more frequently found not guilty by reason of insanity than defendants with psychopathic disorders. The length and kind of punishments had less consistent results, and they were frequently influenced by perceived behavioral control, recidivism risk, and treatability. There are hardly any studies on the potential negative consequences of FMHE.

The opinions of mental health professionals can have a significant impact on legal processes. In the meantime, Grossi and Green (2017) stress that because legal criteria, operationalization, and classification of mental illness vary throughout countries, it is challenging to compare the usage and impact of forensic mental health expert testimony on judicial decisions across jurisdictions. Regarding these distinctions, it seemed feasible to identify the components that are pertinent in the majority of legal systems and, where needed, to explain key distinctions. Table 1 shows this structure.

Table 1. Effects of forensic mental health expertise on judicial decisions

A court ruling	**Forensic mental health expertise**		
	+	0	-
1. Guilt a. *Mens rea* b. *Actus reus*	 x x	 √ √	 √ x
2. Sentencing	√	√	√

Source: van Es et al. (2020)

Neal et al. (2019) presented the findings of a two-part study on psychological assessments performed by psychologists in legal circumstances. The first section included a thorough examination of the 364 psychological assessment tools that psychologists reported using in court cases in 22 surveys of experienced forensic mental health practitioners, with an emphasis on legal norms as well as scientific and psychometric theories. The second section included a legal analysis of admissibility issues in psychological assessments. The first part's findings show that, consistent with their roots in psychology science, almost all of the evaluation methods employed by psychologists and given as expert testimony in legal situations have been empirically tested (90%). However, the authors were able to clearly identify approximately 67% as generally acknowledged in the field, with only around 40% receiving generally positive appraisals of their psychometric and technical qualities from authorities such as the Mental Measurements Yearbook. Furthermore, there is little correlation between widespread acceptance and the favorability of tools' psychometric qualities. The second section's findings demonstrate the rarity of legal challenges to this evidence's admission: Just 5.1% of the sample's instances contained legal objections to the evaluation evidence for any reason; slightly more than half of these featured validity concerns. Only roughly one-third of the time did they succeed when challenges were posed. There are hardly any challenges to the most dubious scientific instruments. Psychological expert evaluation testimony is rarely contested by attorneys, and when it is, judges frequently neglect to apply the legal scrutiny.

According to de Roo et al. (2022), behavioral science and forensics are frequently viewed as distinct fields. The need for more integration between the two fields is becoming increasingly apparent, though. Forensic science may be able to solve investigation issues, particularly at the crime scene, by using psychological theories about human behavior. The authors of the study investigate the following: (1) investigative psychologists are better at identifying deviant behavioral cues than forensic examiners when examining a crime scene; (2) forensic examiners can identify pertinent traces that may be linked to this behavior; and (3) the availability of a psychological report that highlights these behavioral cues aids forensic examiners in identifying more pertinent traces. In order to do this, a virtual 3D fake crime scene was examined by 40 forensic examiners and 14 investigative psychologists. The study's findings demonstrate that forensic examiners who receive a psychological report on these cues identify and gather significantly more traces that can be connected to deviant behavior and have a high evidential value than examiners who do not receive this information, and that investigative psychologists observe significantly more deviant behavioral cues than forensic examiners. But the study also shows that when behavioral information challenges preexisting views, it is likely to be disregarded.

Criminals' motivation, on the other hand, plays a critical part in forensic investigations by offering context for a crime, supporting suspect profiling, and connecting instances through behavioral patterns. Although motive is not a legal prerequisite for conviction, knowing it aids in case linking, helps investigators formulate hypotheses, and helps them grasp purpose, particularly in recurrent crimes. Armeanu (2018) highlights the



importance of motivation in forensic analysis from a variety of perspectives. Table 2 provides summary of these insights.

Table 2. The role of motivation in forensic examination

Role	Description
Gives context and purpose	Determining the motivation behind a crime's commission provides vital background information that aids detectives in comprehending the perpetrator's objective. Motive, for example, is crucial when the offender disputes their involvement since it can be used in conjunction with other evidence to establish their guilt
Provides information for criminal profiling	Forensic psychologists employ motivation to develop profiles of criminals by evaluating their behavior, psychological traits, and reasons for committing crimes. This helps narrow the search for suspects and serves as a starting point for investigations
Helps with case linking	Forensic psychologists can connect crimes to the same criminal by evaluating behavioral patterns and motivations across several crimes, which is especially beneficial for serial offenders. This is predicated on the premise that offenders frequently repeat specific actions or patterns across offenses
Aids in the examination of crime scenes	Behavioral indicators at a crime scene, impacted by motive, might provide important information about the perpetrator's psychology and personality. Investigators can utilize this data to better understand how the crime was perpetrated
Guides investigative strategy	Understanding the motive influences the whole investigative strategy. For example, understanding the reason might help law enforcement focus on certain sorts of suspects or areas, such as geographic profiling, which combines location data with behavioral patterns to anticipate future crimes.
Supports courtroom presentations	Motive can play a significant role in a trial, even though it is not a requirement for conviction. Comprehending motive is essential for both making a strong case for the prosecution and disproving the defense's evidence
Enhances forensic work' quality	A more thorough and accurate image of the crime scene and the people involved can be obtained by combining behavioral data, including motive, with conventional forensic evidence. In order to enhance the initial response, some future perspectives propose that crime scene investigators themselves may receive training in assessing behavioral elements

Source: Armeanu (2018)

Baidya (2022) studies criminal reasons by looking at conventional theories of motivation. Using actual criminal cases from India, McClelland's needs, Murray's psychogenic requirements, Maslow's need hierarchy, Alderfer's ERG model, and Optimal Level Theory are all examined. These theories bridge the gap between motivational psychology and the forensic-criminal environment by incorporating ideas from Sutherland's postulates, Kohlberg's moral growth, and the Frustration-Aggression hypothesis. Lastly, the author

shows how the drive for non-criminal behavior and the motivation for unlawful activity have similar foundations.

In order to assess the significance of individual motives for juvenile and adult crimes, as well as across a variety of offending categories, Koegl and Farringtron (2021) compiled a list of offender motivations for criminal offending. The applicability of each of the 17 reasons to official conviction records and other clinical-risk variables was evaluated by adult male convicts (N = 136). According to the findings, the majority of prisoners committed crimes in order to escape reality, feel pleasure, or pursue sensations. While non-sex offenders supported substance abuse, social influence, and utilitarian incentives, adult sex offenders cited sexual motives. The results are examined in relation to evidence-based correctional practice and research.

Reddy (2025) uses psychological theories and techniques to comprehend the complexities of criminal behavior by drawing on a wide range of instances from the US, UK, Belgium, Columbia, Germany, and India, such as financial deceit, maternal psychosis, and serial murder. These ideas cover everything from behavioral analysis and criminal profiling to the dynamics of influence and the psychology of dishonesty.

According to Combalbert et al. (2014), there has been an increasing worry about the quality of forensic mental health assessment in a number of nations on both sides of the Atlantic. However, legal systems are not necessarily comparable, and many parts of forensic assessment are unique to a particular nation. The authors examine forensic mental health evaluation in France and provide suggestions for raising standards. The study outlines the benefits and drawbacks of forensic psychological evaluation in France (i.e., the pre-trial investigative phase assigned to a judge, with mental health evaluation carried out by preselected professionals referred to as "experts" in French). According to the authors, a lack of agreement on a number of fundamental concepts, including mental health diagnosis or assessment techniques, unfavorable working conditions, a lack of specialized training, and a lack of familiarity with the Code of Ethics, appear to be the primary causes of the heterogeneity of expert practices in France. The quality and dependability of forensic mental health reports have come under increasing scrutiny from the public and the judiciary due to the alleged involvement of psychiatric and psychological reports in a number of high-profile mismanaged criminal cases (such as the Outreau trial in 2005). According to Combalbert et al. (2014), there has been an increasing worry about the quality of forensic mental health assessment in a number of nations on both sides of the Atlantic. However, legal systems are not necessarily comparable, and many parts of forensic assessment are unique to a particular nation. The authors examine forensic mental health evaluation in France and provide suggestions for raising standards. The study outlines the benefits and drawbacks of forensic psychological evaluation in France (i.e., the pre-trial investigative phase assigned to a judge, with mental health evaluation carried out by preselected professionals referred to as "experts" in French). According to the authors, a lack of agreement on several fundamental concepts, including mental health diagnosis or assessment techniques, unfavorable working conditions, a lack of specialized training, and a lack of familiarity

with the Code of Ethics, appears to be the primary cause of the heterogeneity of expert practices in France. The quality and dependability of forensic mental health reports have come under increasing scrutiny from the public and the judiciary due to the alleged involvement of psychiatric and psychological reports in several high-profile mismanaged criminal cases (such as the Outreau trial in 2005). According to Combalbert et al. (2014), a psychological or psychiatric report that is mainly meant to inform the court on the personalities of accused criminals and victims should be written in a way that is understandable to both the prosecution and the defense. Technical terminology should be used sparingly. Additionally, experts should provide thorough answers to every query. Their findings should be supported by strong reasons, and they should be clear and succinct. Additionally, the authors emphasize the abundance of structured instruments for both actuarial evaluation (which yields the best rates of predictive validity) and clinical assessment of antisocial, violent, and sexual risk, as well as the practicality of taking their use into consideration.

Research by Neal et al. (2022) discusses the potential future of forensic psychology and gives a summary of its past. The authors claim that best practices of a psychological evaluation using the standards, principles, and respect of science to guide legal proceedings, should be followed. Accordingly, eight important factors are formulated: (i) assessment' foundational validity; (ii) assessment's validity as used; (iii) control and mitigation of bias; (iv) paying attention to quality control; (v) communicating data, findings, and opinions suitably; (vi) taking assumptions and limits into account in a clear manner; (vii) evaluating opposing viewpoints or arguments; and (viii) strict adhering to professional standards, codes of conduct, rules of evidence, and ethical duties.

Ukrainian scientist Martynenko (2024) focus her research attention on creating uniform protocols for professional forensic psychology work in the Ukrainian setting. In order to establish standardized procedures, improve forensic psychological outcomes, and expedite international cooperation, the study looks into finding the ways how international standards might be applied in Ukrainian practice. The author highlights that the universality of international standards, that is, their ability to be applied in any forensic institution, independent of the nation, departmental affiliation, or organizational structure is what makes them valuable in the field of forensic examination. The article's conclusion states that in order to support adherence to the principles of interdependence, consistency, and continuity in standardization, national standards in the field of forensic examination should take into consideration the provisions of the ISO/TC 272 standards. The author claims that, for enhancing the quality of forensic examination activities, cooperation between Ukrainian forensic institutions and international organizations on standardization issues should be developed and strengthened. This can be achieved by working together on ISO/TC 272 and by participating in the various communication formats provided by regional networks of operational forensic examination laboratories.

A group of Ukrainian scholars – Tkachenko et al. (2024) – made an effort to evaluate global experience in the area of expert assistance of justice and to examine strategies for incorporating contemporary international standards into domestic forensic expert

practice. It was highlighted that forensic expert activity in Ukraine is organized using a hybrid approach. Harmonization of forensic examinations, standardization of expert methodologies, certification of forensic facilities, and publishing of the register of forensic experts are some benefits of such an approach. The author emphasized the importance of integrating the Ukrainian system of expert support for justice into the worldwide framework, as well as the participation of Ukrainian forensic institutions in international organizations that bring together foreign experts. The author recommended establishing a single body, the National Service for the Provision of Forensic Expertise, which would be subordinated to Ukraine's Ministry of Justice.

Makarova (2024) underlined the importance of studying a personality's psychological features and their impact on forensic psychiatric examination strategies in order to improve examination quality. According to the author, recognizing these characteristics enables the expert to analyze the defendant's mental state in a more objective and reliable manner. Nestor et al. (2024) investigate ethical norms in Ukraine and English-speaking countries, demonstrating the importance of established guidelines that minimize expert prejudice and ensure public trust in their conclusions.

Nevertheless, at the international level, there are very few studies in the field of harmonization of international standards in forensic psychological expertise, in particular, in analyzing criminals' motivation. Many publications describe the theoretical concepts of motive and goal, but do not develop a unified methodology that would allow for a standardized assessment of the motivational structure of criminals in different countries. Practical research often focuses on general personality characteristics or psychopathology rather than on a detailed analysis of motivational processes (awareness, conflict of motives, role of context). This evidently necessitates further research in this field, implying departure from vague conceptualization and moving towards design of practical solutions.

Methods

The research was carried out within a qualitative paradigm, with the use of an integrative review methodology. Preliminary search for sources to be included in the sample was carried out within the scientometric libraries databases ScienceDirect, ResearchGate, Wiley, MDPI, PubMed, as well as through direct search on the Google platform. The inquiry for search included two domains: 1) international standards of forensic psychological assessment"; and 2) criminals' motivation evaluation. Only peer-reviewed or monographic English-language publications were considered. Screening was based on the topic and abstract. This preliminary search allowed identifying 97 sources. Among them, 30 publications appeared not openly available in full text. In the next stage of research, the found publications were evaluated based on their methodology and findings, which enabled deeper analysis of their scope and, thus, relevance for current research. This procedure allowed selecting 41 entries for inclusion in the sample for integrative review.

Results and Discussion

Typically, the validity, dependability, and consistency of the fundamental scientific techniques for examining tangible evidence, such as DNA, fingerprints, and digital evidence, are the main goals of harmonization initiatives within forensic science. General standards are created and promoted by organizations like the International Organization for Standardization (ISO), the National Institute of Standards and Technology (NIST), and ASTM International (e.g., ISO/IEC 17025 for testing and calibration laboratories, and the ISO 21043 series for forensic sciences). By reducing the influence of cognitive and motivational biases in examiners' decisions, these guidelines seek to enhance the quality of data collection, analysis, and reporting. Meanwhile, within the domain of psychological forensic examination, harmonization process is much more 'modest'. At the same time, to speed up the efforts in this field, there is the need of uniting expertise of psychology, social psychology, forensic science, and ethics.

It should be noted that understanding the basic ideas of psychology is crucial to comprehending the nature of criminal behavior and the influence of mental state on it. According to Bartol and Bartol (2016), the most significant of these theories are:

1 According to Bandura's Social Learning Theory, criminal behavior is picked up by watching and copying others, particularly strong role models like family members or peer groups. This viewpoint emphasizes the importance of both positive and negative reinforcement, the social context, and the incapacity to understand the detrimental effects of conduct.

2. Hirschi's Social Control Theory: This theory highlights how social connections with family, school, the law, and society can help to prevent deviation. Crimes are more likely to be committed by those individuals who were actually cut off from these connections. Mental illnesses potentially can erode social bonds and serve as a criminal activity' catalyst.

3. Psychodynamic theory (Freud and his followers): The theory implies that unresolved childhood concerns (traumas) and a weak Superego may represent the cause of criminal behavior. Within this approach, psychological evaluation examines personality structure of individual, his/her unresolved complexes, and unconscious motivations.

4. According to Eysenck's trait theory, criminal behavior is strongly associated with traits such as neuroticism, severe extraversion, and psychopathy. Individuals with high impulsivity, low empathy, and antisocial characteristics are more likely to violate the law.

Motivation is a key component of the criminal psychology analysis system because it helps researchers comprehend how criminal intentions develop, how criminals make decisions, and what motivates their criminal behavior. In-depth research on criminal behavior helps scientists create evidence-based theories about criminal offenders, which improves crime prevention, tailored punishment, and rehabilitation initiatives. Studying criminal motivating patterns is crucial in the contemporary globalized legal context because correct forensic psychology evaluations for international criminal justice rely on appropriate interpretation.

In recent decades, an important point of cooperation in international criminal justice was set in the phenomenon of profiling.

Criminal profiling, according to European police forces, was an effort to create a description of the offender based on the findings of an examination of the crime scene data and traits associated with the offender's past (Eze et al., 2025). The UK's Association of Chief Police Officers Behavioral Science Investigative Support Subcommittee later approved and endorsed this description. Criminal profiling was viewed by the definition as a preferred approach to crime solving rather than a specific technique, and it was generally unable to identify the actual criminals. In actuality, it can only imply some of the personality traits and demographics that a criminal would probably have. Because a criminal profile is simply one method of detecting real criminals, it was improper for the police to totally exclude anyone who did not match the aforementioned traits.

In his book, Kocsis (2006) defined criminal profiling as the practice of examining and interpreting the behavior or activity that was obviously evident in a crime. The traits that the offender most likely had were predicted by this research. In contrast to psychological profiling, criminal profiling did not involve the examination of new patients. Instead, it involved analyzing the crime to understand key behaviors at the time of the crime so that the investigator could create an image of the perpetrator (Kocsis, 2006).

Compared to the earlier definitions, this one appeared to be more expansive and general. When creating a criminal profile, Kocsis (2006) considered every facet of criminality. This meant that his definition was more flexible in terms of the strategies and techniques that profilers may employ throughout investigations in order to accomplish the primary objective of creating a criminal profile of the offender in question.

From the standpoint of criminology, criminal profiling identified the precise circumstances that could have led to a crime. It concentrated more on creating the chronology of the incident than on developing the character of the offender. In the meantime, criminal profiles were created by the psychiatric section in order to determine the perpetrator's demographics, mental health, and motivations for committing such acts. Instead of emphasizing how a crime was actually committed, it focused more on the background and history of the offender. From a forensics perspective, a criminal profile was constructed using the evidence found at a crime scene and focused more on the techniques and consequences of the crime.

In the end, criminal profiling was one of the techniques that law enforcement could employ to determine the predominant traits of an offender in a specific case by considering the traits, demographics, method of operation, and evidence in comparable cases that have been documented, looked into, or tried in court. Only prior case studies and scientific knowledge from fields like criminal psychology, forensics, geography, and statistics may be used to construct this strategy. These components were crucial in raising the accuracy percentage for any profiles that were generated. However, because the three branches of knowledge that served as the foundation for creating crime profiles did not have the same goals, it was still very difficult to implement an integrated definition of criminal profiling (Mustaffa et al., 2022).

In fact, just two studies have looked at adult prison samples' reasons for committing crimes thus far. In a sample of 196 male inmates, Gudjonsson et al. (2011) investigated the connection between four OMQ-derived motivations, Axis I and II illnesses, and childhood ADHD symptoms. Generally speaking, many connections were not significant when other personality characteristics were taken into account, even though different DSM illnesses had strong univariate links with each of the four motivation categories. The most compelling result was that drug dependence was closely linked to financial incentive. The second study (Ohlsson & Ireland, 2011) examined the connection between aggression and incentives in a sample of 206 adult male inmates in the United Kingdom. The OMQ, an aggression motivation questionnaire, and other tests were completed by study participants. Four primary motivations for aggressiveness were identified: enjoyment, social recognition, protection, and perceived benefits. The findings showed that the reasons behind hostility varied across violent and nonviolent criminals. Positive outcomes and pleasure-related motives were more frequently endorsed by those with a violent conviction, and both of these motives were strongly correlated with a standardized measure of rage (Ohlsson & Ireland, 2011).

Unquestionably, variations in the process employed to create a criminal profile may alter the profile's veracity and admissibility as the foundation for a suspect's arrest and conviction. Finding the ideal methods to do so was a challenging task. In addition to drawing on prior case studies and pertinent scientific knowledge, the community's demographics should also be considered. The majority of research on criminal profiling methodology was predicated on the demographic appropriateness of western civilization. Although international criminal tribunals deal with a variety of people, Western cultures are frequently the source of psychological tools and diagnostic frameworks. This raises moral questions regarding (Mihaela, 2025):

- Cultural misreading of symptoms or behaviors (e.g., culturally normal manifestations of grief or trauma misunderstood as psychopathology);

- Language obstacles, reliance on interpreters, and translation mistakes that distort meaning;
- Ethnocentrism in diagnosis can undermine local narratives or resilience methods.

According to Mustaffa et al. (2022), the absence of a defined framework for forensic psychiatric examination has a negative impact on the legal system and law enforcement. The author thought that one of the primary sources for creating a crime profile in Malaysia may be the customs and culture of a particular national or ethnic group. This was because the demographics and customs of the local community where the crime was perpetrated were intimately linked to the prominent traits of the offenders.

Numerous initiatives have already been put into place that could aid in the advancement of criminal profiling techniques in Malaysia. The creation of the Penang State Crime Mapping Application (Polgis-Pen) 2012 (Police Online Geographical Information System for Penang) was one of them. The app was created to track the locations and specifics of crimes for when a police complaint was filed, as well as to analyze crime and eSector data. Additionally, it made it easier to create Penang's crime statistics. The app alerted

users to two types of crimes: property crimes and violent crimes. The app's geographically based data has helped to facilitate and expedite the crime profiling process (Simposium Maklumat Geospatial Kebangsaan (NGIS) ke 5, 2012). In addition to nations like Sweden and Canada, Malaysia also employed criminal profiling as a crucial investigative technique, according to a 2008 Skeptic Magazine article titled "Criminal Profiling". The application of this method can be found in Part V, Chapter 13 of the Criminal Procedure Code, which covers information to the police and investigative authority from section 107 to section 120. Moreover, Part VIII, Chapter 33, Section 329 of the same Code, which addressed the police's obligation to investigate deaths, also included reference to criminal profiling.

The inquiry process outlined in Chapter 13 of the Code, meanwhile, has be an object of criticism for being overly broad and harsh. It also focuses more on physical evidence, even though psychological evidence must also be considered. The investigation analysis and evidence from the incident – whether from witnesses, the crime scene, or criminal remnants – were used in Malaysia's crime profiling process. However, the author also believed that the Code's rules regarding the authority and methods of inquiry failed to provide a clear and comprehensive explanation of the criminal profiling technique employed by local police officers. Mustaffa et al. (2022) came to the conclusion that variations in backgrounds and methods employed by investigating officers during a criminal profile can lead to an incorrect crime profile, which could result in erroneous arrests.

Part IV, Chapter 13 and Part VIII, Chapter 33 of the Criminal Procedure Code in Malaysia both mention the use of criminal profiling; the latter relates to information provided to police and their investigative authority. Sections 109 and 329 were the precise provisions in question. Only police or officers in charge of stations with a level of Sergeant or higher were qualified to conduct an investigation for a significant case, according to Section 109. These officers were also prohibited from being questioned at any point during the process. In the meantime, Section 329 (1)(a) of the Criminal Procedure Code established a police officer's obligation to look into deaths caused by unknown causes. Section 329(2) made it clear that the criminal profiling method could be applied utilizing evidence from the crime scene and traces of the crime approach. In addition to conducting investigations based on the crime sites and issues pertaining to the death, District Police Officers and police officers ranking Sergeant and higher were required to submit an initial determination on the crime's method of operation. However, the "investigation" offered in this instance was overly broad and condensed, focusing more on physical evidence whereas psychological evidence should also be prioritized (Mustaffa et al., 2022).

There was no minimal benchmark or yardstick to gauge their effectiveness because being a profiler did not require any particular training or accreditation. It was impossible to discipline or punish careless or inept profilers due to the lack of realistic criteria. Aggravating effects like unlawful detention and, worse, the possibility of misconvictions were exacerbated by the lack of a "peer-reviewed system" practice and uniformity over the necessary profile-making process and methodology.

Rather than being a "forensic examination" in the conventional sense of physical evidence analysis, the assessment of motivation is typically a component of a mental health evaluation or competency assessment. There is a lack of agreement on particular evaluation techniques and reporting across various contexts and judicial systems because these evaluations heavily rely on clinical data, mental history, interviews, and the defendant's account of the accused offense. Although experts in these fields frequently offer their opinions to the court, there is a continuous discussion in the legal and scientific communities over the necessity of stricter, scientifically grounded standards to guarantee the validity and admissibility of such expert testimony. Current international standards emphasize tangible, empirical data. Due to inherent differences in legal frameworks and the subjective nature of psychological assessment, motivation assessment is still a difficult, qualitative area of forensic psychology that is not governed by a single, harmonized forensic standard.

The International Association of Forensic Psychology (IAFP), the American Psychological Association (APA), as well as United Nations documents, unanimously claim that psychological evaluation standards should have a number of key ideas in their foundation:

1. Professional competence of assessor. The forensic psychologist should possess expertise in forensic psychology, proficiency in application of psychometric instruments, adequate experience in judicial assessment, and be familiar with current legal frameworks.

2. Employing scientifically justified and standardized instruments: It is crucial to use assessments protocols with established validity and reliability, such as MMPI-2, PCL-R, and SCL-90-R. Any informal or local tools should be considered with caution and be assessed based on strong scientific argumentation.

3. Respecting the principles of independence and impartiality: During the evaluation process, an expert is obliged to express an opinion based solely on objective observations and scientific evidence, regardless of the demands of the parties involved or political and personal factors.

4. Respecting confidentiality and informed consent: The expert should be made aware of the evaluation's goal, methodology, and implications. Personal information should not be shared unless there are specific circumstances, including a court order or a threat to other persons.

5. Transparent and intelligible reporting for the court: In order for the judge or jury to understand psychological reports, they must be given in straightforward, logical language that makes reference to the instruments employed and is devoid of technical or judgmental terminology.

Table 3 provides structure of international standards for psychological evaluation.

Table 3. International guidelines for forensic psychological assessment structure

APA standards	IAFP guidelines	Recommendations of the United Nations and the Office on Drugs and Crime (UNODC)
The assessor should be completely knowledgeable of the legal conditions and the type of case Selecting scientifically valid psychometric instruments Conducting systematic and documented clinical interviews Preserving professional objectivity and independence Respecting confidentiality and clients' rights Reports for the court that are credentialed, accurate, and transparent Recognizing the assessment's limits and refraining from incorrectly extrapolating the findings	Necessity of specialized training for psychologists in the legal and ethical field Focus on multi-source evaluation (interview, psychometric testing, case review, witness accounts) Considering linguistic, social, and cultural factors when analyzing data The necessity of preserving independence from political or judicial pressure The necessity of constantly updating one's knowledge and abilities	Safeguarding the accused's rights during evaluations Preventing prejudice and discrimination based on race, sexual orientation, and culture Educating criminal justice staff on how to communicate with psychologists Stress the use of evaluation to lessen the negative effects of punishment

Source: Liell et al. (2022)

Despite the importance of all these concepts, they do not offer a workable framework that can be modified for the global forensic environment. The discipline of forensic mental health evaluation is delicate, challenging, and have implicit dangers. It necessitates a deep understanding of symptomatology, substantial assessment experience, cautious interpretation, and rigorous observance of ethical code. Forensic work is complicated and can have major repercussions for both defendants and plaintiffs, thus ethics is a crucial component. Many nations, most notably the Netherlands (Duits et al., 2012), have demanded improvements in mental health forensic reports during the past 20 years and have offered models that incorporate structural changes. Certain European nations may not be able to use these models since judicial processes vary depending on whether their legal systems are founded on Roman law or Common law. At the international level, the 'disperse' in standards for forensic psychological assessment is still very significant, which impedes international criminal justice cooperation.

Psychologists may have to choose between their ethical duty to the person being evaluated and their duty to the court. The prosecution, defense, or judges frequently request psychiatric examinations under international criminal law; nonetheless, the person being assessed may not have given completely informed or willing consent, particularly in detention situations. Confidentiality violations, the possibility of coercion or lack of agency in participation, and the compromise of therapeutic neutrality due to the use of evaluations for legal rather than clinical goals are some of the issues that arise from this dual role.

There is no a global code of ethics created especially for psychologists working in international criminal courts. As a result:

- The expert's training and country of origin determine different ethical norms;

- Ethical wrongdoing is not well monitored or enforced;
- Fairness is undermined by cross-jurisdictional inconsistencies that result in unequal use of psychological expertise.

Let us remind that the study of motivation as a psychological phenomenon started during the early 20th century when scientists began to examine human behavior through systematic analysis. The initial understanding of behavior focused on biological and stimulus-based explanations but Heckhausen (1977) and other scientists later established motivation as a complex system which combines needs with goals and emotions and social factors. The criminal-psychological framework shows that criminal conduct emerges from a complete system of personal and environmental elements which affect how people make choices.

A person commits a crime through deliberate action which fulfills their needs by using dangerous social behaviors. The structure of criminal motivation contains three elements which include cognitive processes and emotional responses and volitional actions that function together based on personal mental state and life experiences and social surroundings (Ha et al., 2024). The forensic psychological examination requires complete understanding of this structure because it enables experts to determine the extent of criminal awareness and control and pathological motivation elements for creating expert opinions.

The distinction between internal and external motives receives special focus because it enables researchers to understand crime psychology better. People develop internal motivation through their personal needs to achieve self-affirmation and compensate for frustration but external motivation stems from social rewards and pressures and benefits (Franco & Svensgaard, 2011). The classification system serves an essential purpose for international expert work because multiple countries need experts to determine the extent of personal control over motives and their impact on decision-making processes.

The scientific validity, dependability, and quality control of test results and evidence handling are the main goals of harmonization efforts in forensic science (e.g., through the ISO 21043 series and ISO/IEC 17025 standards). In particular, for evidence that can be objectively verified, such as DNA or digital evidence, these criteria guarantee that

forensic procedures are scientifically sound and that the outcomes are dependable, reproducible, and globally acceptable.

However, behavioral analysis, psychological profiling, and investigative procedures – all of which are intrinsically more subjective and reliant on national legal frameworks, cultural contexts, and investigative traditions – are primarily responsible for the forensic investigation of a criminal's motivation.

Among the main obstacles to harmonizing forensic investigation of motivation are (Bouzin et al., 2023):

- Subjectivity: The interpretation and behavioral theories involved in motivation analysis are less subject to the empirical testing and validation criteria used for tangible evidence

- Legal Differences: The weight and admissibility of such evidence varied greatly amongst legal systems (e.g., common law vs. civil law states)
- Lack of Consensus: Harmonization of intricate, non-physical studies is challenging since there is still a lack of a wide, shared international understanding of the foundational ideas and boundaries of forensic science itself.

A number of professional associations, including the International Association for Correctional and Forensic Psychology (IACFP), the American Psychological Association, and the American Academy of Forensic Psychology (AAFP), create and disseminate their own best practices and specialist recommendations. By improving service quality and providing guidance for accreditation and certification procedures, these recommendations help members and associated areas achieve de facto harmonization. Global information exchange and the promotion of best practices are facilitated by organizations such as the International Association of Forensic Sciences (IAFS), which offer forums for international discussion and cooperation.

The necessity of using culturally sensitive methods in forensic mental health evaluations to guarantee validity and reliability across a range of demographics is becoming more widely acknowledged and the subject of increased research. When used in different cultural contexts, assessment tools and techniques created in one may not have cross-cultural validity and reliability. As was already established, evaluators who are not familiar with local norms may misunderstand the impact of culture.

The use of classic psychological tests in various forensic contexts has been the subject of numerous survey studies, all of which have consistently shown that psychological tests are crucial to the majority of forensic assessments. However, its use has both benefits and drawbacks. When choosing, administering, and interpreting psychological tests for forensic evaluation, the forensic evaluator should consider a set of standards.

El-Shenawy (2017) correctly points out that there are differences between the standards employed in therapeutic and forensic assessment. While forensic assessment incorporates both clinical and legal standards, therapeutic assessment standards aid in diagnosis and treatment and serve organizing, condensing, and orienting purposes. For

instance, when the evaluator is expected to take into account the relationship between the underlying mental, emotional, and cognitive deficiencies and various legal difficulties, such criminal responsibility, skills, or sentencing considerations.

The sources of information used in each of the two types of assessments differ significantly from one another. They both use behavioral assessment, psychological testing, and self-report measures to gather clinical and psychosocial data. These sources are insufficient for forensic evaluation, in contrast to therapeutic evaluation. To evaluate the accuracy and consistency of data obtained from self-reports, additional information is required through the use of collateral material (such as document examination and interviews). There are numerous reasons why someone undergoing forensic evaluation might provide false information. For instance, some persons may exaggerate mental health issues to avoid criminal culpability or to seek financial advantage in personal injury claims, while others may overestimate their parenting abilities to get custody of their children. The likelihood that the person being assessed will purposefully (by exaggerating or minimizing) falsify the nature of symptoms or experiences is typically low in the majority of therapeutic evaluation cases.

Additionally, in light of verbal communication regarding the evaluation outcomes, there is a significant difference between the two types of assessments. It is uncommon for the therapist evaluator to testify as an expert witness in court. The theory that provides the context and framework for the tests used in the evaluation must be clearly explained to the trier of fact (typically a jury, sometimes the judge), even though the forensic evaluator should always testify as an expert witness and that testimony would be connected to the assessment. In order to prevent the lawyer from proving that the expert is not an expert in this field and has misinterpreted, misused, or misstated the workings and results of the tests, it should be explained how the tests were developed, how they are used, how the results are interpreted, and how the test results at hand can be used validly and reliably.

Lees-Haley et al. (1996) carried out an early survey study to determine the prevalence of several psychological tests used in forensic assessments. Information gathered from reports of 100 neuropsychologists' assessments of adult personal injuries. The findings showed that between one and thirty-two tests were used in one hundred forensic neuropsychological assessments. The most popular scale was the Wechsler Adult Intelligence Scale-Revised (WAIS-R), followed by the MMPI/MMPI-2 and the Wechsler Memory Scale (WMS)/Wechsler Memory Scale-Revised (WMS-R).

Quinnell and Bow surveyed 198 psychologists about the use of psychological tests in child custody assessments (Liell et al., 2022). According to the results, half of the participants said that IQ tests were used to assess custody of both adults and children. The Millon Clinical Multiaxial Inventory II or III (MCMI) was the second most popular objective test for adults, followed by the MMPI/MMPI-2. Other assessments, such as the California Personality Inventory and the 16-Personality Factors, were also utilized, but sparingly. The Millon Adolescent Clinical Inventory (MACI) and the Minnesota Multiphasic

Personality Inventory–Adolescent Version (MMPI-A) were frequently used for testing adolescents.

Another survey was carried out in Australia by Martin et al. (2001) to evaluate the usage of psychological tests and their application among 79 Australian psychologists employed in government agencies, private practices, or organizations that offer court evaluations. The MMPI and Wechsler Intelligence Scales are recognized as highly used tests, according to the results. The MCMI was placed third, while the PAI was the second most popular personality test.

Members of the American Psychology-Law Society Division of APA and American Board of Forensic Psychology evaluated the psychological tests used in forensic examinations (Archer et al., 2006). Participants were asked to describe how they used the exams in specific areas, such as ability to stand trial, custody evaluations, and sex offender risk assessments. Additionally, survey data was gathered for specific testing categories, such as cognitive/intellectual tests, neuropsychological tests, multiscale inventories, and single-scale evaluations. The results demonstrated that the most widely used clinical assessment instruments in forensic examinations were the MMPI-2 and the Wechsler IQ scores. The results also demonstrated the use of other assessment instruments in the field of minors evaluation, such as the Personality Assessment Inventory (PAI) and parent self-report measures like the Parenting Stress Index (PSI), in addition to more well-known instruments like the Child Behavior Checklist (CBCL) and the Personality Inventory for Children (PIC).

McLaughlin and Kan (2014) provided an update on the usage of assessment tools by 102 forensic examiners to assess nonsexual violence risk, reaction style/malingering, competency to stand trial (CST), and mental state at the time of alleged offense (MSO). The findings demonstrated that the type of assessment tool and forensic mental health assessment had an impact on test usage. While multiscale inventory like MMPI-2, MMPI-2, MCMI, and PAI were more frequently used in MSO assessments, FAIs/FRIs were most frequently utilized in evaluations of reaction style/malingering, CST, and risk for nonsexual violence. Evaluators used projective techniques the least across all four forensic concerns (such as the Thematic Apperception Test and the Rorschach inkblot Test).

The other key consideration for using psychological tests in forensic settings is how the test results are interpreted. In general, all psychological test findings should be interpreted in light of the standards group, which may limit their applicability in forensic evaluation. Groth-Marnat (2003) asserts that a well-designed test incorporates both fundamental standardized group norms and particular subgroup norms. A more appropriate and significant interpretation of scores is made possible by an understanding of each of these subgroup norms. Sadly, not all psychological tests are covered by this, especially those used in forensic assessments. The MMPI-2-RF is an unusual since it is a thorough assessment of psychopathology with fundamental criteria for healthy people and a variety of comparison groups to support its application in populations of inmates, personal injury claims, and custody evaluation litigants.

Berger (2025) provides a well-structured and internationally agreed-upon framework, the importance of which extends beyond traditional quality management. The ISO 21043-4 Interpretation standard, guided by principles such as rationality, transparency, and relevance, includes standards and suggestions, as well as a common vocabulary and support for both evaluative and investigative interpretations. According to the author, the standard was developed with the goal of establishing uniformity and accountability while allowing for the necessary flexibility across varied areas of expertise. Above all, he believes that ISO 21043 represents a rare chance to integrate and enhance the discipline of forensic science, as well as to strengthen the reliability of expert judgments and faith in the justice system.

Indeed, ISO 21043-4 Interpretation focuses on the case's issues and possible solutions in the form of opinions. The standard recognizes that there are multiple ways to do something correctly and provides the flexibility to accommodate it. At the same time, this flexibility does not include doing things incorrectly in order to ensure the quality of the forensic process.

The Interpretation ISO standard is based on the understanding that forensic science is about asking questions and using science to assist answer those questions. Interpretation explains what our observations signify in relation to the case's central question. As a result, some of the most important requirements are logical: what answers are possible, and what information is needed? The standard's fundamental structure is based on the different types of inquiries and replies or opinions. All essential task information must be considered, and all data, observations, and interpretation methods must be documented. Any known limits or potential sources of mistake in the analysis and interpretation processes must be documented and factored into the interpretation.

In our opinion, namely this ISO standard can become a foundation for approaching national standards for forensic psychological examination in studying the motivational structure of criminals, since it provides clear directions, necessary flexibility, and at the same time implies obligatory nature of potential limitations, which could eliminate, for example, cultural specifics to the maximum extent.

In recent years, several documents containing evaluative comments have been published. The European Network of Forensic Science Institutes (ENFSI) issued the "ENFSI Guideline for Evaluative Reporting in Forensic Science" in 2015. The Australia New Zealand Policing Advisory Agency (ANZPAA) released "An introductory guide to evaluative reporting" in 2017. In 2021, the UK Forensic Science Regulator will publish "Development of evaluative opinions: codes of practice and conduct for forensic service providers".

While these documents were important to varied degrees, none of them met international standards or incorporated investigative opinion. The ISO 21043-4 Interpretation standard is a truly global standard that covers both evaluative and investigative questions and judgments. This is the initial two-way division in types of opinions: evaluative or inquisitive.

According to Mihaela (2025), the psychiatric evaluation of people charged with international crimes such war crimes, crimes against humanity, and genocide has grown to be an important yet challenging part of international criminal justice. In procedures before international tribunals and courts, such as the International Criminal Court (ICC) and ad hoc tribunals, this study investigates the function, extent, and constraints of psychological evaluations. Psychological evaluations are frequently used to ascertain the accused's mental competence, their eligibility for trial, or the existence of personality problems that would have affected their behavior. However, there are important ethical and legal issues when psychological competence is incorporated into international legal contexts. According to the author, obstacles include the potential of "pathologizing" political or ideological motives, cultural and linguistic biases, as well as the absence of standardized templates for assessment across different jurisdictions. Moreover, assessments by forensic expert can also affect punishment, criminal responsibility, or views of regret and rehabilitation, and this fact actually creates ethical dilemmas.

The above-mentioned ISO 21043-4 Interpretation can serve as a point of intersection of approaching nation-states' legal system peculiarities within forensic psychological expertise, eliminating the effect of biases, adjusting cultural concerns, providing broader perspective for criminals' motivation analysis, impact of political landscape, etc.

Moreover, there is an evident need for a multidisciplinary strategy, in order to close the gap between legal frameworks and psychological forensic science. It is needed to create integrated systems that guarantee the uniform application of forensic techniques and their conformity with legal requirements; policymakers, legal experts, and forensic scientists must collaborate. This endeavor necessitates investments in infrastructure, technology, and training in addition to the development of open procedures for gathering, analyzing, and presenting evidence. In order for the legal and forensic communities to comprehend one another and recognize the subtleties of each other's fields, appropriate education is essential. Collaborative research, interdisciplinary workshops, and cooperative training programs are examples of initiatives that could improve criminal justice systems' efficacy.

Integrated approach has numerous potential advantages. Justice systems can increase their accuracy, effectiveness, and trustworthiness by promoting a more harmonious interaction between forensic science and legal frameworks. A system that maintains both responsibility and fairness serves society as a whole, and both defendants and victims can have more faith in the impartiality of court decisions. Furthermore, integration fosters innovation since the cooperation of the legal and scientific sectors promotes the creation of innovative approaches and instruments for addressing complicated crimes.

A coordinated, context-sensitive, and rights-based strategy is necessary to develop interdisciplinary standards and ethical principles for psychological evaluations in international criminal justice. Such criteria must draw from law, psychology, human rights, ethics, and cross-cultural studies due to the complexity of international crimes and the variety of cultural, legal, and psychological concerns involved. The development

of strong, equitable, and human rights-compliant frameworks can be guided by the following essential components:

1. Creation of a multidisciplinary working group comprised of legal experts from international criminal law institutions (ICC, ICTY, and ICTR), cross-culturally competent clinical and forensic psychologists; human rights specialists; representatives of vulnerable groups and civil society; and experts in medical law and ethics. In addition to verifying compliance with international legal documents like the Rome Statute, the UN Principles of Medical Ethics, and the Universal Declaration of Human Rights, this committee would be in charge of creating fundamental principles and harmonizing current national standards.

2. Defining minimum ethical and procedural requirements (neutrality and independence from political and prosecutorial influence; clear limitations of interpretation: psychological findings must not be pushed to serve punitive or ideological aims).

3. Standard operating procedures (SOPs) for conducting interviews, gathering data, and writing reports; triangulation of data (clinical observation, collateral information, and self-report) to minimize bias and error; and the development of standardized methodologies and tools (culturally adapted instruments that are validated for use across diverse populations). Before being recognized as evidence, psychological instruments should, if feasible, go through peer review and international validation procedures.

4. Forensic experts training and accreditation.

5. Establishing procedures for oversight and review (an impartial review board ought to have the authority to keep an eye on the application of psychological evidence, particularly in international cases).

Conclusion

International experience and evidence, revealed in the process of integrative review, demonstrates that integrating psychological knowledge into law enforcement activities significantly increases the effectiveness of investigations, contributes to the humanization of criminal proceedings and the development of preventive strategies; at the same time, the use of forensic psychological examinations in combination with criminalistic, medical, and sociological methods allows for a deeper understanding of the nature of criminal behavior, the formation of an objective picture of motives and the creation of conditions for crime prevention at the institutional level.

Meanwhile, large gaps still exist in this integration within the criminal justice system, despite the evident success in forensic psychology science evolution and the strong structures of legal frameworks. These deficiencies manifest themselves as institutional, procedural, instructional, and technical difficulties that compromise the effectiveness and equity of court decisions. In order to have a coherent system where forensic evidence and legal procedures coexist together and guarantee justice is done, it is imperative that these gaps be filled.

The study showed that although forensic psychological evaluations are crucial in international trials, their use is inherent with serious methodological issues that can compromise their validity, usefulness, and even applicability in court.

The absence of uniformity among international legal systems is a major challenge. Psychological evaluations are neither consistently carried out nor consistently interpreted because different courts may function under different procedural rules, definitions, and evidentiary standards. Efforts to guarantee consistency and comparability of assessments across instances and jurisdictions are complicated by this diversity.

Furthermore, psychological evaluations are extremely vulnerable to linguistic and cultural biases, which can substantially undermine their validity, particularly in such a complicated field as the motivations of criminals. Many evaluation instruments may not fairly represent psychological functioning in people from diverse cultural backgrounds since they were created and standardized in particular cultural contexts, frequently Western ones.

Designing culturally sensitive techniques, enhancing interdisciplinary communication between legal and mental health professionals, as well as establishing more precise standards for psychological evaluations in international justice contexts are necessary condition to address current problems.

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GENERATION OF HUMAN RIGHTS AND THEIR ROLE IN THE FORMATION OF THE CONCEPT OF "CONSTITUTIONAL MAN": IN THE DIMENSION OF NATIONAL AND INTERNATIONAL DOCTRINES

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Abstract

The relevance of the study arises from the growing importance of the concept of the "constitutional person" in the context of globalization, digitalization, and socio-political transformations. As legal systems adapt to modern challenges, the need to harmonize national and international standards and to develop effective institutional mechanisms for protecting human rights becomes increasingly urgent. The research aims to systematize the evolution of this concept, reveal the patterns of its transformation in legal thought, and outline prospects for modernizing the legal system amid global and digital changes. The study employs historical-legal, comparative, systemic, and analytical methods, enabling a comprehensive examination of the development of the idea of the "constitutional person," the impact of historical and cultural contexts on legal institutions, and the identification of key trends in its contemporary reinterpretation. The findings demonstrate the gradual formation of the normative and institutional foundations of the concept, the integration of international standards into national legal frameworks, and the influence of digital and social transformations on the realization of individual rights and freedoms. The results confirm the need to adapt legal mechanisms to modern challenges, enhance the effectiveness of human rights protection, and strengthen institutional guarantees. The concept of the "constitutional

person" emerges as a fundamental element of the legal architecture that ensures a balance between state interests and individual rights. The study proposes recommendations for legislative modernization and for developing strategies in legal education and institutional human-rights protection.

Keywords

Constitutional man, human rights, evolution of the concept, bioethics, globalization.

Resumo

A relevância do estudo decorre da crescente importância do conceito de «pessoa constitucional» no contexto da globalização, digitalização e transformações sociopolíticas. À medida que os sistemas jurídicos se adaptam aos desafios modernos, torna-se cada vez mais urgente a necessidade de harmonizar as normas nacionais e internacionais e desenvolver mecanismos institucionais eficazes para a proteção dos direitos humanos. A pesquisa visa sistematizar a evolução desse conceito, revelar os padrões de sua transformação no pensamento jurídico e delinear perspectivas para a modernização do sistema jurídico em meio às mudanças globais e digitais. O estudo emprega métodos histórico-jurídicos, comparativos, sistêmicos e analíticos, permitindo uma análise abrangente do desenvolvimento da ideia de "pessoa constitucional", do impacto dos contextos históricos e culturais nas instituições jurídicas e da identificação das principais tendências em sua reinterpretação contemporânea. As conclusões demonstram a formação gradual dos fundamentos normativos e institucionais do conceito, a integração de normas internacionais nos quadros jurídicos nacionais e a influência das transformações digitais e sociais na realização dos direitos e liberdades individuais. Os resultados confirmam a necessidade de adaptar os mecanismos jurídicos aos desafios modernos, aumentar a eficácia da proteção dos direitos humanos e reforçar as garantias institucionais. O conceito de «pessoa constitucional» surge como um elemento fundamental da arquitetura jurídica que assegura um equilíbrio entre os interesses do Estado e os direitos individuais. O estudo propõe recomendações para a modernização legislativa e para o desenvolvimento de estratégias na educação jurídica e na proteção institucional dos direitos humanos.

Palavras-chave

Homem constitucional, direitos humanos, evolução do conceito, bioética, globalização.

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GENERATION OF HUMAN RIGHTS AND THEIR ROLE IN THE FORMATION OF THE CONCEPT OF "CONSTITUTIONAL MAN": IN THE DIMENSION OF NATIONAL AND INTERNATIONAL DOCTRINES

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Introduction

In the current conditions of globalization and digital transformations, legal thinking is at a stage of intensive evolution, which necessitates a rethinking of traditional approaches to the concept of human rights. The concept of "constitutional person" is particularly relevant, which integrates historical and legal traditions, moral and ethical norms and modern social standards into a single model of the legal status of an individual. The importance of this concept is due to its ability to serve as a normative basis for the protection of rights and freedoms and a mechanism for reconciling the interests of the state and the individual in the context of sustainable development and democratization of social processes.

The relevance of the study is enhanced by modern challenges, in particular the digitalization of social relations, the spread of artificial intelligence, the transformation of labor and educational practices, as well as the need to ensure human rights in conditions of emergency situations and social instability. These factors determine the need for a systematic understanding of the "constitutional person" as a key element of the legal architecture of society, integrating international standards and national practices. Studying the evolution of the concept of "constitutional person" allows us to determine the patterns of development of legal norms, the influence of historical and cultural contexts on their institutionalization, and outline the prospects for modernization of the legal system, taking into account global and local trends. In this context, the study has theoretical and practical significance, since the results can be used to improve national

legislation, formulate legal education policies, and develop institutional protection of human rights.

Therefore, the subject of the study is the historical and legal evolution of the concept of "constitutional person", and the object is the modern mechanisms for the implementation of individual rights and freedoms in the context of globalization and digital transformations. Achieving the goal of the study requires the comprehensive application of methods of historical and legal, comparative and systemic analysis, which provides a comprehensive assessment of the dynamics of the development of the concept and the identification of key trends in its transformation.

The purpose of writing a scientific article is a comprehensive analysis of the evolution of the concept of "constitutional person" in the context of the development of legal thinking, as well as the determination of the patterns of formation of individual rights and freedoms within national and international legal systems. The research is aimed at identifying the relationship between historical and legal approaches, generations of rights and modern challenges of globalization, digitalization and bioethical transformations, which allows developing a holistic model of the integrated legal status of a person as a subject of law and morality.

Literature Review

The genesis of the concept of "constitutional man" should be viewed as a multidimensional intellectual and legal process that combines the historical and philosophical foundations of constitutionalism with the dynamics of international legal transformations and the national reception of universal human rights standards. Three interrelated paradigms were decisive in the trajectory of this process: (1) the classical natural-law universalism of the mid-20th century, which found its codified expression in the Universal Declaration of Human Rights as a normative matrix of dignity and equality; (2) the treaty-institutional era of the 1960s–1980s, represented by the International Covenants of 1966 (ICCPR and ICESCR), which translated moral imperatives into systemic obligations of states and control mechanisms; (3) a contemporary postmodern interpretation that transforms legal personality into a complex construct category that includes moral and value autonomy, social responsibility, and technological accountability. These stages are confirmed by key international texts that continue to perform a normative function in the process of constitutionalization of human rights (UNTC, 1976; United Nations, 1948)

The thesis that the "constitutional person" is not so much a new legal actant as a conceptual repositioning of the individual as the ontological center of the constitutional order currently dominates the scientific discourse. Khwan (2025) proposes a phenomenologically-oriented approach in which the local level of self-government acts as a key space for filling constitutional subjectivity with practical content; thus, municipalism acts not only as an instrument for the implementation of rights, but also as a source of forming the legal consciousness of territorial communities. Thus, the "constitutional person" appears as a subject of two orders – normative (the bearer of

rights guaranteed by the constitution) and effective (the subject of socio-political life at the local level), which emphasizes the need for institutional decomposition of legal guarantees.

Work by Deiak (2024), devoted to the phenomenon of "constitutionalization", emphasize the processes of integration of constitutional principles into domestic legal systems as a key mechanism for the protection of the individual: constitutionalization acts as a method of systemic legitimation of rights, which ensures their priority in the legal hierarchy and standardizes the procedures for their protection. This approach allows to connect theoretical constructions with practical tools – from the direct effect of constitutional norms to judicial mechanisms of interpretation. International and regional instruments (European Convention on Human Rights; EU Charter of Fundamental Rights) additionally produce a precedent normative fabric, which complicates a simple distinction between «international» and "national" levels of protection and stimulates a coherent reception of the concepts of dignity and autonomy (Council of Europe, 1950; European Union, 2012).

In the theoretical discussion of the status of the individual, contemporary constitutional law increasingly contrasts the categories of "citizen" with the category of "person". Bosniak (2010) emphasizes that personhood frees the individual from the framework of nationality and orients the legal system towards the universalism of protection; however, this also creates a tension between the rights that flow from citizenship and the universal norms that can be applied to individuals without national status. Mailey (2022) in turn draws attention to the paradox of the protective role of law: constitutional mechanisms designed to protect the individual sometimes insufficiently analyze or do not adequately respond to the harm caused by the state itself – a phenomenon that requires the theory of new tools for criticism and accountability of state power. These positions outline the theoretical field in which the "constitutional person" unfolds as a complex legal and social category.

The analytical perspective on the generations of human rights confirms that each subsequent generation does not annul the previous one, but rather incorporates and transforms its emphases: the first generation established individual freedoms, the second – social guarantees, the third – collective rights of solidarity, the fourth and fifth – informational, ecological and bioethical norms that require new mechanisms of implementation and control (Britannica, 2025; Khoo, 2015; López Baroni, 2020; Schabas, 2021a, 2021b; Turyanytsia, 2022). This is empirically and normatively reflected in international acts and recommendations, which translate the concept of dignity into the plane of technological and environmental responsibility (Humanium, 1966; UNESCO, 2005; 2021; United Nations, 1948; UNTC, 1976). Thus, the "constitutional person" acquires moral and value autonomy, which entails for the state not only negative (non-interference) obligations, but also positive obligations to create conditions for the implementation of autonomy (education, access to information, environmental safety, regulation of technologies).

Critical works, in particular Golia and Teubner (2021), add a historical and methodological dimension to this discourse, showing that constitutionalism as an intellectual tradition evolves in response to socio-economic challenges and technological change, and its

theoretical framework must be constantly revised. The contemporary scholarly palette also includes works that draw attention to the jurisprudential transformation of the concepts of "person" and "people" (Slaughter, 2014; Ciepley, 2024), which correlates with the multi-level reception of rights at the national and supranational levels. Taken together, these sources outline the empirical and conceptual basis for further research, in which the scientific novelty lies in the formulation of a theoretical and practical model of the "constitutional person" that synthesizes the rights of generations with the requirements of technological ethics and ecological sustainability.

Modern scientific discourse indicates that the "constitutional person" is a dynamic concept that is constantly being filled through the processes of constitutionalization and reception of international standards (Deiak, 2024; Khwan, 2025); in addition, the transformation of legal personality towards moral and value autonomy requires new methodologies from legal science – interdisciplinary, combining law, ethics, technological studies and ecology. The implementation of this concept in national systems (in particular in Ukraine) is a matter of normative editing, as well as institutional restructuring, aimed at ensuring that the constitution becomes a vital mechanism for the protection and development of human autonomy in the conditions of the 21st century (Council of Europe, 1950; European Union, 2012).

Methods

The following methods were used in the research process:

- Historical and legal analysis was used to track the evolution of legal concepts, the development of generations of rights, and their implementation in national and international legal acts;

- the comparative method was applied to compare constitutional models and practices of human rights protection in different jurisdictions, including the EU, international treaties and national constitutions;

- systems analysis was applied to integrate multi-level legal norms, institutional mechanisms, and moral and ethical aspects into a single model of a "constitutional person";

- method was used to formulate conclusions about the current state of the concept of human rights and predict its transformations in digital, environmental, and global contexts;

- the method of systematization used is the study of legal acts, international treaties, scientific sources and statistical materials that confirm the trends in the development of legal norms and practices.

Research Results

The evolution of human rights ideas should be viewed as a dynamic process in which different "generations" of rights were gradually formed, responding to historical, socio-

economic and technological challenges. Based on the classical classification proposed by Vasak in the late 1970s (liberté – égalité – fraternité) and according to which the first generation includes civil and political rights, the second – socio-economic and cultural, and the third – solidarity or collective rights, it is worth noting that this scheme also becomes the basis for understanding the formation of the concept of "constitutional man" (Domaradzki et al., 2019). The evolutionary and doctrinal characteristics of the generations of human rights and their role in the formation of the concept of "Constitutional Man" are given in Table 1.

Table 1. Evolutionary and doctrinal characteristics of generations of human rights and their role in the formation of the concept of "Constitutional Man"

Human Rights Generation	**Historical and legal evolution**	**Contents and key regulatory sources**	**Implementation features**	**The role in the formation of the concept of "Constitutional Man"**
1st generation: Civil and political rights	It was formed during the Age of Enlightenment, as a result of the bourgeois revolutions of the 17th–18th centuries (England, USA, France). It affirmed the ideas of natural law, individual freedom, and the rule of law.	Major acts include Bill of Rights (1689); Declaration des rights from the man and du citizen (1789); Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (1966); and provide for the right to life, liberty, personal integrity, freedom of thought, speech, religion, and participation in political life.	Mostly "negative" rights require non-interference by the state. Mechanisms: judicial review, constitutional guarantees, independence of the court. Challenges include abuse of power, inequality of access to justice.	They form the legal foundation of the constitutional subjectivity of a person. A "constitutional person" is a free citizen, guaranteed against the arbitrariness of the state.
2nd generation: Socio-economic and cultural rights	Origin in the 19th century, development after the First and Second World Wars; influence of socialist ideas, concept of a welfare state.	Main acts: International Covenant on Economic, Social and Cultural Rights (1966); Constitutions of the 20th century (Germany, Italy, Spain, etc.). Content: the right to work, education, social protection, housing, healthcare, participation in cultural life.	"Positive" type of rights: the state must create conditions and resources for their implementation. progressive implementation realization ").	Expand the meaning of the constitutional status of a person: from freedom to dignity and well-being. "Constitutional person" is a socially secure subject, a bearer of dignity and solidarity.
3rd generation: Collective (solidarity) rights	They arose after the processes of decolonization and the development of international law in the 1960s and 1970s (ideas of fraternité).	Main acts: African Charter on Human and Peoples ' Rights (1981); Rio Declaration on Environment and Development (1992). Content: the right of peoples to self-determination, peace, development, a healthy environment.	Implementation requires cooperation between states and international institutions. Challenges include sovereignty, inequality between the global North and South, and the lack of enforcement mechanisms.	They are forming the image of a "global constitutional man" who acts not only within national jurisdiction, but as a member of the international community.

Generation IV: Bioethical and digital rights	Associated with the scientific and technological revolution, biotechnology, artificial intelligence, digitalization of society (late 20th – early 21st centuries).	Key documents: GDPR (2016); UNESCO Universal Declaration on Bioethics and Human Rights (2005). Content: right to digital identity, protection of personal data, bioethical autonomy, access to the Internet.	Challenges include algorithmic discrimination, cyber threats, unequal access to technology, and the need for global regulation and an interdisciplinary approach.	It affirms the "technological person" as a subject of the digital space, for whom the state must guarantee the latest rights and data security.
Fifth generation: Environmental and future generations' rights	Formed in the 21st century against the backdrop of climate change, the biodiversity crisis, and sustainable development concepts.	Main documents: Paris Agreement (2015); UN Resolution 76/300 (2022) – the right to a healthy environment. Content: rights of nature, rights of future generations, environmental justice.	Requires global, transnational mechanisms; institutionalization of "ecological constitutionality." Challenges include economic interests, weakness of international control.	"Constitutional Man" – environmentally a responsible subject who is aware of solidarity with nature and future generations.

Source: compiled by the author based on (Britannica, 2025; Humanium, 1966; Khoo, 2015; López Baroni, 2020; Rights Recall, 2025; Schabas, 2021a, 2021b; Turyanytsia, 2022)

Within the first generation – civil and political rights – the basic legal status of the individual as a subject of law in a constitutional state was established. The ideas of the Enlightenment, the French Revolution and early constitutionalism formed a legal tradition according to which a person has fundamental rights: the right to life, liberty, personal integrity, freedom of thought, religion, speech, the right to participate in political life and legal protection. In the international legal field this began to be embodied after 1948 through the Universal Declaration of Human Rights and later through International Covenant on Civil and Political Rights (UNTC, 1976; United Nations, 1948). Understanding the first generation as "negative" rights (i.e. those that impose on the state the obligation to refrain from interference) provides the basis for the model of the "constitutional person", who acts as an active carrier of legal protection and participation. National doctrinal approaches to the rule of law are closely connected with the implementation of these rights: it is through these guarantees that the state ceases to be absolute and acquires the features of a legal order in which the person acts as a subject, not an object.

The second generation, socio-economic and cultural rights, opens up a new dimension of the legal status of the human being, focused not only on freedom from interference, but on the ability to realize one's dignity and secure one's living conditions. According to international law, this was crystallized in the International Covenant on Economic, Social and Cultural Rights (1966, in force since 1976) (Humanium, 1966). This area includes the right to work, fair remuneration, social protection, health care, education, participation in cultural life, housing, etc. (Schabas, 2021a). In the context of the implementation of such rights, the state must take positive action, provide resources, policies and legal mechanisms that create opportunities for action by subjects – the idea

of \u200b\u200b "expanding" the legal status of a person by adding social aspects. At the same time, in practice it is recognized that these rights are often implemented gradually ("progressive realisation") and depend on public resources. (Saul et al., 2014) For the concept of "constitutional person" this means that the legal status of a person constitutes not only participation and freedom, but also the provision of opportunities for the use of these freedoms; a person becomes a full-fledged citizen in the social space.

The third generation or solidarity (collective) rights form the global dimension of human rights, going beyond the national individual and heading towards groups, peoples, humanity as a whole. Among such rights are the right to development, the right to peace, the right to a healthy environment, the right of peoples to self-determination (Khoo, 2015). As Schabas (2021b) notes, although the status of these rights in international law remains debatable, they are collective in nature and often require the cooperation of many actors (states, international organizations, civil society). In national doctrine, the integration of these rights at the constitutional or legislative level is a difficult task; however, they contribute to the interpretation of a person as a participant in the global community, and not exclusively a national citizen. Thus, the "constitutional person" acquires the features of a subject capable of acting in global processes – through the challenges of ecology, development, peace, solidarity.

Recently, against the backdrop of rapid technological, bioethical, and digital development, as well as environmental challenges, a discourse about the fourth and even fifth generation of human rights has been taking shape. In the article "Fourth Generation Human Rights in View of the Fourth Industrial Revolution" emphasizes that the current three-generation scheme is insufficient to respond to the challenges of biotechnology, information technology, artificial intelligence. (López Baroni, 2020). Scientific research emphasizes that the concepts of "digital rights", "epistemic rights" in the digital world, "biomaterial" or "somatic rights", the rights of future generations and the rights of nature are gaining popularity (Sepúlveda et al., 2004). In the context of implementation, such rights pose new challenges: protection of personal data, digital identity, autonomy of biotechnological interventions, the right to a healthy and sustainable environment, the right to technological identity. For the model of "constitutional man" this means that the individual becomes a subject not only of political and social relations, but also of the digital, biotechnological and ecological space; the legal status of "constitutional man" must take into account the technological, ecological, transhuman challenges of the 21st century.

There is not just a chronological, but a functional-systemic connection between all generations of human rights. The rights of the first generation create the legal basis of individual subjectivity; the rights of the second generation provide the possibility of realizing this subjectivity in the social space; the rights of the third generation expand the field to groups, peoples and the international community; the rights of the fourth and fifth generations open up new horizons for the subject in the digital, bioethical, ecological dimensions. Scientific doctrine emphasizes that rights cannot be considered in isolation; that is, they are universal, inalienable, interdependent and mutually reinforcing (Risse, 2021). It is through such a consistent integration of different generations of rights that a holistic image of a "constitutional person" is formed, that is, a legal subject who is

guaranteed freedoms and participation, social security, the ability to act in global solidarity and adapt to the latest technological and environmental conditions.

Thus, the idea of a "constitutional person" in national and international doctrine implies that the status of a person is not limited to the framework of citizenship or one category of rights. On the contrary, it includes a set of legal guarantees and opportunities, starting with civil and political freedom, continuing with socio-economic security, expanding with a solidary and global role, and ending with the ability to function in a digital, bioethical and ecological environment. Such a holistic approach contributes to the formation of a person as a subject of a constitutional order, capable of exercising his or her own law-making, participating in the life of the state and society, while meeting the challenges of globalization, technologization and sustainable development.

The formation of international law in the second half of the 20th and early 21st centuries demonstrates the gradual transformation of human rights from abstract universals of natural law origin into a codified, institutionalized system of norms with multi-level implementation. The first "generation" (civil and political rights) was formalized in the fundamental documents of the post-war period, mainly in the Universal Declaration of Human Rights, which served as a semantic and normative source for the construction of subsequent treaty mechanisms. The Universal Declaration created the axiological and formal-legal foundation on which binding international legal instruments were subsequently built (United Nations, 1948).

The second step of codification – the introduction of two fundamental International Covenants of 1966 (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) – marked the demarcation of "generations" in the format of the contractual responsibility of states. These covenants not only consolidated the list of rights, but also established institutional mechanisms for implementation and reporting, which radically changed the legal status of human rights: from an intangible moral requirement to an obligation subject to international control. In this sense, the 1966 covenants should be seen as the core of the classical (first and second) generational paradigm of rights, combining individual freedoms with socio-economic guarantees (UNTC, 1976).

The Council of Europe and the European Convention on Human Rights were the first regional mechanism to transform declaratory provisions into practical judicial due diligence through the work of the European Court of Human Rights (ECHR), which provided a precedent-setting development of the interpretation of rights (interpretation) – from the formal grammar of the text to the substantive standards of protection (margin). of appreciation, proportionality, etc.) – which had a dual result: strengthening individual-oriented protection and at the same time creating a catalyst for the transformation of ideas about the constitutional role of the individual in public law. In parallel, the Council of Europe developed the social dimension through the European Social Charter, which reflected the desire to integrate the "second generation" of rights into the sphere of regional law (Council of Europe, 1950; European Court of Human Rights, 1953).

The European Union (EU), in its normative evolution, incorporated human rights principles into its own legal system through the Charter of Fundamental Rights (2000; confirmed by the Treaty of Lisbon in 2009), which led to a synthesis of constitutional and supranational levels of rights protection. The Charter not only codified rights, but also integrated the principles of social solidarity, non-discrimination and dignity into the supranational legal space, thereby reinforcing the idea of the "constitutional person" as a subject whose dignity and rights are both the normative basis and the criterion of legitimacy of state power (European Union, 2009).

Regionalism in Africa and Latin America has demonstrated its own trajectories of generational development. The African Charter on Human and Peoples' Rights introduces a synthetic approach, combining individual rights with collective (people's) rights and responsibilities, which opens up space for a different spectacle of "generations" – where legal constructions respond to specific historical-cultural and postcolonial challenges. Latin American instruments (the American Convention on Human Rights and the Special Protocols) have simultaneously served as a model of active jurisprudence and socio-legal innovation (particularly in the area of economic and social rights), emphasizing that regional systems can formulate autonomous notions of generational shifts (African Union, 1981).

Thus, international legal acts act not only as repositories of rights, but also as dynamic instruments that "materialize" the next generations of rights through: (1) the formalization of new categories (environmental, digital, bioethical rights); (2) the creation of mechanisms of responsibility and accountability; (3) regional modifications that interpret universal norms in the light of local values and challenges. This process of institutional and doctrinal articulation of human rights – both at the universal and regional levels – is key to understanding the emergence of the "constitutional person" as a legally protected, axiologically defined and socially responsible subject of modern constitutionalism. The key provisions and meanings for the formation of the concept of "Constitutional Person" are listed in Table 2.

Table 2. The formation of international law as a representation of human rights generations

International regulations	Year of adoption / entry into force	Institutional jurisdiction	Represented generation of human rights	Key provisions and meanings for the formation of the concept of "Constitutional Man"
Universal Declaration of Human Rights (UDHR)	1948	United Nations (UN)	Generation I (civil and political rights)	For the first time, universal standards of dignity, freedom, and equality were codified; the axiological basis for the legal subjectivity of the individual on a global scale was laid.
International Covenant on Civil and Political Rights (ICCPR)	1966 - 1976	UN (Human Rights Committee)	Generation I	Defines the obligations of states to guarantee freedom, life, inviolability, and participation in public affairs; establishes the legal binding nature of rights.

International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966 - 1976	UN (Committee on Economic, Social and Cultural Rights)	Generation II	Institutionalizes social guarantees, the right to work, education, and healthcare; forms the paradigm of a socially responsible state.
European Convention on Human Rights (ECHR)	1950 - 1953	Council of Europe / European Court of Human Rights	Generation I	It created a judicial mechanism for individual protection; it established the doctrine of the "living instrument" and the principle of proportionality as a manifestation of constitutional humanism.
European Social Charter (European Social Charter, Revised 1996)	1961-1996	Council of Europe	Generation II	Deepens the socio-economic aspect of rights, recognizing them as an integral part of human dignity; contributes to the formation of a social state as a constitutional ideal.
Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights of the EU)	2000 - 2009 (Lisbon Treaty)	European Union	Generation I–III (comprehensive integration)	It unites civil, social, environmental and digital rights; it establishes the principle of dignity as the basis of the EU constitutional order; it strengthens the supranational dimension of the "constitutional person".
African Charter on Human and Peoples' Rights (African Charter on Human and People 's Rights, Banjul Charter)	1981 - 1986	African Union/African Commission on Human and Peoples' Rights	2nd–3rd generation	For the first time, it integrates individual and collective (people's) rights and responsibilities; it reflects the African concept of communitarianism and human responsibility to the community.
American Declaration of the Rights and Duties of Man (American Declaration of the Rights and Duties of Man)	1948	Organization of American States (OAS)	Generation I	The first regional act of the UN that combined rights and duties; a precursor to the Latin American approach to the "moral autonomy" of the individual.
American Convention on Human Rights (Pact of San Jose, Costa Rica)	1969 - 1978	OAS / Inter-American Court of Human Rights	I–II generation	Defines the legal framework for the integration of civil and social rights; establishes judicial jurisdiction on a regional scale.
Additional Protocol to the American Convention on Economic, Social and Cultural Rights (San Salvador Protocol)	1988 - 1999	OAD	Generation II	Develops socio-economic rights as an imperative for sustainable development; emphasizes the ethical responsibility of states for social equality.

UN Millennium Declaration / Sustainable Development Goals (SDGs)	2000 - 2015	UN	Generation IV–V (right to development, environmental, digital, gender rights)	Forms the normative basis of global solidarity, digital and environmental justice; expands the boundaries of legal subjectivity in a posthumanistic dimension.

Source: compiled by the author based on (African Union, 1981; Council of Europe, 1950; European Court of Human Rights, 1953; European Union, 2009; United Nations, 1948; UNTC, 1976)

The above-mentioned norms, which have been transformed in the internal constitutional systems of European states, are a direct factor in the formation of the doctrine of anthropocentrism as the highest manifestation of the concept of "constitutional man". Thus, if universal documents have created a normative space in which human rights are a universal legal language, then at the national level it is the constitutions that have determined the way in which these rights are institutionalized, hierarchized and acquire legal ontological status – from declaration to legal reality. A comparison of the three leading legal systems – Germany, France and Italy – allows us to identify a common European trend: from a formal declaration of rights to the constitutional affirmation of human dignity as the highest principle of law.

I. In the German constitutional model, anthropocentrism appears not only as a normative fundamentality, but also as a metaphysical category of state existence. The Basic Law of the Federal Republic of Germany of 1949 (Grundgesetz for die Federal Republic Deutschland) already in the first article establishes: "Die Dignity des People ist unantastbar" – "Human dignity is inviolable" (Art. 1 GG) (Tomuschat et al., 2025). This provision has acquired a precedent interpretation by the Federal Constitutional Court, which in Lüth Case defined dignity as "a central constitutional principle that permeates the entire legal system" (Jaggi, 2016). Thus, human rights are seen not only as an object of legal protection, but as a source of legitimacy for public authority – a hallmark of the classical paradigm of the "constitutional man".

II. The French model, in turn, demonstrates the transition from historical individualism to modern social humanism. The Constitution of the French Republic of 1958 integrates the Déclaration des Rights from The Man and du Citoyen of 1789 and Préambule from the Constitution de 1946, establishing the doctrine of the "social republic", where the individual is considered not only as a bearer of rights, but also as a participant in the collective well-being (Conseil Constitutionnel, 1958). The Constitutional Council, in a series of decisions, in particular in case No. 71-44 DC (1971), gave direct legal effect to the principles of the 1946 preamble, recognizing them as "norms with constitutional value". Thus, French constitutional law combines the natural law heritage with the concept of a social state in which dignity, freedom and equality mutually reinforce each other.

III. In Italy, the anthropocentrism of the constitutional model has a distinctly ethical and social character. The Constitution of the Italian Republic of 1948 defines the person as the "central element of democratic coexistence" and proclaims work as not only the

economic but also the moral foundation of the state (Art. 1, Art. 3, Art. 4, Art. 32) (Corte Costituzionale, 1948). The Italian Constitutional Court has repeatedly developed the provision on "dignity as the basis of all fundamental rights" in its practice, for example in decisions No. 141/2019 and No. 242/2019, emphasizing the need to interpret rights in the context of "human autonomy, social solidarity and moral responsibility".

The above constitutional systems reflect three forms of implementation of the European doctrine of anthropocentrism: axiological (dignity as a meta-legal principle in Germany), socio-institutional (equality and collective solidarity in France) and ethical-humanistic (integration of freedom, work and responsibility in Italy). What they have in common is the tendency towards constitutional "humanization" of the state, in which legal systems recognize a person not only as a subject of legal relations, but as the source, content and purpose of the legal order. At the same time, at the level of the European Union, this tendency is confirmed through *the Charter of Fundamental Rights of the EU*, legally binding after the Treaty of Lisbon, which in Articles 1–6 reproduces the content of constitutional anthropology – dignity, freedom, equality, solidarity, citizenship and justice – as systemic components of European legal identity (European Union, 2009). Thus, the formation of the concept of "constitutional man" in the European doctrine is the result of multi-level interaction: universal standards (UN), regional mechanisms (Council of Europe, EU) and national constitutions, which transform human rights from a norm of international law into the living tissue of constitutional statehood. Thus, modern European anthropocentrism has gone beyond the formal and legal recognition of rights and transformed into a meta-theoretical concept, where "constitutional man" is considered as an ontological basis, an axiological reference point and a teleological goal of law. It is this trinity – dignity, freedom, responsibility – that determines the vector of evolution of the constitutional law of the European Union in the 21st century.

The process of transformation of the concept of "constitutional person" in international legal doctrine has progressed from the formal recognition of legal personality to the construction of moral and value autonomy, and is also based on the study of the ways in which new, "fifth" generations of rights (digital, bioethical, environmental, related to artificial intelligence) test the universal principles of constitutional humanism. In particular, modern interpretations of the phenomenon of "constitutional person" demonstrate the transition from a narrowly legal construct – a person as a bearer of legal rights and obligations – to a multidimensional category in which legal personality is combined with axiological and ethical autonomy. Three conceptual shifts play a key role in this transformation:

- The constitutional person ceases to be only the "addressee" of positive norms and is increasingly seen as a source of legitimacy of the state: his dignity and self-identification become the criterion for assessing the constitutionality of power. This position is reflected in the classical guidelines on human dignity and personified subjectivity contained in national constitutions and supported by court practice (Klein – the standard of dignity in German law);

- Constitutional man is increasingly viewed through the prism of normative autonomy – the ability of a person to form and realize his own value identity within the framework of

the legal order, which imposes on states not only negative, but also positive obligations to create conditions for the implementation of this autonomy;

- International and regional acts and guidelines concerning new technologies and bioethics embed the content of moral and value autonomy in the legal matrix: they declare not just protection from interference, but an active guarantee of the conditions for autonomous self-affirmation (the right to informed consent in biomedicine; principles of transparency and accountability in the use of algorithms).

These practical and normative transformations are recorded in intergovernmental recommendations and documents, in particular, in the UNESCO (2021), which directly emphasizes the need to protect human dignity and rights in the context of algorithmic decisions, and in the Universal Declaration on Bioethics and Human Rights (UNESCO, 2005), which constructs bioethical principles as an element of legal assurance of human autonomy (Council of Europe, 2001; Council of Europe, 2023).

From an international legal perspective, this means that "constitutional person" acquires a dual status: it is simultaneously (a) a recognized legal entity with an established set of rights and protection mechanisms and (b) a bearer of moral and value autonomy, which requires states and supranational actors to form active guarantees – educational, informational, environmental and regulatory – to strengthen this autonomy. Such a complication is increasingly reflected in interstate resolutions and regional conventions that combine contractual and non-contractual instruments of law enforcement. At the same time, the implementation of the fifth generation of rights creates systemic challenges for classical constitutional humanism, since digital, bioethical, environmental and artificial intelligence aspects of rights simultaneously expand the subject area of rights and violate traditional assumptions about the boundaries of state responsibility.

The first set of challenges is related to privacy and autonomy in the digital space: mass data collection and processing, profiling and automated decision-making undermine the possibility of effective individual autonomy and create new forms of discrimination; in response, the Office of the UN High Commissioner for Human Rights has developed numerous reports and guidance on the "right to privacy in the digital age", focusing on the principles of proportionality, accountability and non-interference (United Nations, 2014). At the same time, the radical criminalization of certain digital practices (e.g. excessive state control) is opposed by international instruments such as the Council of Europe Convention on Cybercrime (Budapest Convention), which regulates the criminal law side but raises the question of the balance between security and rights (Council of Europe, 2001).

A second set of challenges arises in the bioethical sphere: the development of genetic technologies, genome editing, neurotechnology and related issues of informed consent, privacy of mental data and protection of the integrity of the person require international bodies to reformulate legal guarantees. UNESCO (2005) data emphasize that classical mechanisms of individual protection must be complemented by ethical imperatives that guarantee autonomy without compromising dignity.

The third and perhaps most complex set of challenges is related to artificial intelligence: algorithmic systems can transform public decision-making, increase the opacity of

government, generate algorithmic discrimination and undermine legal accountability. Frameworks for responding to these risks are being developed at the regional and global levels: the EU adopts regulatory texts (in particular, the AI Act), and the Council of Europe develops standards and a model "framework convention" at the intersection of human rights, democracy and the rule of law; UNESCO proposes an ethical matrix for national policies (UNESCO, 2005; 2021). These initiatives aim to ensure the compatibility of innovations with fundamental constitutional values and to convert technical requirements (security, transparency, accountability) into legally binding standards.

Furthermore, environmental rights – recognized at the intergovernmental level (UNGA Resolution 2022 on the right to a clean, healthy and sustainable environment) – transform "constitutional person" into a subject whose rights entail collective and intergenerational obligations, thereby changing the horizon of responsibility of the constitutional state (United Nations General Assembly, 2022). The recognition of the right to a healthy environment creates a normative platform for environmental guarantees to become part of constitutional anthropology, with corresponding imperatives for sustainable development policies and interstate cooperation.

Thus, international doctrine is in the process of a double transformation: on the one hand, "constitutional person" is enriched through the incorporation of moral and value autonomy into legal identity; on the other hand, technological, bioethical and environmental challenges require lawmakers and judicial practice to rethink traditional protection mechanisms and create comprehensive, cross-sectoral regulatory solutions. The sustainability of the concept of "constitutional person" in the 21st century will depend on the ability of international law to combine treaty mechanisms, regional standards and ethical guidelines into a coherent system capable of protecting and developing the autonomy of the individual in a rapidly changing technological and environmental context.

However, it should be noted that the set of challenges of the fifth generation of human rights (Table 3) forms a qualitatively new stage in the development of international constitutionalism, which requires the integration of digital, environmental and bioethical values in the system of legal personality of the person. As stated in the UNESCO Recommendation on the Ethics of Artificial Intelligence (from 2021), human dignity should remain a central criterion for technological progress, while UN General Assembly Resolution A / RES /76/300 (from 2022) emphasizes that environmental sustainability is an inalienable human right. Thus, the doctrine of "constitutional humanism" is transformed into "universal constitutional personhood", which combines legal, ethical and existential autonomy of a person.

If talk about the Ukrainian national dimension of the formation of the concept of "constitutional person", then it is necessary to record both the legal reception of international generations of human rights and the process of transformation of the constitutional anthropology of Ukraine – from the text of the Constitution to the practice of state institutions and judicial jurisprudence, capable of producing a legally effective phenomenon of "constitutional person". In Ukraine, this process has a multi-level nature: (1) constitutionally enshrined value-anthropological guidelines, (2) regulatory and legal

infrastructure that regulates social, digital, bioethical and environmental aspects of rights, (3) institutional protection mechanisms (Constitutional Court, Verkhovna Rada Commissioner for Human Rights, administrative and criminal jurisprudence), (4) strategic policy in the direction of adapting national law to regional (EU, Council of Europe) and global standards. These components form an architecture within which the "constitutional person" must be constitutionalized as simultaneously a bearer of guarantees of dignity, will, and social support, and as a subject of active autonomy and responsibility.

The 1996 Constitution of Ukraine lays the axiological basis of modern Ukrainian constitutionalism: the proclamation of a person, his life and health as the highest social value, the set of civil, political and socio-economic rights (Chapter II), as well as special environmental guarantees (Article 50) – all this forms a normative framework for the development of a "constitutional person" as a legal and moral ideal. Constitutional norms have direct application and create the basis for the imperative reception of international standards (in particular, the European Convention on Human Rights). That is, the Ukrainian constitutional text combines a natural-law orientation (dignity, universal freedoms) and a social state imperative (ensuring social and environmental rights) (VRU, 1996).

Table 3. Global challenges to the implementation of fifth generation rights and doctrinal and normative ways to overcome them

Call type	Characteristic	International legal acts/doctrines	Possible solutions (within the concept of constitutional humanism)
Digital calls	Violation of digital privacy, algorithmic discrimination, data manipulation, violation of cyber sovereignty.	- Council of Europe Convention No. 108+ for the Protection of Individuals with regard to Automatic Processing of Personal Data (from 2018); - EU General Data Protection Regulation; - UN General Assembly Resolution A/RES/75/176 (from 2020) "The Right to Privacy in the Digital Age".	- Formation of "digital legal constitutions" (Digital Constitutionalism); - Implementation of international AI governance standards ; - Strengthening control over algorithmic transparency and corporate accountability.
Bioethical challenges	Genomic interventions, cloning, bioengineering, violation of the principle of human dignity in the context of biomedicine.	- Council of Europe Convention on Human Rights and Biomedicine; - UNESCO Declaration on the Human Genome and Human Rights (from 1997); - WHO Declaration on Genetic Ethics (from 2019).	- Recognition of bioethical principles as a component of constitutional law; - Ensuring international control over biotechnology; - Introduction of the category of " bioethical responsibility of states".

Environmental challenges	Deepening climate crisis, degradation of ecosystems, threats to the right to life and health.	- Paris Climate Agreement (from 2015); - UN Resolution A/RES/76/300 (from 2022) on the recognition of the right to a healthy environment; - The European Green Deal (EU Green Dea).	- Constitutional enshrining of the right to environmental safety; - Introduction of an environmental ombudsman; - Formation of the doctrine of "eco-humanism" as a component of constitutional identity.
AI-related challenges	Autonomous decisions without human participation, violation of the principles of justice, discrimination and threat to legal personality.	- UNESCO Recommendation on the Ethics of Artificial Intelligence (from 2021); - Draft EU Regulation on Artificial Intelligence (AI Act); - Council of Europe Resolution CM/Res (2020)1 on the impact of algorithms on human rights.	- Recognition of human digital autonomy as a new constitutional value; - Introduction of a global AI accountability mechanism ; - Institutionalization of the principle of "human oversight" in legal systems.

Source: compiled by the author based on Conseil Constitutionnel (1958); Council of Europe (2001; 2023); European Union (2009); UNESCO (2005; 2021); United Nations (2014).

At the doctrinal level, Ukrainian law has evolved towards synthesis: classical natural law values (dignity, freedom) have been incorporated into a positive normative system (constitution, laws) and supplemented by protection mechanisms (national institutions, international treaties). The practical implementation of this synthesis is carried out through the instruments of parliamentary and executive legislation (in particular, legislation on the protection of personal data, environmental laws, regulations in the field of health care) and through the repertoire of constitutional and interstate jurisprudence. This synthesis creates a legal basis for the "constitutional person" to act simultaneously as an object of legal protection and as a bearer of positive public rights (access to information, environmental protection, the right to social guarantees). In this context, a special role belongs to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine as a national mechanism for preventing violations and monitoring human rights standards (Ombudsman of Ukraine, 2023; VRU, 1997).

Constitutional and national judicial practice in Ukraine demonstrates a gradual increase in the reception of international human rights standards: the ratification and internal recognition of the ECHR (1997) created the basis for judicial cooperation and participatory integration of European precedents into the national doctrine of the protection of dignity and freedom. The Constitutional Court of Ukraine in its practice formulates the interpretation of human dignity as a constitutional value, which becomes a criterion for assessing the balance of rights and obligations of the state (see the thematic developments of the Constitutional Court of Ukraine on the right to dignity). At the same time, the challenges of the fifth generation constitute unprecedented demands on jurisprudence: courts and law enforcement agencies are forced to interpret old norms in the light of new technological and environmental realities, which requires a comprehensive approach (synthesis of law, ethics, technological regulation) (Constitutional Court of Ukraine, 2021; European Court of Human Rights, 2010).

The prospects for strengthening the role of the "constitutional person" in the national law of Ukraine are closely related to the European integration course and the transformation program, recorded in the Association Agreement with the EU and in the process of preparing the Action Plan for Approximation to the Acquis (NPAA). Specific steps: (1) updating the regulatory framework in the field of personal data protection and digital rights (adopting a GDPR-compatible law and creating an independent regulator – the National Commission for the Protection of Personal Data and Access to Information); (2) ratification and implementation of international bioethical instruments (in particular, the final ratification of the Oviedo Convention and bringing medical legislation into line with its standards); (3) integration of environmental law into the constitutional-paradigmatic space (strengthening the implementation of Article 50 of the Constitution, incorporating international obligations of the Paris Agreement into national energy and environmental legislation); (4) development of a national strategy on AI with the implementation of the principles of " human oversight and accountability, with the creation of sectoral support (expert councils under the Cabinet of Ministers/Ministry of Digital Transformation) and mechanisms for controlling algorithmic discrimination. All these steps should be implemented within the framework of the NPAA and at the national level, taking into account the recommendations of the European Commission (Cabinet of Ministers of Ukraine, 2014; European Commission, 2024).

Given the above-described national aspects of the implementation of the concept of "constitutional person" in Ukraine, the formation of a "constitutional person" requires a targeted strategy that combines: (1) a constitutional interpretation of human dignity and social rights; (2) the imperative of European harmonization of legislation (especially in the field of data, bioethics, ecology, and AI); (3) the creation and strengthening of independent national institutions for the protection of rights; (4) the adaptation of judicial practice and state policy to the standards of algorithmic accountability and environmental justice. Such a comprehensive policy will transform the "constitutional person" from an academic construct into a real, institutionally protected subject in the modern Ukrainian legal system.

Table 4. Systemic and institutional matrix of national aspects of the implementation of the concept of "Constitutional Man" in Ukraine in the context of human rights generations

Generation of rights	Key challenges for Ukraine	Roadmap (stages of transformation)	Scientific and practical guidelines	Regulatory and legal framework
I generation – civil and political rights	The gap between constitutional guarantees and the real effectiveness of their implementation; formalism in the interpretation of Article 3 of the Constitution	1) Strengthening parliamentary control over the observance of rights. 2) Institutional strengthening of the Ombudsman. 3) Improving legal education.	- Improving constitutional complaint mechanisms. - Formation of the practice of a "living constitution". - Increasing the autonomy of the individual as a subject of the constitutional order.	Constitution of Ukraine, Decision of the Constitutional Court of Ukraine No. 1-r/2020, Law“On the Commissioner for Human Rights of the Verkhovna Rada of Ukraine".

	regarding anthropocentrism.			
Generation II – socio-economic rights	Low level of implementation of social rights under martial law and financial decentralization.	1) Adaptation of the principles of social justice to the market economy. 2) Review of social protection policy.	- Introduction of people-centered budgeting. - Digitalization of social services ("Action"). - Institutionalization of the principle of dignity in economic policy.	Human Development Strategy of Ukraine until 2030, Budget Code (amendments of 2021).
Generation III – collective (solidarity) rights	Lack of a legal culture of participation; weak implementation of environmental and cultural rights of communities.	1) Development of participatory institutions (e-democracy). 2) Raising the level of legal awareness.	- Strengthening mechanisms for public participation in environmental policy. - Recognition of cultural heritage as part of national identity. - Implementation of the principle of "ecological man".	Aarhus Convention (1998), Law "On Public Consultations", National Environmental Policy 2030.
Generation IV – informational, genetic, digital rights	The threat of excessive state interference in privacy; lack of legal regulation of artificial intelligence.	1) Development of a code of ethics for digital platforms. 2) Harmonization of legislation with the EU in the field of AI and data.	- Enshrining the right to digital autonomy. - Improving the regulation of bioethical issues. - Implementation of " digital" constitutionalism » into legal politics.	Law "On Personal Data", Digital Transformation Strategy (2021), EU Regulation on Artificial Intelligence (AI Act 2024).
Generation V – rights of future generations, bioethics, ecohumanism	Insufficient constitutional mechanism to protect the rights of future generations; environmental vulnerability due to war.	1) Integration of sustainable development principles into constitutional law. 2) Development of a doctrine of intergenerational justice.	- Inclusion of the concept of "ecological man" in the constitutional doctrine. - Establishing a constitutional obligation for sustainable environmental restoration. - Development of a national system of bioethical control.	Green Deal of Ukraine (2023), Presidential Decree No. 722/2023, Decision of the Constitutional Court of Ukraine in the environmental case (2021).

Source: compiled by the author based on Cabinet of Ministers of Ukraine (2014); Constitutional Court of Ukraine (2021); European Court of Human Rights (2010); European Commission (2024); Ombudsman of Ukraine (2023); VRU (1996, 1997).

Discussion

The obtained results of the study confirm and at the same time expand the modern scientific discourse on the evolution of human rights generations and their role in the formation of the concept of "constitutional man". As the comparative analysis shows, in most scientific approaches (Bosniak, 2010; Schabas, 2021a, 2021b; López Baroni, 2020; Khwan, 2025) an attempt can be traced to explain the "constitutional person" as a product of the gradual constitutionalization of legal ideas – from natural law universalism to the post-institutional humanism of the digital age. Our results are consistent with this

logic, but show its deeper structural conditioning – not only historical and evolutionary, but also systemic and functional, within which each generation of rights does not simply inherit the previous one, but creates a new level of autonomy and responsibility of the subject of the constitutional order.

Comparing the results of the study with the theoretical approaches of Khwan (2025) and Deiak (2024), it should be noted that the authors confirm the thesis of the two-layer subjectivity of the "constitutional person" – normative (based on the text of the constitution) and effective (manifested in the ability to act in the public space). However, unlike Khwan, who interprets the constitutional person mainly through the prism of local self-government, our study showed that his legal subjectivity is formed through the holistic integration of generations of rights – from individual freedom to digital-ecological responsibility; which allows us to consider the "constitutional person" not as a static phenomenon of democratic participation, but as a dynamic form of ethical and legal evolution of humanity. In turn, the conclusions of Deiak (2024) emphasize the process of "constitutionalization" as a mechanism for integrating legal principles into national systems. In this context, the results of our study develop the author's position, demonstrating that constitutionalization is not just a procedure of legal hierarchization, but a process of anthropological transformation – the formation of a person as a bearer of dignity, capable of being a source of law. That is, a constitutional person in our understanding is not an object of the constitutional order, but its substantial center, which ensures the internal legitimacy of the system.

Compared to the classical vision of Bosniak (2010), which separates the concepts of "citizenship" and "personhood", the results of our analysis confirm that modern constitutional subjectivity is increasingly oriented towards a universal concept of the person, regardless of nationality. However, the authors find that such universalization does not abolish the need for state responsibility – on the contrary, it creates a new format of positive obligations of the state to provide space for the realization of autonomy, education, digital security, environmental well-being; which echoes the approaches of Schabas (2021b) and Turyanytsia (2022), who interpret new generations of rights as a tool for expanding human subjectivity to the level of a global community. Our results also confirm the concept of Mailey (2022) about the ambivalence of the protective role of law, when legal instruments sometimes reproduce systemic forms of state coercion. However, unlike Miley's critical approach, our study shows that a way out of this dilemma is possible through an institutional rethinking of the constitution as a "vital mechanism" – a system not only limiting, but also nourishing the autonomy of the subject. Thus, the authors propose a positive model of the constitutional person as a factor of balance between state coercion and freedom.

The study's analysis of human rights generations confirms López's Baroni (2020) and Sepúlveda et al. (2004) findings on the need to expand the three-generation paradigm. The authors have shown that the fourth and fifth generations of rights are not "additional" categories, but constitute a qualitatively new dimension of human subjectivity, which requires a rethinking of the very concept of constitutional dignity; which confirms the view of Golia and Teubner (2021) about the historical and methodological evolution of constitutionalism as a living tradition that responds to the challenges of civilizational

development. Our results complement this approach, specifying that the response of modern law lies in the development of new norms of responsibility for artificial intelligence, biotechnology, ecological sustainability and the preservation of human autonomy in the digital environment.

Considering the international and regional reception of the concept, our results are consistent with the conclusions of Slaughter (2014) and Ciepley (2024), who emphasize the changing relationship between the concepts of "person" and "people". The authors found that the constitutional person is an intermediate link between these two categories – he personifies the will of the people, but does not dissolve in it; his rights become the basis of the legitimacy of power, and not a derivative element of statehood. This approach is also in line with current trends in the case law of the European Court of Human Rights, where human dignity is increasingly recognized as a constitutional principle of the supranational level (Council of Europe, 1950; European Union, 2012).

Thus, the results of the study allow us to assert that, unlike the traditional generational model, in which human rights are considered as a sequence of historical stages, the concept of "constitutional man" reveals them as a single dynamic system of moral and legal evolution. It combines the universalism of dignity, social justice, collective solidarity and technological accountability into a holistic constitutional order. In this aspect, our study not only confirms the main theoretical provisions of modern science, but also suggests their systemic integration – as a model in which human rights act not as an external reference point, but as an internal mechanism for the self-development of a constitutional man and a legal state of the 21st century.

Conclusions

The evolution of human rights reflects a multidimensional process of forming the concept of "constitutional man", in which the integration of generations of rights into national and international doctrines plays a key role. The results of the study confirm the conceptual thesis put forward in the scientific discourse that "constitutional man" is a complex category that combines normative subjectivity with effective participation in socio-political and global space. National and regional practices – from European constitutions to the EU Charter of Fundamental Rights and regional treaties – demonstrate that universal human rights standards are implemented through a multi-level institutional and legal system that provides simultaneously protection, participation and positive support for autonomy.

Thus, the concept of a "constitutional person" in the 21st century takes on the character of an integrated model in which the rights of generations become interdependent and reinforce each other, forming a holistic image of a legal entity. This approach opens up new horizons for legal science and practice: it implies the need for interdisciplinary methods that combine constitutional law, international regulation, ethics, technological security and environmental sustainability, and also stimulates the development of legal mechanisms capable of responding to the challenges of the digital, bioethical and global environment. Thus, the results of the study confirm that the evolutionary generational

perspective of human rights is a key tool for the constitutionalization of the dignity and autonomy of the individual, which allows transforming the legal status of a person into an active, multidimensional subject of law, capable of forming the legitimacy of the state and participating in global social processes.

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THE ALGORITHMIC RULE OF LAW: INSTITUTIONALIZING ACCOUNTABILITY AND HUMAN OVERSIGHT IN AI-DRIVEN LEGAL SYSTEMS

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Abstract

The article examines the integration of artificial intelligence (AI) technologies into justice, public administration, and private law, highlighting the need to rethink traditional notions of legal personality, liability, and procedural guarantees. The study employs an integrative review of literature, comparative legal analysis of supranational and national regulations, formal-dogmatic analysis of AI legal personality and delictual capacity, content analysis of ethical codes, case studies on algorithmic systems in judicial and administrative processes, and scenario modeling of the "human–algorithm–state" partnership. The dual nature of AI in the legal system is identified: while interpretation dominates as a tool with increased autonomy, space is emerging for functional legal personality within delegated responsibility. Key interaction points are highlighted, including algorithmic rule of law, the right to non-automated decisions, audit and impact assessment, and explainability, alongside a lack of operational mechanisms for appeals and causal reasoning in AI-related cases. A three-level partnership framework is proposed, covering normative, ethical, and institutional dimensions, with a phased recognition model ranging from functional to limited civil and conditional subjectivity. The study demonstrates that effective AI integration requires simultaneous reinforcement of procedural guarantees and adaptation of liability regimes. Optimal implementation involves a cooperative model in which algorithms remain accountable,

explainable, and human-controllable. Recommendations include adopting a national charter on AI and law, establishing a register of high-risk systems, and creating independent centers for assessing AI's impact on national legal systems.

Keywords

Artificial intelligence, cybersecurity, law enforcement, legal regulation, legal relations.

Resumo

O artigo examina a integração das tecnologias de inteligência artificial (IA) na justiça, na administração pública e no direito privado, destacando a necessidade de repensar as noções tradicionais de personalidade jurídica, responsabilidade e garantias processuais. O estudo emprega uma revisão integrativa da literatura, análise jurídica comparativa de regulamentos supranacionais e nacionais, análise formal-dogmática da personalidade jurídica e capacidade delitual da IA, análise de conteúdo de códigos éticos, estudos de caso sobre sistemas algorítmicos em processos judiciais e administrativos e modelagem de cenários da parceria "humano-algoritmo-Estado". A natureza dual da IA no sistema jurídico é identificada: enquanto a interpretação domina como uma ferramenta com maior autonomia, está a surgir espaço para a personalidade jurídica funcional dentro da responsabilidade delegada. São destacados pontos-chave de interação, incluindo o Estado de direito algorítmico, o direito a decisões não automatizadas, auditoria e avaliação de impacto e explicabilidade, juntamente com a falta de mecanismos operacionais para recursos e raciocínio causal em casos relacionados com IA. É proposta uma estrutura de parceria de três níveis, abrangendo dimensões normativas, éticas e institucionais, com um modelo de reconhecimento faseado que vai da subjetividade funcional à subjetividade civil limitada e condicional. O estudo demonstra que a integração eficaz da IA requer o reforço simultâneo das garantias processuais e a adaptação dos regimes de responsabilidade. A implementação ideal envolve um modelo cooperativo no qual os algoritmos permanecem responsáveis, explicáveis e controláveis pelo ser humano. As recomendações incluem a adoção de uma carta nacional sobre IA e direito, o estabelecimento de um registo de sistemas de alto risco e a criação de centros independentes para avaliar o impacto da IA nos sistemas jurídicos nacionais.

Palavras-chave

Inteligência artificial, cibersegurança, aplicação da lei, regulamentação jurídica, relações jurídicas.

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Introduction

The relevance of the study is due to the exponential growth of the significance of artificial intelligence (AI) in the functioning of the legal system, which determines the transformation of established concepts of subjectivity, legal responsibility and mechanisms for the implementation of law. Machine learning technologies, automated decision-making and processing of large data sets are increasingly being implemented in the field of justice, public administration, forensics and contractual legal relations, which actualizes the need for conceptual rethinking of the fundamental categories of legal science (Rafanelli, 2022). At the same time, the legal doctrine of the vast majority of states demonstrates insufficient readiness for the systemic incorporation of such technologies: current regulatory legal acts do not regulate the legal responsibility of autonomous systems, and the concept of electronic legal personality continues to remain a subject of scientific discussion. The formulation of the research problem consists in determining the optimal ratio between the interpretation of AI as a tool that will assist a person in law-making and law-enforcement activities, and the potential possibility of granting it a limited status of a subject of legal relations within the framework of delegated responsibility.

Literature Review

In the scientific space, the issue of the legal nature of AI occupies a priority place in the context of the digital transformation of legal systems. Researchers Çami and Skënderi (2023). Getman et al. (2022), Orobets et al. (2025), argue for the need for proactive legal regulation of innovative technologies in relation to the pace of technological progress, since it is the legal system that acts as a guarantor of preserving the fundamental principles of justice, protection of human rights and the rule of law. Scientists emphasize that at the present stage, the dominant part of the world's legal systems treats AI as a tool, that is, an object of legal relations used by a person to achieve certain goals, and not as a subject of law. At the same time, the issue of distributing legal consequences for the damage caused by the actions of the algorithm remains uncertain.

Scientific research states the fragmentation and lack of systematicity of regulatory and legal support in the field of AI. In a number of works Rafanelli (2022) and Tavolzhanskyi et al. (2025), discusses a risk-based regulatory methodology, classifying AI systems by the level of potential danger to the legal sector. At the same time, the question of the sufficiency of such a risk-based approach to resolve conflicts between algorithmic decisions and fundamental human rights remains debatable. In particular, in cases where an autonomous system makes decisions with legal consequences (judicial, administrative, financial), control and appeal mechanisms remain insufficiently developed.

Researchers Beruashvili (2025), Ghannadi (2025), Petrovskyi et al. (2025) draw attention to the problem of legislation lagging behind technological development, which is typical for most countries. They state that the legal system traditionally operates according to a reactive model, responding to already formed phenomena, while the development of AI requires preventive, adaptive and dynamic regulation. Scientists justify the need to create a flexible legal architecture that would ensure the updating of norms without a radical change in legislation, but through subordinate regulatory acts, standards and ethical codes. However, the lack of a coordinated approach to the application of these regulatory documents in the context of ethical standards and legal practice is problematic.

A great deal of attention in the studies of Masoudi and Yarahmadi (2024), Poorhashemi (2024), Sarra (2025) is paid to the issue of legal personality of AI, which acquires both theoretical and practical significance. Scientists are discussing the possibility of recognizing an autonomous system as a bearer of rights and obligations, that is, granting it the status of an "electronic person". However, the fundamental question of the criterion of legal personality remains unresolved: the presence of will, consciousness and the ability to act with intention. Algorithms, even the most autonomous, do not have an internal intention, therefore, their subjectivity can only be fictitious, that is, constitute a legal construct necessary for the distribution of responsibility, and not for the recognition of an independent legal status.

Scientists Moretti and Zuffo (2025), Zhaltyrbayeva et al. (2025), indicate the possibility of considering AI as a new form of delegated responsibility, which involves expanding the

concept of agency, i.e. treating AI as a legal instrument acting on behalf of the subject. The question of the legal distinction between "algorithmic error" and "offense" remains unclear, as well as the possibility of applying the norms of tort or criminal law to the actions of autonomous systems.

In a report from IBA (2024), Gilani et al. (2023), there is a trend towards an interdisciplinary analysis of the legal status of AI. Research indicates that it is impossible to isolate legal systems from ethical and technological contexts. A model of "shared responsibility" is proposed, according to which the state, developers, users and independent supervisory bodies jointly ensure that algorithms comply with legal and moral standards. However, the model itself remains at the conceptual level, since there are no mechanisms for its implementation, especially within national legal systems, where there is a lack of independent structures for verifying algorithmic decisions.

To summarize, the authors can state that scientific research undoubtedly confirms the relevance of the researched issues and recognizes the integration of AI into the legal system as an objective process, but also forms the problem of the dichotomy of the status of AI in interaction with the law and legal regulations of the country.

The aim of the article is to substantiate the formats of interaction between AI and the legal system, in order to determine the principles of its transition to the status of a potential subject of legal relations.

Research Methodology

The methodological foundation of the study is based on an integrative approach that synthesizes general scientific, special legal and comparative methods for a comprehensive analysis of the phenomenon of AI integration into the legal system. The leading methodological principle is a systemic approach, based on the interpretation of AI as a component of a digital legal ecosystem in which a person, an algorithm, the state and legal institutions function and interact.

The dialectical method was applied, which made it possible to identify the evolutionary dynamics of the legal status of AI – from the object of technical regulation to the potential subject of delegated legal relations. The comparative legal method was used to study international regulatory acts: European Parliament & Council of the European Union (2024), OECD (2019), UNESCO (2021), European Commission (2022). This step provided the opportunity to expound on the differences between regulatory models.

The formal-dogmatic method provided an analysis of the categorical apparatus of "legal personality", "legal responsibility", "autonomy", which function in scientific discourse and legislative practice to determine the legal status of AI. The content analysis method was implemented during the processing of scientific publications and international documents, in particular reports of the European Parliament (Mayer & Boni, 2017) and the Council of Europe (Committee of Ministers, 2020). Additionally, the study applied a predictive method to model scenarios of the evolution of legal regulation of AI in Ukraine, taking into account global trends in the field of digital law. The overall methodological

configuration made it possible to analyze the state of the regulatory framework, but also to formulate the author's scientific and practical recommendations.

Results

Part 1. Algorithms and practices of combining and interacting AI, law and legal relations

On the threshold of the third decade of the 21st century, humanity found itself in a state of profound transformation of legal thinking, caused by the expansion of AI into the sphere of public administration, communications, economic interaction and judicial process. Algorithmization, which was initially considered only as a technological tool for optimizing routine operations, has turned into a complex system that forms new types of legal relations, modifies the traditional categories of the subject and object of law, changes the structure of legal responsibility and the principles of the rule of law. Modern law, reacting to the emergence of intellectual systems, is forced to expand its ontology, recognizing that AI algorithms not only implement human intentions, but also independently produce decisions that affect legal reality and social justice Getman et al. (2023).

The problem of combining artificial intelligence and law is inevitably related to the renewal of fundamental legal principles. Thus, the principle of the rule of law, in the classical sense, is enshrined in the CM/Rec(2020)1, states that any decision that affects human rights should be taken by a legitimate and accountable authority. In the context of AI, this principle takes on a new form, algorithmic rule of law, i.e. requirements that algorithms operate under supervision, comply with the principle of transparency and can be checked for bias or discrimination (Committee of Ministers, 2020).

According to the European Parliament & Council of the European Union (2016), citizens of the European Union have the right not to be subject to solely automated decision-making that has legal consequences (Article 22). This regulatory provision is one of the first regulatory recognitions of algorithmic autonomy as a potential source of human rights violations, and therefore requires the creation of human-in-the-loop mechanisms, namely human control over each critical stage of the functioning of AI. The authors also point to the Recommendation on the Ethics of Artificial Intelligence (UNESCO, 2021), which establishes four key principles for the ethical interaction between law and AI:

1) promoting human well-being;

2) ensuring transparency of algorithms;

3) guarantee of justice;

4) developer accountability.

Thus, AI ceases to be just a technical phenomenon, and it becomes a legal event that creates obligations, rights and legal consequences. Algorithmic norms do not replace legal ones, but form a new level of legal practice, through operational normativity, in which the legal requirement is implemented not through a declaration, but through the

structuring of data and behavioral models in the digital space. Practical models of interaction between law and AI are already enshrined in a number of international documents. For example, OECD Principles on Artificial Intelligence sets out five basic guidelines: inclusive growth, safety and fairness of systems, transparency and explainability, accountability and sustainability. These principles serve as a global ethical framework for countries developing their own AI legislation. They outline a clear approach according to which algorithmic activities should then be not only effective, but also socially acceptable (OECD, 2019).

Table 1. Critical points of interaction between AI and law

Critical point	Characteristics	Legal document	Implications	Application recommendation
Algorithmic rule of law	Require algorithms to operate under oversight, transparency, and bias checks	CM/Rec(2020)1	Ensures protection of human rights from automated decisions	Implement regular AI audits in government agencies
Protection against automated solutions	The right not to be subject solely to algorithmic decisions with legal consequences	GDPR (Art. 22)	-in-the-loop control to avoid discrimination	Develop appeal mechanisms against AI decisions
Ethical principles of AI	Promoting well-being, transparency, fairness and accountability	UNESCO	Forms operational norms where AI becomes part of legal practice	Integrate ethical codes into the development of AI systems
Assessment of high-risk systems	Ethical risk screening, discrimination testing and impact analysis	AI Act (EU)	Shifts the paradigm to the interaction of law and technology, with a focus on responsibility	Create national AI impact assessment centers

Source: compiled by the authors based on Committee of Ministers (2020), European Parliament & Council of the European Union (2016; 2024), UNESCO (2021)

In the format of legal relations, this means that the traditional paradigm "law – regulates technology" is changing to "law ⇔ interaction with technology". "AI-based" technologies are emerging in the law enforcement system. legal analytics systems", or algorithms that can predict court decisions, classify precedents, analyze legal risks. These processes have formed a completely new class of legal relations – algorithmic trust relations, in which the state delegates part of its legal powers to the AI system, but retains responsibility for the consequences of its actions. Special legal mechanisms are being developed for such situations: algorithmic audit, impact assessment, compliance-by-design. Within the framework of the AI Act, each high-risk system must undergo a compliance assessment, which includes ethical risk assessment, discrimination testing, and social impact analysis

(Popa & Pascariu, 2024). This means that the algorithm is included in the legal cycle as a "regulated sub-process", not as an independent actor, but as a structural part of the legal decision (Table 1).

However, the integration of algorithms into the legal system cannot take place without updating the institution of legal liability. International practice is gradually moving from the principle of "fault" to the principle of foreseeable risk, which implies that the operator or developer of an AI system is obliged to foresee the potential consequences of its activities and is liable even for indirect errors. This approach is reflected in the EU Liability project for Artificial Intelligence Directive, which proposes to introduce a simplified presumption of liability for suppliers of high-risk systems (European Commission, 2022; Bertolini, 2025). In theoretical terms, this means that law becomes a self-learning system, and a legal norm becomes a separate dynamic code that is constantly updated under the influence of information flows.

Part 2. Artificial Intelligence as a Subject of Law: Comparative Analysis and Prospects

The issue of the legal personality of AI is one of the most relevant in the legal theory of the 21st century. It reveals the limits of the anthropocentrism of law and raises the question of whether a human-created intellectual entity can be not only a tool, but also an independent participant in legal relations. In the article by Guitton et al. (2025), it is argued that modern discussions about the legal personality of AI go beyond the theoretical plane and are included in the political agenda of many states, primarily the EU and North America. These facts indicate a tendency towards a global legal revision of the concept of a legal subject, which was traditionally limited to a person and the legal entities created by him.

Legal personality in the classical sense includes legal capacity, capacity to act and tortious capacity. It is based on the ability of a subject to be aware of their own actions, to have will, interests and moral responsibility. Traditional law is based on anthropocentric logic, which was formed on the basis of human characteristics: emotionality, intentions, ability to understand consequences. That is why the main argument against recognizing AI as a subject of law is the "absence of something": consciousness, intentions, feelings. However, this does not exclude the possibility of legal recognition of AI based on analogy with the legal personality of legal entities or animals. The idea of a "fictitious subject" has long been used in law: a company or a state are considered persons in the legal sense, although they have neither a body nor consciousness (Barichella, 2023). This kind of formal mechanism has created the possibility of assigning rights and obligations to collective or non-physical entities, which opens the prospect of its application to autonomous artificial intelligence systems (Makedon et al., 2024; Bernaziuk, 2025).

In the report of the European Parliament's Committee on Legal Affairs, "Draft Report on Civil Law Rules on Robotics" states that the development of autonomous robots raises the question of creating a "new category of electronic persons" to grant legal status to the most complex systems. Although this document is not binding, it has set the

framework for further discussions in the EU, in particular within the framework of directives on the ethics of artificial intelligence and training (Mayer & Boni, 2017).

Hallevy (2010), who developed a model of criminal liability for AI, similar to the liability of legal entities. The EU Regulation on Artificial Intelligence (AI Act), approved by the European Parliament in 2024, enshrines the principle of "human accountability" and establishes a clear distinction: AI is an object of regulation, but not a subject of law. However, the law recognizes a high level of autonomy in decision-making for certain autonomous systems, which potentially creates the basis for a gradual conceptual evolution towards legal subjectivity (European Parliament & Council of the European Union, 2024).

In the document Law of War The US Department of Defense Manual emphasizes that the law of war applies only to individuals, not to weapons, even if they have the ability to make "legally significant decisions," such as selecting a target. This suggests that at the level of international humanitarian law, recognizing AI as a subject is currently impossible. At the same time, the document does not exclude the future evolution of interpretation if technologies reach the level of autonomous moral judgment (Office of General Counsel, 2015).

In 2017, Saudi Arabia granted symbolic citizenship to the robotic system Sophia, marking the first time a machine has been legally recognized as a subject. While the move was largely a publicity stunt, it demonstrates the potential of soft law to legitimize new forms of subjectivity. In China, where Artificial Intelligence Industry Development Plan (2017) and a set of norms within Cybersecurity Law and Personal Information Protection Law, the state recognizes AI as an object of administrative responsibility of the developer, but not as an autonomous participant in the law (Webster et al., 2017). At the same time, the concept of a "responsible algorithm" in Chinese doctrine is increasingly seen as a potential form of limited legal personality (Hakimi et al., 2025).

International law does not contain a universal category of "electronic person", however, discussions are underway within the UN to create *a Global Digital Compact,* a separate document that can regulate the interaction of humans and artificial intelligence in the legal field. Thus, as soon as society recognizes the feasibility of granting AI rights and responsibilities, this will become legally possible. An important precedent is also CM/Rec (2020)1 on the human rights impacts of algorithmic systems, where the principle of "shared" is defined "accountability" – or practices of collective responsibility of developers, users and the state for the behavior of algorithms (Committee of Ministers, 2020).

The authors propose to give legal recognition to AI as an entity through a series of the following levels:

1) Functional subjectivity – consolidation of limited legal capacity in the field of civil rights (conclusion of contracts, copyright on the results of AI's creative activity). *Example: in the USA,* the US Copyright Office confirmed in 2023 that works created by AI without human input are not protected, but the law allows for "co-authorship", which actually recognizes the agent role of the algorithm;

2) Autonomous legal personality – a hypothetical model in which AI can be a party to a contract or bear civil liability (similar to corporations). This would require the creation of a new category in national codes, possibly in the form of an electronic person;

3) Moral and legal subjectivity, as the highest level, is possible only if AI is endowed with elements of self-awareness or social ethics. At this stage, issues of "digital rights" of AI may arise, for example, the prohibition of its unjustified destruction or modification;

However, there are serious risks: first, it is the problem of liability, or who will bear the punishment in case of unlawful actions of AI; second, the threat of undermining the principle of human control, enshrined in many international norms; third, the issue of moral equality between man and machine, which can change the value foundations of law. Comparative analysis has shown that modern world law is gradually moving from categorical denial to cautious functional recognition of artificial intelligence as a participant in legal relations. Mechanisms similar to the legal personality of legal entities already create a legal basis for granting AI a limited status (Makedon et al., 2025). However, the lack of moral awareness and autonomous will makes AI an object of regulation rather than a subject in the classical sense. The future of the legal personality of AI depends on the development of cognitive technologies, public consent and political will of states.

Part 3. Ways of interaction, ensuring partnership and tolerance between AI and the country's legal system

AI is not the enemy of law, but rather its test, tool and co-creator. Today, there is a shift from the "law against technology" model to the "law in cooperation with technology" paradigm, where tolerance does not mean passive consent to the existence of digital autonomy, but a conscious recognition of its usefulness within a clearly defined regulatory framework. (Sasko et al., 2025).

The question of partnership between artificial intelligence and law is inextricably linked to understanding the very nature of law as a living, self-regulating system. Misch et al. (2025), indicate that the digital environment transforms law from a set of textual norms into a system of dynamic codes, in which algorithms become tools of legal practice, and not only objects of regulation. In this sense, law and AI enter into a relationship of functional symmetry: the first sets ethical boundaries, the second ensures the effectiveness of their implementation. According to the AI Act (Regulation (EU) 2024/1689), algorithmic systems can be integrated into the processes of legal proceedings, management or provision of administrative services, provided that the principles of transparency, accountability, explainability and human control (human-in-the-loop) are observed. This is embedded in a deep legal idea – AI should not replace a person as a moral subject, but should support his rationality, ensuring equality, impartiality and speed of legal processes (European Parliament & Council of the European Union, 2024).

Tolerance between AI and the legal system lies in the mutual recognition of boundaries: law recognizes the technical autonomy of the algorithm as a source of efficiency, and AI

recognizes the rule of law as the basis for the legitimacy of its actions. It is on this basis that the concept of cognitive partnership arises, in a model of cooperation between the human mind, which determines values, and machine intelligence, which ensures their implementation through analytical procedures (Organization for Economic Co-operation and Development, 2025).

International legal documents adopted over the past five years demonstrate that leading states and organizations are not limited to declarations on the safety of AI, but are creating the basis for its institutional inclusion in the legal ecosystem. Thus, Recommendation on the Ethics of Artificial Intelligence (UNESCO, 2021) declares that the purpose of regulation is to ensure the human-centered development of technologies, in which the autonomy of systems does not contradict human dignity and freedom. The document has already laid the foundations for tolerant interaction, but not through control or restrictions, but through trust, co-responsibility and adherence to ethical norms.

OECD (2019) identify five basic directions of development: (1) inclusive growth; (2) sustainable development; (3) transparency; (4) accountability; (5) orientation to human well-being. This vision forms the model of a "partnership algorithm" – a system that does not replace the law, but strengthens its ability to ensure justice (OECD, 2019). At the same time, CM/ Rec (2020)1 introduces the concept of "algorithmic accountability", according to which the state must provide mechanisms for verifying and appealing decisions made on the basis of artificial intelligence (Committee of Ministers, 2020). Thus, a dual system of protection is created: on the one hand, these are certain technological barriers that prevent abuse, and on the other, legal instruments that guarantee access to justice. Based on these documents, a general trend emerges: the interaction of AI and law should evolve from strict regulation to a partnership based on trust, predictability, and humanistic control.

In the context of the interaction of law and artificial intelligence, the concept of "tolerance" takes on a meaning different from the traditional understanding of interpersonal tolerance. Here the authors are talking about institutional tolerance, or the ability of the legal system to adapt to new forms of rationality, to recognize the existence of another, non-thinking subjectivity that operates according to the rules of calculation, not intuition (Meyers, 2025).

Tolerance does not mean compliance, but rather the intellectual maturity of the law, which allows it to accept algorithms as partners while maintaining moral guidelines. For example, when introducing predictive justice systems (Predictive Justice) in some EU countries, the state does not abandon the principle of judicial independence, but uses analytical models to reduce subjectivity in the interpretation of norms. This is a manifestation not of subordination of law to the machine, but of tolerant integration, in which the human factor corrects algorithmic logic.

In such a context, it is appropriate to mention Article 22 of the General Data Protection Regulation (GDPR), which guarantees a person the right not to be the subject of an exclusively automated decision that has legal consequences (European Parliament & Council of the European Union, 2016). Such a norm is a manifestation of institutional

tolerance: it recognizes the potential of AI, but at the same time ensures the possibility of appeal, supervision and human judgment. The law does not reject the algorithm, it coexists with it on the basis of control and respect for dignity (Adams Bhatti, 2025). The authors believe that the interaction between law and artificial intelligence should not occur in the plane of subordination, but in the form of cooperative regulation, where technology and law perform complementary functions. Such a model can be defined as integrative-tolerant, which should contain three levels:

1. Regulatory level – building a legal framework that recognizes the autonomy of AI, but sets limits on its use. This means adapting legislation (for example, within the AI Act or GDPR) to new forms of decision-making made with the help of machine learning, with the guarantee of human oversight.

2. Ethical level, through the development of codes of algorithmic conduct that establish moral principles for developers and users. This approach proposes to expand the concept of professional responsibility of lawyers and programmers, turning it into a form of shared ethical accountability.

3. Institutional level – creation of state and supranational structures that ensure monitoring and auditing of algorithms. This includes the formation of centers for assessing the impact of AI on human rights (AI Impact Assessment Centers), which carry out independent examination of the social risks of technologies (Figure 1).

The authors propose that every country integrating AI into its legal system develop a National Charter on Artificial Intelligence and the Law, which would include: partnership principles (human – algorithm – state); standards of ethical interaction; criteria for assessing algorithmic fairness; procedures for legal liability for the actions of autonomous systems.

To truly establish a partnership between AI and the legal system, it is necessary to implement a number of practical steps that will ensure a balance between innovation and legitimacy. The author identifies several key areas:

1. Algorithmic rule of law. Mechanisms should be established to verify algorithms that perform legal actions (for example, in the field of e-justice, customs control or public services). This would include independent certification of software, the creation of public registers of high-risk algorithms and the introduction of a mandatory "ethical license" for systems that affect citizens' rights.

2. Human-centric justice. The justice of the future must combine the analytical capabilities of AI with human moral judgment. The use of algorithms to analyze evidence or predict decisions is possible only if the model is fully transparent. The judge must see not only the conclusion of the algorithm, but also its logic, which implements the principle of the "right to be explained" enshrined in the GDPR.

3. Education and legal culture in the algorithmic era. In the training of lawyers, disciplines dedicated to digital law, ethics of technologies and regulation of AI should be introduced. This will allow to form a generation of lawyers who are able not only to interpret the law, but also to evaluate algorithms as social norms.

4. International cooperation. No country is capable of independently creating a universal model of partnership with AI, therefore, participation in intergovernmental structures is necessary, for example, in the Global Council on the Ethics of Artificial Intelligence (Global Partnership on AI), created at the initiative of the OECD. Such cooperation will allow harmonizing standards, sharing audit results, and creating a single legal infrastructure for accountability (Office of General Counsel, 2025; OECD, 2025).

Figure 1. Stages of convergence and ensuring interaction between artificial intelligence and the legal system of the state



Source: developed by the authors

Tolerance and partnership between law and artificial intelligence is not a short-term response to a technological challenge, but a new vector of evolution of legal civilization. In this process, legislators would do well to stop considering technology as a threat and start perceiving it as a co-creator of the rule of law, capable of ensuring accuracy, efficiency, and objectivity of law enforcement (Table 2).

Table 2. Directions for synchronization and development of interaction between AI and the country's legal system

Direction	Working principle	A decisive advantage	Challenges	Recommendations
Algorithmic rule of law	Verification and certification of algorithms for legal actions, including registers of high-risk systems	Ensures transparency and legitimacy of AI decisions	The difficulty of auditing complex models	Implement a mandatory ethical license for AI in public services
Human-centered justice	Integration of AI into judicial proceedings with mandatory human control and the right to explanation	Increasing efficiency and reducing subjectivity	Risk of bias in the data	Develop standards "right" this explanation " at the national level
Education and legal culture	Training lawyers in digital law and AI ethics	Formation of competent specialists for the algorithmic era	Insufficient infrastructure for education	Integrate AI disciplines into legal higher education institutions
International cooperation	Participation in global initiatives like Global Partnership on AI	Harmonization of standards and exchange of experience	Various national regulations	Join international AI ethics councils
Ethical integration	Developing codes for AI developers and users	Strengthening moral principles in technology	Defining universal ethical norms	Create a national charter on AI and rights

Source: developed by the authors

The author concludes that legal tolerance for AI is not a relaxation of norms, but their flexible expansion, taking into account the multiplicity of forms of mind and intelligence. The partnership between a person and an algorithm will expand the practice of creating a legal culture of co-responsibility, in which technology operates within the ethical code of law, and law in the rhythm of technological progress.

Discussion

The results of the study are generally consistent with the modern scientific concepts of Beruashvili (2025), Popa and Pascariu (2024), Sarra (2025), which focused on the need to implement AI in the legal sphere while adhering to the principles of anthropogenic control, accountability, transparency, and ethical responsibility of developers. Our study develops this concept, demonstrating that the incorporation of AI into the legal system

is not only a technological challenge, but also an ontological process within which law is transformed from a textual institution into a cognitive system capable of self-learning and predicting socio-legal risks.

At the same time, the concept of "institutional tolerance" proposed by us partially argues with the methodological approaches of Moretti and Zuffo (2025) and Rafanelli (2022), which interpret AI regulation mainly through the prism of ethical principles and risk-based supervision. Our position is that ethical principles should be operationalized through legal mechanisms – algorithmic audit, impact assessment, a certification system for high-risk systems, which concretizes the provisions of the OECD (2019) and Recommendation on the Ethics of Artificial Intelligence (UNESCO, 2021). In contrast to most scholars who limit themselves to declarative approaches to ethical regulation, our model enables the formalization of responsibility through algorithmic mechanisms. accountability and compliance-by-design, which ensured a transition from declarative principles to practical implementation.

Regarding the issue of AI legal personality, the results obtained partially correlate with the conclusions of Hallevy (2010), Barichella (2023) and Guitton et al. (2025), which assume the existence of intermediate forms of subjectivity with a variable degree of autonomy. In contrast to radical concepts of granting AI the status of an "electronic person", the authors propose the concept of functional legal personality or limited legal status, which allows us to determine the scope of legal powers and delegated responsibilities without violating the principle of anthropogenic accountability. Our position corresponds to the norms of the European Parliament & Council of the European Union (2024), which stipulates that only a person can act as the ultimate bearer of legal responsibility, while AI is treated as a regulated sub-process within the legal system. Thus, our study not only agrees with the leading trends of scientific discourse, but also expands the theoretical field, moving the interaction of AI and law from the plane of declarative principles to the plane of institutionally established procedures and legal responsibility.

Conclusion

The results of the scientific research show that the algorithmization of legal processes has determined the formation of a new paradigm of legal regulation, in which artificial intelligence functions as an integral component of the legal system, but does not eliminate its anthropocentric nature. It has been established that modern law is characterized by a gradual transformation from a normative to an operational form – "algorithmic governance", within which legal norms are implemented through information arrays, models and digital procedures. It was found that international regulatory acts form a legal field where algorithmic decisions are considered as a component of a regulated cycle of law-making activity. At the same time, the problems of determining the boundaries of responsibility for the autonomous functioning of AI, procedural audit of algorithmic systems and legal legitimacy of operational decisions made by systems without human participation remain insufficiently resolved.

The results of the comparative analysis show that modern law demonstrates an evolutionary trajectory from categorical denial to limited functional recognition of artificial intelligence as a participant in legal relations. It was found that the vast majority of states adhere to the concept of "human accountability", while creating space for legal experiments, in particular in the field of the institute of "electronic person". Analysis of national legislative initiatives confirmed that the functional legal personality of AI is implemented within the delegated responsibility of developers and users. The issues of the moral and legal status of AI, the parameters of its autonomy in the decision-making process, and the lack of a unified international model of legal personality capable of determining the optimal ratio between technical independence and legal accountability remain debatable.

The study demonstrated that effective interaction between the legal system and artificial intelligence is possible only on the basis of partnership, based on the principles of trust, transparency, explainability and anthropogenic control. An integrative-tolerant model is proposed, covering three levels: normative (adaptation of legislation to algorithmic processes), ethical (codes of responsible development) and institutional (audit and monitoring of AI decisions). The feasibility of creating a National Charter of Artificial Intelligence and Law, which would regulate the standards of ethical interaction and legal liability, is argued. The conclusion is formulated that legal tolerance of AI does not imply a weakening of control mechanisms, but means a flexible expansion of the legal space, which recognizes technological rationality as an element of a new humanistic digital legal order.

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PERSONAL DATA SOVEREIGNTY IN THE DIGITAL AGE: A COMPARATIVE ANALYSIS OF GLOBAL AND DOMESTIC REGULATORY FRAMEWORKS

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Abstract

In today's society, the number of companies collecting and processing personal data is growing, which poses a threat to the security of confidentiality and the security of the human right to privacy. That is why the role of legislative regulation of data privacy protection is growing. The study aimed to compare domestic legislative documents with European and American norms in personal data protection and to identify trends in the country's legal regulation of data privacy. It used bibliographic, induction-deduction, quantitative-comparative, trend, comparative-logical and graphical methods to achieve this goal. The results revealed the need to improve regulatory documents on personal data protection, especially for users of Internet resources. The problem of regulations exists in both Ukrainian and international law. The study has revealed similarities between the basic principles of the Law of Ukraine and the GDPR, but the liability in Ukraine is less than in Europe. A growing trend has been identified: in recent years, the number of court decisions on violations of personal data protection has increased significantly, and according to statistical forecasts, it will continue to grow. At the same time, the structure of court decisions showed that administrative, civil and criminal decisions predominate among the decisions. Hence, most cases relate to disseminating and processing data by public services.

Keywords

Law of Ukraine, personal data, confidentiality, privacy protection, consumer privacy, trends, court decisions.

Resumo

Na sociedade atual, o número de empresas que recolhem e processam dados pessoais está a crescer, o que representa uma ameaça à segurança da confidencialidade e ao direito humano à privacidade. É por isso que o papel da regulamentação legislativa da proteção da privacidade de dados está a crescer. O estudo teve como objetivo comparar documentos legislativos nacionais com normas europeias e americanas em matéria de proteção de dados pessoais e identificar tendências na regulamentação legal do país em matéria de privacidade de dados. Para atingir esse objetivo, foram utilizados métodos bibliográficos, de indução-dedução, quantitativos-comparativos, de tendências, comparativos-lógicos e gráficos. Os resultados revelaram a necessidade de melhorar os documentos regulamentares sobre a proteção de dados pessoais, especialmente para os utilizadores de recursos da Internet. O problema da regulamentação existe tanto no direito ucraniano como no direito internacional. O estudo revelou semelhanças entre os princípios básicos da Lei da Ucrânia e o RGPD, mas a responsabilidade na Ucrânia é menor do que na Europa. Foi identificada uma tendência crescente: nos últimos anos, o número de decisões judiciais sobre violações da proteção de dados pessoais aumentou significativamente e, de acordo com as previsões estatísticas, continuará a crescer. Ao mesmo tempo, a estrutura das decisões judiciais mostrou que as decisões administrativas, civis e criminais predominam entre as decisões. Portanto, a maioria dos casos está relacionada com a divulgação e o processamento de dados por serviços públicos.

Palavras-chave

Lei da Ucrânia, dados pessoais, confidencialidade, proteção da privacidade, privacidade do consumidor, tendências, decisões judiciais.

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PERSONAL DATA SOVEREIGNTY IN THE DIGITAL AGE: A COMPARATIVE ANALYSIS OF GLOBAL AND DOMESTIC REGULATORY FRAMEWORKS

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Introduction

In the era of technological progress, when digitalisation is being introduced into all industries and areas of activity, the issue of personal data protection deserves special attention. As personal data is used for various processes, every citizen has the right to protect personal data that may be misused. Today, the data that needs to be protected includes the confidentiality of consumer information, financial transactions, biometric data, health, education, and employment (Solove & Schwartz, 2020). Personal data protection legislation varies from country to country, but it is important because it can even threaten national security.

Despite the regulatory documents in the field of personal data privacy, there is a problem with their protection and confidentiality. Moreover, the threat of violating citizens' rights to their data security has been growing in recent years. This is due to technological progress and the increasing data distribution in the digital space among various industries. As a result, the cybersecurity system cannot fully control the protection of personal data, which individuals or companies mainly use.

Aim

The work aimed to compare domestic legislative documents with European and American standards in personal data protection and to identify trends in the legal regulation of data

privacy in Ukraine. To achieve this goal, the study set the following objectives: to compare the Law of Ukraine on Personal Data Protection with the European Union's General Data Protection Regulation (GDPR) and the US California Consumer Privacy Act (CCPA); to assess the effectiveness of the application of the Law of Ukraine in practice by analysing the number of court decisions of the Unified State Register of Court Decisions; to forecast changes for the next 5 years based on the analysis of trends in the number of court decisions from 2010 to 2024 with the query "personal data protection"; to study the structure of court decisions on violation of the CCPA.

Literature review

Today, people actively use information technologies, such as social networks and online shopping sites, in their daily lives. At the same time, the growing digitalisation of the economy has led to low personal data protection and privacy (Aljeraisy et al., 2021). Social media and e-commerce site developers deal with sensitive data that needs to be protected from a human rights perspective. Thus, information technology legislation aims to protect data privacy while being linked to substantive and criminal justice (Lloyd, 2020; Baranovska, 2024). A threatening area of digitalisation is digital identification through face recognition. Although this step towards creating a digital ecosystem increases the possibilities of electronic services for the population in the country, it brings new challenges to protecting information privacy (Bulgakova & Bulgakova, 2023).

One of the challenges to data privacy protection is using artificial intelligence, which can carry risks of information leakage (Zhukevych, 2024). Makedon et al., 2020) highlights the risk of big data leakage of patients' health information from healthcare facilities. AI programmes are in the hands of individuals who cannot ensure high personal data protection. The leakage of such information can pose a threat related to de-identification and anonymisation, which, when applied to certain AI algorithms and techniques, can pose risks, especially for patients under private care. Concerns about the security of medical data have also increased with the widespread use of mHealth applications by people with various diseases, as the applications contain different software and may carry risks of data leakage (Nurgalieva et al., 2020).

In general, the issue of health data privacy is regulated in the United States by the Food and Drug Administration (FDA) and the Health Insurance Portability and Accountability Act (HIPAA), which emphasises the confidentiality of health data. However, recent studies have criticised these documents for excessive access to data (Arora, 2019). Instead, the European Union's General Data Protection Regulation (GDPR) adopted in 2018 in Europe and the California Consumer Privacy Act (CCPA) adopted in 2020 in the United States have become new regulatory documents that regulate the activities of online services and healthcare organisations. These documents protect the right of consumers to know how and where their information is collected, to whom it is shared, and by whom it may be used (Zuraw & Sklar, 2020). However, these two regulations differ in their approaches to personal data protection. The European model focuses on data protection in all areas by default, i.e., when collecting, processing and transmitting data of any kind, obtaining

permission to use personal data is necessary (Hrytsak et al., 2025; Yermachenko et al., 2023).

The California model is based on a sectoral approach, meaning that it is regulated differently depending on the area of activity - medical, financial, educational, or commercial. Moreover, in the California model, data can be used at the discretion of the data collector unless prohibited by the personal data owner and other rules (Chander et al., 2020). From this point of view, citizens should be aware of their data protection issues. For this purpose, the authors recommend simplifying control over the circulation of consumers' data by creating icons and links in applications that would allow consumers to quickly refuse to sell or transfer their data to companies (Habib et al., 2021).

The privacy violation of medical data obtained from fitness bracelets and various applications for monitoring patient health remotely in outpatient settings has prompted the creation of legislative documents in various states. For example, in 2023, the Washington My Health My Data Act, New York State Assembly Bill 2023-A3007C, and other federal laws, such as Nevada's Consumer Health Data Privacy Act, Connecticut Data Privacy Act, California Confidentiality of Medical Information Act, came into force, which prohibit geofencing within 1,750 feet of any healthcare facility, that may be of interest to the consumer and prohibiting the use of any data from medical devices about a person's health status by third parties for marketing products or facilities that meet the health needs of users (Steffen, 2024).

That is why important aspects of legal regulation of artificial intelligence in cybersecurity are transparency and clarity of algorithms, protection of data privacy, and avoidance of injustice and bias (Rodrigues, 2020). The authors also emphasise the need for continuous improvement of artificial intelligence technologies, and to strengthen the legal context, they recommend improving accountability and liability for the possibility of harmful impact. After all, more companies are using personal data, even though only one was granted access. This indicates that users are unaware of the possibility of their data being sold, hacked or leaked to third parties that may pose a real threat. Moreover, various modern devices, from thermostats to fitness bracelets and social media to dating apps, pose a danger (Klosowski, 2021).

The issue of protecting consumers' data has become increasingly important as a result of the growing use of digital technologies. Accordingly, companies collect consumer data to identify business weaknesses, personalise advertising, and improve the quality of services. Companies can request customers' locations and receive personal data about consumers, which must be protected from hacking, information leaks, and privacy violations. Thus, businesses face a new challenge of increasing responsibility for consumer data security. As for consumers, surveys indicate that users have low confidence in the ability of companies to store their data, so they try to provide minimal information about themselves. Moreover, consumers are more likely to choose companies with a good reputation for protecting their personal data and customer base (Anant et al., 2024). Another aspect is the database of big data collected by artificial intelligence from comments, transactions, and physical movements, which should ensure privacy based on guarantees of compliance with data privacy laws, anonymisation, and

pseudonymisation. Such an approach will not improve data protection in general but will only reduce risks based on compliance with the GDPR as the gold standard for cybersecurity (Andrew & Baker, 2021).

Another aspect is regulating data collection from vulnerable populations, namely children who actively use digital technologies and are unaware of the risks of providing personal data. In order to protect the data of children under 13, the Children's Online Privacy Protection Act (COPPA) was developed, which requires mandatory parental or guardian permission to collect data from children under 13. At the same time, there is little research on children's media literacy and the harms associated with data privacy violations on the Internet (Stoilova et al., 2021).

The issue of data privacy has become more acute with the onset of the COVID-2019 pandemic, which has increased the level of digital unfreedom in the interests of public health. After the pandemic, the appropriateness of such restrictions was rejected, so the focus was on initiating digital freedom, which includes control over personal information, protection from surveillance, respectful treatment of personal data and the right to bodily autonomy (Małagocka, 2024; Makedon et al., 2024). The pandemic has also led to a significant increase in remote economic activity, resulting in a growing amount of data in the digital environment. The industry has appreciated the benefits of changing the activity vector according to demand based on behavioural analysis and personal preferences. Thus, the industry's desire to acquire more data has led to risks of misuse, which violates the principles of democracy and hurts the emotional health of the population (Hartzog & Richards, 2020).

After analysing the literature, it was found that personal data protection is relevant due to the growing level of digitalisation in society (Petrovich, 2025; Rosales, 2025; Ilychok et al., 2023). This has led to the search for new legal documents and the improvement of existing ones to ensure the protection of privacy and confidentiality of information. Nevertheless, the existing regulatory laws and acts do not show significant effectiveness, encouraging a detailed analysis of the existing legal documents on personal data protection.

Methodology

To achieve the objectives, the study used the bibliographic, induction-deduction, and logical comparison methods to reveal the main provisions of the legislative documents of the Law of Ukraine on Personal Data Protection, the European Union's General Data Protection Regulation (GDPR), and the California Consumer Privacy Act (CCPA). A graphical method to visualise the results of the analysis of the Unified State Register of Court Decisions for the query "personal data protection" from 2010 to 2024 was applied. The trend analysis is used to identify trends in court decisions in personal data protection and forecast them. The research analyses the structure of court decisions in personal data protection cases from 01.01.2024 to 05.12.2024 by the form of proceedings.

Results

In Ukraine, personal data protection is regulated by the Law of Ukraine On Personal Data Protection No. 2297-VI dated 01.06.2010. The law regulates the processing of personal data in automatic and non-automatic modes, which is aimed at preserving the rights and freedoms of individuals to privacy. Comparing the main provisions of the Ukrainian law and the GDPR, we found standard features of the universality of the law, which applies to all industries. At the same time, the CCPA is concerned with protecting the personal data of buyers and users of websites. The main differences between the Law of Ukraine on Personal Data Protection, the GDPR and the CCPA are presented in the table below.

As can be seen from the table, the Law of Ukraine has many similarities with the GDPR, is universal and has many restrictions. Nevertheless, the law does not contain any provisions for the processing of data of vulnerable citizens, such as children and people with disabilities. The European and Ukrainian regulations apply to companies and do not consider the threats of online data collection. At the same time, the California document focuses on data collection in the online space, which requires increased attention in the current environment. California's law is more concise and easier to understand for consumers, with the primary goal of making consumers aware of the dangers of the misuse of personal data and the ability to influence the dissemination and use of data through a simplified procedure. The laws also differ in terms of their scope. The Ukrainian law applies to companies operating in Ukraine and using citizens' data, while the GDPR applies in the EU and beyond if companies operate within the EU. The GDPR is universal and binding for EU member states, but in addition to the provisions of this regulatory document, the internal laws of EU member states are taken into account. The data protected by law differs. Ukrainian legislation, for example, has a longer list of data that is publicly available due to the operation of laws on corruption and tax violations. Ukrainian and European legislation provides for restrictions on biometric, ethnic, religious, and socio-cultural data, while the California Act has no such restrictions. The degree of liability also differs, which is more straightforward and transparent in the California document. At the same time, the European and Ukrainian laws require lengthy proceedings and the possibility of hefty fines. In general, these three documents have a common goal of preserving the human right to privacy, but they need to be improved, as they do not provide adequate protection (Makedon et al., 2025).

In this study, we analysed the status of court cases requesting "personal data" and determined their dynamics and structure. To achieve the goals, we reviewed cases in the Unified State Register of Court Decisions, which is publicly available. Figures 1 and 2 present the dynamics and trend of the number of court decisions for the period 2010-2024.

As can be seen from the figures, since adopting the Law on Personal Data Protection, the number of court decisions requesting "personal data protection" has increased yearly, indicating a positive experience of applying the law. We analysed the trend of changes in the number of court decisions for 2010-2024 with the request for "personal data protection". We found an increase in a polynomial relationship with a probability of further growth of R=0.9388 for the next 5 years.

Table 1. Key features of the Law of Ukraine on Personal Data Protection, GDPR and CCPA

Characteristics	The Law of Ukraine on Personal Data Protection	General Data Protection Regulation	California Consumer Privacy Act
The document applies to	Companies that collect and process personal data, including the owner, manager of personal data and a third party. The law does not apply to individuals acting for personal, journalistic, or creative purposes that do not violate the rights to respect for privacy and freedom of opinion.	All companies and institutions operating within the European Union, except those that process data for criminal, administrative liability and public order protection. It does not apply to an individual who carries out activities to meet personal or household needs.	Social networks, brokerages, and large companies collect the personal data of Californian residents. Companies that collect information from at least 50,000 California residents or businesses Companies with annual gross revenue exceeding $25 million Companies that receive 50% of annual revenue comes from the sale of personal data of Californian residents. California residents, even if they are located in other states. Persons who are temporarily or transiently in the state.
Legally regulated and restricted data	Data containing information with confidential content. The data specified in the declaration of a person performing the functions of state administration and local self-government, including the receipt of state funds and official property, are not included. The data of persons with tax debts are also excluded. The data on religion, race, ethnicity, biometric, genetic, and ideological data are subject to restrictions.	Name Identification number Location. Economic, social, political, cognitive, behavioural, and physiological factors can directly or indirectly identify a person. Data is subject to restriction: Religion Ethnicity Sexual preferences Biometric data Genetic characteristics	Names, pseudonyms Postal addresses Accounts Social insurance policy Passport details Driving licence Biometric data Geolocation Purchase history Information on education that is not public Information about employment
Consent to the processing and sale of personal data	It is mandatory to indicate the purposes of data collection and processing. If the purposes change, the subject's consent is required. Without consent, data may be processed for the purposes of national security, economic well-being, and human rights.	Required by default. Consent must be in a separate document written in clear language. The subject has the right to withdraw consent at any time. Children under the age of 16 must provide permission from a parent or guardian.	It is not required except for minors over 13 years of age. Parental or guardian permission is required for children under 13.
Special features	The law provides for the right to request information on the processing of personal data within 30 days, to request the destruction or modification of one's data, and to withdraw consent to data processing.	Processing security is provided, which includes data encryption, the use of pseudonyms, the ability to recover data after technical errors, and periodic checks of technical equipment.	Ability to prohibit the sale of personal data in one click

Responsibility	The Ukrainian Parliament Commissioner for Human Rights and the courts control the law's implementation. Based on complaints or notifications, the Commissioner has the right to inspect personal data owners or managers, with the possibility of prohibiting the processing of personal data or imposing administrative liability in case of violations.	The severity, specificity, level of damage and duration of the damage impose the amount of the administrative fine. In case of violation of the duties of a controller, operator, monitoring or certification body, the fine may not exceed EUR 10 million or 2% of the company's annual revenue. For other violations, including consent violations, subject rights, and data transfers to a third party or country outside the EU, a fine of up to EUR 20 million or 4% of the firm's annual revenue is provided.	From $100 to $750 per consumer for a data breach that caused damage. USD 2,500 for an unintentional breach. 7500 USD fine for intentional violation

Source: compiled by the author based on the Law of Ukraine on Personal Data Protection, GDPR, CCPA.

This trend emphasises, on the one hand, the importance of the law and its effectiveness and, on the other hand, the growing demand of citizens for the protection of their data and awareness of their rights. Additional analysis of court practice in the field of personal data protection indicates the need not only for quantitative measurement, but also for in-depth qualitative interpretation of the decisions adopted, since it is the content of the courts' legal positions that allows assessing the real effectiveness of legislative norms and identifying existing gaps. In particular, a number of administrative cases have revealed a tendency toward broad interpretation of the powers of state bodies in accessing personal data, which sometimes leads to restrictions on an individual's right to privacy. In civil disputes, there is often a low level of public awareness of protection mechanisms, which indicates a need to improve digital literacy. In criminal proceedings, a key problem is the lack of established practice in applying sanctions for the illegal dissemination of personal information.

In order to determine which articles of the Law on Personal Data Protection appear in court decisions most often, we analysed the structure of court decisions depending on the form of proceedings in 2024. The structure is shown in Figure 3. As can be seen from the graph, the most frequent decisions concerned administrative, civil and criminal proceedings. Civil and administrative rulings mainly concerned the request for personal data by public authorities, including social services and border services. There were also lawsuits against the migration service regarding the change of personal data. Criminal cases also concerned law enforcement agencies' requests for personal data under Articles 14 and 16.

Figure 1. Court cases with a request for the Law on Personal Data Protection

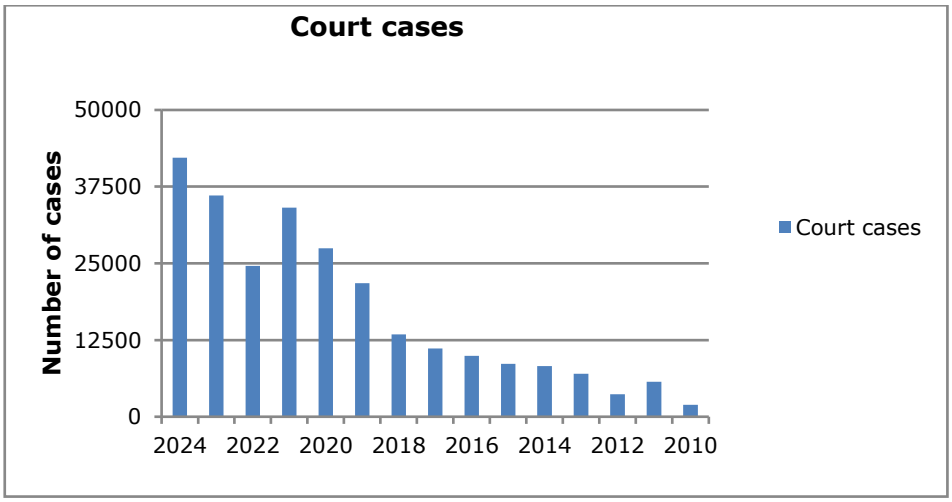
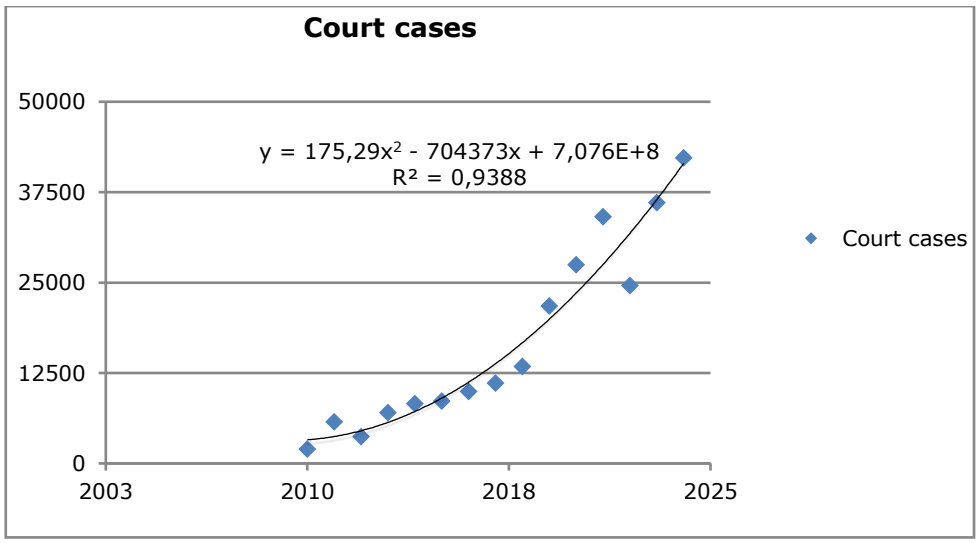
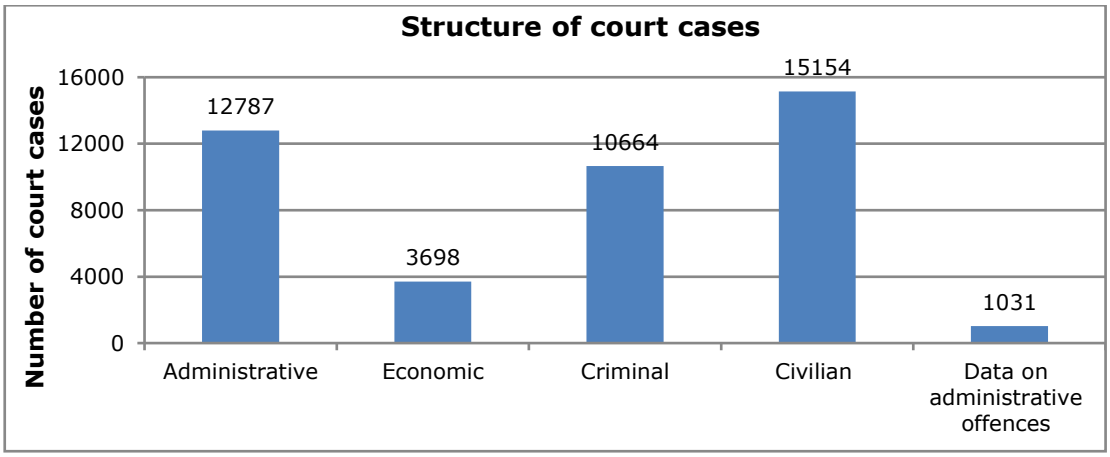


Figure 2. Dynamics of court cases with a request for the Law on Personal Data Protection



A systematic review of the impact of new technologies on the legal regulation of personal data protection highlights a number of fundamental challenges. The use of artificial intelligence in the processing of large amounts of information creates the risk of automated decision-making without proper control and transparency of algorithms, which can lead to discriminatory practices and violations of the principles of fairness. Biometric technologies, in particular facial and fingerprint recognition, pose a new level of threat, as unlike passwords or codes, such data cannot be changed in the event of a leak. The Internet of Things complicates legal regulation, as billions of devices collect sensitive information about users' behavior and health, which goes beyond the traditional approach to personal data.

Figure 3. Structure of court cases by form of proceedings



The research has revealed the need to improve regulatory documents on personal data protection. The number of companies collecting personal data is growing. The problem of legislation in this area concerns both Ukrainian and international law. Analysing the Law of Ukraine and modern European and American regulatory documents revealed more remarkable similarities with European norms. However, the responsibility in Ukraine is less than in Europe. Nevertheless, the number of court decisions on personal data protection violations has increased significantly in recent years, and according to statistical forecasts, it will continue to grow. Most cases relate to the dissemination and processing of data by public services, which still indicates low public confidence in the law. However, the threats to citizens are increasing in online information collection.

It should also be emphasized that qualitative analysis of judicial practice in the field of personal data protection is no less important than quantitative tracking of trends, as it allows for the identification of underlying problems in law enforcement and contradictions in the interpretation of norms. A study of specific legal positions of courts demonstrates a low level of unification of approaches, which necessitates the harmonization of national legislation with European standards. Such an approach will contribute to improving the effectiveness of law enforcement practices and lay the foundation for Ukraine's full integration into the digital legal space of the European Union.

Discussions

This research has revealed similarities between the personal data protection laws of Ukraine and the EU, but in the digital age, the legal innovations of the California Act are relevant. As the risks for users of social networks and websites are increasing. Balai and Horlopolov (2024) emphasised the increase in the amount of data processed due to the growing role of digitalisation in the economy. The authors also emphasised the importance of digital analytics, namely Privacy-Centred Analytics, for securely processing users' data in compliance with legal regulations. Padden and Öjehag-Pettersson (2024)

identified three threats of digitalisation to personal data: threats to elections through manipulation, discrimination through automated decision-making, and threats to democracy through pervasive surveillance. The authors emphasised the imperfections of the GDPR in regulating profiling and the anti-democratic digitalisation model. Numerous studies have focused on the threats to data processing, online transactions, the risk of data breaches, and inadequate privacy policies (Mannan, 2024).

Having analysed the number of court decisions requesting personal data protection, we found a progressive increase in cases that testify to applying this law and its active implementation in public life. Docksey and Hijmans (2019) emphasised the importance of court decisions as a factor of influence on society, which stimulates action within the framework of this law, using the example of three high-profile cases of violations of personal data protection: Digital Rights Ireland, Google Spain and Schrems. Having determined the structure of decisions by the form of proceedings, we found that the Law of Ukraine "On the Personal Data Protection" is used mainly by state authorities to ensure public order, justice, and social standards is used mainly by state authorities to ensure public order, justice, and social standards (Varenia, 2024). At the same time, they found a low number of decisions on violating individuals' data, including on social networks and the Internet. In the literature, the authors also emphasise the low level of coverage of personal data rights violations on the Internet, namely the lack of mechanisms to influence the Internet of Things (Karale, 2021). The authors also emphasise the lack of effectiveness of existing legislative initiatives, namely the Electronic Communication Privacy Act, the Health Insurance Portability and Accountability Act, and the Fair Information Practice Principles, and recommend the creation of new laws to implement the protection of personal data of Internet users. Another aspect of the imperfection of privacy laws is the requirement to prove harm in court, which reduces liability for violations of rights (Citron & Solove, 2022).

Conclusions

This research has revealed the relevance of personal data protection and the need to improve legislation. When comparing the Ukrainian Law on Personal Data Protection, we found similarities with the European GDPR, which consisted of the universality of the law, the requirement of consent to the processing of personal data by default, the data to be protected and the approach to liability. Instead, the study found a low level of effectiveness of personal data protection on the Internet, which could be improved by applying some provisions of the CCPA. The article reveals an increase in the number of court decisions on personal data protection requests in Ukraine in recent years. However, the structure of court decisions is dominated by criminal, administrative and civil cases, which mostly request personal data in the interests of public authorities.

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Conflicts of Interests

The authors declare no conflict of interest.

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INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS DURING THE WAR IN UKRAINE

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Abstract

Russia's full-scale war against Ukraine has become an unprecedented challenge for the international community and international humanitarian law, clearly demonstrating the limits of its effectiveness in a hybrid armed conflict. The relevance of the topic is due to the need for a legal assessment of the massive human rights violations recorded in Ukraine, as well as the search for international mechanisms to bring the perpetrators to justice. The purpose of the study is to analyze violations of international humanitarian law during the war in Ukraine. The theoretical basis of the study is the provisions of public international law, the Geneva Conventions, the Additional Protocols, the Rome Statute and the latest initiatives to establish a Special Tribunal. The study analyzed the facts of violations of the laws and customs of war, systematized the most resonant crimes against civilians and critical infrastructure, and identified signs of genocide, sexual violence, illegal deportation of children, torture and nuclear blackmail. The author substantiates the need to update international humanitarian law to take into account the methods of hybrid warfare. The key barriers to bringing to justice the top military and political leadership of the Russian Federation are identified. The importance of establishing a Special Tribunal for the crime of aggression and the International Commission on Claims as instruments for restoring justice is systematically outlined. The practical

significance of the results obtained is to develop recommendations for improving the legal regulation of hybrid warfare, as well as to formulate an international strategy of accountability for the crime of aggression.

Keywords

Administrative and legal protection of rights, administrative proceedings, international humanitarian law, crime of aggression, special tribunal.

Resumo

A guerra em grande escala da Rússia contra a Ucrânia tornou-se um desafio sem precedentes para a comunidade internacional e o direito internacional humanitário, demonstrando claramente os limites da sua eficácia num conflito armado híbrido. A relevância do tema deve-se à necessidade de uma avaliação jurídica das violações maciças dos direitos humanos registadas na Ucrânia, bem como à procura de mecanismos internacionais para levar os perpetradores à justiça. O objetivo do estudo é analisar as violações do direito internacional humanitário durante a guerra na Ucrânia. A base teórica do estudo são as disposições do direito internacional público, as Convenções de Genebra, os Protocolos Adicionais, o Estatuto de Roma e as últimas iniciativas para estabelecer um Tribunal Especial. O estudo analisou os factos das violações das leis e costumes da guerra, sistematizou os crimes mais ressonantes contra civis e infraestruturas críticas e identificou sinais de genocídio, violência sexual, deportação ilegal de crianças, tortura e chantagem nuclear. O autor fundamenta a necessidade de atualizar o direito internacional humanitário para ter em conta os métodos da guerra híbrida. São identificadas as principais barreiras para levar à justiça os principais líderes militares e políticos da Federação Russa. A importância de estabelecer um Tribunal Especial para o crime de agressão e a Comissão Internacional de Reclamações como instrumentos para restaurar a justiça é sistematicamente descrita. O significado prático dos resultados obtidos é desenvolver recomendações para melhorar a regulamentação jurídica da guerra híbrida, bem como formular uma estratégia internacional de responsabilização pelo crime de agressão.

Palavras-chave

Proteção administrativa e jurídica dos direitos, processos administrativos, direito internacional humanitário, crime de agressão, tribunal especial.

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INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS DURING THE WAR IN UKRAINE

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Introduction

In the 21st century, international humanitarian law faces many challenges due to the transformation of the nature of armed conflicts, the emergence of new types of weapons, unmanned systems, cyberwarfare and the growing number of conflicts in which it is difficult to identify clear parties and front lines. In such circumstances, the effective use of IHL principles requires not only proper legal interpretation but also practical implementation at the level of military command (Berdnik & Pylypenko, 2024; Sotula & Piątkowski, 2024).

Researchers note that in hybrid warfare, traditional mechanisms for protecting civilians are insufficient (Antouly, 2019; Crawford et al., 2017; Winaldi & Setiyono, 2022).

Russia's full-scale invasion of Ukraine has become not only a military but also a deep legal crisis for the entire international community. Violations of international humanitarian and human rights law, which were previously perceived as exceptions, have become systemic (United Nations, 2024).

The relevance of the topic is due to the need for a legal assessment of the massive human rights violations recorded in Ukraine, as well as the search for international mechanisms to bring the perpetrators to justice. There is a problem not only of legal qualification of crimes, but also of an effective mechanism for bringing perpetrators to justice at both the political and military levels. In this context, international humanitarian law faces the challenge of adapting to a new form of warfare – hybrid aggression.

The purpose of the study is to analyze violations of international humanitarian law during the war in Ukraine.

Literature review

The current views of scholars indicate a growing attention to IHL in the context of the war in Ukraine and in the retrospective of previous conflicts. A significant part of the literature is devoted to the analysis of IHL violations during the wars in the Balkans, Iraq, and the current conflict between Israel and Hamas.

Bartolini (2005) in his study compares the application of IHL during the US operation in Iraq in 1991 and 2003. The author notes violations of the principles of proportionality and distinction. Similar attention is paid by Dinstein (2002), who emphasizes the difficulty of determining the military expediency of air strikes. Byron (2010) notes that the absence of the criterion of "excessive civilian casualties" causes difficulties in law enforcement.

The application of IHL in the war between Israel and Hamas was studied by Schmitt (2022), who emphasized the problems of target verification and the need to assess the impact on civilians in an asymmetric conflict.

In the context of the war in Ukraine, the work of Sotula and Piątkowski (2024) deserves special attention, in which the authors analyze Russia's use of strikes against Ukrainian infrastructure through the prism of proportionality and necessity.

Hayashi (2023) draws attention to the criterion of a "smart commander" in the context of mistakes in combat decision-making. Kreß (2024), in turn, focuses on the crime of aggression as a legal basis for bringing the Russian leadership to justice. However, Kovalchuk (2024) points out that practical implementation is impossible due to political barriers.

Particularly noteworthy is the work of Collins et al. (2023), in which the authors examined in detail the fighting in Gostomel as a key episode in the outbreak of a full-scale war. Additional legal depth is brought by Marcinko (2019), who analyzes the normative approach to the conduct of hostilities.

In the Ukrainian discourse, the studies by Zamryga (2022) and Vasyliev (2025), which analyze the challenges of IHL in the context of hybrid warfare, are important. In general, a number of sources (Boogaard, 2023; Berdnik & Pylypenko, 2024; Jovanovski, 2021; Mauri, 2022) raise the problems of weapons technology development and the need to adapt IHL to modern realities: autonomous systems, drones and mixed civil-military zones.

Research methods

The study uses a combination of general scientific and special legal methods. The method of analysis was used to study the provisions of IHL and the legal acts regulating war crimes. The method of systematization was used to classify the recorded human rights violations by the elements of international crimes. The method of generalization was used

to draw conclusions about the need to update legal mechanisms. The empirical analysis was applied to the registered facts of violations of IHL in Ukraine, as well as to the data from official reports of Ukrainian and international organizations.

Results and Discussion

It is worth starting with what international humanitarian law is and what it means in modern international conflicts. International humanitarian law is a system of international legal norms that regulates the rules of armed conflict by striking a balance between military necessity and humanity, with the aim of limiting the means and methods of war and protecting persons who are not or have ceased to be involved in hostilities. By its very nature, IHL in general and each of its rules in particular is a compromise between two opposites – humanity and military necessity. IHL is possible to the extent that a balance between them is achieved (Kozorog et al., 2024). The main purpose of IHL is to limit the means and methods of warfare that can be used by parties to a conflict, as well as to ensure the humane treatment of persons who are not or have ceased to be involved in hostilities.

International humanitarian law applies only to armed conflicts; it does not apply to internal tensions or disturbances, such as individual acts of violence. The law applies only after the outbreak of a conflict, and then equally to all parties, regardless of who started the hostilities (ICRC, 2004).

In general, IHL encompasses all norms of international law that establish minimum standards of humanity and must be observed in any situation of armed conflict. It is important to clarify that international humanitarian law is one of the most effective tools that the international community has in its so-called “arsenal” to ensure security and respect for honor and dignity during war. Everything has its limitations, and war is no exception, so IHL seeks to ensure that humanity is preserved even during war and armed conflict.

A distinctive feature of IHL among other fields is that it does not regulate the legality of the fact of warfare itself, as this is the responsibility of international law on the use of force. Instead, IHL focuses specifically on the rules of conduct during existing armed conflicts. The key goal here is not to end the war, but to mitigate its consequences, including humanitarian ones. Therefore, one can often hear IHL referred to as “the law of armed conflict” or “the law of war”.

In the current context of international armed conflicts, especially given the full-scale invasion of Ukraine by Russia, international humanitarian law pays considerable attention to the protection of civilians. Civilians are increasingly becoming the targets of armed attacks, which directly contradicts the basic principles of IHL, as enshrined in the Geneva Convention and its Additional Protocol. The norms of these documents establish that the civilian population cannot be the object of attack, and the parties to an armed conflict are obliged to take all possible measures to protect such persons (Articles 51 and 57 of the Additional Protocol) (Verkhovna Rada of Ukraine, 1977).

However, the realities of the war in Ukraine show us numerous examples of these norms being ignored. In 2022–2023 alone, more than 120,000 criminal offenses related to violations of the laws and customs of war were registered in Ukraine (Ukraïner, 2023). Most often, this happens in the form of deliberate attacks on civilians. In national legislation, such actions are qualified under Article 438 of the Criminal Code of Ukraine as war crimes, and their specific composition is determined by reference to international treaties that are part of national legislation (Botnarenko & Kryzhna, 2024).

The peculiarity in the qualification of such crimes is that there is a need to establish direct intent to harm the civilian population specifically, and, accordingly, the presence of consequences in the form of death, serious bodily injury or harm to health. Such provisions are based on Article 85(3)(a) of the Additional Protocol, which states that targeting the civilian population or individual civilians as an object of attack constitutes a grave breach of IHL (Verkhovna Rada of Ukraine, 1977).

Accountability for war crimes is regulated by a number of international treaties and domestic laws. The sources of international humanitarian law that guarantee punishment for war crimes include the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (Verkhovna Rada of Ukraine, 1949) and its Additional Protocols of 1977 (Verkhovna Rada of Ukraine, 1977), which define serious violations as war crimes and require states parties to criminalize them in national legislation, affecting, in particular, even administrative and legal protection of rights, as well as administrative proceedings. An important document is also the 1974 Statute of the International Criminal Court (Verkhovna Rada of Ukraine, 1998), which grants the International Criminal Court jurisdiction over war crimes and defines their composition. Another important document is the 1974 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (Verkhovna Rada of Ukraine, 1974).

An important principle is the universal jurisdiction over war crimes, meaning that any state has the right to prosecute the perpetrators, as well as the absence of immunity for military and civilian leaders (Kovalchuk, 2024).

The authors point out that Russia's war against Ukraine is a double violation of international humanitarian law. Firstly, it violates the rules governing the legality of the use of force (jus ad bellim), and secondly, the rules of warfare (jus in bello). Russia's attack on Ukraine is contrary to Article 2(4) of the UN Charter and cannot be justified by self-defense, as there is no evidence of armed aggression by Ukraine or direct threats to Russian citizens (Kreß, 2024).

Russia's rhetoric about "protecting" Donbas in collective self-defense is also groundless, as these regions do not have the status of sovereign states. At the same time, gross violations of the principles of jus in bello are manifested in the shelling of civilian objects, the use of prohibited weapons, such as cluster or thermobaric weapons, as well as in the direct ill-treatment of prisoners (Bukar, 2023).

T4P research indicates that Russia shells civilian objects in Ukraine an average of 75 times a day. (T4P, 2023) A total of more than 1,500 cultural institutions and 600 monuments have been damaged. As of 2023, according to the Kyiv School of Economics,

153,900 residential buildings, 3,170 educational institutions (almost 1,500 schools, 909 kindergartens, 528 higher education institutions), 1,216 healthcare facilities, and 1,800 cultural institutions were destroyed or damaged as a result of the hostilities (EU NEIGHBOURS East, 2024).

The documented cases of gross violations of international humanitarian law by the Russian military are not only systemic, but also targeted. For example, massive attacks on civilian objects, residential buildings, train stations, and shopping centers are not isolated tragedies, but part of a large-scale terror against civilians (EU NEIGHBOURS East, 2024).

International law qualifies such actions as having signs of systematic violations of the principle of distinction between civilian and military objectives, which is a fundamental standard of the Geneva Conventions and Protocol I (ICRC, n.d.; Verkhovna Rada of Ukraine, 1977). The targeting of residential buildings, hospitals, and schools without demonstrable military necessity violates Articles 51(4)-(5) and 57(2)(a) of Protocol I, which explicitly prohibit indiscriminate attacks (Boogaard, 2023).

In the first five months of the full-scale invasion alone, Russia carried out a number of high-profile attacks that resulted in the deaths of hundreds of civilians. For example, in July 2022, a strike on a five-story building in Chasovyi Yar killed at least 48 people, including a 9-year-old child. Similar consequences were caused by the destruction of the Amstor shopping center in Kremenchuk, which was hit by a missile on June 27. One of the most tragic attacks was the rocket attack on the train station in Kramatorsk, when 61 people were killed, including many children, on April 8, 2022 (BBC News Ukraine, 2022). All of these attacks were accompanied by the use of heavy weapons, including Iskander ballistic missiles and Tochka-U guided missiles, as well as the deliberate spread of disinformation by the Russian authorities, who are trying to justify their actions with false claims of military installations in civilian buildings. Such actions require a comprehensive investigation, proper legal assessment, and bringing the perpetrators to justice in the framework of international justice.

Bombings that have signs of discriminatory attacks can be regarded as a war crime, which is confirmed by the current doctrine and practice of the ICC (Berdnik & Pylypenko, 2024; Bukar, 2023).

According to the analysis of Hayashi (2023), the application of the "reasonable commander" standard requires parties to the conflict to actively verify targets and assess possible harm to civilians; in this case, since such verifications are not carried out, attacks lose their legitimacy under IHL.

The most terrible pages of the war are written in history with such tragedies as the atrocities in Bucha, where mass killings, torture, rape, and executions of civilians were recorded after the liberation. According to local authorities, more than 420 people were killed in Bucha, many of them with signs of torture and rape. All of these war crimes under the Geneva Conventions and the Rome Statute constitute serious violations of international humanitarian law that have no statute of limitations and require mandatory judicial review.

Another horrific page of the war was the mass grave in Izyum, where more than 450 graves were discovered after the de-occupation in September 2022. Most of the bodies were civilians with signs of violent death, gunshot wounds, tied hands, and traces of torture and abuse. It is also worth mentioning the deliberate killing of Ukrainian prisoners in the colony in Olenivka. On the night of July 28-29, 2022, 53 prisoners of war were killed in explosions, and more than 130 others were injured. Despite the statements of the Russian side about the alleged Ukrainian attack, all the facts indicate a staged provocation to conceal the facts of torture and inhuman treatment of detainees. Such actions once again confirm the deliberate nature of the crimes committed by the Russian military and the gross disregard for international humanitarian law (Novynarnya, 2023).

Particular attention should be paid to the documented facts of sexual violence, which the Russian military systematically used as a tool of humiliation, terror and demoralization of the civilian population in the occupied territories. One of the most egregious cases is the rape of a woman by Russian soldiers in front of her child in the Brovary district of Kyiv region. Human rights activists emphasize that the actual number of such cases may be hundreds of times higher than the statistics due to fear, shame or distrust of the investigation system on the part of the victims.

We should not forget about the crime of abduction and forced transfer of Ukrainian children to Russia. In many cases, children were evacuated under the guise of rehabilitation, and then their citizenship was changed and they were completely isolated from their relatives. Such actions can be qualified not only as a direct violation of the articles of the Geneva Convention, but also as an act of genocide - an attempt to destroy the national identity of Ukrainian children through forced assimilation.

And of course, no less dangerous is the tactic of nuclear blackmail used by Russia during the shelling of areas near Ukrainian nuclear power plants. In particular, the Zaporizhzhya NPP has been repeatedly shelled, creating serious risks of a nuclear disaster on the level of Chernobyl or Fukushima. In addition, the Kremlin propaganda systematically threatens the world with strikes on nuclear infrastructure, which is a direct violation of the Geneva Convention, which prohibits attacks on objects that could lead to a dangerous release of forces and serious civilian casualties.

It is worth noting that Russia, having not ratified the Rome Statute, actually avoids the jurisdiction of the International Criminal Court in this regard, but this does not relieve it of responsibility for its actions before the international community, which, in turn, given the scale and unprecedented nature of the crime of aggression, is increasingly raising the issue of establishing a separate special tribunal to bring to justice the top military and political leadership of the Russian Federation (Zamryga, 2022).

International humanitarian law also obliges parties to an armed conflict to facilitate unimpeded access to humanitarian aid for the affected population. In this regard, it is also worth noting that Russia systematically blocks the work of international humanitarian organizations in the occupied territories. According to IHL, assistance should be provided impartially, without discrimination, solely to reduce human suffering. However, the Russian side often denies access to the affected settlements, does not allow representatives of such reputable organizations as the International Committee of the

Red Cross, Doctors Without Borders, or UN humanitarian missions. Such actions of the aggressor create additional threats to the lives of civilians, depriving them of the opportunity to receive basic medical and food assistance, psychological support or evacuation. At the same time, restricting the access of such organizations makes it impossible to effectively document human rights violations and war crimes in the temporarily occupied territories, which is the purpose of the aggressor's prohibitions and concealments and further complicates the work of international human rights institutions (Kurilyuk et al., 2024).

Thus, the Russian invasion of Ukraine has actually actualized the problem of the crime of aggression as a central challenge to the international legal order. However, despite the historical importance of this crime, which was the foundation of the Nuremberg and Tokyo trials, today the International Criminal Court is limited in its ability to prosecute Russia due to the imperfect jurisdictional regime (Kreß, 2024).

In this context, the idea of creating a special international ad hoc tribunal, which is increasingly being discussed by the international community, deserves special attention. Since the Rome Statute limits the possibilities of holding states that are not parties to it accountable, the need for an alternative mechanism is becoming more urgent. Such a tribunal could be established on the basis of a multilateral international treaty or under the auspices of the UN General Assembly, which would circumvent Russia's blocking of the Security Council. It is worth noting that this idea is supported by more than 40 states, including most EU countries, Canada, the United States, and Japan.

However, regardless of the format, the key condition for the effective functioning of any international tribunal is political will, coordinated efforts of the international community and the availability of sufficient evidence collected in accordance with procedural standards. In this aspect, it is necessary to develop the practice of digital technologies and open sources of OSINT for verification of facts, as this is especially relevant in the context of limited access to the temporarily occupied territories.

The war waged by the Russian Federation is hybrid, as it is a conflict that combines classical military operations with information warfare, cyberattacks, terrorist methods, economic pressure and the participation of irregular armed groups (Zamryga, 2022). As this war is waged without an official declaration, with the involvement of mercenaries and the use of civilians as human shields, it makes it difficult to identify the aggressor, blurs the line between war and peace, making effective application of existing IHL norms that do not cover such non-standard forms of conflict virtually impossible.

Therefore, the absence of the term "hybrid warfare" in international legal documents is a major problem that complicates the qualification of the aggressor's actions and the determination of legal consequences. It can be argued that the current system of international humanitarian law is unsuitable for responding to hybrid threats, which was manifested during the Russian-Ukrainian war, in particular, cyberattacks, information aggression, disinformation and actions of proxy forces create legal vacuums that make it impossible for the international community to respond. Humanitarian law needs to be updated to take into account the context of asymmetric and irregular forms of warfare, including situations where the enemy refuses to be openly identified, as was the case in

Crimea and Donbas. Both domestic and international transformation of legal norms is needed, with the use of innovative technologies, digital platforms, new forms of monitoring and expanded jurisdictional tools (Vasyliev, 2025).

As of today, there are several problems that prevent the military and political leadership of the Russian Federation from being brought to justice, even if there is evidence. For example, Russia, as a permanent member of the UN Security Council, can block the creation of international justice mechanisms based on the UN; the absence of an international obligation to extradite citizens to Russia makes it unlikely that arrest decisions will be enforced even if they are made; states allied to Russia, such as Iran, Syria, and North Korea, may not recognize such tribunals, and countries that remain politically neutral may avoid participating in sanctions or legal procedures.

In view of this, an important step is institutional support for Ukraine at the level of the EU, NATO and the UN, as well as the consolidation of universal jurisdiction of states that are ready to consider cases of international crimes outside the country of their commission. For example, courts in Germany, Poland, Lithuania, and Estonia have already opened proceedings over Russian crimes committed in Ukraine.

In addition, the information and legal front is extremely relevant today. Russia is the "queen of propaganda" and invests significant resources in creating a parallel reality, justifying its actions by "protecting Russian speakers" and "fighting Nazism" and so on (VoxUkraine, 2023).

Therefore, we believe that an important task of the international community is to systematically counter disinformation, introduce mechanisms of reputational responsibility, such as isolating Russia in international cultural, sports, and academic spaces; depriving Russian cultural heritage sites of UNESCO World Heritage status; and imposing bans on Russian politicians and propagandists from participating in international forums and conferences.

In our opinion, ensuring Russia's responsibility for international crimes requires a multilevel strategy that would combine legal, informational, political and diplomatic dimensions. Systematic evidence gathering, international solidarity, and recording of violations are the key prerequisites for bringing Russia to justice, which can take place in both the medium and long term, as has already happened in international practice with regard to the former leaders of Yugoslavia.

In the case of the former Yugoslavia, the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY, 2001) allowed for the prosecution of political and military leaders, including Slobodan Milosevic, the President of Serbia. Despite the fact that he died before he was sentenced, the precedent of bringing a sitting head of state to trial had a significant impact on the development of international criminal law.

In its decision in Prosecutor v. Krstić (IT-98-33), the ICTY recognized the massacre in Srebrenica as an act of genocide, which was one of the first judicial qualifications of such a crime in Europe after World War II (United Nations, 2004).

Thus, it should be noted that on February 4, 2025, the European Commission and the EU High Representative for Foreign Affairs and Security Policy, Kaja Kallas, officially

announced a decisive step - the establishment of the legal basis for the Special Tribunal for the Crime of Aggression against Ukraine. This tribunal is to become the first ever modern international justice mechanism aimed at bringing the highest military and political leadership of the aggressor state to justice for the crime of aggression – a violation of the UN Charter and the foundations of international law and order (European Commission, 2025).

The Special Tribunal will be established on the basis of an agreement between the Government of Ukraine and the Council of Europe. It will have jurisdiction based on Ukrainian national law with the integration of international standards. This should help overcome a key obstacle – Russia's non-recognition of the jurisdiction of the International Criminal Court, which remains a serious barrier to justice.

As part of this initiative, the first major legal document, the so-called "Draft Schuman Statute", has already been prepared, which will define the structure, powers and procedures of the tribunal.

In addition to punishment, there is the issue of compensation for victims. Thus, the EU has already decided to start negotiations on the establishment of an International Claims Commission, which will be authorized to determine the amount of compensation for damage caused by Russia. This commission will rely on the Register of Damage, which has been operating in The Hague since 2023 and documents evidence of destruction, losses and deaths caused by the aggression. Starting in 2024, Ukrainian citizens who have lost their homes will be able to apply to the Register, and starting in 2025, relatives of deceased civilians will be able to apply. This commission should be a logical step towards restoring justice not only through punishment, but also through compensation for war victims.

This was indeed a breakthrough in the restoration of justice, because all previous practice of international law, such as the Nuremberg Tribunal or Rwanda, shows that the most effective international justice is achieved when a legal initiative is supported by a significant number of states, a special tribunal is created that is not limited by existing institutions, and a parallel compensation process is ensured.

Under conditions where Russia blocks the work of humanitarian organizations, destroys evidence and does not allow international observers, an external international investigation, tribunal and compensation system are the only realistic way to restore justice.

International cooperation in the field of wartime forensics is a critical tool for effectively documenting Russian crimes, upholding the rule of international law and implementing international standards in the Ukrainian forensic system (Tsarenko et al., 2023).

Ukraine has already begun to implement a special mechanism of justice in the de-occupied territories, in particular through the joint work of national and foreign experts, investigators and prosecutors to collect evidence of IHL violations. Kyiv Scientific Research Institute of Forensic Expertise (Kyiv Scientific Research Institute of Forensic Expertise) actively cooperates with European institutions such as ENFSI, CEPOL and the TAIEX program. Through participation in international projects, such as EU-ACT and ICE

(UNODC), Ukrainian experts gain access to the latest techniques, which allows them to improve the quality of war crimes documentation and adapt domestic practice to international standards (Negrebetskyi, 2023).

It is worth noting that some in the international community still equate the aggressor and the victim and demand diplomatic efforts from both sides as if both sides are guilty, which is quite inappropriate, as stated by Tsuji Kyoto, State Minister for Foreign Affairs of Japan, at a meeting with representatives of OSCE member states.

The findings confirm the systematic and purposeful nature of Russia's violations of IHL. The literature emphasizes the lack of an adequate regulatory framework for an adequate response to Russia's challenges, which is confirmed by the study.

It is worth noting that the idea of establishing a Special Tribunal is not new, but in the case of Ukraine, it has tremendous support from more than 40 countries. The establishment of such a tribunal is an important practical step in bridging the jurisdictional gaps of the Rome Statute. Compared to international practice, it should be noted that the concept of establishing an International Claims Commission is innovative. Although there are compensation programs after the wars in Iraq or Libya, the creation of a universal register of losses is unprecedented.

Conclusion

The study proves that IHL in its current form is not able to fully respond to the challenges posed by Russia's hybrid aggression against Ukraine. The findings demonstrate the scale of war crimes, genocide, sexual violence, human trafficking, nuclear blackmail and violations of the right to humanitarian assistance.

The novelty of the study lies in the systematic justification of the need to establish a Special Tribunal for the Crime of Aggression, as well as a compensation mechanism that should become part of a global strategy for restoring justice.

The practical significance of the study lies in identifying the shortcomings of the current international humanitarian law in the context of hybrid conflicts and justifying the need for its adaptation to this form of warfare.

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ADMINISTRATIVE LIABILITY FOR ENVIRONMENTAL OFFENCES: PROBLEMS AND PROSPECTS FOR LEGISLATIVE CHANGES

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Abstract

Environmental problems have increased in the context of economic globalization and consumer behavior. This has led to the emergence of the green economy paradigm, which requires the creation of legislative initiatives to achieve the stated environmental goals. The purpose of the study was to identify the weaknesses and strengths of environmental legislation in the leading countries of the world in achieving the goals of the green economy. The study used the following methods of induction, deduction, analysis, synthesis, systematization, logical comparison and statistical analysis. Authors identified trends in the dynamics of carbon dioxide emissions and plastic waste in the United States, China, and the EU for the period 1990-2022. Authors determined the probability of further changes based on the trend line equations for carbon dioxide and plastic waste emissions. Among the problems is the lack of strict and binding legal regulation of environmental issues, which demonstrates the low effectiveness of environmental initiatives even in the United States and China. The author demonstrated the feasibility of creating administrative responsibility for end users and distributors to improve waste management efficiency and increase demand for green products.

Keywords

Green economy, environmental pollution, legal regulation, waste management, harmful emissions.

Resumo

Os problemas ambientais têm aumentado no contexto da globalização económica e do comportamento do consumidor. Isso levou ao surgimento do paradigma da economia verde, que exige a criação de iniciativas legislativas para alcançar as metas ambientais estabelecidas. O objetivo do estudo foi identificar os pontos fracos e fortes da legislação ambiental nos principais países do mundo no que diz respeito ao cumprimento das metas da economia verde. O estudo utilizou os seguintes métodos de indução, dedução, análise, síntese, sistematização, comparação lógica e análise estatística. Os autores identificaram tendências na dinâmica das emissões de dióxido de carbono e resíduos plásticos nos Estados Unidos, China e UE para o período de 1990 a 2022. Os autores determinaram a probabilidade de novas mudanças com base nas equações da linha de tendência para as emissões de dióxido de carbono e resíduos plásticos. Entre os problemas está a falta de regulamentação legal rigorosa e vinculativa das questões ambientais, o que demonstra a baixa eficácia das iniciativas ambientais, mesmo nos Estados Unidos e na China. O autor demonstrou a viabilidade de criar responsabilidade administrativa para os utilizadores finais e distribuidores, a fim de melhorar a eficiência da gestão de resíduos e aumentar a procura por produtos verdes.

Palavras-chave

Economia verde, poluição ambiental, regulamentação legal, gestão de resíduos, emissões nocivas.

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Introduction

In the modern world, there is a constant negative impact of humans on the environment, which is caused by the consumer model of their behavior. This results in the depletion of natural resources and environmental pollution, which requires an immediate search for ways to protect the environment. After all, the negative impact on the environment is manifested by changes in climate, air, water, and soil conditions, which in turn affects the health and quality of life of the population. Therefore, the issue of environmental protection is at the heart of political and legal discourse, given the scale of the cascade of environmental problems and their consequences for society (Mikhno et al., 2021).

The issue of combating environmental pollution is being discussed at the global level, through the creation of international communities and institutions to develop mechanisms for protecting nature. Moreover, economic development is planned with due regard for environmental impact. However, despite the obviousness of environmental problems, a large percentage of entrepreneurs and consumers avoid the adopted environmental protection rules due to the increased financial costs associated with them (Merino-Saum et al., 2020). That is why educational and incentive-based conservation initiatives have proven ineffective, leading to the need to engage legal mechanisms to counteract environmental violations by citizens and entrepreneurs, which are expected to be effective in the long run, but there is uncertainty about their actual effectiveness.

Literature Review

Growing environmental problems associated with the development of production have led to the emergence of the terms green economy and sustainable development, which include strategic planning of economic processes in terms of their impact on the environment and human well-being. The United Nations Environment Program, the Global Green Growth Institute, the Green Economy Initiative, the Green Growth Declaration, the Sustainable Development Strategy, and other documents that provide for steps to preserve the environment were created to help countries cooperate in addressing environmental issues (Merino-Saum et al., 2020; Sumets et al., 2022). These programs include combating global warming by reducing greenhouse gas emissions by 42% to 52% by 2030, reducing fossil fuel production, reducing nitrogen oxide emissions that deplete the ozone layer, preserving biodiversity and wildlife, combating land degradation, plastic pollution, preserving freshwater ecosystems, and dealing with the effects of natural disasters and armed conflicts (Abbasi et al., 2024).

In addition to economic cooperation, international associations of large enterprises also have environmental goals, namely, they act within the framework of accepted recommendations for conserving resources and reducing greenhouse gas emissions, and create a competitive environment based on environmental friendliness. The effectiveness of such market relations is explained by their scale, as according to the Organization for Economic Cooperation and Development (OECD), 39% of greenhouse gas emissions are produced by its members. Since the recommendations are mostly voluntary and focus on the integrity of entrepreneurs and reputational risks, their effectiveness is limited, and regulation is carried out in accordance with the laws of the country of origin (Tam et al., 2021).

Although the modern paradigm of economic development has changed the vector from financial prosperity to creating favorable natural and social conditions, conserving resources, energy, and combating climate change, the problems of legal regulation of environmental impacts are becoming an obstacle to achieving the stated goals (Tomaselli et al., 2021). Fostering an environmentally friendly society involves many factors, but the most effective are environmental projects that are adequately funded and accompanied by effective regulation, governance, energy-saving technologies, and pro-environmental policies (Huang et al., 2021).

Despite the creation of joint international environmental initiatives, researchers believe that their success in practice varies significantly from country to country, depending on economic capacity, financial and technological capabilities, as well as national characteristics of population behavior (Wang et al., 2021). That is why these environmental directives are rather a guideline that is implemented in different countries in different ways. Moreover, even within the same country, the same initiative can have different consequences, depending on the location, size, and ownership of the company. For example, the introduction of green finance in China, although it helps to reduce environmental pollution, has a different impact on the investment capacity of companies. Namely, it has a negative impact on the investment behavior of privately owned medium and small businesses, but a positive impact on state-owned large enterprises in the western and eastern regions of the country (Zhang et al., 2021).

Another equally favorable legal system for environmental protection is that of the European Union, which actively implements environmental legislation in member states where more than 50% of laws are based on EU law. Moreover, the EU has an Environmental Enforcement Commission that has access to companies and can file a complaint against violations of environmental rules with the European Court of Justice. In this way, the Commission can bring to administrative responsibility enterprises that violate environmental legislation bypassing national courts (Oncioiu & Neacsu, 2023). Thanks to strict regulation, the EU plans to reduce greenhouse gas emissions by 20%, increase the use of renewable energy by 20%, and increase energy efficiency by 20% by 2030.

However, environmental legislation has faced new challenges due to the change in economic models of businesses from local transactional markets to open international relations involving e-commerce and social media to launch and promote products (Kyriakopoulos, 2021). Thus, the globalization of the economy has led to a decrease in the effectiveness of administrative regulation of environmental offenses due to changes in logistics chains, expansion of production geography, and the use of digital technologies. This is due to the lack of unified environmental standards that differ from country to country in relation to different industries, which creates problems for both regulators and businesses, as well as the rapid development of technologies that, in the context of globalized market relations, cannot be effectively regulated by environmental laws without constant changes. On the one hand, technologies can be favorable for the development of a green economy by optimizing production and logistics routes, but they have a number of problems, including high energy consumption, cybersecurity, and significant financial costs, which requires consideration of the feasibility of using certain types of technologies (Luo, 2022; Castro et al., 2021; Bielai et al., 2024).

On the other hand, the requirements for the economic model have changed from a linear to a circular one, which allows reducing the use of resources and energy for waste disposal in order to ensure the reuse or recycling of products. At the same time, the classification of waste is also constantly changing, and in addition to administrative liability for violating waste disposal rules, a tax on landfills and packaging is being introduced (Pouikli, 2020). The problem of waste is of great importance, as the consumer model of the economy has led to a large amount of waste that requires energy-intensive disposal processes and leads to environmental pollution.

No less important is climate change due to increased greenhouse gas emissions. Although 195 countries have agreed to act within the stated goals of reducing greenhouse gas emissions, these changes are not noticeable in the short term and there is a risk that this initiative will not produce the stated results in the long term as well (Oncioiu & Neacsu, 2023). Moreover, economic legislation is national, and adopted international recommendations are often ignored due to the high costs of achieving green economy goals and the peculiarities of changes in the legal framework in different regions (Abbasi et al., 2024). That is why it is important to study administrative liability for violation of environmental norms and identify the weaknesses and strengths of environmental legislation in the world's leading countries.

Aim. The purpose of the study was to identify the weaknesses and strengths of the environmental legislation of the leading countries of the world in achieving the goals of the green economy.

Materials and Methods

The study used the methods of induction, deduction, analysis, synthesis, systematization, logical comparison and statistical analysis. The author analyzed legislative initiatives from around the world, including the EU, the US, and China. The weaknesses and strengths of the EU environmental directives and responsible entities are identified, and promising areas for legislative change on the way to achieving the stated environmental goals are identified. Authors analyze the peculiarities of environmental legislation in the world, in particular in the leading economies of the United States, China, and the EU, and determine their effectiveness by comparing the levels of harmful carbon dioxide emissions and plastic waste for the period 1990-2022. Authors identified trends in the dynamics of carbon dioxide emissions and plastic waste based on the identification of trend lines with the probability of further changes. Based on the analysis, authors proposed ways to overcome the weaknesses of environmental legislation.

Results

To determine the effectiveness of legislative initiatives to protect nature, authors analyzed the main EU directives, since the environment plays a significant role in the political, legal, social and economic activities of the community. There were systematized existing legislative documents according to environmental areas and principles for achieving environmental goals in Table 1. Also there were identified the entities that monitor and manage environmental issues and the entities that bear administrative and civil liability for violations of environmental requirements. Based on the analysis, authors identified the weaknesses and strengths of the existing EU environmental legislation and suggested possible ways to address the problematic issues.

Table 1. Legal regulation of environmental issues in the EU

Environmental area	**Principle**	**Legal regulation**	**Objects, subjects and types of liability**
Environmental pollution	Control over the company's impact on the environ-ment and the possibility of air, water, soil pollution.	Directive 96/61 - provides for control over production technology, technical characteristics of equipment at the stage of design, use, maintenance and decommissioning Directive 85/337; 2001/42; 2014/52 - control over possible negative impact on the environment before the start of business activities.	It provides for obtaining a permit to conduct economic activity at the stage of production design. Regulation is entrusted to national authorities, which are responsible for issuing permits and monitoring ongoing activities for environmental pollution.

Waste	Disposal, reuse or recycling of the product produced	Article 14, Article 8 of the 2008 EU Framework Directive – the costs associated with the disposal, recycling or determination of the product's suitability for reuse are borne by the manufacturer and partially by the distributor of the product.	Administrative responsibility lies with the manufacturer, while waste management is carried out by local municipalities; the manufacturer has the right to choose the type of responsibility: partial operational responsibility (the manufacturer is partially involved in the processes of waste collection, processing and disposal) and full operational responsibility (the producer has full control over the processes of waste collection, processing and disposal).
	Disposal, reuse or recycling of packaging	EU Directive 94/62 provides for collection from end users or reuse of packaging by users.	
	Disposal of end-of-life vehicles	EU Directive 2000/53 provides for the transfer of the costs of vehicle disposal to the manufacturer rather than the last owner, in order to reduce the use of hazardous substances and to provide for simple recycling at the design stage of the vehicle by the manufacturer.	
	Disposal of waste electrical and electronic equipment	EU Directive 2012/19 encourages producers to use alternative technologies to facilitate the dismantling, reuse and recovery of electrical and electronic equipment.	
	Recycling of batteries and accumula-tors	EU Directive 2006/66 obliges Member States to establish collection points for batteries and accumulators for consumers in accessible locations without charge and without the obligation to purchase a new battery or accumulator. Manufacturers must ensure safe conditions for the recycling of this waste.	
Plastic	Ensuring the availability and sustainable manage-ment of water and sanitation	EU Regulation 1907/2006, which provides for the improvement of the quality of plastic products in order to extend their service life, reuse and reduce plastic waste.	The manufacturer compensates for the cost of plastic utilization and recycling.
Protection of water resources	Manage-ment of surface and deep water resources, natural and artificial water bodies	Water Framework Directive 2000/60, Article 13, Annex VII provides for the control of water quality in 5 categories, determination of physical, chemical, hydrological and morphological characteristics, protection of aquatic ecosystems. Article 14 provides for informing and involving the public and users in the balanced use of water.	Quality control is carried out by national authorities. The responsibility is collective and applies to both entrepreneurs and consumers who compensate for the costs of water supply services on an ongoing basis.

Clean air	Air quality manage-ment.	The Clean Air Directive for Europe (CAFE) 2008/50 provides for the reduction of harmful substances in the air: acidifying substances (SO(2), NO(x), NH(3)), emissions that deplete the ozone layer, dust precursors (PM(10), PM(23)), emissions that affect airquality in urban agglomerations. Directive 2001/81 on the reduction of national emission ceilings. The Convention on Long-Range Transboundary Air Pollution (LRTAP) obliges countries to control emissions from their own enterprises. Directive 2010/75 provides for the control of industrial emissions. Directive 2001/80 controls emissions from large combustion plants.	Member states control emissions from industrial facilities and cities and notify the EU Commission of the permissible levels and an action plan for their possible reduction. Producers are required to comply with emission limits and use technologies that reduce emissions. In case of violations, industrial facilities are subject to administrative sanctions, as well as possible closure of the facility. The public's responsibility is to restrict the use of certain types of vehicles in urban areas with high levels of air pollution.
Preventing climate change	Reducing global warming to $2^{(0)\,C}$	The Paris Agreement was adopted by 195 states at the UN Convention and provides for the reduction of greenhouse gas emissions, creation of a green economy, creation of adaptive mechanisms to climate change, measures to combat climate change-related emergencies, counteracting deforestation and forest degradation, creation of giant biomass plants that absorb carbon dioxide, reduction of fossil fuel use in favor of renewable energy sources, and development of energy efficiency.	Signatories to the agreement are obliged to monitor climate change and submit reports on the state of the environment. Economically developed countries are obliged to provide financial and technological assistance to developing countries in achieving the goals of the Paris Agreement.

Source:created by the author on the basis of (Pouikli, 2020; Oncioiu & Neacsu, 2023; Council Directive 96/61/EC; Directive 2000/60/EC; Directive 2008/1/EC; Directive 2010/75/EU; Directive 2012/19/EU)

As can be seen from Table 1, achieving the goals of environmental legislation is not an easy task and requires the efforts of central authorities to constantly improve legislative mechanisms in line with changes in the economic model. Nevertheless, administrative liability for violations of environmental initiatives mainly falls on the manufacturer, with distributors and third parties representing the product sharing this role. The EU is committed to preventive actions in its environmental initiatives, so the specially created Commission for the Protection of Nature monitors production processes at the planning stage of business activities. That is, without the Commission's approval, a company cannot obtain a permit to start production in the EU member states in accordance with EU Directive 85/337. Another effective mechanism of influence of EU legislation is the ability of the Commission to monitor the environmental impact of member states' enterprises without the approval of national central authorities and in accordance with Article 169 of the EU Treaty. The Commission has the power to take legal action against an individual company or a Member State for violating environmental rules. Another important achievement is the ability of the public to participate in the detection of environmental violations. Citizens have the right to freely receive information about the

type of activity of enterprises and the environmental risks associated with them. Citizens can also file a complaint against companies if they detect actions that harm the environment or request an inspection of companies whose activities are suspicious.

Environmental legislation in the EU is constantly monitored and changed to simplify regulatory mechanisms. This approach implies a more flexible regulatory principle that encourages businesses to comply with the law and protect nature. Thus, on the way to change, new directives change the previous ones, creating simpler and clearer rules that are easy to follow. An example of such changes is the repeal of Directives 91/689 on hazardous waste and its disposal, as well as 75/439 on the disposal of used oils.

Directive 2004/35 on environmental liability was adopted to determine the type of liability that applies to environmental pollution, which contains both preventive measures and legal mechanisms for civil and administrative liability (Directive 2000/60/EC). Producers and consumers can be held liable by public authorities for damage to protected species, their natural habitats, water bodies, and soils. The Directive provides for liability for significant damage, but does not define criteria for assessing damage and thresholds for the significance of violations. Moreover, Annex III of the Directive establishes administrative liability for high-risk enterprises without the need to prove guilt. Moreover, administrative fines are not fixed, but fully cover ecosystem restoration measures and compensation for damages. Instead, offenses not listed in Annex III and committed by a citizen or low-risk enterprises, including those engaged in agricultural activities, require proof of guilt and may be subject to administrative liability for negligent conduct of activities or intentional damage to the biodiversity of natural resources.

Although the EU environmental legislation has made significant progress in recent years and is constantly being improved, and the Commission's powers to protect nature are being expanded, the effectiveness of these measures is controversial, as actual pollution rates change only slightly. In addition, the global trend is also not positive, which encourages us to identify the advantages and disadvantages of the environmental protection measures implemented and to find effective solutions. Table 2 analyzes and systematizes the main global environmental initiatives, identifying weaknesses and strengths that can be used to improve the national legal framework in the field of environment. Figure 1 demonstrates the dynamics of carbon dioxide emissions in the United States, China and the EU over the period from 1990-2022 and identifies trends and forecasts for the next 4 years. Figure 2 shows the trends in plastic waste dynamics in the United States and forecasts trends for the next 5 years.

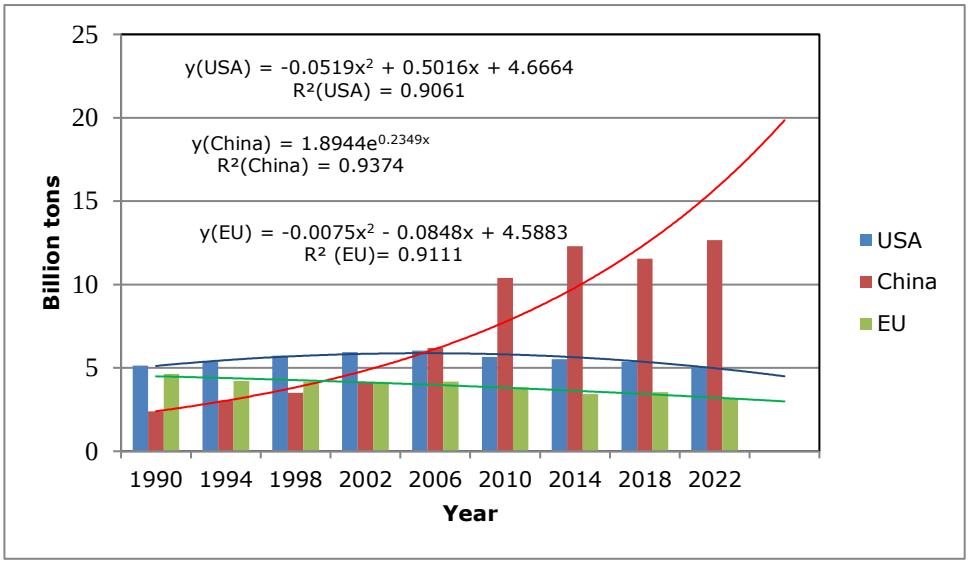
Table 2. Strengths and weaknesses of major global environmental legislative initiatives

Environmental issue	**Legislative initiatives (strengths)**	**Weaknesses**
Plastic pollution	EU Regulation 1907/2006; Conducting audits on plastic pollution (more than 1500 events in more than	Difficulty in monitoring to bring the manufacturer to administrative responsibility, as more than 50% of the detected plastic is unbranded, which causes a shortfall of 50% of the funds for plastic waste disposal.

	100 countries in 6 years), imposing a tax on the use of plastic bags, banning the use of plastic bags, China's ban on imports of plastic waste.	The low efficiency is confirmed by the increase in plastic production from 200 million tons in 2000 to more than 400 million tons in 2019. The lack of mandatory audits for all countries, as a result of which the United States and Indonesia have conducted more than 100 audits in 6 years, while 84 countries have conducted only 1. The problem of corruption in some countries, which causes unreliable audit results and thus a lack of funds for plastic recycling. Lack of effective mechanisms to encourage end-users to reduce the use of plastic and to dispose of used plastic at special collection points. Low awareness of the environmental damage caused by plastic and lack of information about plastic collection points in developing countries.
Reducing greenhouse gas emissions	The Paris Convention, Sustainable Development Goals for 2030 and 2050, Article 7 of the Sustainable Development Goals on the use of clean energy, Article 13 on urgent measures to combat climate change, national initiatives under international agreements	Despite the adopted goals, even such successful countries as the United States do not demonstrate a stable positive result, so in 2020 the level of carbon dioxide emissions in the United States amounted to 4.7 billion cubic meters, and in 2022 5.6 billion, which exceeds even the level of 2016 (5.01 billion). And China, which ranks first in the world in terms of greenhouse gas emissions, despite its stated goal of reaching a zero carbon footprint in 2060 at the 26th Conference of the Parties in Glasgow, has retreated from the goal of phasing out coal to gradually reducing coal consumption. Although the Chinese authorities hope to improve their forecasts by developing renewable energy and digital technologies. Lack of mandatory unified legislative initiatives, resulting in different national and regional legislative acts and low efficiency. High cost of implementing energy efficient technologies. Poor quality of reports on greenhouse gas emissions and fossil fuel use. Low rates of forest restoration and continued deforestation in developing countries. Increasing number of armed conflicts that increase greenhouse gas emissions and contradict the goals of sustainable development.
Waste management and recycling	EU Regulation 1907/2006, Initiating the establishment of waste management organizations in organizations, governments and academia. Administrative responsibility of producers for the disposal and recycling of various types of waste. Use of technologies to predict customer behavior and optimize wholesale purchases.	Lack of collective responsibility for violating waste disposal rules, especially among end users. Low effectiveness of educational work on the overuse of goods and, as a result, excessive waste production. The reasons for failures in food waste management are low consumer culture regarding the use of food products and low optimization of bulk purchases of food products with limited shelf life, especially in developing countries. Corruption in some countries, which leads to producers avoiding administrative responsibility for environmental pollution. Due to lack of funding, developing countries have a low number of waste recycling plants and waste sorting facilities, which leads to the creation of natural dumps. As a result, about 40% of waste ends up in landfills, which leads to methane emissions into the atmosphere.

Source: created by the author on the basis of Cowger et al., 2024; Regulation (EC) No 1907/2006; Geyer et al., 2020; Wang et al. 2019; Zavidna et al., 2025; Bistline et al., 2022; Ma et al., 2022; Anuardo et al. 2022; Voronina et al., 2024).

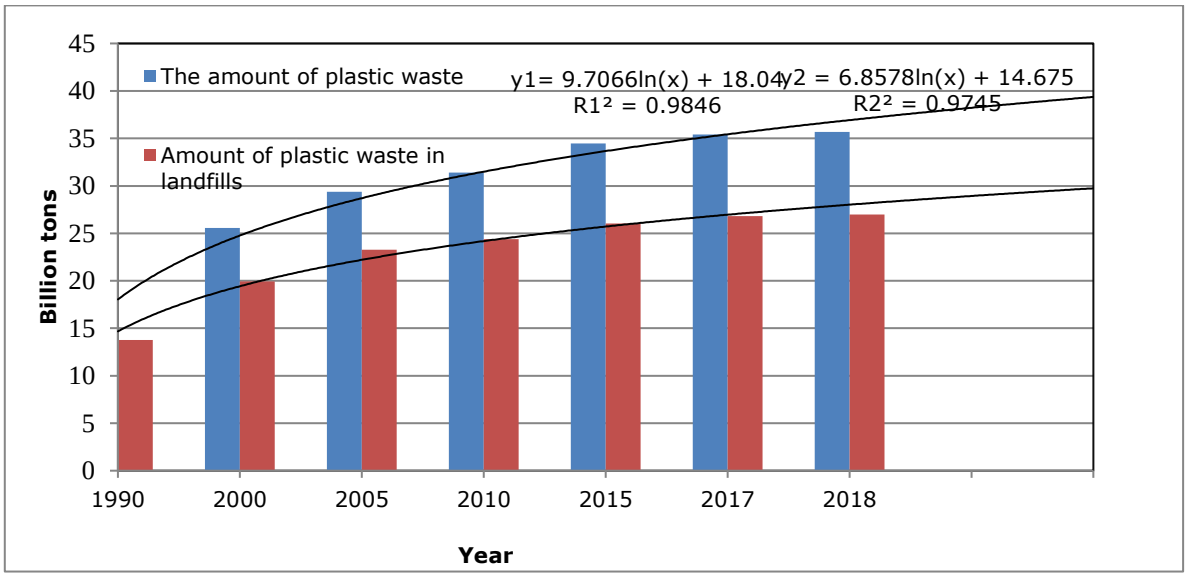
Figure 1. Trends in carbon dioxide emissions in the US, China, and the EU



Source: created by the author based on (Tiseo, 2025; Worldometer, 2025; EEA greenhouse gases – data viewer, 2025)

As can be seen from the table, the effectiveness of these environmental initiatives at the global level is extremely low, due to a number of factors. Namely, the lack of unified environmental rules with mandatory enforcement. After all, developing countries cannot quickly switch to renewable energy, abandon the use of polluting equipment, or develop technologies that promote waste management and optimize resource use, as this requires large financial outlays. Moreover, our research has shown that even the economic giants of the United States and China cannot achieve their stated environmental goals in practice. Namely, the determination of the trend line of carbon dioxide emissions in China showed a tendency to increase carbon dioxide emissions according to an exponential relationship with a probability R(2)=0.8566 for further growth (Figure 1). Also, the determination of the trend line for the dynamics of plastic waste in the United States showed an upward trend in both the total amount of plastic waste with a probability of R(2)=0.9846 and the amount of plastic waste in landfills with a probability of R(2)=0.9745 (Fig. 2). This trend indicates the need for more stringent methods. The EU countries are more successful in strictly regulating environmental issues, as they plan to reduce greenhouse gas emissions by 20%, increase the use of renewable energy sources and improve energy efficiency by 20% in 2030. The tendency to reduce carbon dioxide emissions with a probability of further reduction R(2)=0.9111 is in favor of achieving the above stated EU goals. The positive dynamics of carbon dioxide emissions reduction was also demonstrated by the analysis of the trend line in the United States with the projected probability of further reduction of carbon dioxide emissions R(2)= 0.9061.

Figure 2. Dynamics of plastic waste and the amount of plastic in landfills in the United States



Source: created by the author based on (EPA, 2024)

Y1, R1 – trends in the total amount of plastic waste. Y2, R2 – trends in the amount of plastic waste in landfills

Instead, to increase the efficiency of waste management, it is advisable to create mechanisms for administrative liability of the end user for excessive use of plastic, improper waste disposal, use of vehicles with a high carbon footprint, etc. Responsibility for the negative impact should be shared between distributors, manufacturers, and end users, which would encourage manufacturers to produce goods in an environmentally friendly manner with a long service life and recyclability. With administrative responsibility shared, distributors would be able to choose more environmentally friendly products and avoid excessive bulk purchases. Consumers, on the other hand, would be more interested in choosing environmentally friendly products due to the lower price of the goods. In practice, however, consumers are less likely to choose green goods because their price is usually higher, which is explained by the financial burden on the producer alone and the low level of adoption of green technologies.

Discussion

Our research has revealed the limitations of international environmental laws that give states the right to choose whether to introduce certain norms and impose penalties in relation to them. The globalization of the economy, financial transactions, and the absence of borders in environmental pollution are the reasons for the transition from recommended environmental legislation to mandatory compliance with basic requirements. In this regard, the EU is the most effective, acting within its member states with the possibility of bringing producers or distributors of goods to administrative responsibility for violating environmental legislation directly in EU courts, bypassing

national courts (Oncioiu & Neacsu, 2023). The importance of transnational environmental standards is demonstrated by the transboundary release of polluted water that flows from one country to another, causing environmental damage, while the lack of clear regulatory mechanisms for one country to influence another does not allow to overcome this problem (Li & Lu, 2022). Thus, as can be seen from the study, individual national laws are adopted primarily based on economic indicators and political vectors, which explains the regression in the development of the green economy in China and the United States, which are leaders in terms of negative environmental impact. That is why the creation of unified laws would avoid speculation in environmental legislation, the possibility of substituting concepts, environmental reports, and the use of corruption schemes to avoid environmental production.

In our opinion, stricter regulation would have contributed to better results in the development of a green and circular economy. Instead, Lee et al. (2022) emphasized that strict regulation combined with low financial support has a negative impact on achieving green economy goals, while more flexible regulation combined with technology development allows achieving environmental well-being goals. Rainisio et al. (2022) argued that individuality, long-term planning, uncertainty avoidance, national culture, and local customs also have a positive impact on the effectiveness of environmental management. This study demonstrates that an individual approach to the formation of effective environmental models can be applied at both the family and community levels. Ul Haq et al. (2020) emphasized the development of production efficiency on the example of optimizing fertilizer use, which leads to a significant reduction in greenhouse gas emissions without compromising yields. That is why production efficiency should be encouraged at the level of government agencies, which ultimately receive less harmful waste from the excessive use of non-environmentally friendly fertilizers, which determines the financial efficiency of such a step.

As can be seen from the results of our study, administrative liability for violations of environmental rules is mostly imposed on producers and partially on distributors of goods, while mechanisms of administrative liability of the end user are mostly not applied and are of an educational nature. This leads to the lack of effectiveness of environmental initiatives at the national and international levels, as the consumer is the last link in the use of products before disposal or recycling, and their participation is key to scaling up waste management. Kyriakopoulos' (2021) study also demonstrated the need for collective responsibility of producers, consumers, and central governments for the environmental impact of products and identified the low effectiveness of legislative initiatives in facilitating or encouraging consumers to choose green products. Poor regulation of consumer environmental behavior was also described by Mak and Terryn (2020) and Ballardini et al. (2021).

Conclusions

Having analyzed the legal regulation of environmental offenses, auhtors have determined that EU countries pay much attention to the environmental friendliness of the economy, and the main administrative burden is placed on producers. This approach has proven effective in terms of reducing waste at the stage of planning the production of goods.

However, the existing mechanisms do not effectively regulate the behavior of the end user, which offsets the mechanisms implemented by the manufacturer and the local municipality. An analysis of the effectiveness of global environmental pollution indicators has revealed a mismatch with the stated goals of sustainable development, which calls into question the effectiveness of environmental legislative initiatives in the long run. Therefore, it is advisable to place administrative responsibility also on the consumer and, to a greater extent, on distributors, which will encourage distributors and users to choose green products and control their quantity according to demand. Another aspect is the transition from individual and recommendatory legislative initiatives to mandatory and more stringent ones, which will encourage countries to avoid speculation and comply with environmental regulations.

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INSTITUTIONAL AND LEGAL SUPPORT FOR STATE MANAGEMENT OF THE BIOENERGY SECTOR'S DEVELOPMENT IN THE CONTEXT OF GLOBAL TRANSFORMATIONS

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Abstract

The relevance of the study is due to the need to transform Ukraine's energy policy in the context of war, global climate challenges and the need for integration into the European energy space. Bioenergy is emerging as a strategic direction for ensuring energy independence, decarbonization of the economy and sustainable development of regions. The purpose of the study is to identify the institutional and regulatory features of public administration in the field of bioenergy in Ukraine in the context of globalization processes. The study uses a systematic, institutional, comparative, analytical and content analysis of legal acts and scientific sources, which ensures a comprehensive approach to assessing the state and trends of the industry. The study found that the Ukrainian model of public administration in the field of bioenergy is in the process of transition from fragmented regulatory support to a systemic policy based on EU standards. The main aspects of legislation harmonization with Directives (EU) 2018/2001 (RED II) and (EU) 2023/2413 (RED III) are defined, the effectiveness of the management process enhancement through decentralization and intersectoral collaboration is described. It is justified that the creation of the multi-level system of the public administration needs a complex of regulatory incentives, support and digitalization of the management. The practical value of the results is in the fact that the proposed conclusions could be adopted to revise the state strategies, form energy clusters, enhance the regulatory framework and increase the institutional capacity of Ukraine in the sphere of renewable energy.

Keywords

Bioenergy, public administration, renewable energy, institutional policy, regulatory framework.

Resumo

A relevância do estudo deve-se à necessidade de transformar a política energética da Ucrânia no contexto da guerra, dos desafios climáticos globais e da necessidade de integração no espaço energético europeu. A bioenergia está a emergir como uma direção estratégica para garantir a independência energética, a descarbonização da economia e o desenvolvimento sustentável das regiões. O objetivo do estudo é identificar as características institucionais e

regulatórias da administração pública no campo da bioenergia na Ucrânia no contexto dos processos de globalização. O estudo utiliza uma análise sistemática, institucional, comparativa, analítica e de conteúdo de atos jurídicos e fontes científicas, o que garante uma abordagem abrangente para avaliar o estado e as tendências da indústria. O estudo constatou que o modelo ucraniano de administração pública no domínio da bioenergia está em processo de transição de um apoio regulamentar fragmentado para uma política sistémica baseada nas normas da UE. São definidos os principais aspetos da harmonização da legislação com as Diretivas (UE) 2018/2001 (RED II) e (UE) 2023/2413 (RED III) e descrita a eficácia da melhoria do processo de gestão através da descentralização e da colaboração intersetorial. Justifica-se que a criação do sistema multinível da administração pública necessite de um conjunto de incentivos regulamentares, apoio e digitalização da gestão. O valor prático dos resultados reside no facto de as conclusões propostas poderem ser adotadas para rever as estratégias estatais, formar clusters energéticos, melhorar o quadro regulamentar e aumentar a capacidade institucional da Ucrânia no domínio das energias renováveis.

Palavras-chave

Bioenergia, administração pública, energias renováveis, política institucional, quadro regulamentar.

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INSTITUTIONAL AND LEGAL SUPPORT FOR STATE MANAGEMENT OF THE BIOENERGY SECTOR'S DEVELOPMENT IN THE CONTEXT OF GLOBAL TRANSFORMATIONS

IAROSLAV IANUSHEVYCH

OLEG HUBANOV

Introduction

The problem of energy security has become one of the most significant problems of the era due to global climate change, energy crisis and geopolitical instability. In this sense, bioenergy does not simply represent an alternative to fossil fuels in terms of technology, but a perspective of state policy that is both ecological, economical and social regarding sustainability. Specifically, bioenergy development is one of the primary components of the European Green Deal in the European Union that is intended to reach climate neutrality by 2050 (European Commission, 2023; Taylor et al., 2024). In the case of Ukraine, where the country is at war, and energy restructuring is in its deep stage, bioenergy has become a strategic instrument of energy independence strengthening, diversification of energy supply, and development of the region (Kurbatova et al., 2023; Pimenow et al., 2025). It is in this connection that the topicality of the issue is explained by the fact that the current energy policy of Ukraine needs not only to be improved in terms of technology, but a profound institutional reorganization of the public administration. In spite of the fact that there are some strategic documents, including the Energy Strategy of Ukraine up to 2035 and the Concept of Renewable Energy Development, the gap between the regulations and the practice of their fulfillment exists. European researchers note that the effectiveness of the energy transition is based on the quality of the governance mechanisms, the degree of coordination between the state and non-state actors, and the capability of the state to provide transparency and sustainability in the policies (Christou et al., 2024; Proskurina & Vakkilainen, 2024; Buzogány et al., 2023).

The scientific value of this study lies in the combination of European experience in bioenergy management with the Ukrainian context of military and post-war development, which allows us to identify the patterns of formation of a new model of public administration in the field of renewable energy. The theoretical significance is determined by the generalization of institutional and regulatory aspects of energy policy, while the practical importance lies in the possibility of using the results obtained to improve legislation, develop regional energy sustainability programs, and increase the efficiency

of public administration. Despite the significant volume of scientific publications, a number of issues remain underdeveloped. In particular, mechanisms for harmonizing Ukrainian legislation with Directives (EU) 2018/2001 (RED II) and (EU) 2023/2413 (RED III), institutional aspects of interaction between central and regional authorities, and assessment of the effectiveness of management decisions in the context of decentralization require a deeper analysis. The issues of biomass sustainability certification, digitalization of management processes, and integration of scientific developments into the public administration system also remain insufficiently researched (Vasyliev, 2024; Kramar, 2025; Filippova & Stelmashenko, 2024).

The purpose of the study is to identify the peculiarities of institutional and regulatory support for public administration in the field of bioenergy in Ukraine in the context of modern globalization challenges, as well as to characterize the main directions of adaptation of national policy to the standards of the European Union. To achieve this goal, the following tasks have been defined: to systematize key legal acts, analyze the institutional architecture of bioenergy management, assess the level of coherence of Ukraine's state policy, and recommend recommendations for improving the public administration system in the field of bioenergy. To achieve these objectives, a structural and functional analysis of institutional governance mechanisms, a comparative study of the regulatory frameworks of Ukraine and the EU, as well as a generalization of statistical and analytical materials of international organizations such as the European Commission, the European Environment Agency (EEA) and the Energy Community Secretariat were conducted.

Thus, the study aims to fill in the existing gaps in the national scientific debate on the integration of bioenergy development policy into the broader context of public administration. The scientific novelty of the work is an attempt to form a holistic concept of public administration of bioenergy as a multilevel system that combines regulatory, investment, and socio-environmental components. The achieved results can not only increase the knowledge of the institutional relations in energy reforms, but also can provide the practical principles of how to modernize the social policy on sustainable development. Such an analytical framework could be used in the future to build on the basis of an interdisciplinary research that would yield the models of successful public administration in the context of energy transition and post-war recovery of Ukraine.

Literature review

The available scientific literature demonstrates increased importance of bioenergy as the material component of the energy transition that guarantees decarbonization, energy security and development of the region. European scientists focus on the connection between the sustainability policy, bioeconomy, and the regulation of the bioenergy management (Feindt et al., 2020; Buzogány et al., 2023; Proskurina & Vakkilainen, 2024; Taylor et al., 2024). They highlight the necessity to unite environmental requirements and market tools to provide the successful elaboration of the sector within the framework of the European Green Deal. The regulatory and institutional aspects of governance are the subject of recent studies on alignment of national policies to EU Directives (Vasyliev, 2024; Kramar, 2025; Christou et al., 2024; Dadi et al., 2025). Much

effort is devoted to the influence of the war in Ukraine on changing the energy policy and shifting towards renewable sources of energy (Kurbatova et al., 2023; Ciot & Butișcă, 2025; Pimenow et al., 2025; Winkler et al., 2024). The articles have highlighted that bioenergy is not only a part of environmental security, but also in economic recovery and decentralization of energy provision. The connection between sustainable development principles and environmental risk management is also critical to the governance of bioenergy because the state policy development should address the ecological safety principles in the context of large agricultural farms (Sumets et al., 2022). Another important detail that researchers point to is the fact that the institutional basis of sustainability-oriented energy management is the integration of economic and environmental elements into the practicum of the public administration (Voronina et al., 2024). Simultaneously, the emergence of bioenergy digital governance is also burdened with a specific legal and informational security system that is a precondition of successful coordination of actors of the state and the private sphere (Bondarenko et al., 2022).

Some of the authors examine the potential of biomass, biogas, and biofuels as instruments of attaining sustainable development. The researchers add that the effectiveness of the utilization of bioresources is conditional upon the combination of the governance systems, technological advances, and financial opportunities (Guo et al., 2025; Mensah et al., 2025; Sulis et al., 2025; Millinger et al., 2025). Comparative evaluations on the EU level and the Ukrainian level indicate that the application of European standards in the national policy needs more institutional coordination and greater transparency of the sustainability certification processes (Filippova & Stelmashenko, 2024; Vaskina et al., 2025; Strelkowski, 2025; Thomas, 2024). Scientists are also interested in the international tendencies of bioenergy development involving the integration of digitalization, efficiency in logistics, and intelligent governance. Specifically, Baasch (2021), Balanay and Halog (2024), Daneshmandi et al. (2022) incorporate bioenergy supply chain management models in the context of environmental hazards, whereas Reid et al. (2020), Wu and Pfenninger (2022) examine the barriers in introducing bioenergy to the country energy policy. Ukrainian research reveals that the industry has a great potential to guarantee energy independence and minimize CO_2 emission under the conditions of regulatory stability and establishment of public-corporate collaborations (Pryshliak et al., 2022; Kuzior et al., 2021; Filippova & Stelmashenko, 2024; Pimenow et al., 2025).

More of the scientific literature discloses the significance of interdisciplinary approach to the development of bioenergy that relies upon economic, environmental and social management factors. Baasch (2021), Feindt et al. (2020), and Reid et al. (2020) highlight that the development of bioenergy must be premised on the government regulation and market incentives in the same proportion. The specific focus is given to the land use conflicts and biomass in the climate policy context, which needs the creation of more adaptable regulatory tools (Balanay and Halog, 2024; Wu & Pfenninger, 2022; Daneshmandi et al., 2022; Sulis et al., 2025).

The necessity to introduce the digital technologies into the system of the bioenergy industry public administration is also highlighted by the modern international analytical reports. This will enable the optimization of the certification, emission control and reporting processes on biomass sustainability (European Commission, 2023, 2025; EEA,

2025; Taylor et al., 2024). According to Thomas (2024), Strelkowski (2025), and Kurbatova et al. (2023), digitalization helps in enhancing the efficiency of energy flow management, development of transparent monitoring mechanisms, and investment based on innovative financial instruments.

The articles by Vasyliev (2024), Filippo and Stelmashenko (2024), and Pimenow et al. (2025) refer to the details of the legislative regulation and the impact of the state support on the establishment of the sustainable bioenergy policy in Ukraine. The authors point out that it is necessary to establish one coordinating body that would make sure that there is a coherence between the national strategies and the local programs and the European directives. Rather, Kramar (2025) and Vaskina et al. (2025) concentrate on the technical and environmental features of biomethane and biogas development and note the necessity to invest in the technologies of emission reduction and enhance the performance of the agricultural raw materials processing. The issues of regional energy security and decentralization of governance are addressed in Ciot and Butișcă (2025), Kuzior et al. (2021), and Pryshliak et al. (2022), who emphasize the role of local communities in the development of energy clusters and cooperatives. At the same time, researchers Dadi et al. (2025), Mensah et al. (2025), and Millinger et al. (2025) emphasize the global challenges of energy transformation, in particular the need to harmonize international sustainability standards and to develop green justice policies for developing countries.

Thus, the literature review confirms the high level of theoretical and practical development of the topic, but a number of issues remain open. In particular, the mechanisms for integrating digital tools into the public administration of bioenergy and the issue of assessing the socio-economic efficiency of energy clusters in the context of Ukraine's post-war recovery remain underdeveloped.

Methods

The study was based on the analysis of statistical data obtained from publicly available official international sources, including reports of *the* European *Commission,* European *Environment Agency (EEA), Eurostat, and* analytical materials of EERA Bioenergy. To achieve the study's objective, the methods of comparative, analytical, economic and statistical analysis were used to assess the dynamics of bioenergy development in Ukraine and the European Union. Based on official statistics on the share of biomass in the structure of renewable energy, growth rates of biofuel production, solid biomass supply and agricultural biogas potential, generalized tables were constructed for further interpretation of trends. A systematization method was used to compare national and European indicators of bioenergy development, as well as a logical and analytical method to identify patterns and managerial conclusions. Data were selected based on existing open international reports and databases and this ensures that such data is reliable and reproducible.

Results

The existing situation in the development of bioenergy in Ukraine and the European Union can be described as highly dynamic because of the increased interest of the world community to the decarbonization of the economy, energy security, and the shift towards alternative energy sources. In the EU, bioenergy is not considered to be one of the components of energy transformation; however, its part in a wider bioeconomic approach is that which combines industrial, agricultural, and environmental policies. Directive (EU) 2018/2001 on Renewable Energy Sources (RED II) provides strict requirements to the growth of the biomass, biogas, and biofuels respectively in the consumption pattern, predetermining the principles of sustainability and traceability of raw materials. Specifically, mechanisms of institutional governance, specializing agencies, platforms and alliances in the area of bioenergy, making scientific, business and popular policy converge are actively being adjusted by European countries (Christou et al., 2024; Proskurina & Vakkilainen, 2024).

The recent war in Ukraine also highlighted the relevance of bioenergy development after the war, which caused massive losses to the energy infrastructure in Ukraine. Bioenergy has emerged as a significant field in the realization of energy self-sufficiency particularly in the rural population and areas that show biomass availability. Bioenergy is one of the major carriers of decarbonization mentioned by the State Strategy of the Renewable Energy Development till 2035, but the regulatory framework is in pieces. Several governmental programs are oriented at the alignment of laws with the EU Directive, however, the efficiency of the measures to promote the creation of the investment climate by the government and investment is not high yet (Filippova & Stelmashenko, 2024; Vasyliev, 2024). The role of the international programs and donor organizations in the development of the modern architecture of the public administration in this field is important, as they provide financial support to the projects that are aimed at modernizing the bioenergy facilities, implementing monitoring systems, and training the personnel. Specifically, institutional cooperation between the state, local population, and companies that enable the development of energy cooperatives and bioenergy clusters are of significance. This practice creates a multi-level type of governance where coordination of policy, accountability of decision-making and transparency of decision-making are central elements (Kurbatova et al., 2023; Pimenow et al., 2025).

Ukraine is slowly being integrated into the common energy market in the European dimension, where it is necessary to harmonize the structure of governance to the EU standards and introduce the system of data-driven strategic planning and performance indicators. The bureaucratic ability of the government in the bioenergy sector is an important precondition of realizing long-term energy transformation schemes. The quality of the public administration in the sector depends on the interaction of the regulatory frameworks, incentives on investments and participation of the people. According to contemporary researchers, it is only through a systematic approach, which integrates a political will, scientific justification, and a transparent procedures bioenergy will be a true driver of sustainable development (Buzogány et al., 2023; Dadi et al., 2025). Consequently, the analysis indicates that Ukraine is at the phase of shaping its model of the public administration in bioenergy sphere geared towards the European

standards though it requires a greater support of the regulatory coherence, institutional coordination and provision of resources to reach the strategic targets of the energy transition.

The emergence of the state policy in the area of energy transition on the basis of bioresources indicates the wishes of Ukraine to gain energy independence, but, at the same time, to follow the principles of sustainable development and integration into the European energy space. In the current context, the key guidelines for the development of such a policy are the provisions of Directive (EU) 2018/2001 (RED II) and the updated Directive (EU) 2023/2413 (RED III), which set higher targets for the share of renewable energy sources, strengthen the requirements for the sustainability of biomass and stimulate decentralized energy production from bioresources. The Ukrainian regulatory framework is currently undergoing the process of harmonization with European norms, but requires further systematization of state regulatory instruments that ensure the balanced development of bioenergy (Vasyliev, 2024; Kramar, 2025; Proskurina & Vakkilainen, 2024).

The essence of public policy is a combination of strategic planning, regulatory incentives, financial support, and institutional coordination. It is important that the key areas are formed taking into account the European experience, where the approach of "smart governance" prevails – flexible and multi-level governance aimed at achieving decarbonization goals and socio-economic effects for communities (Taylor et al., 2024; Christou et al., 2024). In Ukraine, the emphasis is on creating legal conditions for the development of biofuels, biogas, biomethane, and solid bioresources, but there are barriers to investment, access to finance, and unregulated mechanisms for certifying the sustainability of raw materials. To systematize the main directions of the state policy in the field of energy transition based on bioresources, a generalized table has been prepared (Table 1).

The systematization shows that Ukraine's bioenergy policy is generally in line with European directives in terms of strategic priorities, but retains a number of structural gaps. The greatest efforts are required in the areas of sustainability certification, emissions monitoring, and the development of effective investment incentives. At the same time, there is a positive trend in regulatory adaptation in the area of biomethane, decentralized governance, and community participation in local energy projects. This shows that gradual institutionalization of public administration according to the standards of EU is being carried out, which preconditions the inclusion of Ukraine into the single energy space in Europe.

The development of bioenergy in Ukraine is conditioned by the institutional environment determined by the multi-level system of the public administration which comprises of government agencies, regional institutions, scientific institutions, business structures, and public organizations.

Table 1. Main directions of Ukraine's state policy in the field of bioenergy and their coherence with EU Directives

No.	State policy direction	Main regulatory legal acts of Ukraine	Relevant provisions of EU Directives and international standards	Level of consistency
1	Strategic planning of bioenergy development	Energy Strategy of Ukraine until 2035; Concept of Renewable Energy Development (2020)	RED II, RED III – Strategic goals to increase the share of bioenergy in the overall energy balance	High
2	Regulatory and legal framework for biomass sustainability	CMU Resolution No. 1002 (2021) "On Approval of the Procedure for Determining the Sustainability of Biofuels"; Law "On Alternative Energy Sources"	RED II – biomass sustainability criteria; ISO 14064, 14067 – carbon footprint standards	Average
3	Financial mechanisms and investment support	Law "On the Electricity Market"; State Strategy for Attracting Investments in RES (2022)	European Green Deal; REPowerEU – incentives for RES investors	Medium
4	Development of biomethane technologies	Law of Ukraine "On Amendments to the Development of Biomethane Production" (2023)	RED III – stimulation of biomethane production for gas networks	High
5	Institutional coordination and decentralization of governance	Law on Local Self-Government; ESCO projects, regional energy programs	RED II – support for local energy initiatives and energy cooperatives	Medium
6	Sustainability certification and emissions monitoring	CMU Resolution No. 227 (2022) on verification of greenhouse gas emissions	RED III, ISO 14065, LCA approaches – mandatory environmental reporting	Low
7	Scientific and technical innovation support for the sector	State Strategy for Innovative Development (2021-2030); Horizon Europe programs	EERA Bioenergy; SET-Plan – R&D in the field of bioenergy	Medium
8	Integration into the European energy area	EU-Ukraine Association Agreement; National Energy and Climate Plan (NECP, under development)	RED III, Fit for 55 – integration of RES markets, decarbonization commitments	High

Source: created by the author on the basis of (Vasyliev, 2024; Kramar, 2025; Christou et al., 2024; Taylor et al., 2024; Proskurina & Vakkilainen, 2024; Pimenow et al., 2025)

The success of such environment is determined by the degree of interaction between the two, openness in decisions making and mutualization of power and functions according to the principles of energy security and sustainable development. European approach to energy governance focuses on network coordination among the institutions, participation

of local actors, and establishing cross-sectoral partnerships to provide the opportunity to implement the overall bioenergy transition policy (Christou et al., 2024; Kurbatova et al., 2023).

The institutional framework of bioenergy in Ukraine is undergoing some changes. The main decision-making centers remain the Ministry of Energy, the Ministry of Environmental Protection and Natural Resources, and the National Energy and Utilities Regulatory Commission (NEURC). However, regional authorities, sustainable development agencies, biofuel producers' associations, public environmental associations, and scientific institutions are also becoming increasingly important as communication intermediaries between the state, business, and society. To visualize the institutional environment and the interaction of key actors in bioenergy development, a generalized structure is presented below (Table 2).

The interaction of public administration entities in the field of bioenergy has horizontal and vertical dimensions. Horizontal interaction is realized through partnerships between the state, business and civil society, which contributes to the formation of "energy ecosystems" focused on local self-sufficiency and the development of innovative technologies. Vertical interaction ensures coordination between central and regional levels of government, directing efforts to achieve energy security, reduce dependence on imported energy and create conditions for sustainable economic growth.

To conclude, the institutional environment of the bioenergy sector in Ukraine is in the gradual process of transforming the administrative command setting to the networked management one, which addresses the requirements of European good governance and offers the principles of openness, responsibility, as well as cross-sectoral cooperation. This preconditions the enhancement of the energy security of the country and its entry into the European energy space.

Within the framework of the contemporary globalization issues – mainly war, energy instability and climate crises, the emergence of bioenergy technologies is a strategic move towards the economic sustainability and energy security. Bioenergy is not only an alternative form of energy, it is also a systemic determinant of socio-economic development because it can provide new labor markets, promote innovation in renewable technologies, as well as ensure the decarbonization of industry and the agricultural sector. Simultaneously, the level of the management decision efficiency in this respect is considerably predetermined by the degree to which the public administration can find a compromise between economic feasibility, environmental protection, and social equity (Dadi et al., 2025; Mensah et al., 2025; Wu & Pfenninger, 2022).

The Ukrainian war has become a significant trigger of reviewing the energy policies: the devastation of infrastructure, increased costs of standard resources, and the necessity of a quick shift to the model of decentralized energy supply has become a reality that proves the role of bioenergy as a survival tool, rather than a long-term modernization (Pimenow et al., 2025; Kurbatova et al., 2023). Meanwhile, the obstacles are increasing, namely, insufficient investment and inadequate logistics infrastructure. Under these conditions, the evaluation of the economic, environmental and social impact of bioenergy technologies acquires a systemic significance since it will be possible to modify the

policies to the new realities of post-war recovery and the tendencies in the world environment. Table 3 summarizes the relevant aspects.

Table 2. Main public administration entities in the field of bioenergy in Ukraine and areas of their interaction

No.	Group of institutions	Key actors	Main functions and powers	Nature of interaction with other entities
1	Central executive authorities	Ministry of Energy; Ministry of Environmental Protection and Natural Resources; Ministry of Economy	Formation of the state policy in the field of bioenergy; development of strategies, legislative acts and support programs	Coordination and regulation of the industry; interaction with international partners
2	Regulatory bodies	NEURC; State Agency on Energy Efficiency and Energy Saving of Ukraine (SAEE)	Licensing of energy production from bioresources; tariff policy; supervision of compliance with technical requirements and standards	Cooperation with producers, local authorities, investors
3	Regional authorities and local governments	Regional and city councils; regional energy agencies	Development of local RES programs, creation of energy clusters, project management at the community level	Decentralized coordination with central authorities; participation in EU grant programs
4	Business and private sector	Energy companies; agricultural enterprises; investors in biogas plants and biomethane projects	Implementation of production facilities; participation in public-private partnerships; technological innovations	Interaction with regulators, financial institutions, and communities
5	Research and educational institutions	Institute of Renewable Energy of the National Academy of Sciences of Ukraine; specialized universities	Conducting research; training of personnel; development of biomass processing technologies	Cooperation with government, business and international research networks
6	Public and international organizations	Bioenergy Association of Ukraine; Energy Community Secretariat; UNDP, USAID, GIZ projects	Expert support, popularization, policy monitoring; attracting international funding	Partnership in strategy development and preparation of recommendations
7	Financial institutions	EBRD, World Bank, Energy Efficiency Fund	Provision of loans and grants for the development of bioenergy facilities; support for innovation	Cooperation with government and business through sustainable financial instruments

Source: created by the author based on (Filippova & Stelmashenko, 2024; Kurbatova et al., 2023; Pimenow et al., 2025; Ciot & Butișcă, 2025; Christou et al., 2024)

Table 3. Economic, environmental and social effects of bioenergy technologies implementation in Ukraine in the context of global challenges

No.	Category of effects	Main manifestations	Potential benefits	Main risks / limitations	Management implications
1	Economic	Increase in production of biofuels, biogas, biomethane; development of local energy enterprises	Reduction of energy imports; creation of jobs; increase in tax revenues	High initial investment costs; market instability; currency risks	Need to stimulate the private sector, attract international financing
2	Environmental	Reduction of CO_2 emissions; utilization of agricultural and household waste; reclamation of degraded land	Reducing the greenhouse effect; improving the environment; replacing fossil fuels	High costs of sustainability certification; risk of monocultures; need to control the balance of ecosystems	Development of an eco-audit system, harmonization with RED II / RED III, ISO 14064
3	Social	Creation of new jobs in rural areas; formation of "green" competencies; increase of energy autonomy of communities	Development of local communities; strengthening of social cohesion; improvement of quality of life	Low level of public awareness; uneven access to resources	Development of training programs and educational initiatives
4	Impact of war and energy crises	Destruction of infrastructure; rising energy costs; decreased energy sustainability	Intensification of energy supply decentralizatio n processes; attraction of donor reconstruction programs	Supply chain disruption; equipment shortages	Development of crisis strategies; state coordination of energy recovery
5	Decarbonization trends and interna-tional commitments	Harmonization with the Paris Agreement, European Green Deal, UN SDGs	Strengthening international cooperation; access to green financial instruments	Mismatch between ambitions and available resources	Need to integrate energy, environmental and social policies

Source: created by the author on the basis of (Dadi et al., 2025; Mensah et al., 2025; Kurbatova et al., 2023; Pimenow et al., 2025; Wu & Pfenninger, 2022; Guo et al., 2025)

The discussion of the above data indicates that the implementation of bioenergy technologies is a multidimensional impact which transcends the energy policy. The economic gains are reflected in the development of new market segments, the energy balance diversification, and region competitiveness. The environmental impact is to mitigate the anthropogenic impact, and this is aligned with global decarbonization objectives, whereas the social impact is to generate more job opportunities and enhance

social resilience of the local communities. Nevertheless, these advantages can be achieved only under the condition of the presence of a stable regulatory regime, efficient financialization, and the all-encompassing administration of citizens. The bioenergy in Ukraine, in this case, can be seen not only as a field of energy, but also as a significant element of national security and national economic restoration after the war.

As Table 4 reveals, the proportion of bioenergy in the renewable energy of the EU and biogas potential in Ukraine indicate the particular size of the sector.

Table 4. Key statistics on bioenergy in the EU and Ukraine

No.	Parameter	Year/period	Value
1	Share of biomass in renewable energy (EU)	2021	59.00%
2	Share of renewable energy sources in final energy consumption (EU)	2023	24.50%
3	Increase in primary supply of solid biomass (EU) 2008 → 2021	2008: 3 336 811 TJ → 2021: 4 454 768 TJ	growth by +33.50
4	Agricultural biogas potential of Ukraine	estimate of ~ 15 438.75 million m³ of biogas per year	equivalent to ~ 8,800.00 million m³ of biomethane

Source: created by the author on the basis of (European Commission, 2025; EEA, 2025; Vaskina et al., 2025) according to the list of references

The table presents some of the most important statistical indicators that present how bioenergy is important in the European Union as well as the future of biogas development in Ukraine. The proportion of biomass in the renewable energy system of the EU is approximately 59 percent that accentuates that it prevails over the other technologies. In the EU, the overall renewable energy has reached 24.5% in 2023, which means the slow shift of the energy mix towards renewable sources (EEA, 2025). During *the* period *2008–2021,* the volume of primary supply of solid biomass in the EU increased from 3,*336,811 TJ* to 4,*454,768 TJ,* i.e. by 33.5%, *which* demonstrates a steady increase in demand for bioenergy resources (European Commission, 2023).

In the case of Ukraine, the potential of agricultural biogas is estimated at approximately 15,438.75 million m 3/per year, which corresponds to approximately 8,800.00 million m 3/per year of biomethane. Such numbers suggest that the industry has big reserves to be developed and that it can somewhat cover the energy import requirements of the country (Vaskina et al., 2025). Considering such statistical data during the study will only make it possible not only to quantify dynamics of bioenergy, but also to justify the decisions taken by the management based on real indicators. On the one hand, it is possible to specify the scale and structure of the market, and, on the other hand, ambitions and restrictions on the situation in the national perspective.

In this way, the analytical component of the study is reinforced by the statistical information of international sources proving that the concept of the public administration

of the sphere of bioenergy must be founded on the combination of objective quantitative characteristics and the strategic forecasting. In this way, the balanced policy of energy transition can be considered, considering the objective trends in the development of bioenergy in the EU and the internal potential of Ukraine (European Commission, 2023; EEA, 2025; Vaskina et al., 2025).

The evolution of the bioenergy sector in Ukraine needs the complex model of the population administration on the foundation of the combination of the regulatory, institutional, and economic elements. The initial one ought to establish a consistent legal environment that would bring predictability to the decision-making of the investors and form a foundation of energy policy over the long run. The provisions of Directives (EU) 2018/2001 (RED II) and (EU) 2023/2413 (RED III) emphasizing the specifications of biofuel certification protocols, bio-mass sustainability, and emission reduction requirements should be recommended as the changes to the national regulatory framework are necessary. The implementation of the integrated environmental monitoring and reporting system according to ISO 14064 and ISO 14067 standards, that will enhance the clarity of the regulatory process and make both national and European control mechanisms harmonized, should also be mentioned (Kramar, 2025; Vasyliev, 2024). The condition behind the success of the reform is to enhance the institutional ability of the government agencies, specifically the State Agency on Energy Efficiency and the Ministry of Energy, through creating interagency coordination councils, enhancing the digitalization of the management process and providing clear information exchange between the state, business, and communities (Christou et al., 2024).

The second aspect that should be enhanced in the public administration is the establishment of a desirable investment climate that can bring in the private capital and foreign financial resources to execute the bio energy projects. It is already recommended to establish a national program "Green Transition Investment Framework" which would integrate a mix of public, as well as, private financial tools to develop the infrastructure of biomethane, biogas and bio fuel. They should also pay special attention to the support of the local communities with the help of soft loans, grants, and tax breaks on decentralized energy initiatives that will add to the energy independence of the region (Taylor et al., 2024; Pimenow et al., 2025). Ukraine needs to implement the mechanisms of involvement in the Horizon Europe and the EERA Bioenergy programs as the part of its integration into the European energy area to conduct the joint research, technological advancement, and experience sharing. This coherence of regulations, institutional coordination, and attractiveness to investment, such an integrated approach would be able to guarantee not only the sustainable development of bioenergy, but also the integration of Ukraine into a single energy architecture of the future in the entire European space.

Discussion

The results indicate that the public administration in bioenergy sector in Ukraine is slowly adopting a fragmented regulatory model towards a systemic policy that is geared towards European standards of sustainable development. This corresponds to the results of Christou et al. (2024), Proskurina and Vakkilainen (2024), and Taylor et al. (2024), who

argue that institutional coherence and strategic planning can be considered as primary factors of a well-developed energy system. Meanwhile, other authors, including Feindt et al. (2020) and Baasch (2021), are of the opinion that over centralization of regulatory processes may lower the flexibility of the energy policy, particularly during the crisis, as they are in need of more involvement of the regional actors and a community in the energy governance processes.

The outcomes of the current research prove that the Ukrainian model of governance is being shifted towards decentralization, which supports the views of Kurbatova et al. (2023) and Pimenow et al. (2025) regarding the significance of horizontal connection between the state, business, and communities. Nonetheless, unlike Wu and Pfenninger (2022), who claim that an institutional stability is a key factor in drawing investments, the Ukrainian situation demonstrates that even during the period of regulatory instability, projects have the opportunity to evolve in the form of versatile partnership and foreign assistance. This implies that legal consistency is not the primary success factor per se, but the degree of adaptive ability of management structures.

The problem of focusing on financial rewards instead of regulation is disputable. Dadi et al. (2025) and Mensah et al. (2025) opine that bioenergy is developed as a result of financial support and the investment mechanisms. But Vasyliev (2024), Filippova and Stelmashenko (2024) point to the fact that, in the Ukrainian situation, the financial incentive is not enough to guarantee the sustainability of the industry in the long term without the regulatory stability. The findings of the given research prove that the synergy of the two strategies – regulatory and investment – is a prerequisite of the sustainable development of the bioenergy industry.

There are also considerable disparities in the ways of evaluating the impact of bioenergy on the environment. Guo et al. (2025) and Sulis et al. (2025) argue that bioenergy definitely contributes to CO_2 emission reductions, while Millinger et al. (2025), Balanay and Halog (2024) draw attention to the risks of monoculture production and carbon offsets that may reduce the real environmental effect. The results of the analysis in this article show that the environmental efficiency of bioenergy in Ukraine depends on the regional specificity of resources and the level of control over supply chains, which is consistent with the findings of Kramar (2025) and Vaskina et al. (2025).

Thus, despite the diversity of approaches, most researchers agree that the future of bioenergy will be determined by the quality of public administration, the effectiveness of regulatory adaptation, and the involvement of civil society. To summarize, the results of this study confirm the need for further research aimed at quantifying the effectiveness of bioenergy projects in the post-war period and developing digital mechanisms for monitoring sustainability within the public administration system.

Conclusions

The study has shown that the development of bioenergy in Ukraine is not only a technological but also an institutional and political process that determines the directions of energy security and post-war recovery of the state. The novelty of the obtained results lies in the systematic substantiation of the relationship between regulatory

harmonization, institutional capacity and public administration in the field of bioenergy. In contrast to previous approaches, the study proves that the effectiveness of reforms depends not so much on the number of legislative acts as on the level of coordination between government agencies, business, and local communities. The practical significance is that the proposed analytical model can be used to formulate a policy of "smart governance" and Ukraine's integration into the European energy space. It has been found that the main challenges remain the low level of digitalization of management processes, the lack of investment mechanisms, and the inefficiency of the biomass sustainability certification system. The weakness of this research is that it does not provide an in-depth empirical data on the areas of Ukraine and this aspect makes it impossible to compare regions in detail. It is recommended in the future to devise quantitative models to determine the energy, environmental and social performance of bioenergy projects, increase the database on the analysis of regional practices and consider digital sustainability monitoring tools that can promote transparency and accountability in energy management.

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CONSTITUTIONAL EVOLUTION OF DEMOCRACY: A COMPARATIVE ANALYSIS OF EUROPEAN AND UKRAINIAN LEGAL FRAMEWORKS (18TH–20TH CENTURIES)

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Abstract

The study of the development of democratic principles in the European constitutions of the eighteenth century and their impact on the formation of Ukrainian constitutionalism is relevant in analysing the historical and legal foundations of democracy. The Constitution of Pylyp Orlyk deserves special attention as a unique document that integrates democratic ideas in the context of the national liberation struggle. The aim of the study is to examine the impact of European democratic principles on the formation of the legal culture of Ukraine. The research methodology is based on historical, comparative, systematic, content analysis and chronological methods. The study identifies the critical democratic principles enshrined in the European constitutions of the eighteenth century, such as popular sovereignty, separation of powers and guarantees of human rights, and their impact on Ukrainian legislation. The analysis of the Constitution of Pylyp Orlyk shows its uniqueness as a document that combines democratic ideas with traditional customary law. It is established that European constitutions have influenced the formation of modern Ukrainian constitutionalism by integrating

fundamental democratic values. The practical importance of the study lies in its potential to inform and enhance the ongoing reform of the Ukrainian legal system, aligning it with European standards and reinforcing the processes of democratic society in the present era.

Keywords

Democratic principles, European constitutions, the Constitution of Pylyp Orlyk, constitutionalism, popular sovereignty.

Resumo

O estudo do desenvolvimento dos princípios democráticos nas constituições europeias do século XVIII e o seu impacto na formação do constitucionalismo ucraniano é relevante para a análise dos fundamentos históricos e jurídicos da democracia. A Constituição de Pylyp Orlyk merece especial atenção como um documento único que integra ideias democráticas no contexto da luta pela libertação nacional. O objetivo do estudo é examinar o impacto dos princípios democráticos europeus na formação da cultura jurídica da Ucrânia. A metodologia de investigação baseia-se em métodos históricos, comparativos, sistemáticos, de análise de conteúdo e cronológicos. O estudo identifica os princípios democráticos críticos consagrados nas constituições europeias do século XVIII, tais como a soberania popular, a separação de poderes e as garantias dos direitos humanos, e o seu impacto na legislação ucraniana. A análise da Constituição de Pylyp Orlyk mostra a sua singularidade como um documento que combina ideias democráticas com o direito consuetudinário tradicional. Fica estabelecido que as constituições europeias influenciaram a formação do constitucionalismo ucraniano moderno, integrando valores democráticos fundamentais. A importância prática do estudo reside no seu potencial para informar e melhorar a reforma em curso do sistema jurídico ucraniano, alinhando-o com as normas europeias e reforçando os processos da sociedade democrática na era atual.

Palavras-chave

Princípios democráticos, constituições europeias, Constituição de Pylyp Orlyk, constitucionalismo, soberania popular.

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CONSTITUTIONAL EVOLUTION OF DEMOCRACY: A COMPARATIVE ANALYSIS OF EUROPEAN AND UKRAINIAN LEGAL FRAMEWORKS (18TH–20TH CENTURIES)

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Introduction

One of the most serious problems of modern science that needs to be solved is the problem of democratic development and the democratic embodiment of the principles in the legal systems, particularly in historical approach. Modern democratic systems are formed upon the basis of the European constitutions of the 18th century privying in popular sovereignty, separation of powers and human rights (Bondarenko et al., 2022). However, more detailed study is required of the impact of these constitutions in the context of the national liberation struggle of Ukraine and specifically in the development of democratic traditions in the country. A literature review reveals a lot of interest in this area. Boyko (2020) stresses the uniqueness of Pylyp Orlyk's Constitution and Berman (2021) surveys the evolution of democracy in Western Europe. The role of functional democracy in the interwar period in the work of Couperus (2019) and the historical democratic traditions in Ukraine in Stechyshyn (2024) are highlighted. However, at the same time, despite substantive work on the subject in Europe, there is not enough public discussion or evidential work on the impact of European constitutions on the formation of Ukraine's legal culture, which nevertheless should be decisive. Several of these "spots" have yet to be studied in detail. In particular, such analysis as a systematic one of the adaptation of European democratic principles to Ukrainian realities and of their role in shaping modern Ukrainian constitutionalism is absent. It is also necessary to take the interdisciplinary approach to the problem, i.e. to unite historical, legal and socio-cultural aspects of the problem.

What follows is a study of the impact of eighteenth century European constitutions on the development of democratic principles in Ukraine and their adaptation in the context of the national liberation struggle, and the shaping of the modern legal system generally**.** The tasks of the study are as follows:

- to explain what were the fundamental democratic principles of the European constitutions of the eighteenth century; assess the influence of these principles on the development of Ukrainian constitutionalism. eighteenth century;
- to study the impact of these principles on the formation of Ukrainian constitutionalism;
- to identify the uniqueness of the adaptation of democratic values in Ukraine;
- to analyse the current challenges of implementing democratic norms in the legal system of Ukraine.

The aim of this study is to deepen our knowledge of the historical and constitutional legal bases of democracy and its application to the contemporary constitutionalisation of Ukraine.

Analysis of the latest research and publications

Modern research focuses on the evolution of democratic principles in the constitutions of Europe and Ukraine. Boiko (2020), Krysachenko (2023), Couperus (2019), Nazarov and Derkach (2023) cover various aspects of the development of democracy and its legislative support. Buhaienko (2024), Berman (2021), Stechyshyn (2024), and Kyrychenko and Kyrychenko (2021) provide a comparative analysis of constitutional development and its social impact. Khaustova (2022), Gouvea and Branco (2023), and Simons (2024) analyse the latest challenges to democracy, including the role of e-governance, international organisations and the impact of the pandemic. Sanford (2002), Martyn et al. (2016), and Dauchy et al. (2016) examine the historical impact of legal texts and constitutional traditions on the formation of modern democratic systems. Christensen et al. (2024) focus on conceptualising democracy in different socio-cultural contexts, including Ukraine, Norway, and Palestine. Medvedska (2020) and Yakovlev et al. (2022) analyse the development of deliberative democracy and economic democracy, emphasising the role of the middle class. Kyrychenko and Kyrychenko (2021), Kobyletskyi and Paslavska (2023), and Gorenko et al. (2023) examine the historical and legal aspects of equal rights and the impact of Ukrainians on the cultural and educational space of Europe. Markhgeym et al. (2019) highlight the humanitarian context of the principles of justice in the constitutions of Eastern Europe.

Van der Straaten (2022) examines legal identity in the context of democracy in Northern Europe, while Novák (2024) analyses Aristotle's theoretical ideas on democracy and oligarchy. Gouvêa and Castelo Branco (2023) discuss constitutional processes involving the UN, highlighting their contribution to democracy. Simons (2024) examines the politicisation of law and science in Europe during the pandemic, while Stechyshyn (2024) focuses on the historical traditions of democracy in Ukraine. Studies by authors such as Berman (2021) and Couperus (2019) trace the transition to democracy in different regions of Europe. In general, the analysis of sources shows that modern research covers

both historical and contemporary aspects of democracy development, demonstrating the complexity and multifaceted nature of this process. This approach allows for a deeper understanding of the evolution of democratic principles and their adaptation in modern Ukraine.

Previous studies have insufficiently covered the practical mechanisms for implementing the democratic principles enshrined in the European constitutions of the eighteenth century in Ukraine's modern legal system. There is also a lack of analysis of the impact of these constitutions on the formation of Ukrainian identity in the context of the national liberation struggle.

Research Methods

In the course of the study, a set of methods providing an objective and systematic analysis of the development of democracy principles in the constitutions of Europe and Ukraine of the XVIII-XX centuries was used:

1. Historical and comparative method was applied to analyse the evolution of democratic principles in European constitutions and their impact on the formation of Ukrainian constitutionalism. This method allowed to identify common features and differences between European and Ukrainian constitutional traditions.

2. Constitutions were studied as holistic legal documents integrating political, social and economic aspects of democracy using systemic approach.

3. The method of analysis and synthesis was utilied to summarise historical data, identify the key principles of democracy and their impact on the formation of the legal system of Ukraine.

4. Comparative method of law was used in analysing the constitutions of European countries of various epochs with the Constitution of Ukraine, and thus identifying originalities of the Ukrainian attitude towards integration of democratic values.

5. The chronological method was used to assume the structuring of the material depending on the history stages of democracy in its implementation and the constitutional norms during given historical periods.

6. To identify the main democratic values contained in constitutions, legislative acts and scientific publications, we have used content analysis.

7. The data were obtained and the conclusions were formulated according to the method of logical generalisation based on them and to interpret in the context of the research problem.

Application of these methods allowed to undertake a comprehensive analysis of the influence of European constitutional traditions in the formation of democratic principles in Ukraine in the historical, legal and socio-political context.

Research Results

The eighteenth century was a period of significant transformation in the political structures of numerous European nations. Traditional monarchical forms of governance gave way to a new conceptualisation of the role of citizens in public administration. However, the modern democracy, whose formation was based on Enlightenment ideas which encouraged respect for reason and freedom, equality and justice for all men, was created in the course of this century. The concepts of popular sovereignty, the separation of powers and the protection of human rights were introduced into the political culture of the European states, thereby influencing the way in which public administration was understood. These models were employed to delineate the principles that were emerging, as evidenced by the US Constitution of 1787 and the French Constitution of 1791. In addition, these documents have served as a primary source of inspiration for the establishment of legal systems that are founded upon the principles of the rule of law and citizen involvement in governance processes.

The constitutions of the eighteenth century in Europe laid the foundation for democratic transformations by introducing the principles of popular sovereignty, separation of powers and guarantees of civil rights. They became a key benchmark for further developing democratic systems in the nineteenth and twentieth centuries, including the formation of the Ukrainian constitutional tradition.

The Constitution of Pylyp Orlyk, adopted in 1710, is one of the world's first written acts that systematically enshrined democratic values and principles of government. This document became an important milestone in the history of Ukrainian state-building and entered the treasury of world constitutional thought. The Constitution was written in the circumstances of the Ukrainian Cossacks' fight for their autonomy within the Polish Lithuanian Commonwealth and Muscovite states. In exile Hetman Pylyp Orlyk tried to outline road map to restore Ukrainian state independence and its democratic development (Boiko, 2020).

Orlyk's constitution envisaged the following critical democratic values:

- Separation of powers. For that time, the document gave a clear separation of hetman, legislative and judicial branches of government. This principle was a form of the modern principle of separation of powers.
- People's sovereignty. Power within the state consisted in the power of the people, and the hetman was obliged to do that which did him no displeasure, by consent of the officers and representatives. The way it was done was progressive, just ahead of its time.
- Rights and freedoms that are guaranteed. The Constitution guaranteed the rights of the Cossacks and the population of Hetmanate and condemned any forms of arbitrariness of Hetman, or other representatives.

Unlike European eighteenth century constitutions, Orlyk's Constitution was based on national liberation. It combined democratic principles with traditional customary law, reflecting the desire to restore Ukrainian autonomy within a democratic state. Although the Constitution of Pylyp Orlyk was never put into practice due to historical circumstances, it became an essential source of inspiration for subsequent generations

of Ukrainian politicians and lawyers. It was the first to lay down the foundations of a state system that aligned with democratic ideals.

Figure 1. Democratic principles in the constitutions of Europe in the eighteenth century



Influence of Enlightenment ideas on constitution-making

- Popular sovereignty, the separation of powers, equality before the law and individual rights also held by such thinkers as John Locke, Charles-Louis de Montesquieu and Jean-Jacques Rousseau, were also important. About many constitutions of that time (Dauchy et al., 2016), their theoretical base was Montesquieu's separation of powers.



The first written constitution in Europe

- The first European written constitution was the Constitution of 3 May 1791, adopted in the Polish-Lithuanian Commonwealth. It laid down the principles of hereditary monarchy, separation of powers, and guarantees of citizens' rights, which was a revolutionary step for its time (Couperus, 2019). Although the Constitution did not last long due to political circumstances, it had a significant impact on the further development of constitutional law in Europe.



The development of democratic principles in France

- The French Revolution (1789-1799) gave rise to the revolutionary French Constitution of 1791, which proclaimed the sovereignty of the people, established a constitutional monarchy and guaranteed civil rights. Although this document had its shortcomings, its democratic principles influenced the formation of constitutional systems in other European countries (Kobyletskyi & Paslavska, 2023).



Comparison with other countries

- Compared to the UK, which already had a well-established democratic tradition, the formalisation of these principles in the form of written constitutions was a new phenomenon in continental Europe. In the UK, the main democratic institutions existed in the form of case law and parliamentary tradition (Simons, 2024).

Source: compiled by the author based on research data (Boiko, 2020; Couperus, 2019; Berman, 2021) and analysis of democratic processes (Gorenko et al., 2023; Stechyshyn, 2024; Kyrychenko & Kyrychenko, 2021).

The Constitution of Pylyp Orlyk of 1710 was an outstanding phenomenon in the history of legal thought. It laid down the fundamental principles of democratic governance that influenced the further development of Ukrainian constitutionalism. Its values and ideals remain relevant in the modern understanding of democracy.

European constitutions have also significantly impacted the development of democratic processes in Ukraine, especially during the periods of national statehood and adaptation to European standards. Since the eighteenth century, the ideas and practices of European constitutionalism have contributed to the gradual introduction of democratic principles into Ukraine's legal system (Table 1).

Table 1. The impact of European constitutions on democratic processes in Ukraine

Period	**European Constitution**	**Impact on Ukraine**
XVIII century	Constitution of 3 May 1791 (Polish-Lithuanian Commonwealth)	It laid down the principles of separation of powers, hereditary monarchy and civil rights, which influenced the development of democracy in Ukraine.
The end of the eighteenth century	The Constitution of France of 1791	The ideas of people's sovereignty and equality before the law inspired Ukrainian thinkers and politicians, including the Constitution of Pylyp Orlyk.
The Soviet period (1917-1991)	European democratic models	Formal consolidation of democratic norms (voting rights, declarations of rights), which were not actually implemented due to the totalitarian system.
Independence of Ukraine (since 1991)	Constitutions of Western European countries (France, Germany)	The principles of the rule of law, human rights, the separation of powers and popular sovereignty are integrated into the 1996 Constitution of Ukraine.

Source: compiled by the author on the basis of research data (Krysachenko, 2023; Buhaienko, 2024; Couperus, 2019) and analysis of constitutional principles (Nazarov & Derkach, 2023; Kyrychenko & Kyrychenko, 2021; Markhgeym et al., 2019).

The constitutions of the Ukrainian SSR adopted between 1919 and 1991 reflected changes in the political life of the Soviet Union, while remaining controlled by party ideology. They formally enshrined democratic principles, but due to the totalitarian regime, real democracy was absent. The main characteristics of the constitutions of the Ukrainian SSR of this period are their declarative nature and their compliance with the interests of the Communist Party.

The first Constitution of the Ukrainian SSR of 1919 was adopted in the context of the establishment of Soviet power. Its main characteristics:

- *The principle of the dictatorship of the proletariat.* The constitution enshrined the power of the working class and peasantry, exercised through councils controlled by the Communist Party. Political multiparty system was eliminated.

- *Restrictions on civil rights.* Citizens' rights and freedoms depended on their loyalty to the Soviet government. For example, the deprivation of voting rights affected representatives of the "non-labour" classes (entrepreneurs, clergy).

- *Centralisation of power.* The republic was effectively subordinated to the central authorities of the Soviet Union, which limited the autonomy of the Ukrainian SSR.

The Constitution of the Ukrainian SSR of 1937 was adopted during the period of Stalin's repression and officially affirmed the "democratic" principles of the socialist state:

- *Formal equality of citizens.* The Constitution proclaimed the equality of all citizens before the law, regardless of gender, nationality or social status. However, this provision was not implemented due to massive repression and political control.

- *The principles of "people's democracy".* The document declared freedom of speech, press, assembly and rallies, which were effectively controlled by the party.

- *The leading role of the party.* The CPSU's monopoly on power was legally enshrined, making democratic pluralism impossible.

- *Restriction of political rights.* The elections were held on a first-past-the-post basis, where voters could only elect candidates nominated by the Communist Party.

The Constitution of the Ukrainian SSR of 1978, the last Soviet Constitution, reflected the ideas of "developed socialism":

- *Declarative democratic rights.* The rights to participate in elections, freedom of speech, press, assembly and demonstration were enshrined. All these rights were limited by state control.

- *The right to vote.* The constitution declared universal suffrage, but elections remained a formality, as the list of candidates was approved by party bodies.

- *Economic and social policy.* Equal access to education, medicine, and culture was proclaimed. However, state control over all spheres of life reduced these rights to declarations.

- *Control over the government.* The constitution formally enshrined the separation of functions between the branches of government, but all of them were effectively dependent on the Communist Party.

The main drawback of all Soviet constitutions was the lack of natural mechanisms to ensure democracy, as their provisions were mostly declarative and not implemented in practice. Despite the formal enshrining of citizens' rights and freedoms, such as freedom of speech, press, assembly, and participation in elections, these rights were limited by the strict political control of the party. The political and legal control of the Communist Party over all institutions precluded the independence of the branches of government, creating a monopoly on decision-making and implementation of state policy. Elections proclaimed general and equal became a formality, as voters could not choose between natural alternatives due to the lack of political pluralism. The judiciary, which was supposed to be independent, was controlled by party organs, undermining the rule of law. Thus, the Soviet constitutions enshrined only the appearance of democratic norms, using them to legitimise the totalitarian regime and suppress political opposition. This resulted in the absence of any conditions for the development of genuine democracy and limited the ability of the people to influence political processes.

The influence of Soviet ideology on the legal regulation of democracy is presented in Table 2.This table demonstrates the systemic influence of Soviet ideology on the constitutional development of the Ukrainian SSR, where formal democratic principles were merely declarations that served the interests of the totalitarian regime.

European constitutions are traditionally considered to be a model of democratic governance and legal regulation. The 1996 Constitution of Ukraine, as part of the post-Soviet space, adopted many of the key principles of European constitutionalism, such as the rule of law, separation of powers, protection of human rights and popular sovereignty. At the same time, there are peculiarities that distinguish the Ukrainian constitutional experience from its European counterparts.

Table 2. The influence of Soviet ideology on the legal regulation of democracy

Period	Basic principles of the Constitution of the Ukrainian SSR	Manifestations of the influence of Soviet ideology	Restrictions on democracy
1919	The dictatorship of the proletariat.	Power concentrated in party-controlled councils; disenfranchisement of "non-labour" classes.	Lack of multi-party system, freedom of speech and independent courts.
1937	The supremacy of the Communist Party, the proclamation of equality of citizens.	Declarative nature of rights; political control over citizens; repression of "enemies of the people".	The Communist Party's monopoly on power, formal elections with no alternative, suppression of press and assembly freedoms.
1978	Developed socialism, the right to vote, freedom of speech and assembly.	Elections without alternative candidates; all media under state control.	Political rights were only formally enshrined; citizens' rights were regulated in accordance with party decisions.
1980s	The beginning of perestroika: criticism of totalitarianism.	Some attempts to introduce real changes in the areas of freedom of speech and political competition.	Lack of real mechanisms to ensure democratic transformation.

Source: compiled by the author on the basis of research data (Christensen et al., 2024; Khaustova, 2022; Simons, 2024) and analysis of democratic norms (Berman, 2021; Couperus, 2019; Boiko, 2020).

While the 1996 Constitution of Ukraine shows a relatively high degree of compliance with European standards of democracy, at the same time maintaining its own identity. Ukrainian and European constitutions alike share basic democratic principles, such as popular sovereignty, the rule of law and separation of powers. However, it is also not easy for Ukraine to put these principles into practice, and in particular in constitutional oversight, human rights protection, and decentralisation. Further reform of the legal system and strengthening of the political culture will be needed for these areas to progress. While the 1996 Constitution of Ukraine shows a relatively high degree of compliance with European standards of democracy, at the same time maintaining its own identity. Ukrainian and European constitutions alike share basic democratic principles, such as popular sovereignty, the rule of law and separation of powers. However, it is also not easy for Ukraine to put these principles into practice, and in particular in constitutional oversight, human rights protection, and decentralisation. Further reform of the legal system and strengthening of the political culture will be needed for these areas to progress.

Table 3. Comparative analysis of the Constitution of Ukraine of 1996 and European constitutions

Criterion	Constitution of Ukraine (1996)	European constitutions	Comparison and features
People's sovereignty	The people are the sole source of power (Article 5).	It is proclaimed in most European constitutions (France, Germany, Italy).	The principle is implemented through elections, referendums and representative bodies.
Rule of law	The Constitution has supreme legal force (Article 8).	It is enshrined in the constitutions of Germany, France, and Spain.	Ukraine has integrated this principle into its legal system, but the practice of its implementation is still evolving.
Distribution of power	The legislature, executive and judiciary are independent (Article 6).	The principle of separation of powers is implemented in most European countries.	In Ukraine, mutual control mechanisms have not yet reached the level of stability of European democracies.
Protection of human rights	Title II guarantees a wide range of rights and freedoms.	European constitutions often include references to the European Convention on Human Rights.	The Constitution of Ukraine provides for similar rights, but the practice of protecting them needs to be improved.
Multi-party system	The right to form parties and public organisations is guaranteed.	European countries (e.g. France, Italy) actively support political pluralism.	Multiparty system in Ukraine still has shortcomings due to the low level of political culture.
Decentralisation	Recognition of local self-government (Article 7).	European constitutions (Spain and Germany) enshrine regional autonomy.	Ukraine's decentralisation process continues, and significant progress has been made in strengthening the role of local communities.
Voting rights	Universal suffrage for citizens.	Most European countries have similar provisions.	According to the organisation's standards, Ukrainian elections are in line with democratic principles, but there are questions about transparency.
Constitutional control	The Constitutional Court of Ukraine ensures the compliance of laws with the Constitution.	In Europe (e.g. Germany), there are developed mechanisms of constitutional control.	The Ukrainian system is not yet effective enough due to political influence.
Integration of international law	International treaties are part of the national legal system (Article 9).	Many European countries (France, Germany) also have this provision.	Ukraine is actively adapting its national legislation to international standards, especially in the context of European integration.
Language	The state language is Ukrainian (Article 10).	In some countries (Switzerland, Belgium), several official languages are recognised.	The Ukrainian Constitution emphasises the unitary nature of the language, which reflects national identity.

Source: compiled by the author based on constitutional amendments (Kyrychenko & Kyrychenko, 2021; Gorenko et al., 2023; Buhaienko, 2024) and a review of historical traditions (Stechyshyn, 2024; Medvedska, 2020; Berman, 2021).

The Constitution of Ukraine of 1996 was important in the creation of a democratic society and asceticism of the rule of law, democracy and protection of citizens' rights and

freedoms. It is important because it has not only turned into a legal document, but also a symbol of the democratic change in Ukraine. Among the main accomplishments of the Constitution is the embedding of a wide variety of rights and freedoms in Chapter II. This section contains:

- Civil rights: of personal integrity, freedom of thought and speech, the right to life.
- Political rights: functions on the ability to vote in elections, to join political parties as well as the right to hold peaceful assembly.
- Social rights: work, social protection, education, medical care.

International human rights standards including the European Convention on Human Rights, these provisions are consistent with. The Constitution has established people's sovereignty enshrined by Article 5 of the Constitution, so the citizen is sovereignsthe citizen can change the government through his elections and his referendums. The participation of citizens in this principle must be an important element of local self government.

The Constitution of Ukraine enshrines the rule of law as a fundamental principle of governance (Article 8). The aforementioned principles are enshrined in the law and form the basis for all legal operations, including those conducted by state authorities. In this context, the Constitutional Court of Ukraine bears a particular responsibility for determining which laws are in compliance with the Constitution.

The Constitution allows for multi-party system and freedom of political activity (Article 36), rendering the process of political pluralism more complete and democratic political culture rising. The provision is meant to reduce the level of competition in the political process and to lay the basis for open decision making. A key part was development of democracy at the regional level, which included consolidation of local self-government (Article 7). It gave additional powers to Territorial communities in dealing with local problems and with citizens' initiative. The development of the legal framework was created for Ukraine as a result of their responding to the demand about the need of Ukraine to enter into European community, this was done with the adoption of the 1996 Constitution. Passage seals the primacy of international law (Article 9), and means that Ukraine enters the world of democracy, rule of law and human rights in the European way.

The Constitution of Ukraine, enacted in 1996, has become a cornerstone of the country's democratic system of governance. The formal enshrinement of democratic principles is of significant importance, as is the establishment of measures to ensure their effective implementation. Nevertheless, numerous challenges have emerged in relation to attempts to restrict legal reform and the persisting low levels of political instability. However, the Constitution retains its paramount importance for the protection of democracy, human rights and the rule of law in Ukraine.

A review of the Ukrainian experience, the development of democracy in Ukraine, and the constitutions of Europe reveals that constitutionalism has been shaped by the European democratic tradition since the time of Pylyp Orlyk's Constitution. The constitutions of the 18th and 20th centuries in Europe served as a model for the establishment of the rule of

law in Ukraine. The most significant factor in the democratisation of society was the Constitution of Ukraine, adopted in 1996. This document introduced a number of key principles, including popular sovereignty, the rule of law and the protection of human rights. Nevertheless, the practical implementation of these principles is contingent upon further reform of the legal system.

Discussion

The findings confirm that the European constitutions of the eighteenth century significantly shaped democratic principles in Ukraine, which is in line with the results drawn by Boiko (2020) and Kyrychenko (2023). For instance, Pylyp Orlyk's constitution was one of the first and the most democratic, integrating popular sovereignty and a separation of powers ahead of its time. These provisions have a European constitutionalism component, which shows their common source of democratic thinking. The research findings demonstrate, at the same time, the originality of the Ukrainian tradition of combining democratic ideas with customary law. It contrasts with Western European models, where the codification process was more centralised (Berman, 2021; Couperus, 2019). Such a national liberation war of the Ukrainian people makes it evident that democratic values in the country were shaped by such a war, according to Nazarov and Derkach (2023).

The principle of democratic ideology is similar, but its application in Ukraine is minimal. Elsewhere in post-totalitarian countries (Kyrychenko & Kyrychenko, 2021), this contradiction between progressive norms in constitutions and their implementation has been observed. For instance, the 1937 Constitution of the Ukrainian SSR enshrine in its constitution the rights of citizens, yet the totalitarian system makes it virtually impossible to exercise these rights. Provisions similar to these existed elsewhere in Soviet republics, where guarantees were only on paper (Markhgeym et al., 2019). Additionally, the results also offer further research. In particular, the effects of the European democratic traditions on modern Ukrainian constitutionalism may provide insights into suitable adaptation of the European experience to the Ukrainian conditions. Furthermore, the study of the practical implementation of democratic principles within the modern context of decentralisation and European integration should be well-engaged.

In general, the results achieved are consistent with earlier research. However, as explained below, they also portray some new aspects of the historical and legal history of democracy development in Ukraine. In confirmation of the research hypothesis, this thesis further confirms the central role of European constitutions in developing democratic traditions in Ukraine. However, an in-depth study of the tasks and opportunities of constructing a democratic society in contemporary Ukraine is still required.

Conclusion

The study revealed a significant influence of the European constitutions of the eighteenth century on the formation of democratic principles in Ukraine, mainly through adapting the ideas of popular sovereignty, separation of powers and protection of human rights. The uniqueness of the Constitution of Pylyp Orlyk lies in its integration of democratic values with traditional customary law, which became the basis for the formation of national identity even in the context of the national liberation struggle. The analysis showed that despite the formal enshrinement of democratic principles in the Soviet constitutions, their practical implementation was limited due to ideological control. The 1996 Constitution of Ukraine demonstrates significant progress in implementing democratic standards, enshrining the principles of the rule of law, popular sovereignty and decentralisation, which align with European traditions. At the same time, implementing these principles effectively depends on further improving the legal system, political culture and constitutional oversight mechanisms.

Prospects for further research include analysing the current challenges in Ukraine's democratic development, particularly in European integration processes, and adapting successful democratisation practices of other countries to the national context.

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THE IMPORTANCE OF CRITICAL INFRASTRUCTURE FOR NATIONAL SECURITY: LEGAL ASPECTS, RISK MODELS AND MECHANISMS OF STATE MANAGEMENT OF SECURITY

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Abstract

In Ukraine, where the war creates additional challenges, the rapid restoration and adaptation of critical infrastructure form the basis of the national security field. Between February 2022 and the end of 2023, more than 1,200 major cyberattacks were recorded in Ukraine, approximately 40% of which were directed against energy and communication systems, and the damage from missile and drone strikes on infrastructure exceeded $137 billion. The purpose of this article is to analyze the functionality of legal support critical infrastructure in the national security system in the current context of military challenges. The study examines the structure of legal aspects, support critical infrastructure and its place in the overall security system of the state. Various risk assessment methods are analyzed, such as system models, multi-level models, and cybernetic models, which help predict possible crisis situations and plan measures to prevent or mitigate damage. It is argued that resilience can be enhanced through digital technologies, cybersecurity measures, legal reforms, and better coordination between public and private organizations. The prospects for optimizing the state of critical infrastructure in Ukraine are considered, including diversification of supply, modernization of the energy system, improvement of legislation in accordance with European requirements, and improvement of the investment climate. A generalized author's model for managing the

resilience of critical infrastructure in Ukraine during times of increased risk of war is proposed. The study emphasizes the importance of the legal aspects resilience of critical infrastructure, its ability to recover quickly, and highlights the role of cooperation between the public and private sectors.

Keywords

Critical infrastructure, national security, risks, resilience, international experience, legal aspects.

Resumo

Na Ucrânia, onde a guerra cria desafios adicionais, a rápida restauração e adaptação de infraestruturas críticas constituem a base do domínio da segurança nacional. Entre fevereiro de 2022 e o final de 2023, foram registados mais de 1200 ciberataques de grande dimensão na Ucrânia, dos quais aproximadamente 40% foram dirigidos contra sistemas energéticos e de comunicação, e os danos causados por ataques com mísseis e drones às infraestruturas excederam os 137 mil milhões de dólares. O objetivo deste artigo é analisar a funcionalidade do apoio jurídico às infraestruturas críticas no sistema de segurança nacional no contexto atual de desafios militares. O estudo examina a estrutura dos aspetos jurídicos, o apoio às infraestruturas críticas e o seu lugar no sistema geral de segurança do Estado. São analisados vários métodos de avaliação de riscos, tais como modelos de sistema, modelos multiníveis e modelos cibernéticos, que ajudam a prever possíveis situações de crise e a planear medidas para prevenir ou mitigar danos. Argumenta-se que a resiliência pode ser reforçada através de tecnologias digitais, medidas de cibersegurança, reformas jurídicas e uma melhor coordenação entre organizações públicas e privadas. São consideradas as perspetivas de otimização do estado das infraestruturas críticas na Ucrânia, incluindo a diversificação do abastecimento, a modernização do sistema energético, a melhoria da legislação em conformidade com os requisitos europeus e a melhoria do clima de investimento. É proposto um modelo generalizado do autor para gerir a resiliência das infraestruturas críticas na Ucrânia em tempos de risco acrescido de guerra. O estudo enfatiza a importância dos aspetos jurídicos da resiliência das infraestruturas críticas, a sua capacidade de recuperação rápida e destaca o papel da cooperação entre os setores público e privado.

Palavras-chave

Infraestruturas críticas, segurança nacional, riscos, resiliência, experiência internacional, aspetos jurídicos.

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THE IMPORTANCE OF CRITICAL INFRASTRUCTURE FOR NATIONAL SECURITY RISK MODELS AND MECHANISMS OF STATE MANAGEMENT OF SECURITY

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Introduction

Critical infrastructure, which includes energy, transportation, financial, information and communication systems, directly affects national security, as its failure or destruction can lead to serious consequences that threaten the sovereignty, territorial integrity and functioning of the state. The destruction of critical infrastructure causes uneven economic development, regional imbalance, outflow of financial and intellectual capital, growing social polarization, slowdown in innovation and investment, and increased environmental problems.

During the war in Ukraine, the risks of damage to critical infrastructure facilities are becoming alarming. According to the Business Ombudsman Council, more than 700 critical infrastructure facilities were damaged in 2022 alone. The government of Ukraine, together with the World Bank Group, the European Commission and the United Nations, published a report on an updated joint assessment of the damage and needs resulting from the large-scale invasion of Russia – Rapid Damage and Needs Assessment, RDNA3 (World Bank Group, 2024). The RDNA3 assessment covers the damage caused during the almost two-year period from the moment of Russia's full-scale invasion of Ukraine on February 24, 2022, to December 31, 2023. According to the report, direct losses in Ukraine have so far reached nearly $152 billion, with housing, transportation, trade and industry, energy, and agriculture identified as the most affected sectors. The destruction

of the Kakhovka hydroelectric dam in June 2023 led to catastrophic environmental consequences and exacerbated social problems.

Such challenges create a need for new approaches to legal support for public administration in the security sector, which must take into account the complex nature of threats to critical infrastructure and the need for rapid response. The aim of this work is to analyze the functionality of the legal aspects of critical infrastructure support in the national security system and to propose the author's concept for the formation of effective mechanisms for its protection in the conditions of martial law in Ukraine.

Literature Review

Scientists Obi et al. (2024), Ingvarson and Hassel (2023), as a result of their research on the multifactorial impact of critical infrastructure on the state of national security, identified the main vectors of such impact: resilience to threats (cyberattacks, physical destruction); recovery capacity; economic consequences (losses from damage to infrastructure and a long interruption in its functioning); societal life; defense capability dynamics; state stability, trust in the government and prevention of social conflicts. The researchers emphasize that it is important to take into account the cascading effect of threats, when the failure of one element affects the entire security system.

Lubis et al. (2025) explored the possibilities of quantifying the impact of critical infrastructure on national security and identified the main aspects of measurement, including quantifying damage and financial losses, vulnerability analysis (assessing the weaknesses of critical infrastructure that could potentially be affected), monitoring the functioning of systems to identify failures and their causes, and modeling the potential consequences of threats to critical infrastructure.

A number of scholars, in particular, Jada and Mayayise (2024), Saeed et al. (2023), emphasize the need to raise awareness of public sector employees about information security standards to prevent the risks of damage to critical infrastructure: ensuring the uninterrupted operation of facilities, preventing unauthorized interference, predicting crisis situations and preventing their negative impact. Furthermore, the scientists argue for the need to establish cooperation between the public sector, the public and business in the context of common interests in combating cyber threats, emphasizing the need for interagency coordination and public-private partnerships to improve system reliability.

Kalapodis et al. (2025) promote innovative IDS systems for detecting attack traffic, arguing that if more protection resources are invested in critical infrastructure, the ability to resist intrusions can be significantly higher.

Erbas et al. (2024), Paravantis and Kontoulis (2020), studying models for assessing risks and levels of impact on national security, concluded that the most effective assessment models for determining the likelihood of hazards and potential consequences (losses) from the realization of risks are statistical methods, expert assessments, simulation modeling, decision tree, sensitivity analysis, scenario analysis, as well as calculation and analytical and similar methods.

The publications of Eusgeld et al. (2011), Große (2021), Li et al. (2022) are considered relevant, where it is established that the protection of critical infrastructure includes activities to identify, prevent and neutralize threats, as well as minimize and eliminate the consequences of their implementation. The authors outline the boundaries of stakeholder responsibility in this context: the state determines the national policy in the field, forms legislative requirements and coordinates the work of the national critical infrastructure protection system; at the same time, owners (operators) are responsible for ensuring an adequate level of security of facilities, developing and implementing protection measures, as well as cyber defense.

Dimitropoulos (2020), Rass et al. (2020) proposed a number of methods for modeling security threats based on risk forecasting. The main approaches to threat modeling are as follows: threat modeling frameworks (e.g., TRIKE), including structured analysis and documentation of threats; analysis of risks and vulnerabilities, followed by an assessment of their consequences; prioritization of preventive countermeasures; development of a potential breach model to study and predict behavior, potential motives and methods of attacks.

Despite the significant scientific developments, the issue of rethinking the role of critical infrastructure in the national security system in wartime requires expanded research and the development of effective protection mechanisms.

Methodology

To achieve the stated research objective, a comprehensive methodological framework combining general scientific, special legal, and interdisciplinary methods was applied. This approach ensured a systematic and multifaceted analysis of the legal, organizational, and risk-related aspects of critical infrastructure protection within the national security system of Ukraine under wartime conditions.

The analytical method was used to systematize existing scientific approaches, international standards, and doctrinal positions concerning the role of critical infrastructure in ensuring national security. This method made it possible to identify key legal categories, regulatory gaps, and structural weaknesses in the current system of state management of critical infrastructure security.

The systemic and structural-functional methods were applied to examine critical infrastructure as an integrated element of the national security system, characterized by interdependence between energy, transport, communication, digital, and defense-related sectors. These methods allowed for the identification of functional links between legal regulation, institutional mechanisms, and practical security measures.

The comparative legal method was used to analyze Ukrainian legislation in the field of critical infrastructure protection in comparison with European Union legal acts, NATO resilience standards, and international best practices. This enabled the assessment of the level of harmonization of national legislation with European requirements and the identification of priority directions for legal adaptation.

The modeling method played a key role in assessing potential crisis scenarios and risks to critical infrastructure. System models, multi-level risk models, and cybernetic models were applied to simulate the impact of military, cyber, and hybrid threats, as well as to evaluate the resilience and recovery capacity of infrastructure systems under conditions of large-scale disruption.

The risk assessment and scenario analysis methods were employed to classify threats, determine their probability and potential consequences, and evaluate vulnerability levels across different infrastructure sectors. These methods supported the development of preventive and mitigation strategies aimed at enhancing infrastructure resilience.

The methods of synthesis and logical generalization were used to formulate an author's conceptual model of state management of critical infrastructure resilience during periods of heightened military risk. This model integrates legal regulation, cybersecurity measures, institutional coordination, and public–private partnership mechanisms.

In addition, content analysis of legal acts, strategic documents, and policy papers was conducted to identify prevailing regulatory approaches and emerging trends in critical infrastructure protection.

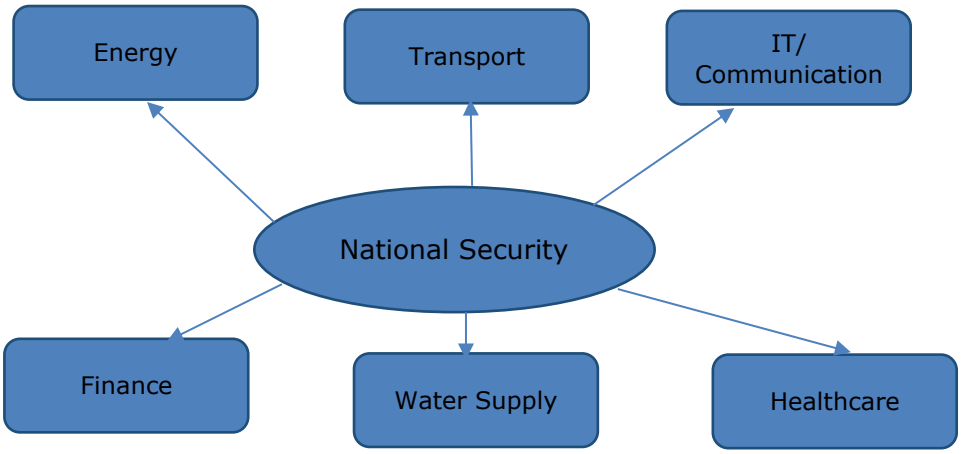
The limitations of the study are related to the restricted availability of classified data, the complexity of empirical verification of security models under wartime conditions, and potential regional bias due to uneven levels of infrastructure damage and restoration. Nevertheless, the applied methodological toolkit provides a sufficient basis for substantiated conclusions and practical recommendations aimed at strengthening the legal and institutional framework for critical infrastructure protection in Ukraine.

Results

Critical infrastructure is defined as a set of facilities, systems, and networks whose disruption has a significant impact on the security and stability of the state. It includes the energy sector, transportation systems, information and communication technologies, financial sector, and healthcare. In the scientific literature, the concept of "critical infrastructure" is interpreted as a multi-level system with a high degree of interdependence.

The full-scale war has shown the vulnerability of Ukraine's critical infrastructure and its direct impact on the overall security context on a national scale. From February 2022 to the end of 2023 alone, more than 63 thousand energy facilities were damaged, with total direct losses in the energy sector estimated at USD 8.8 billion. In the transport sector, more than 23.5 thousand kilometers of roads and more than 340 bridges were destroyed; in the healthcare sector, more than 1.5 thousand institutions were affected**,** 204 of which were completely destroyed; in cyberspace, more than 4.3 thousand incidents were recorded in 2024 alone (State Statistics Service of Ukraine, 2024). As of 2025, the intensity of threats to critical infrastructure continues to grow, with hybrid attacks affecting various areas gaining particular popularity (Figure 1) (Ilyenko et al., 2025).

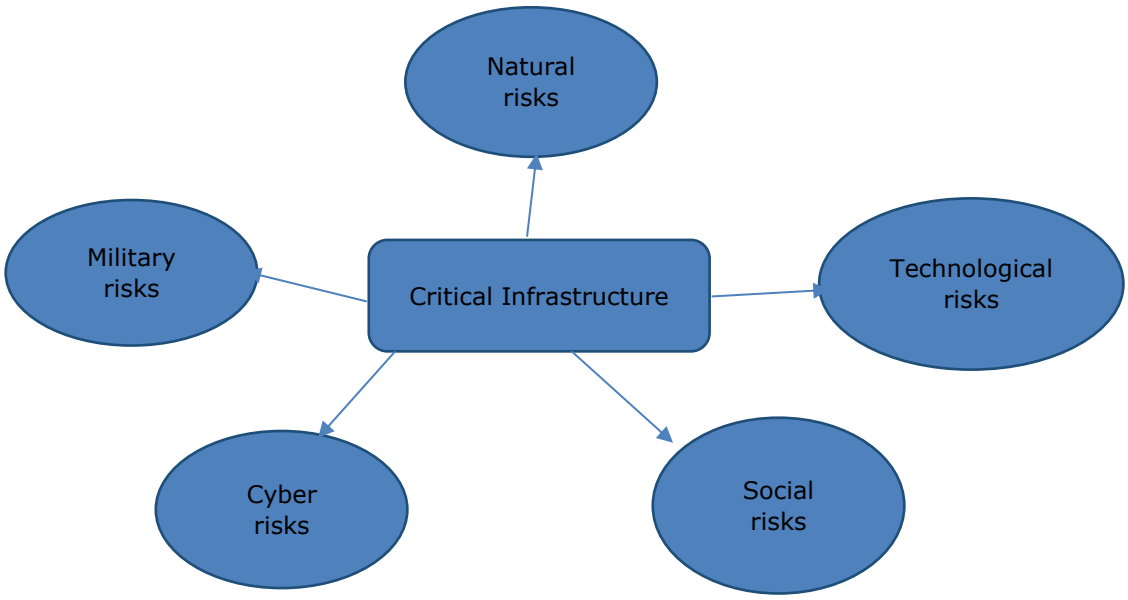
Figure 1. National security and critical infrastructure



Source: (Ilyenko et al., 2025)

Each element of the national security system performs a unique function, and the vulnerability of one segment can create a cascading effect (Novotny & Janosikova, 2020; Roshanaei, 2021). At the same time, cyberspace risks are of particular importance, along with other categories of critical infrastructure risks (Figure 2).

Figure 2. Risks of Critical Infrastructure



Source: created by the author based on Tzavara and Vassiliadis (2024)

The information in Figure 2 emphasizes the multidimensional nature of the risks of critical infrastructure destruction and highlights the urgent need to improve mechanisms for its protection, as economic stability, defense capability, and the level of social stability are largely determined by the security of the critical infrastructure system (Yefimenko et al., 2023; Tzavara & Vassiliadis, 2024). For example, in the European Union, critical infrastructure is defined in accordance with Directive 2008/114/EC, which emphasizes the transnational nature of threats, and NATO pays considerable attention to cyber defense and common approaches to ensuring the resilience of member states (Abgarowicz et al., 2014). Israel has strong cyber defenses and centralized threat management, while Canada focuses on inter-agency coordination and working with private companies. In all countries, an integrated approach that combines legal, organizational, and technological mechanisms is important (Grigalashvili & Abiashvili, 2021). Studying these practices allows us to adapt them to national conditions and form a more effective protection system in Ukraine.

Military security processes are regulated in accordance with the Constitution of Ukraine, the Laws of Ukraine "On National Security of Ukraine," "On the National Security and Defense Council of Ukraine," "On Defense of Ukraine," "On Intelligence," "On the Principles of Domestic and Foreign Policy," "On the Armed Forces of Ukraine," as well as the Decrees of the President of Ukraine "On Issues of the National Security and Defense Council of Ukraine," "On the Decision of the National Security and Defense Council of Ukraine of September 14, 2020, "On the National Security Strategy of Ukraine," "On the Decision of the National Security and Defense Council of Ukraine of March 25, 2021, "On the Military Security Strategy of Ukraine," "On the Decision of the National Security and Defense Council of Ukraine of August 20, 2021 "On the Strategic Defense Bulletin of Ukraine" and Resolutions of the Cabinet of Ministers of Ukraine "On Approval of the Regulations on the Ministry of Defense of Ukraine," "On Approval of the Procedure for Conducting a Defense Review of the Ministry of Defense".

As for Ukraine, the state policy in this area is aimed at predicting threats, preventing crises, reducing risks, and ensuring rapid restoration of facilities in the event of attacks or accidents. Ukraine's regulatory framework defines the legal basis for the protection of critical infrastructure. It includes laws, government regulations and strategic documents in the field of national security. The requirements of international standards and EU directives are partially implemented. There are gaps in the harmonization of legislation with international norms. The need to modernize the legal framework is a key factor in improving the effectiveness of system protection (Herasymenko & Siryi, 2025).

Critical infrastructure is managed by institutions and organizations. Institutions include central bodies and committees. Financial mechanisms include public funding for protection measures and incentives for private investment. Legal mechanisms regulate liability and control over compliance with security standards. The joint application of these mechanisms allows for the integration of resources and optimization of management processes (Demirel et al., 2022).

Risks to critical infrastructure are multifactorial in nature and are classified by source. Natural risks include natural disasters, climate change, and epidemics. Technological risks include accidents at industrial enterprises, transportation, and the energy sector.

Social risks are associated with mass protests, terrorist attacks, and other forms of social destabilization (Ivaniuta et al., 2024). Cyber threats are particularly dangerous because they disrupt digital systems and can paralyze infrastructure networks. Military risks become crucial in the context of hostilities and hybrid aggression. Risk classification allows to systematize threats and develop a comprehensive strategy to prevent them (Table 1).

Table 1. Classification of critical infrastructure risks

Type of risk	Examples of threats	Potential consequences
Natural	Floods, earthquakes, epidemics	Destruction of facilities, disruption of vital services
Technological	Industrial accidents, transportation disasters, power outages	Economic losses, environmental pollution, human casualties
Social	Mass protests, terrorist attacks, social destabilization	Threat to the security of citizens, destabilization of state institutions
Cybernetic	Hacker attacks, cyber espionage, blocking of digital networks	Paralysis of infrastructure systems, data leakage, destabilization of information
Military	Missile and drone attacks, hybrid aggression, sabotage	Destruction of infrastructure, reduction of defense capabilities, large-scale crises

Source: compiled by the author

Table 2. Models of critical infrastructure risk analysis

Model	Characteristics	Advantages	Limitations
Systemic	Considers infrastructure as a single interconnected system	Allows to assess cascading effects	Difficult to apply in practice
Multi-level	Analyzes risks at the facility, regional and national levels	Provides a detailed assessment of threats at different levels	Requires a large amount of data
Cybersecurity	Focuses on information flows and system management	Takes into account digital technologies and cybersecurity	Limited to non-digital threats

Source: compiled by the author

Risk analysis models are an important tool for threat forecasting and defense planning. The cyber model is based on the view of infrastructure as a complex control system where information exchange plays a key role. The system model analyzes the interdependence of all elements and their vulnerability to external influences. The multi-level model involves risk assessment at different levels, from an individual facility to the national system. Such approaches allow identifying both direct and indirect consequences of potential threats (Cherdantseva et al., 2016). The use of models contributes to the development of effective risk management mechanisms and enhanced infrastructure

resilience. The choice of a particular model depends on the specifics of the sector and the nature of potential risks (Table 2).

The development of critical infrastructure crises has different scenarios depending on the scale and nature of the threats. One scenario involves a localized disruption of a single facility with limited impact. Another scenario involves the cascading spread of the crisis to other infrastructure sectors (Heino et al., 2019). A systemic scenario is particularly dangerous when several sectors are disrupted simultaneously. In such circumstances, the state faces the risk of paralyzing key governance and life support functions. The consequences of crisis scenarios include economic losses, social instability, and reduced defense capabilities. The analysis of possible scenarios allows predicting risks and formulating preventive response measures (Krylova & Hlushchenko, 2025).

The digitalization of critical infrastructure increases the efficiency of management and control by providing prompt data collection on the state of systems and possible threats. Monitoring helps to detect and respond to problems in a timely manner, and the use of digital tools increases the resilience of systems and reduces the cascading effects of failures. Thus, digitalization, monitoring, and cybersecurity form the basis of modern critical infrastructure risk management (Lubis et al., 2025).

Modern risk management systems are focused not only on preventing threats, but also on ensuring rapid recovery. The concept of resilience implies the ability of critical infrastructure to withstand and adapt to crisis impacts. It includes preventive measures, monitoring, crisis response, and recovery from incidents. The key principle is an integrated approach that covers organizational, technological and legal levels. The ISO 22301 and NIST standards governing business continuity management are important for implementing this concept. The use of resilience models minimizes cascading effects and increases the reliability of systems (Rehak et al., 2025).

Critical infrastructure protection is impossible without the interaction of the state and business. Most infrastructure facilities are owned by private operators, which increases the importance of partnership models. Public-private partnerships involve joint responsibility for risk management and implementation of security measures. It is important to exchange information between the entities, including data on threats and incidents. Such interaction increases the effectiveness of response and optimizes the use of resources. Examples of partnership initiatives demonstrate the interest of business in ensuring resilience (Ampratwum et al., 2022).

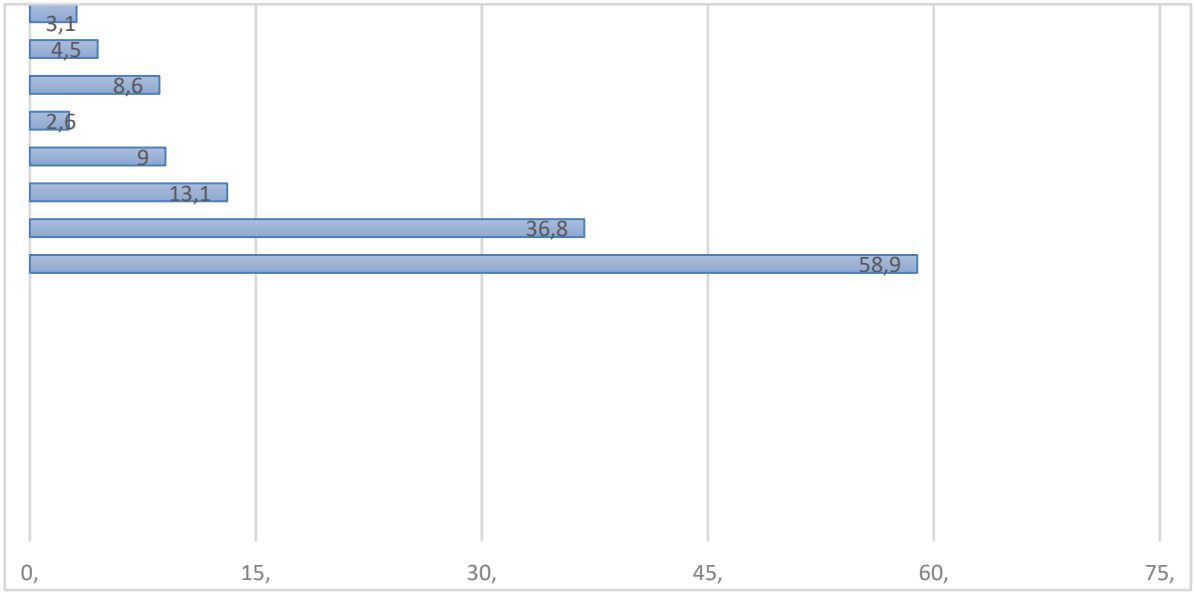
The full-scale war has created unprecedented threats to Ukraine’s critical infrastructure. Massive missile and drone strikes have targeted energy, transportation, and communications. Systematic attacks lead to disruptions in the operation of infrastructure networks and a decrease in the level of life support for the population. The war increases the vulnerability of cyberspace as digital systems become targets of cyberattacks. A particular challenge is the cascading nature of threats, when damage to one sector leads to disruption of other sectors. At the same time, there is a growing need to quickly restore destroyed facilities and ensure their resilience. Thus, the war is shaping a new reality in which the protection of critical infrastructure is a priority for the state (Ivaniuta et al., 2024).

Ukraine declares its desire to harmonize its infrastructure protection system with European and international standards. However, the implementation process faces a number of challenges. The regulatory framework is fragmented and needs to be updated in line with EU and NATO requirements, and government agencies do not have sufficient resources to fully manage risks. Insufficient funding limits infrastructure modernization and cyber defense, making it difficult to implement international approaches.

The main task of creating a comprehensive strategy for the protection of critical infrastructure should be to strengthen coordination between government agencies and the private sector to implement modern resilience standards, create a national cyber defense system, and train specialists (Adegbite et al., 2023).

The energy infrastructure is currently one of the most affected sectors, in particular in terms of the amount of damage caused. In general, the destruction of critical energy, industrial and civilian infrastructure has led to increased security risks, slower investment, and slower socioeconomic development. As of 2024, the amount of direct losses caused by the destruction of infrastructure during the full-scale invasion of Ukraine by Russia between February 2022 and the end of 2023 exceeded 137 billion USD (Figure 3).

Figure 3. Direct losses from the destruction of infrastructure in Ukraine during the full-scale war of the Russian Federation, billion USD February 2022 – end of 2023



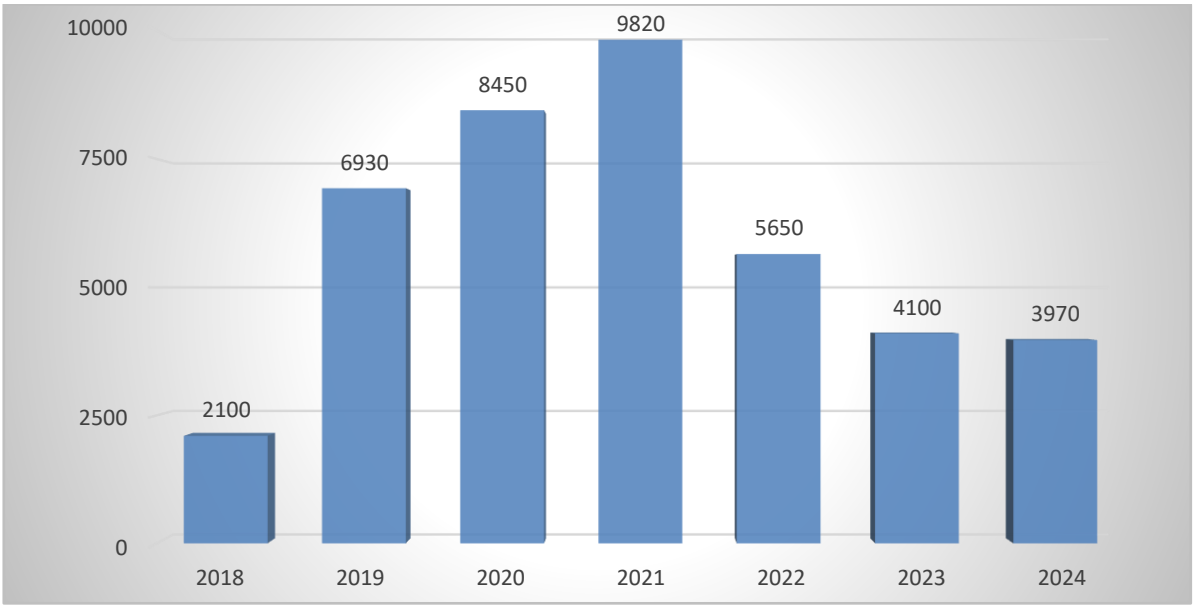
Source: systematized on the basis of the State Statistics Service of Ukraine (2024)

As Figure 3 shows, industrial, energy, and civilian infrastructure suffered the greatest destruction. This situation requires significant financial injections, periodic transfers, and the implementation of a strategy to increase the resilience of energy security.

Ukraine has significant potential in the development of renewable energy, which can strengthen the resilience of energy infrastructure. In order to ensure the fastest possible

balanced development of the industry, Ukraine should deepen the processes of diversification and deregulation, and create conditions for prompt investment. Today, the crisis conditions of the war are causing a slowdown in the industry's development (Figure 4).

Figure 4. Development of renewable energy in Ukraine, MW



Source: compiled by the author based on NKREKP (2024)

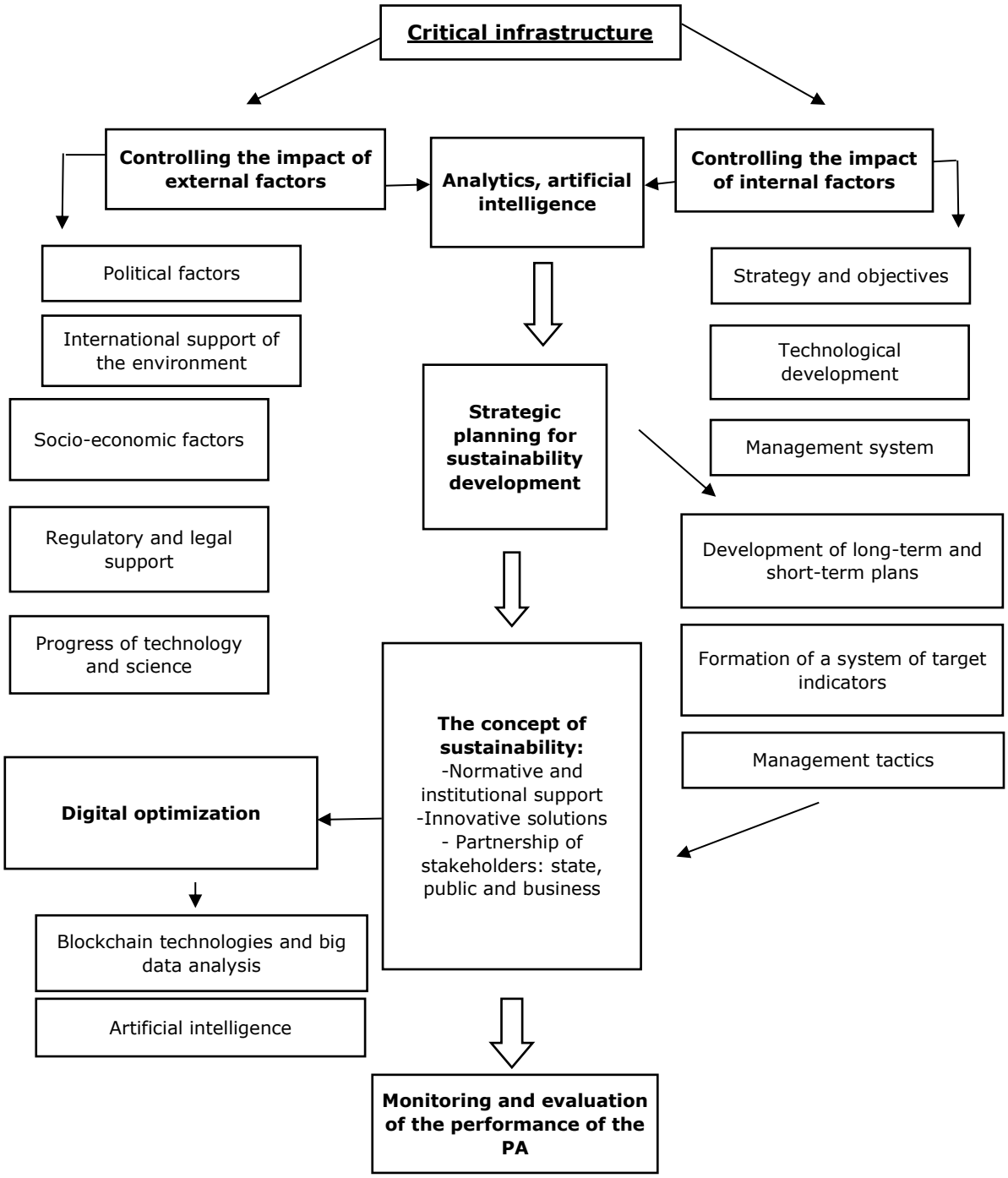
As shown in Figure 4, the full-scale war has made adjustments to the strategy of resource use in the energy sector, as a significant number of alternative energy facilities were destroyed and damaged in the first year of active hostilities.

In order to regenerate critical infrastructure and increase its resilience in wartime crisis conditions, government institutions should implement effective investment development mechanisms, including: war risk insurance for investment projects in priority sectors; interest-free lending for projects to regenerate destroyed or damaged infrastructure; support for industrial and infrastructure investment projects; development of international partnerships; financial incentives for the transfer of green technologies, etc. In particular, the development of a network of industrial parks is positioned as an innovative solution for the rapid restoration of destroyed critical infrastructure, which will contribute to sustainable regional development. This approach will allow for the relocation of production, increase local budgetary injections, and optimize the investment climate. It is also important to further develop the processes of decentralization and deregulation, and to introduce priority models of public-private cooperation.

In addition to the above, it is necessary to use digital technologies and innovative opportunities for data openness, transparency of decision-making procedures for critical infrastructure and control over their implementation, and the implementation of the

necessary corrective action. This approach will ensure high rates of post-war infrastructure regeneration (Figure 5).

Figure 5. Critical Infrastructure Resilience Management Model



Source: Author's elaboration

Analyzing Figure 5, it is necessary to note the importance of integrating digital potential, as electronic information systems allow for the rapid collection and consolidation of necessary data, making informed and reasonable decisions, monitoring and controlling performance. The proposed concept will help to increase the resilience of critical infrastructure, optimize coordination of actions, and strengthen the national security system as a whole.

The events related to the occupation of Crimea and parts of Donetsk and Luhansk regions by the Russian Federation in 2014 prompted the improvement of legal regulation in the field of national critical infrastructure protection in Ukraine. In response to the political situation that developed in late 2014 and early 2015, on January 27, 2016, the President of Ukraine signed a decree enacting the decision of the National Security and Defense Council of Ukraine "On the Cybersecurity Strategy of Ukraine." This document effectively marked the beginning of the formation of legal regulation for the protection of critical infrastructure. The implementation of Ukraine's Cybersecurity Strategy required a number of changes to national legislation to provide a basis for the implementation of its provisions and to increase liability for offences in the field of cybersecurity.

In particular, Resolution No. 563 of the Cabinet of Ministers of Ukraine dated August 23, 2016, approved and enacted the Procedure for forming a list of information and telecommunications systems of critical infrastructure facilities of the state, which for the first time provided an official definition of the concept of "critical infrastructure" as a set of state infrastructure facilities that are most important for the economy and industry, the functioning of society and the safety of the population, and whose failure or destruction could affect national security and defense, the natural environment, and lead to significant financial losses and human casualties.

In order to implement appropriate measures at the national, sectoral, and regional levels regarding legal and organizational-methodological support, coordination, and consolidated provision of resources for security systems, the Cabinet of Ministers of Ukraine, in accordance with the Decision of the National Security and Defense Council of Ukraine dated December 29, 2016 "On improving measures to protect critical infrastructure facilities," developed the Concept for the creation of a state system for the protection of critical infrastructure in Ukraine, which was put into effect by Order of the Cabinet of Ministers of Ukraine No. 1009-r of December 6, 2017.

In particular, the Concept outlines the main problems in the field of building a state system for the protection of critical infrastructure:

- insufficiency and inconsistency of regulatory and legal regulation in Ukraine for the protection of critical infrastructure systems and facilities;

- uncertainty regarding the functions, powers, and responsibilities of central executive bodies and other bodies in the field of critical infrastructure protection, as well as the rights, obligations, and responsibilities of owners and operators of critical infrastructure facilities;

- absence of a state body at the national level responsible for coordinating actions in the field of critical infrastructure protection, existing state protection systems, and crisis response;

- absence of a unified methodology for assessing threats and risks to critical infrastructure, preventing their realization, and responding to threats;

- underdeveloped public-private partnerships and uncertainty regarding sources of funding for critical infrastructure protection measures;

- lack of uniform criteria and methodology for classifying infrastructure facilities as critical infrastructure, and for their certification and categorization;

- insufficient level of international cooperation in this area.

In addition, during this period, important legislative and regulatory acts were adopted, aimed at improving the national security and defense system, in particular, the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine" and a number of sector-specific regulatory acts:

- Procedure for forming a list of information and telecommunications systems of critical infrastructure facilities of the state;

- Resolution of the Cabinet of Ministers of Ukraine No. 519 of 19.06.2019 "On Approval of General Requirements for Cyber Protection of Critical Infrastructure Facilities";

- Resolution of the Cabinet of Ministers of Ukraine No. 943 of October 9, 2020, "Certain Issues of Critical Information Infrastructure Facilities";

- Resolution of the Cabinet of Ministers of Ukraine No. 1176 dated November 11, 2020, "On Approval of the Procedure for Reviewing the State of Cyber Protection of Critical Infrastructure, State Information Resources, and Information, the Protection of Which is Required by Law";

- Resolution of the Board of the National Bank of Ukraine No. 151 dated November 30, 2020, "On Approval of the Regulations on the Identification of Critical Infrastructure Objects in the Banking System of Ukraine";

- Resolution of the Cabinet of Ministers of Ukraine No. 1295 dated December 23, 2020, "Certain Issues of Ensuring the Functioning of the System for Identifying Vulnerabilities and Responding to Cyber Incidents and Cyber Attacks";

- Resolution of the Cabinet of Ministers of Ukraine No. 519 dated June 19, 2019, "On Approval of General Requirements for Cyber Protection of Critical Infrastructure Objects";

- Resolution of the Cabinet of Ministers of Ukraine No. 1109 dated October 9, 2020, "Certain Issues of Critical Information Infrastructure Facilities";

- Resolution of the Cabinet of Ministers of Ukraine No. 1426 dated December 29, 2021, "On Approval of the Regulations on the Organizational and Technical Model of Cyber Protection."

The concept of "critical infrastructure facility" first appeared in the Law of Ukraine "On the Basic Principles of Ensuring Cyber Security of Ukraine," but the subject of its regulation is, to a large extent, highly specialized.

With the start of Russia's full-scale invasion of Ukraine, the process of developing a national CII protection system has accelerated significantly. During this period, the main legislative act regulating this activity was enacted – Law of Ukraine No. 1882-IX of November 16, 2021, "On Critical Infrastructure," which came into force only on June 15, 2022. With the adoption of this law, the organizational structure of the CII protection system was outlined at the legislative level; the mechanism for forming the composition of CII was defined by regulation, which created the legal basis for the proper organization of CII and its protection.

The European Union's Global Strategy on Foreign and Security Policy, adopted in 2016, determines the EU's activities in the context of addressing energy security, hybrid transnational threats, migration, and climate change. Among its strategic priorities, the Strategy highlights an integrated approach to crisis management, enhancing the region's defense capabilities, ensuring stability, and developing international cooperation. The Strategy defines the key principles of the EU's positioning in the international arena, namely, upholding the rules of the global order and promoting peace. Ukraine has the potential to be a guarantor of stability in the European region. With active support from the EU and the US, it will be able to realize its own regional ambitions and implement systemic reforms at the state level. At the same time, the process requires adequate security guarantees, which must be formed within the framework of a single effective national security concept.

Discussion

The results show that critical infrastructure is a system of interconnected elements. This is in line with international studies that emphasize the growing role of digital security (Almahmoud et al., 2025). The risk analysis models proposed by the authors demonstrate different levels of effectiveness: the systemic approach allows for the interdependence of sectors, the multi-level model provides details at the facility, regional, and national levels, and the cyber model reveals the role of information flows in system stability. Comparing the findings of scientists with the results of the current study proves the need for a comprehensive combination of approaches.

The effectiveness of practical tools, such as risk and resilience management, is proved by Mitra et al. (2024). In the context of Ukraine, their implementation is hampered by insufficient funding and weak coordination. Public-private partnerships are promising, but need to be strengthened. At the same time, international experience shows that an integration approach provides the highest protection efficiency.

The results of Khrapkina and Metelenko (2025) show the potential for developing the system based on modern risk management models. At the same time, the Ukrainian context requires the adaptation of international standards and the rapid restoration of facilities and their resilience. Obviously, regulatory shortcomings and institutional constraints hinder progress.

In the scientific discourse, the issue of damage to critical infrastructure in wartime has been addressed in publications by Guarini et al. (2021), De Rosa and et al. (2022). In particular, the authors emphasize the scale of Russian attacks on critical infrastructure,

including energy and healthcare systems, and conclude that the main risks point to the need to strengthen resilience for uninterrupted operation. At the same time, Gunawan and Pane (2024) analyze the problem in the context of legal protection, institutional support for assessing damages from the party responsible for the destruction of infrastructure, as well as international guarantees in this regard.

The research of Pacek and Pacek (2023), Gunawan and Pane (2024), Alcaraz and Zeadally (2015) correlates with the results of the current article on the importance of supporting investment regeneration projects and creating security guarantees for critical infrastructure as a basis for socio-economic development.

Thus, the study confirms the strategic role of legal aspects critical infrastructure in the national security system. At the same time, it reveals a gap between international practices and Ukrainian reality. Further research should focus on developing flexible coordination and financing mechanisms.

Conclusions

Critical infrastructure is a key element of national security, ensuring the stability of society and the functioning of state institutions. The analysis of the theoretical and methodological foundations of legal support for the industry has shown that critical infrastructure is a multi-level system with interdependent components. International experience confirms the importance of a comprehensive approach to its protection and implementation of resilience standards.

The study of risks has shown that they are multidimensional and include natural, man-made, social, cyber and military threats. The use of risk analysis models makes it possible to predict consequences and develop preventive measures. Crisis scenarios demonstrate the state's readiness to respond quickly and restore the system's functioning, primarily through effective legal support.

Practical protection tools, such as risk and resilience management systems, increase the efficiency of public administration. Public-private partnerships help coordinate and optimize resources. International best practices show the importance of an integrated approach that includes legal, organizational, and technological mechanisms. The Ukrainian context is characterized by the increased vulnerability of critical infrastructure in times of war. The implementation of international standards is complicated by regulatory, institutional and financial constraints. All of this must be reflected in the national legislative framework and legal support institutions.

Suggestions for improvement include improvement of legal regulationpolicies to strengthen coordination, introduce modern risk management models, develop cyber defense, and improve the legal framework. Implementing these measures will increase the resilience of critical infrastructure, minimize the risks of cascading effects, and ensure national security. An integrated approach based on theoretical models, practical tools, and international experience forms the basis for strategic development and effective management in the industry's legal framework.

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CONSTITUTIONAL CONTROL IN EASTERN EUROPEAN COUNTRIES: MODELS, EFFECTIVENESS AND DEVELOPMENT PROSPECTS

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Abstract

This study provides a systematic analysis of the effectiveness of constitutional control in Eastern Europe in order to identify mechanisms of democratic degradation and preventive safeguards, given the rule-of-law crises observed in several states. The objective is to examine models, performance, and development prospects of constitutional review through the lens of checks and balances, based on the activities of constitutional courts in Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, and Ukraine during 2015–2024. The methodology includes functional analysis of three core roles of constitutional courts (protection of fundamental rights, arbitration between branches of power, and constitutional interpretation), case-study analysis of four constitutional crises (Poland 2015–2023, Hungary 2010–2025, Romania 2012–2024, Ukraine 2010–2025), and correlation analysis using data from the World Justice Project, V-Dem Judicial Independence Index, official court reports, and Venice Commission conclusions. The results identify three distinct functional models: (1) Full constitutional arbitration (Baltic states, Czech Republic) with high efficiency indicators; (2)

Selective control under political pressure (Poland, Hungary) with sharp declines in performance after political interference; (3) Unstable control (Ukraine, Romania, Bulgaria) marked by high variability. The study demonstrates increasing divergence among models from 2015 to 2024, with the standard deviation of the composite efficiency index rising from 12.4 to 19.7 points, contrary to expected convergence under European integration. The analysis also reveals common techniques of political capture of constitutional justice (procedural manipulation, court-packing, and reinterpretation of constitutional norms). Correlation results show strong links between judicial independence and appointment mechanisms, with higher efficiency associated with transparent selection procedures and balanced institutional design.

Keywords

Constitutional Control, System Of Checks and balances, Eastern Europe, constitutional courts, democratic rollback.

Resumo

Este estudo apresenta uma análise sistemática da eficácia do controlo constitucional na Europa Oriental, com o objetivo de identificar mecanismos de degradação democrática e salvaguardas preventivas, tendo em conta as crises do Estado de direito observadas em vários Estados. O objetivo é examinar modelos, desempenho e perspetivas de desenvolvimento da revisão constitucional através da lente dos freios e contrapesos, com base nas atividades dos tribunais constitucionais da Estónia, Letónia, Lituânia, Polónia, República Checa, Eslováquia, Hungria e Ucrânia durante o período de 2015 a 2024. A metodologia inclui a análise funcional de três funções essenciais dos tribunais constitucionais (proteção dos direitos fundamentais, arbitragem entre os poderes e interpretação constitucional), a análise de estudos de caso de quatro crises constitucionais (Polónia 2015-2023, Hungria 2010-2025, Roménia 2012-2024, Ucrânia 2010-2025) e análise de correlação utilizando dados do World Justice Project, do Índice de Independência Judicial V-Dem, de relatórios oficiais dos tribunais e das conclusões da Comissão de Veneza. Os resultados identificam três modelos funcionais distintos: (1) Arbitragem constitucional plena (países bálticos, República Checa) com indicadores de alta eficiência; (2) Controlo seletivo sob pressão política (Polónia, Hungria) com quedas acentuadas no desempenho após interferência política; (3) Controlo instável (Ucrânia, Roménia, Bulgária) marcado por alta variabilidade. O estudo demonstra uma divergência crescente entre os modelos de 2015 a 2024, com o desvio padrão do índice de eficiência composto a subir de 12,4 para 19,7 pontos, contrariamente à convergência esperada no âmbito da integração europeia. A análise também revela técnicas comuns de captura política da justiça constitucional (manipulação processual, aumento do número de juízes e reinterpretação das normas constitucionais). Os resultados da correlação mostram fortes ligações entre a independência judicial e os mecanismos de nomeação, com maior eficiência associada a procedimentos de seleção transparentes e um desenho institucional equilibrado.

Palavras-chave

Controlo Constitucional, Sistema De Freios E Contrapesos, Europa Oriental, Tribunais Constitucionais, Retrocesso Democrático.

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CONSTITUTIONAL CONTROL IN EASTERN EUROPEAN COUNTRIES: MODELS, EFFECTIVENESS AND DEVELOPMENT PROSPECTS

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Introduction

Constitutional review in modern democracies is an important part of the system of checks and balances, as it allows the judiciary to monitor the compliance of all political institutions with constitutional standards and protect the fundamental rights of citizens from unjustified restrictions by the state (Savchyn, 2019). Constitutional courts have become the main institution new democracies in post-socialist countries countries Eastern Europe, and this was implemented after 1989-1991 with the main goal of avoiding repetition of the authoritarian past, ensuring the supremacy of the constitution over existing laws. However thirty years that have passed since the beginning of democratic changes, demonstrate uneven trends institutionalization these institutes: countries Baltics formed an effective system of constitutional control, Poland and Hungary are experiencing a crisis of the rule of law unprecedented in history these countries that expressed in political enthusiasm constitutional courts and destabilization theirs authorities.

System of checks and balances (checks and balances), for the first time formulated James Madison in the Federalist Papers as a prevention system concentrations power through mutual containment branches power, in modern constitutional democracies is being implemented mainly through judicial review of constitutionality acts legislative and executive branches By institutionalizing the principle of checks and balances, constitutional courts act arbitrators in disputes between branches authorities and have guarantee their adherence to the constitutional distribution powers and lack of usurpations authorities one institution. Efficiency systems checks and balances in post-

socialist democracies Eastern Europe trace to evaluate through the prism of ability constitutional courts actually limit legislative and executive branches power, not through formal the presence of judicial control.

Democratic regression (democratic) backsliding) is process gradual undermining democratic institutions with the help of officially legitimate procedures, such as sabotage of independence judicial organs as part systems checks and balances (Haggard & Kaufman, 2021). In contrast from traditional authoritarian coup, modern erosion democracy is happening gradually through legislative amendments, constitutional amendments and procedural tricks that keep visibility democratic legitimacy, but destroy mechanisms limitation power. Constitutional courts, instead of do resistance to such processes, themselves become objects such policies by modification theirs structures, constraints their powers or creation parallel jurisdiction that annuls their solution.

The crisis of constitutional control in Poland, where the government has been systematically capture Constitutional Tribunal by refusing to legally appoint judges, reducing the quorum for the adoption decisions and appointments new members became a symbol of potential collapse democratic institutes in the European Union (Halmai, 2018). Another form of degradation that indicates Hungary, there is a transcription constitution: introduction of a new Basic Law in 2011, increase quantities members Constitutional Court up to 15 people in order to involve loyal members to the Constitutional Court, limiting the topic of constitutional control and systematic abolition unwanted judicial decisions by amending the constitution. Such cases indicate that formal membership in the EU and acceptance European standards at the entry level are not guaranteed preservation effective constitutional control in the conditions political striving for concentration authorities.

Meanwhile, Ukraine, Romania and Bulgaria demonstrate another dysfunction constitutional control: they are not subject to systematic hobbies, but periodically are experiencing constitutional crises during which courts are experiencing pressure from various political forces that forces their to approve politicized decision, change legal positions after changes in your in stock and cannot to play the role of a stable arbitrator in interstate disputes (Kopcha, 2020). Between 2010 and 2025 Ukrainian politicians have survived four constitutional crisis, as a result whose The Constitutional Court has become an instrument political pressure or decision institutions were ignored by the parties to the conflict, which weakened the authority of the institution and made it impossible creation consistent constitutional ideology.

Venetian commission in your Rule of Law Checklist determines independence judicial power, access to justice and the effectiveness of judicial control as key aspects of the rule of law, violations which he puts under threatens the entire system of democracy (Venice Commission, 2016b). However, international monitoring has proven insufficient to prevent or halt the takeover of constitutional courts: the Article 7 Treaty procedure on European The Union requires unanimity for sanctions and is therefore blocked by the mutual support of Poland and Hungary, and economic sanctions in the form of freezing Euro funds are applied with many years of delay and do not lead to the restoration of the independence of the courts.

The scientific problem lies in the lack of a systematic comparative study of the effectiveness of constitutional review applied in all Eastern European states, both successful (Baltic countries), unsuccessful (Poland, Hungary), and those that failed to stabilize the constitutions (Ukraine, Romania) in historical terms. The available literature only discusses individual countries or individual cases (formal independence, appointment procedures), but does not offer a holistic assessment of the actual capacity of courts to perform three main functions: ensuring fundamental rights of people, resolving interstate disputes, and developing constitutional doctrine through interpretation. It no quantitative indicators, using whose can would be to compare efficiency constitutional control between countries and trace changes over time to to determine critical moments deterioration situations.

The aim of the study is to thoroughly discussion of models, efficiency and opportunities development constitutional control in countries Eastern Europe in context systems checks and balances. In the study are revealed differences in the functioning of constitutional control models, mechanisms political delight judicial systems and their consequences are determined institutional factors that contribute or restrict the court's ability to limit power, as well as is assessed whether can models to get closer with the help of mechanisms European integration.

Literature Review

Theoretical knowledge about the crisis of constitutional control in Eastern Europe lies at the intersection of three interrelated areas of research, namely: conceptualizations of democratic backsliding as a global phenomenon, analysis of mechanisms for seizing judicial power, and study of post-socialist democratic constitutional changes.

The term “democratic” backsliding was introduced by Levitsky and Ziblatt (2018) and is used to refer to the process of slow erosion of democracy through the undermining of important institutions, more from a legal perspective than as a result of a classic military coup. The authors identify four manifestations of authoritarian behavior, including the refusal to abide by democratic rules of the game, the denial of the legitimacy of political opposition, the acceptance or encouragement of violence, and the indulgence in the exercise of civil liberties by the opposition and the media. Constitutional courts in this system serve as important “guardians of democracy” (democratic guardrails), which are supposed to ensure that such trends do not become a threat to the system, but they are the ones who fall victim to such attacks by populist populists strongmen. Haggard and Kaufman (2021) describe the anatomy of democratic retreat by examining executive aggrandizement as one of the main processes leading to the gradual undermining of institutions that constrain executive power, such as the judiciary, the electoral system, and parliamentary oversight mechanisms.

Daly (2019) suggests replacing the term “backsliding” with the concept of “democratic decay” and emphasizes that this process is gradual and its initial signs are difficult to recognize. The author develops a methodology for empirical research on the decline based on indicators of the quality of democracy, such as the independence of the judiciary, access to justice and the effectiveness of constitutional review. This will allow

moving from qualitative assessments to quantitative checks of the process of democratic degradation, which is vital for timely detection of threats and development of preventive policies. Some mechanisms of constitutional judicial seizure organized by Landau and Dixon (2021) in the concept of abusive judicial review, i.e. the exercise of judicial control to protect the democratic process, but with the aim of undermining it. The authors distinguish three options: "court – packing" (expanding the composition of the court to attract loyal judges), "jurisdiction stripping" (reducing the jurisdiction of courts in matters of political sensitivity) and "constitutional hardball" (the vigorous use of formally legal but norm – breaking tactics to neutralize judicial resistance). Empirical research on specific cases in other regions proves that in many cases a combination of these mechanisms and the rhetoric of defending sovereignty or restoring the balance of power is used to justify anti-democratic actions.

From von Bogdandy et al. (2018) analyze the European environment of democratic retreat and conceptualize the rule of law crisis in Poland and Hungary as a "potential constitutional moment" in the European Union and the need for a fundamental revision of the mechanisms for protecting common values. The authors lament the ineffectiveness of current instruments (Article 7 TEU, infringement procedures) and propose to give the Commission additional powers to oversee the rule of law through annual reports and certain recommendations, as well as the inability to impose economic sanctions on regular violators. This decision was partly implemented by the introduction of the EU Rule of Law Mechanism in 2020, which allows for the freezing of access to EU funds as a result of rule of law violations.

Bugarič (2019) analyzes descent into autocracy of Central European countries through the prism of constitutional analysis authoritarian populism, and shows a particular tendency to appeal to constitutional identity as a means of opposing European norms. Hungary and Poland use their "national traditions" and "sovereignty" as a pretext for violating pan-European judicial standards independence and create a narrative confrontation between the "elitist liberalism of Brussels" and the true will of the people. Constitutional courts must to protect not universal human rights, but national an identity that radically rethinks theirs place in the system checks and balances. Analysis of the phenomenon of abuse constitutional identity, proposed

Scholtes (2021), coming yet further, showing how the idea constitutional identity, created in scientific literature and legal practice in the interests of preservation national constitutional traditions against excessive unification according to EU law, was manipulated authoritarian regimes to justify violation main principles of the rule of law. In Hungary calls for constitutional identity were used to limit powers Constitutional Court, annulment its decisions through constitutional amendments and non-implementation solutions European Court of Human Rights. This leads to an ironic situations where the idea is intended to support pluralism constitutional traditions, ultimately summary becomes tool destruction constitutionalism.

Comparative analysis shows that scientific literature about mechanisms democratic backsliding (executive aggrandizement, court-packing, jurisdiction stripping, constitutional hardball) and its prevalence in the East Europe is unanimous. However, still remain unanswered the question of how much fast was deterioration situations (why

Poland and Hungary suffered faster worsening than Slovakia, or perhaps restore efficiency constitutional control after years delight government), and whether helps external monitoring (as far as effectively EU mechanisms can prevent or stop democratic backsliding). Gap in research is that functional efficiency constitutional courts has never been systematically studied within the framework of quantitative research that would cover the entire spectrum from successful (countries Baltic States) to problematic (Poland, Hungary) and unstable (Ukraine, Romania) based on standardized indicators and for the purpose of tracking processes in time.

Materials and Methods

Research efficiency constitutional control in countries Eastern Europe was conducted as a comparative functional research using official secondary sources for the period 2015-2025. It has methodological basis that combines comparative law, institutional analysis and empirical research case law, based on actual success three the most important functions constitutional courts in security fundamental rights, arbitration between branches power and interpretative constitutionalism. In it are analyzed eight Eastern European countries, among whose Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary and Ukraine.

Criteria inclusion: post-socialist transformation political systems after 1989-1991; availability specialized institute constitutional control; membership in the Council Europe and subordination jurisdictions European Court of Human Rights; availability official statistical reports constitutional vessels for analysis period that under consideration. Criteria Exception: Western Balkans (various regional features); Moldova and Belarus (lack of confirmed data); Russia (withdrew from the Council of Europe in 2022). In sample presented all options post-socialist democracies in the region: countries Baltics (successful integration), Visegrad group (differentiated development) and Ukraine (post-Soviet) (long-term transformation).

Primary source data served official annual reports constitutional courts of eight countries for 2015-2024, which contain statistics on considered cases, structure of appeals, types of decisions and deadlines consideration. Used bases data Venice Commission with 47 conclusions of constitutional reforms in the region, decisions European Court of Human Rights of independence judicial power. Quantitative indicators efficiency received from the World Justice Project (2024), V-Dem Institute Judicial Independence Index and Judicial Constraints on Executive Index, Freedom House Nations in Transit Democracy Scores. Additionally analyzed official texts constitutions, laws on constitutional courts and public conclusions international expert organizations of constitutional crises.

Research is based on four interrelated methods. To assess actual efficiency constitutional courts in execution three main functions, regardless from institutional court structure, it was applied functional evaluation method: for the function protection fundamental rights were calculated percentage share individual constitutional complaints satisfied from general quantities filed in court; for the function arbitration between branches authorities was calculated percentage share decisions that restrict powers legislative or executive branches power; for the function constitutional interpretation – percentage fraction

solutions of the constitutional court, to which referred to lower courts instances, and stability legal positions.

case-study method was used for in-depth analysis four constitutional crises: seizure Constitutional Court in Poland (2015-2023), court-packing in Hungary (2010-2025), cyclical constitutional conflicts in Romania (2012, 2017-2019, 2023-2024) and multiple crises in Ukraine (2010, 2014, 2020, 2023). Comparative institutional analysis carried out through comparison formal parameters (assignment procedure judges, term powers, scope competences) with actual indicators effectiveness for detection correlations between institutional design and functional ability.

Detection correlations between institutional features and efficiency systems checks and balances was carried out with the help of descriptive statistics and correlation analysis: was determined coefficients correlations Pearson (r) between the nature of the procedure appointment judges and degree independence judicial power, the existence of the right to individual appeal and impeccability protection of rights, as well as homogeneity judicial structure and quality constitutional interpretation.

According to the results of the functional the author proposed the analysis typology that classifies countries according to three models based on actual efficiency functions constitutional control. Model 1, "Full constitutional arbitration", has high indicators for all three functions and does not have constitutional crises. Model 2, "Selective control under political pressure", demonstrates sharp decrease efficiency after political delight Institute. Model 3, "Unstable control with episodic efficiency", characterized by high variability indicators and several constitutional crises.

Results

Typology of models of constitutional control in Eastern Europe

Functional analysis activities constitutional courts in eight Eastern European countries in the period 2015-2024 shows that there are three radically different models that differ in real efficiency implementation functions protection of rights, arbitration between branches authority and interpretation constitution. Despite the fact that centralized model of constitutional control according to Kelsen and the presence of special constitutional court, established between 1990 and 1996, were officially accepted everyone countries that are being investigated, their efficiency in functioning reveals a wide range of differences in the level political intervention and institutional stability (Pech & Scheppele, 2017).

Model 1: Full-fledged constitutional arbitration used in Estonia, Lithuania, the Czech Republic and Latvia, which are characterized by high indicators efficiency all three functions. Level satisfaction 65-72% of individual constitutional complaints, systematic limitation legislative and executive authorities (58-64% restrictive solutions) and high level citation their solutions lower courts (85-92%) are indicative of these courts. The institutional structure of the countries that included in this groups, provides mixed appointment procedure judges, which covers three branches power, one term powers

and broad access of citizens to constitutional justice through the institution individual constitutional complaints.

Model 2: Selective control under political pressure represented Poland (2016-2025), Hungary (2011-2025) and Slovakia are examples of selective control under influence policies where efficiency sharply decreased after political conquest of the institute. Constitution of the Republic of Poland (1997) formally guaranteed sovereignty Constitutional Tribunal, although in 2015-2016 there were changes in the rules for appointment judges led to a decrease percent successful complaints up to 39 (and even to the absence of solutions against the government in conflicts competences) (Pech & Scheppele, 2017). In Hungary Fundamental Law (2011) in 2011 gave the parliament the power choose judges the Constitutional Court by two- thirds of the votes, which in the conditions dominance one parties was used for systematic court-packing new members by increasing quantities judges (from 11 to 15) and a reduction the age at which judges could retire. This led to a decrease percent restrictive decisions to 31% in 2011-2024 compared to 69% in 2000-2010, which actually neutralized the system of checks and balances.

Model 3: Unstable control with periods efficiency is typical for Ukraine, Romania and Bulgaria, where there is extraordinary variability indicators depending from political situations. The most Ukraine is unstable, where in 2015 was 71% of complaints were satisfied, and in 2020-2021 – 28%, which associated with four constitutional crises between 2010 and 2025. Romania characterized by excessive workload (456 cases per year – the highest indicator in Europe), which negatively affects the quality consideration, while Bulgaria demonstrates chronic difficulty with execution decisions (35% of decisions are not implemented for 12+ months).

This typology illustrates that even when formally applied, Kelsen's model will not provide effective constitutional control, but the real possibility courts carry out control function checks and balances is determined political situation, institutional structure of processes selection judges and external control measures by European institutions (Pech & Scheppele, 2017).

Function protection fundamental rights: comparative analysis efficiency

Official statistical data for 2015-2024 regarding individual constitutional complaints that are being considered by the authorities, indicate that three political models constitutional control are radically different in their ability protect constitutional rights of citizens from violation by the state. Presence individual constitutional complaints as an institution that Venetian commission considers one of the most important tools for accessing constitutional justice (Venice Commission, 2020a) is in effect more or less effectively depending from degree politicization judicial institutions and stability institutional structures systems.

Implementation functions software fundamental rights are a sign of the vertical component of the system checks and balances that restricts arbitrariness states of actions state, not the horizontal dimension (arbitration between branches power), hence, the ability constitutional courts satisfy individual complaints against actions state is

important an indicator of actual functioning checks and balances in protecting rights from intervention states.

Baltic countries and Czech Republic Republic (Model 1) is characterized by stable high effectiveness in ensuring rights, because interest satisfied individual constitutional complaints for the subject period is 65-72%. Angerjärv and Greinoman v. Estonia (European Court of Human Rights, 2022a), the Supreme Court of Estonia, which performs functions constitutional control, also establishes effective procedural fair trial guarantees complaints that provides publicity hearings and justification decisions. Average processing time complaints about a person in countries this one groups also amounts to 8-12 months, which is considered acceptable in accordance with European concepts intelligent duration proceedings.

In Poland and Hungary (Model 2) efficiency protection of rights in these countries sharply decreased after political delight constitutional courts (Table 1). Level satisfied complaints in Poland decreased by 25 percent points, from 64 to 39 percentage points points respectively in 2010-2015 and 2016-2023. In Hungary, since 2010, the Constitutional Court has annulled three laws on the grounds of violation fundamental rights, compared to 47 in the previous period, 2000-2010, which means that actually the constitutional court stopped to play one's role with protection of rights. Theoretically this is corresponds to theoretical understanding constitutional rights as restrictions state authorities who need separate legal protection (Vasylchenko & Matat, 2020).

Ukraine, Romania and Bulgaria (Model 3) have high volatility indicators protection of rights that are determined political situation. Ukraine is the most unstable, because interest satisfied complaints in 2015 is 71%, and in 2020-2021 – 28%, which can explain constitutional crisis of 2020 and the change in the composition of the Constitutional Court. Romania, which has the largest number of cases considered (4560 in ten years), satisfies only 48% of complaints, and the average processing time is 18 months, which double more than in countries Models 1.

Data from World Justice Project (2024) confirm correlation between efficiency protection of rights and general rule of law: Estonia (0.82), Lithuania (0.79) and the Czech Republic (0.78) demonstrate highest indicators, while Poland decreased from 0.73 (2015) to 0.64 (2023), Hungary – to 0.55 (2024), and Ukraine stable remains at 0.52.

Comparative analysis shows that implementation constitutional by courts of yours functions protection main rights directly depends from institutional independence constitutional courts: countries Models 1 demonstrate stable high indicators, countries Models 2 have undergone systematic decrease indicators after political coup, and countries Models 3 remain heavy for forecasting. Although the role of protection fundamental rights is horizontal in nature in the sense that it concerns relations "citizen – state", the role of the constitutional arbitration between branches power is a horizontal component systems checks and balances, where the constitutional court is autonomous mediator in conflicts competencies between the president, parliament and government. It is this role is the most vulnerable to political delight courts, because it directly restricts potential possibility concentrations power in the hands of the hegemonic political forces.

Table 1. Comparative indicators efficiency functions protection fundamental rights (2015-2024)

Country	Model	Satisfied complaints (%)	Average term consideration (months)	Rule of Law Index 2024
Estonia	1	68%	10	0.82
Lithuania	1	72%	9	0.79
Czech Republic	1	61%	12	0.78
Latvia	1	67%	11	0.76
Poland	2	39% (↓ from 64%)	14	0.64
Hungary	2	31% (↓ from 69%)	16	0.55
Slovakia	2	52%	13	0.72
Romania	3	48%	18	0.58
Bulgaria	3	51%	15	0.54
Ukraine	3	28-71% (volatility)	14	0.52

Source: compiled by the author on based on the World Justice Project (2024), Venice Commission (2020a), European Court of Human Rights (2022a).

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Inter-branch arbitrage function power: a system of checks and balances in action

Research solutions constitutional courts of interstate disputes about competence shows that exist critical differences in ability courts to act in the role of impartial arbitrators and restrictive authorities. Theoretically, constitutional courts should to act in the role of "negative legislator" in terminology Kelsen, abolishing acts that do not comply

constitutional distribution powers, regardless from whether has it political meaning (Ginsburg & Huq, 2018). However empirical empirical data for 2015-2024 clearly show that this role is retained only countries Models 1.

For researched period Estonia, Lithuania and Czech Republic Republic adopted 47-89 decisions in support of the principle of separation powers from level execution 91-96. These courts are ordered admitted 58-64% of the defendants laws and government acts such that violate constitutional balance of powers that demonstrated their readiness resist political majority. Judicial arbitration turned out effective even under the condition that the branches do not reach power consent between themselves: Constitutional Court of Latvia adopted 23 decisions regarding the limits of executive power authorities, 91% of which acquired validity for six months.

Since 2015 Poland demonstrates full dysfunction arbitration positions: The Constitutional Tribunal did not uphold none decision in cases of conflicts competences with the government (0 decisions in 8 years compared to 23 in 2005-2015). This can to associate with the concept authoritarian equilibrium as an implementation authorities because of the alleged democratic institutes. Such reaction aims to justify consolidation power, not hers restrictions (Kelemen, 2020). Since 2010, the Hungarian the constitutional court was virtually useless in limiting executive power, supporting the government in 71-78% of decisions, which contradicts throughout concepts constitutional arbitration as independent judicial systems.

Pannon case Poster Ltd. and Others v. Hungary (European Court of Human Rights, 2022b) illustrates consequences weakening arbitration roles are as follows: in Hungary the ECHR determined that legal ban on roadside advertising roads, which is significantly restricted activity companies, was disproportionate, but the Constitutional Court of Hungary did not recognize prohibition roadside advertising roads unconstitutional, although violation of the principle of proportionality restrictions economic rights were obvious. (Hungary, European Court of Human Rights, 2022b). About this is evidenced by the fact that protection should have been provided a supranational court, not a national one constitutional body that indicates insolvency systems checks and balances at the national equal.

In Ukraine, Romania and Bulgaria exists selective arbitration based on expediency political interests. The Constitutional Court of Ukraine failed to speak effective arbitrator between four constitutional crises (2010, 2014, 2020, 2023), when his decision were or ignored, or even by themselves caused political conflict. Romania has experienced three periods constitutional wars (2012, 2017-2019, 2023-2024), during which the court ruled politicized decision under pressure both opposing parties that reduces trust in the institution as impartial arbitrator.

Comparative analysis confirms Ginsburg's and Huq's (2018) thesis, which constitutional democracy requires availability systems checks and balances, as well as theirs abilities resist attempts concentrations authorities that can be achieved only if constitutional courts are institutionally independent (Ginsburg & Huq 2018).

The function of constitutional interpretation: the formation of case law

Quality constitutional interpretation is evaluated by degree case references constitutional court in lower courts instances, the stability of legal positions and the ability to form coherent constitutional doctrine. According to the analysis bases data codes Venetian commission (Venice Commission, 2021), countries that were recognized Model 1, achieved equal citation 85-92%, which means that constitutional doctrine carries great weight and has been integrated into law enforcement practice. Baltic constitutional courts have ruled over 234 explanatory decisions that formed the doctrine of a "living constitution" and adapted constitutional norms to changes in social relationships without making changes to the text of the constitution itself.

After 2017 in Poland there was a constitutional crisis interpretation: 40% of decisions made by the Tribunal are not enforced by lower courts instances due to deprivation institute legitimacy because of its political fascination. Phenomenon comparative reasoning, which Bobek (2013) characterizes as relying on arguments others jurisdictions for justification own decision, has practically disappeared from Hungarian and Polish practice since 2015, which indicates isolation courts, which was characteristic in this context.

Hungary is the most extreme example of subversion interpretative roles: parliament eight times canceled decision Constitutional Court through constitutional amendments, in fact terrorizing constitutional doctrine as a source of law (Table 2). This leads to the state constitutional instability, because constitutional interpretation ceases to be predictable, and the court is now a tool for substantiating political will folk majority in parliament.

Ukraine can be described as the country with the least stable legal position: the court itself overturned 12 decisions on the basis of changes its composition, which negatively affects trust in the constitutional doctrine as stable sources law enforcement. Romania and Bulgaria are characterized by low level citation (32-45 %) due to instability legal organs and a large number of solutions that do not have sufficient justification in doctrine.

Table 2. Indicators qualities constitutional interpretations (2015-2024)

Model	Countries	Citation lower courts (%)	Abolition own solutions	Comparative reasoning
1	Estonia, Lithuania, Czech Republic, Latvia	85-92%	0-2	Active
2	Poland, Hungary	28-60%	8-15	Missing
3	Ukraine, Romania, Bulgaria	32-45%	12-18	Episodic

Source: compiled by the author based on Venice Commission (2021), Bobek (2013).

Comparative analysis proves that the role of the constitutional interpretation is the most vulnerable to politicization structures constitutional judicial body, as it provides for institutional memory and consistency doctrines, which is impossible in situations systematic changes in the composition courts due to political motives.

Empirical functional data efficiency constitutional courts acquire yet larger explanatory forces, when a specific constitutional crisis is analyzed in detail and the authors can to determine processes political delight courts and their consequences for the system checks and balances and structures institutional decline.

Constitutional stability interpretation is a condition functioning systems checks and balances, because only uncertain and unpredictable constitutional doctrine can to guarantee that all state institutes realize boundaries their own powers and organize their activities within constitutional field, while unforeseen changes in the interpretation of the law make the system checks and balances uncertain and ineffective.

Case study constitutional crises: mechanisms capture and degradation

Poland case (2015-2023): systematic court-packing through procedural manipulations

Constitutional crisis in Poland began in October 2015, when the new parliament refused to admit five judges, which appointed the previous parliament on the basis of the Act of 25 June 2015 on the Constitutional Tribunal (Act of 25 June 2015, Venice Commission, 2016c). In December 2015, the Parliament approved amendments to the law, according to which the quorum for the adoption solutions was reduced from two- thirds to idle majority judges, which allowed to neutralize resistance to the legally appointed members of the court (Sadurski, 2019). In 2016-2017 there were assigned three new judges without compliance procedures that led to negative conclusions from the Venetian commission (Venice Commission, 2016a) which called such practices serious a threat to the rule of law.

Kopcha (2024) shows that reforms led to the systematic destruction independence: level satisfied individual complaints decreased doubled (from 64 to 39 percent), there were no more solutions against the government (0 in 2016-2023 vs. 23 in 2005-2015), and Rule of Law Index decreased from 0.73 to 0.64. Table 3 shows the table process the passion and its results.

Table 3. Chronology constitutional crisis in Poland and its impact on court efficiency

Date	Event	Mechanism delight	Consequence for efficiency
October 2015	Refusal admit 5 judges	Contestation legitimacy appointments	Locking court work

December 2015	Changing the quorum from 2/3 to a simple one majority	Procedural manipulation	Neutralization opposition judges
2016-2017	Appointment of 3 new judges	Court packing	Changing the balance in favor authorities
2016-2023	Functioning of the "new" warehouse	Political loyalty	Fall satisfied complaints up to 39%, 0 decisions against the government

Source: compiled by the author based on Sadurski (2019), Venice Commission (2016a), Kopcha (2024).

Hungary case (2010-2025): constitutional rewriting and restrictions powers

Hungarian form of capture judicial authorities characterized by more methodical approach as a result changes constitutional foundations. In 2010, after his government received constitutional majority in parliament, Orbán began to force to replace five judges, lowering their pension age up to 62 years, which Bankuti et al. 2012) called "destabilizing the constitution". In 2011 number members of the court was reduced to 11 people with the possibility of appointment loyal candidates, and in 2013 the court narrowed its constitutional check, leaving issues related to economics outside the court (Halmai, 2019).

Scheppele (2018) theoretically justifies such actions as "autocratic legalism" the application of formally legal processes to attack democratic institutions. The most dramatic manifestation this was that the parliament 8 times canceled decision Constitutional Court, made amendments to the constitution, which, in a certain sense, deprived his right to final decision in matters constitutional interpretation. Consequences this are shown in Table 4.

Table 4. Mechanisms delight Constitutional Court of Hungary and their consequences (2010-2025)

Mechanism	Year	Legal justification	Actual result	Change indicators
Decrease pension age judges	2010	"Harmonization with the civil service"	Forced replacement of 5 judges	Beginning of degradation
Increase in composition from 11 to 15	2011	"Increase efficiency"	Court packing loyal judges	Judicial Independence Index: 0.81→0.47

Limitation of the subject of control	2013	"Constitutional identity"	Exclusion economic questions	Restrictive solution: 69%→31%
Abolition decisions with amendments	2011-2024	"Sovereignty of Parliament"	8 decisions of the Constitutional Court were leveled	Loss of authority

Source: compiled by the author based on Bankuti et al. (2012), Halmai (2019), Scheppele (2018).

Romania case (2012, 2017-2019, 2023-2024): cyclical constitutional conflicts

Romania is an example of a tendency to repeat constitutional crises and failures from the final transition to the judicial authorities. In 2012, the crisis was related to the process impeachment of the president, during whose The Constitutional Court ruled controversial decision regarding the referendum quorum, which was convicted Venice Commission (2012) as political in its interpretation. According to the official court reports (Constitutional Court of Romania, 2024), average The court workload is 456 cases per year, which is the highest indicator in Europe, and this negatively affects the quality consideration of cases, as 28% of decisions are adopted more than 12 months.

Ukraine case (2010, 2014, 2020, 2023): chronic institutional instability

In 15 years Ukraine has survived four constitutional crisis that indicates the greatest institutional instability among analyzed countries. In 2020, when the Constitutional Court overturned sprat the most important provisions anti-corruption law, trust in this institutions have fallen to their lowest ebb level in history – 9%, and in 2020 was started process its restoration (Venice Commission, 2020b). Stanislav's case Lutsenko v. Ukraine (No. 2) (European Court of Human Rights, 2022c), in which the ECtHR found systemic performance problems judicial solutions, because administration prisons repressed applicant after previous decision on it benefit that indicates inefficiency mechanisms execution.

Table 5. Comparative analysis four cases constitutional crises

Country	Type of crisis	Duration	Key mechanism	Degree degradation	Possibility restitution
Poland	Systematic capture	2015-2023 (8 years)	Procedural manipulation + court-packing	High (-29 KEI points)	Average (process after 2023)

Hungary	Constitutional rewriting	2010-2025 (15 years)	Constitutional changes + restrictions powers	Critical (-30 points)	Low (stable mode)
Romania	Cyclical conflicts	2012, 2017-19, 2023-24	Politicized decision under pressure	Medium (stagnation)	Average (depends on from politicians)
Ukraine	Chronic instability	2010, 2014, 2020, 2023	change + self-cancellation solutions	Volatile (±43 points)	High (European integration as an incentive)

Source: compiled by the author based on Sadurski (2019), Venice Commission (2016a), Kopcha (2024), Bánkuti et al. (2012), Halmai (2019), Scheppele (2018), Constitutional Court of Romania (2024), Venice Commission (2012), European Court of Human Rights (2022c), Venice Commission (2020b).

Comparative analysis four cases shows that exists two main forms constitutional crisis: "one-time seizure of power with further stabilization on low levels efficiency" (Poland, Hungary) and "cyclical instability" without final delight power, but with chronic unpredictability (Romania, Ukraine).

More detailed analysis four cases constitutional crises allows to us to go from descriptive to explanatory I will explain: which institutional properties determine that which constitutional courts can resist political pressure and effectively perform functions systems restraints and counterweights.

Institutional factors efficiency

A correlation analysis of the results of eight countries for the period 2015-2024 indicates the possibility of strong relationships between most elements of institutional design and the effectiveness of constitutional review. The method of measuring judicial independence proposed by Ríos-Figueroa and Staton (2014), allows us to identify the structural features that have the most significant impact on the operational capacity of courts. For a quantitative measurement these connections was used complex index efficiency of constitutional control (KEI), which was calculated based on five variables, namely: share satisfied individual complaints, share restrictive solutions against organs power, degree citation decisions by lower courts instances, average duration proceedings and degree implementation solutions within 12 months. Institutional attributes were encoded in the form binary (or there is a right to individual complaint / does not exist) or categorical (type of procedure purpose: monopoly one branches power / mixed with participation two branches / balanced with participation three branches) variables. Table 6 contains weekend data correlation analysis.

Table 6. Institutional characteristics and indicators efficiency constitutional control (2015-2024)

Country	Unique appointment	Appointment procedure	Right of individual complaint	KIEK (0-100)	Rule of Law Index	Satisfied complaints (%)
Estonia	Yes	Mixed (3 branches)	Yes	84	0.82	68
Lithuania	Yes	Mixed (3 branches)	Yes	81	0.79	72
Czech Republic	Yes	Mixed (2 branches)	Yes	78	0.78	61
Latvia	Yes	Mixed (3 branches)	Yes	76	0.76	67
Slovakia	Yes	Mixed (2 branches)	Yes	72	0.72	52
Poland	Yes (until 2015)	Monopoly parliament (after 2015)	Yes	47	0.64	39
Hungary	Yes (until 2010)	Monopoly parliament (after 2010)	Limited	39	0.55	31
Romania	No	Mixed (2 branches)	Yes	58	0.58	48
Bulgaria	No	Mixed (2 branches)	Limited	56	0.54	51
Ukraine	No	Mixed (2 branches)	Yes	52	0.52	28-71 (volatility)

Source: compiled by the author based on official constitutions countries, laws on constitutional courts, annual reports constitutional courts (2015-2024), World Justice Project (2024), Venice Commission (2020a).

Unique appointment judges demonstrates the strongest correlation with independence ($r=0.79$, $p< 0.01$), since eliminates motivation for self-censorship for the sake of re-election. Five countries with unique term (Estonia, Lithuania, Czech Republic, Latvia, Slovakia) have average KEI 78.2, while three countries with the possibility reappointment (Romania, Bulgaria, Ukraine) – only 55.3. Poland and Hungary, which had unique appointment to political delight courts, after The changes in procedures have lost 29 and 30 points of the KEI respectively, which confirms critical importance preservation of this characteristic.

Mixed appointment procedure judges with the participation three branches authorities correlates from balanced composition of the court (and higher efficiency) ($r=0.73$), $p< 0.05$). Estonia, where Supreme Court judges are appointed by the parliament upon the proposal of the president and with the participation of judicial corporations, demonstrates

the highest stability indicators (Rule of Law Index 0.82, KEI 84). Instead Poland after 2015, where the parliament received actually exclusive right of assignment due to reduced quorum and refusal to admit judges previous convocation **, underwent sharp drop ** from 76 to 47 KEI points.

The existence of the right to individual constitutional complaints shows strong correlation with efficiency protection of rights (r=0. 81, p<0.01). Six countries with full individual rights complaints (Estonia, Lithuania, Czech Republic, Latvia, Slovakia, Poland) have average indicator satisfied complaints 60%, while countries with limited access (Hungary) or high procedural barriers (Romania, Ukraine) – only 37%. Data from World Justice Project (2024) confirm that countries with broad access of citizens to constitutional justice (Czech Republic, Estonia, Latvia) have much higher indicators Rule of Law Index (0.76-0.82) compared to countries with limited access (0.52-0.58), where procedural barriers restrict accessibility mechanism.

Negative factors demonstrate yet stronger impact on degradation efficiency. Change procedures destination for court-packing leads to a decrease efficiency by 15-29 points: Hungary after increasing the composition from 11 to 15 judges (2011) lost 30 points of the composite index efficiency for three years. Early termination powers judges due to reduction pension age (Hungary 2010) or contestation legitimacy appointments (Poland 2015) causes decrease by 18-25 points within 2-4 years after intervention.

Absence mechanisms implementation decision-making is critical structural disadvantage Models 3: 34% of solutions in Ukraine are executed with a delay over 12 months, in Romania – 28%, which undermines the authority of constitutional control even under conditions of formally correct appointment procedures. Publicity meetings demonstrates positive correlation with the level trust citizens (r=0. 76, p<0.05): countries with full public broadcast (Estonia, Lithuania, Czech Republic) have 8-11 points higher level public legitimacy compared to countries without systematic public broadcasts meetings (Ukraine, Bulgaria).

Regressive analysis confirms that institutional design has much more impact on efficiency (R^2=0.68, explains 68% of the variation in KEI) than size countries (r=0. 18, statistically insignificant) or number of cases considered (r=-0.23, p>0.05). This refutes assumption that bigger busy automatically means higher efficiency – Romania with 456 cases per year shows a KEI of 58, while Estonia with 187 cases has a KEI of 84, which confirms priority quality over quantity.

Development trajectories and prospects for model convergence

Comparison main indicators for 2015-2025 indicate growth disagreements in models constitutional control in Eastern Europe, not about the rapprochement that was expected to happen thanks to membership in the European Union. The level of standard deviation of the complex index efficiency increased to 19.7 (2025) compared to 12.4 (2015), which indicates an increase rupture between problematic and successful models. This includes the tendency towards institutional strengthening in countries Baltics and Czech Republic: Estonia improved its result from 78 to 84 points, Lithuania continues to score 81 points

despite the political instability, and the Czech Republic scores 78 points in conditions political instability (Boyko, 2024).

Poland and Hungary also are experiencing democratic backsliding, but moving in opposite directions directions: Poland fell by 29 points (from 76 to 47), Hungary fell by 30 points (from 69 to 39). Boyko (2024) also changed Hungary, which was rated as "Free" (2010), on "Partly Free" (2020), while Poland lost this status in 2021, which related from decrease efficiency constitutional control. Distance between the underdog (Hungary -39) and the leader (Estonia -84) is 45 points, and this most indicator that ever observed in history.

Reports European The rule of law commissions show that question judicial independence attracts more and more attention. In 2022, Rule of Law Report (European Commission, 2022) for the first time were presented systematic recommendations for Poland and Hungary, among others which is a necessity restoration independence constitutional courts. Gap Analysis 2023 (European Commission, 2023) notes that Poland part completed recommendations after 2023 elections: the process restoration The Constitutional Tribunal has already started according to recommendations Venice Commission, and the authors can to expect possible increase efficiency by 15-20 points in the medium term perspective.

According to Gap Analysis 2024 (European Commission, 2024), in Hungary, where the freezing of 13 billion euro from the EU did not cause none changes in activity Constitutional Court, no progress has been observed. This confirms inefficiency economic sanctions as a tool impact on constitutional capture government in a stable authoritarian regime. Since 2022 (improvement by 8 points, from 44 to 52) Ukraine slow moving forward (stimulating effect from obtaining EU candidate status and the requirement to carry out reforms judicial structures) to start membership negotiations.

Table 7 presents forecasts development and scenarios for 2030 under three conditions: optimistic (restitution in Poland is successful, Ukraine moving forward), pessimistic (deepening backsliding) and realistic (partial stabilization and further divergence).

Real situation provides availability three individual groups: countries with high indicators (Model 1, 82-88 points), countries that part recovered or are in a state stagnation (Model 2, 35-72 points), and countries that slow improve your indicators (Model 3, 56-68 points). The only the solution is to strengthen EU Rule of Law Mechanism by means of more strict mechanisms conventions for access to funds, successful completion processes restitution in Poland as a model for restoring the balance of power after several years executive dominance authorities and systematic monitoring early signs threats delight constitutional court as a key element systems checks and balances, model convergence and recovery effective systems checks and balances.

Table 7. Trajectories development of constitutional control models and forecasts (2015-2030)

Country	Model	KEI 2015	KEI 2025	Trajectory	Forecast 2030 (realistic)	Key factor
Estonia	1	78	84	Strengthening (+6)	86-88	Stable democratic institutes
Lithuania	1	79	81	Stability (+2)	82-84	Consensus democracy
Czech Republic	1	76	78	Stability (+2)	79-81	Coalition governments
Latvia	1	74	76	Slow growth (+2)	77-79	European integration
Poland	2	76	47	Collapse (-29)	60-65	Restitution after 2023
Hungary	2	69	39	Collapse (-30)	35-40	Saving the mode
Slovakia	2	74	72	Stagnation (-2)	68-72	Political instability
Romania	3	61	58	Stagnation (-3)	60-64	CVM EU pressure
Bulgaria	3	58	56	Stagnation (-2)	56-60	Slow reforms
Ukraine	3	44	52	Volatility (+8)	62-68	EU accession process

Source: compiled by the author based on Boyko (2024), European Commission (2022, 2023, 2024).

Discussion

Efficiency constitutional control in countries Eastern Europe was investigated from the point of view of systems checks and balances, and you can to distinguish three radically different models that do not detect radical differences, although the institutional structure is formally similar. Importance given works consists in empirical confirmation hypotheses that constitutional control in post-socialist countries democracies is not linear process consolidation, and is characterized by gradual divergence ways development, and successful ones are strengthened (countries Baltic States), and unsuccessful are in a state chronic instability (Ukraine, Romania).

Results functional analysis three main functions constitutional courts confirms and expands idea autocratic legalism, which proves that formally legal processes used to weaken institutes democracy (Scheppele, 2018). Our study complements this theoretical scheme with concrete quantitative variables: number satisfied individual complaints in Poland decreased from 64% to 39%, the absence solutions against the government in competent disputes (0 in 2016-2023 vs. 23 in 2005-2015), eightfold magnification solutions The Constitutional Court of Hungary as a result constitutional amendments empirically confirms transformation courts on the instrument legitimization Government. Mechanisms delight power by increasing the composition of the court, manipulating procedures (reducing the quorum) and rewriting constitution create typology strategies of authoritarian legalism, which is complemented by theoretical achievements with certain empirical regularities.

Comparison received results with experience others regions shows how global trends, as well as regional features constitutional control in post-socialist countries Democracies. Studies in Latin America shows such interdependence efficiency courts from these processes appointment judges and political environment (Brinks & Blass, 2018). This is not the first time the authors have found strong correlation between unelected terms and independence (r=0.79). In interregional data it is stated that negative consequences of reappointment on independence judicial authorities correlate with unelected terms. However Eastern Europe demonstrates certain mechanism degradation in the form of formally legal (laws on constitutional courts, constitutional amendments), while others regions more often are subject to direct political intervention or pressure from the executive branch The constitutional courts that have shown the best results in our research, is those that operate in parliamentary systems where there is proportional representation (Estonia, Latvia, Lithuania), and coalition governments create natural obstacles to concentration power, which is observed in presidential systems in other jurisdictions.

The fact that indicators Ukraine is so variable (from 71% to 28% satisfied complaints between 2015 and 2020), allows us to conceptualize another form of cyclical dysfunction, in which the constitutional court is not fully controllable, but cannot become stable due to systematic political intervention. A unique model of institutional amnesia for 15 years constitutional crises and 12 cases self-cancellation solutions complicate creation stable constitutional doctrines. Romania demonstrates similar, although not as much extreme cyclical model conflict (2012, 2017-2019, 2023-2024), where the court decides politicized decision under pressure different political forces, but none of them is ultimately under control.

Correlational analysis institutional factors showed the following unexpected result: there is a negative correlation between quantity cases considered and quality decisions (r=-0.23). Romania has indicators low efficiency (456 cases per year) compared to Estonia (187 cases) (KEI 58), which refutes automatic connection option between judicial activity and efficiency. Lack resources in case of excessive loading leads to assembly line production constitutional justice: average duration proceedings in Romania are 18 months, complaints are satisfied only in 48% of cases, and the solution are executed with a delay over 12 months. This confirms the thesis of priority qualities constitutional

reasoning over quantitative indicators that for the first time quantitatively confirmed in the East Europe.

During the study, it was revealed that expansion of the models (increasing the standard deviation of the composite index from 12.4 to 19.7) does not correspond expectation European integration theories of convergence institutions thanks to EU conditionality instruments. EU membership has proven to be insufficient to ensure successful constitutional control: Poland and Hungary are members that suffered the most dramatic deterioration since 2004. Freezing EU funds for Hungary (13 billion) did not cause changes in activity Constitutional Court, proving vulnerability economic sanctions imposed on Member States with consolidated authoritarian regimes. On the contrary, Ukraine, which received EU candidate status, has experienced changes by 8 points, i.e. by 8 points up, that means that incentives better working in candidate countries that more prone to uphold the rule of law.

By contribution research in methodological part is to create a comprehensive index efficiency of constitutional control (CICE), which includes five dimensions: independence purpose, share restrictive decisions, duration production, accessibility for citizens and the possibility implementation solutions. CICEI measures functional ability to play a role in the system checks and balances as opposed to from current indices that mainly measure formal independence or general rule of law. Use this The index showed trends that cannot be to see with the help of individual indices: Slovakia officially has Rule of Law Index (0.72), but KEI records the beginning of deterioration situation (decrease from 74 to 72), which manifests itself before the general indices can point out the risks.

Theoretical value research consists in empirical verification hypotheses of the political nature of constitutional control in post-socialist countries democracies: effectiveness is not the result of a constitutional text, but of the actual distribution of powers and the existence external control. Value institutional model that guarantees that appointments are not monopolized one political power, confirmed by a strong correlation with the balance of the court composition (r=0.73) and the mixed appointment procedure judges (which involves three branches government). Efficiency coalition government in countries is generally higher (average KEI in Europe is 78) than efficiency a one-party government with constitutional majority (average CIECC in Europe – 43).

Conclusions research have practical importance for policy European integration, because risks delight of the constitutional court were discovered at an early age stage with the help of some key indicators. Change in the method of assignment judges (decrease in quorum, increase size of the court) will be red flag, which will cause decrease efficiency by 15-29 points in 2-3 years. This will give opportunity European commissions and Venice Commission to interfere in constitutional crisis as soon as possible earlier stages when they yet can effectively decide, rather than accept the fact that delight authorities already took place. The example of Poland, where in 2023 will take place elections and where already started process restoration Constitutional Tribunal, indicates the possibility partial restoration efficiency even if long-term period political capture, which is an encouraging principle for others countries that have same problem.

Limitation research consist in the fact that it based on official data constitutional courts that may be incomplete or biased in some countries where there are authoritarian trends.

Procedures reporting between countries are not unified, and some indicators cannot be directly compare, for example, organization of cases considered and the criteria that apply to admissibility complaints. Although methodologically substantiated, combined The KEI index is calculated based on small quantities observations (8 countries, 10 years) that complicates statistical generalization. The study does not take into account high-quality assessment justification decision and its influence on law enforcement practice, but only formal indicators functioning of the court, which means they can be effective addition to quantitative paintings.

Future research opportunities foresee expansion geographical coverage research on Western Balkans and countries Eastern Partnership to confirm applicability detected patterns to a broader spectrum of post-socialist and post-conflict democracies. Long-term research mechanism restoration constitutional court after active authoritarian regimes (Poland after 2023, maybe Hungary in the future) will provide factors successful restoration institutional capacity and determine how long it will take this process. Differences in strategies arguments between independent courts and politicized courts can demonstrate with the help of qualitative content analysis constitutional justification in decisions different courts.

Results research roles comparative constitutional reasoning, transnational judicial networks and capacity constitutional courts resist return to the political influence can justify difference between the courts of the Baltic and Visegrad groups, even despite the fact that both groups courts had the same initial conditions.

In conclusion This work has shown that the system of constitutional control in Eastern Europe Europe is at a crossroads between installation democratic institutions and authoritarian reforms. The fact that models moving in different directions, shows that formal membership in the European Union and implementation European constitutional standards are not required guarantee an effective system of checks and balances. Set institutional mechanisms (procedures appointment, term powers, openness to citizens), political (type of electoral systems, coalition governments) and external deterrence (effectiveness of EU conditionality mechanisms) mitigate actual ability constitutional courts restrain power.

In the study confirmed necessity integrated strategies software constitutional control, which includes preventive institutional precautions, proactive external control and opportunity punishment in case non-compliance criteria of the rule of law.

Conclusions

A study of the functional effectiveness of constitutional review in eight Eastern European countries in 2015-2024 revealed three radically different models: full constitutional arbitration (Estonia, Lithuania, Czech Republic, Latvia), selective control under political pressure (Poland, Hungary, Slovakia), and unstable control with periodic effectiveness (Ukraine, Romania, Bulgaria). A trend towards progressive divergence of development paths was identified: the standard deviation of the cumulative effectiveness index increased by 12.4-19.7 points, and the leader (Estonia – 84) and the outsider (Hungary – 39) had a gap of 45 points.

Functional analysis confirmed, which showed that in countries Model 2 system checks and balances has undergone critical deterioration, because constitutional courts have effectively ceased to be independent arbitrators between branches The fact that number individual constitutional The percentage of complaints upheld in Poland decreased from 64 to 39 percent, and in Hungary from 69 to 31 percent, indicating a weakening roles protection of citizens ' rights from arbitrariness on the part of the state, while the fact that none of the solutions regarding the government against the state is not accepted in the field competences (Poland: 0 cases in 2016-2023 vs 23 in 2005-2015) indicates an alignment arbitrator. Eightfold abolition solutions Hungarian by the constitutional court on the basis of constitutional amendments is an indicator of how the judicial system can be subordinated parliamentary the majority that contradicts herself concepts systems checks and balances, developed by Madison, according to which none branch No power can be higher than another. In Ukraine was recorded twelve cases self-cancellation solutions by the judges of the new composition, which indicates the absence institutional memory that could prevent creation stable constitutional doctrines that are the basis of the system checks and balances.

It was it was discovered that there is a strong correlation between institutional design and efficiency, such as non-regulatory renewal appointment judges (r=0.79), mixed procedures appointment (r=0.73) and the right to individual complaint (r=0.81). There was it was discovered that correlation between number of cases and quality is negative (r = -0.23): Romania, which has 456 cases, appears less effective than Estonia, which has 187 cases.

Designed complex The KEI index demonstrates hidden worsening trends situations more than general Rule of law indices. What is important is the practical value knowledge to determine critical indicators early warning international organizations.

Limitation research: addiction from official data, impossibility standardization reporting, small size samples (8 countries), quantitative indicators without emphasis on quality analysis constitutional reasoning. Prospects: expansion Western Balkans, long-term research process restitution, qualitative content analysis justification adoption solutions.

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STATE REGULATION AND ADMINISTRATION OF HUMAN CAPITAL DEVELOPMENT IN WAR AND POST-WAR CONDITIONS

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Abstract

During the war, the development of human potential has acquired the status of a key problem in terms of socio-economic stability for Ukraine, resulting in analysis and reflections on what is happening and how to overcome it. This is a relevant subject because of the massive demographic losses, educational shortcomings and structural changes in the labor market that the country faces as part of its long-term prospects for recovery. Effective state policy and digital tools to foster human potential are especially important within the context of these processes. The purpose is to determine the main trends of change in Ukraine's human capital during war and postwar time, their impact on labor market and education system. The methodological foundation was the generalization of data from official statistics, a comparative analysis of the dynamics of indicators for 2019–2024, and structural-logical modeling. The outcome witnessed a stark decline of the human capital index, reduction in the working age population, an increase in the IDP figure as well as a drop in employment rate; all pointing to a deepening of socio-economic instability. It has been shown that the worst problems are associated with destruction of educational infrastructure, inequality in access to digital resources and the increase of psychosocial risks preventing an influx of competencies in future

generations. At the same time, the possibility of digitalization and new educational models as counter-factors which could maintain human capital activities under a limited-resource regime has also been profiled. Institutional competencies of public policy in the labour market, social protection and regional development areas have been studied providing a diagnosis of the most effective ones. The impact of the results in practice can manifest in a new approach to the development of post-war recovery programs, retraining programs and creation of regional competences centers and digital infrastructure modernization for the human resources management.

Keywords

Human capital, recovery, labor market, demographic changes, digitalization, public policy, regional development.

Resumo

Durante a guerra, o desenvolvimento do potencial humano tornou-se uma questão fundamental para a estabilidade socioeconómica da Ucrânia, levando a análises e reflexões sobre o que está a acontecer e como superar essa situação. Trata-se de um tema relevante devido às enormes perdas demográficas, às deficiências educacionais e às mudanças estruturais no mercado de trabalho que o país enfrenta como parte das suas perspetivas de recuperação a longo prazo. Políticas estatais eficazes e ferramentas digitais para fomentar o potencial humano são especialmente importantes no contexto desses processos. O objetivo é determinar as principais tendências de mudança no capital humano da Ucrânia durante a guerra e no pós-guerra, bem como o seu impacto no mercado de trabalho e no sistema educativo. A base metodológica foi a generalização de dados de estatísticas oficiais, uma análise comparativa da dinâmica dos indicadores para 2019-2024 e modelagem estrutural-lógica. O resultado revelou um declínio acentuado do índice de capital humano, uma redução da população em idade ativa, um aumento do número de pessoas deslocadas internamente, bem como uma queda na taxa de emprego, tudo isto apontando para um agravamento da instabilidade socioeconómica. Foi demonstrado que os piores problemas estão associados à destruição das infraestruturas educativas, à desigualdade no acesso aos recursos digitais e ao aumento dos riscos psicossociais que impedem o afluxo de competências nas gerações futuras. Ao mesmo tempo, também foi apresentada a possibilidade da digitalização e de novos modelos educativos como contra-fatores que poderiam manter as atividades de capital humano num regime de recursos limitados. As competências institucionais das políticas públicas nas áreas do mercado de trabalho, proteção social e desenvolvimento regional foram estudadas, fornecendo um diagnóstico das mais eficazes. O impacto dos resultados na prática pode manifestar-se numa nova abordagem ao desenvolvimento de programas de recuperação pós-guerra, programas de reciclagem profissional e criação de centros de competências regionais e modernização da infraestrutura digital para a gestão de recursos humanos.

Palavras-chave

Capital humano, recuperação, mercado de trabalho, mudanças demográficas, digitalização, políticas públicas, desenvolvimento regional.

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STATE REGULATION AND ADMINISTRATION OF HUMAN CAPITAL DEVELOPMENT IN WAR AND POST-WAR CONDITIONS

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Introduction

Formation of human capital in the conditions of the military actions has turned into one of the most important factors for stability in Ukraine that should directly impact on quality functioning of a labor force, as it is exactly by this factor determined ability of a country to restore and modernize itself. Human capital is an important factor of the innovation growth and adjustment of society to crisis challenges, as verified by international studies (Mensah 2019; Zhu 2022). The consequences of war on demographic patterns, labor market operation, education and internal migration are posing challenges for the country's future development which is something that needs new policy approaches. Research works on this aspect of the phenomenon consider human capital losses, regression in the regions, changes in employment or the role of digitalization as a recovery tool (Gorodnichenko et al., 2022; Novikova et al., 2023; Kozhyna et al., 2022; Luhova & Makov, 2024). The authors emphasize that it is only by the tandem of management solutions with high-quality modern education and expanded social opportunities that the potential of society can be stabilized. There is, however, no study that provides an integrated model drawing together demographic eventuation with educational losses and decision-making at the institutional level. However, several gaps have been identified in the literature: the lack of an integrated analysis of human capital dynamics in 2019–2024 is apparent; there exists insufficient evidence on interactions among government instruments, digital platforms and labor market; while few studies joint macroeconomic and social-institutional dimensions. Our findings have gaps which require further exploration in the conversion of human capital under long-term instability.

The objective of the article is to analyze fundamental trends in transformation of Ukraine's human capital during the war and post-war time along with application their impact on labor market and education, and assess the role of public policy and digital tools in its restoration. To this end, the following tasks are defined: to analyze official statistics on human resources for 2019–2024; to identify in its dynamics regional and age distinctions that exist today within it; compare them with a scientific approach, based on socioeconomic theories; make proposals for post-war development including legislative norms associated with demographic issues.

Literature Review

Modern interdisciplinary approaches to human capital development in conditions of war and post-war reconstruction are based on the combination of public administration, economic stabilization, digitization and social transformations. Most publications underline the increase in systemic risks to Ukraine's human potential, which is part of the impact that demographic losses, damage to educational institutions and labor market degradation have had (Voznyuk & Pavlovych, 2024; Gorodnichenko et al., 2022), consistent with international organizations findings on the issue of population decline, reducing employment and lowering quality of human development (State Statistics Service of Ukraine, 2024; International Organization for Migration, 2023; World Bank Group Human Capital Project). Specifically, some emergent research presents observational evidence that war derails educational pathways and changes youth behavior while discouraging skills investment that accords with the results already reported on increasing losses of education and access inequalities described in international reports (e.g., OECD, 2019; Posnova et al., 2024; Melnyk, 2025; Novikova et al., 2023).

Scientific research in the field of public administration and public policy emphasized the essential role of coordination between management decisions under crisis. The awareness of the management mechanism provided by the studies [of organizational and administrative activities in the sphere of HCD] testified to verification of public policy by means of modernization (digitization, open data transparency) and institutional capabilities of public authorities strengthening (Moisiikha, 2022; Kozhyna et al., 2022; Ilyina, 2023; Luhova & Makov, 2024). The studies highlight that the recovery of human capital is a process without organization and regional coordination, which makes it chaotic, increases inequalities and destroys labor market efficiency. As it is known from the study of competitive advantages created by human capital (Sanduheis et al., 2025; Pyshchulin, 2024; Krasoty and Suslo, 2025) modernized management instruments should be interlocked with negative tools of employment policy, educations system and social protection.

Many studies focus on structural imbalances and regional shrinkage to which the success of post-war recovery is related. Studies on spatial inequality and risks of economic growth indicate that regional disparities lead to differences in the availability of education, social services and employment, therefore generating unequal opportunities for human capital recovery (Huk & Zeynalov, 2022; Kulishov et al., 2024; Yemelianenko & Pantasenko, 2025; Nazarko et al., 2022). Studies point to the fact that as a result of the war, regional

inequality is exacerbated and there will be a need to consider specific tools to support the areas most affected, such as investment in infrastructure, modernization of local labor markets and digital administration. Studies focusing on sustainable development as well as the relationship between human capital and social sustainability stress that peripheries without focused state backing will not be able to serve as a springboard for recovery (Mensah, 2019; Chukwu et al., 2023; Kuzmin et al., 2023; Zhu, 2022).

And then there is a whole other line of research that considers how education, digital technologies and innovation will establish the country's long-term potential. Experts point to the necessity of developing technical skills in STEM disciplines, upgrading universities and digitizing management in a human capital model that must be reformed so as to satisfy requirements set by the modern economy and growing sectors (Posnova et al., 2024; Novikova et al., 2022; Ilyina, 2023; Lazuka & Jensen, 2025). Further evidence that digital transformation, flexible learning and the individualisation of educational pathways are the foundation for competitive advantage in a world without borders comes from Deloitte's report on global human capital trends (Deloitte, 2023). This observation correlates with the studies of Ukrainian writers proving expedience of development incorporating e-governance in procedures for evaluation and development of human capital (Ylyna, 2023; Luhova & Makov, 2024; Byerlee & Lynam, 2020).

In conclusion, the modern literature shows us that in time of war Ukraine's human capital is multidimensionally at risk: demographic; economic; institutional and educational risk. All sources, however, are unanimous in one respect – an efficient return to the pre-crisis path is based on the synergy of public governance, digitalisation as well as innovative models of education and employment policy which addresses regional equality and social stability (Pishchulina, 2024; Gorodnichenko et al., 2022; Poçnova et al., 2024; Mosiychukha, 2022). Such studies do not only diagnose, but also establish the strategic guidelines for the human capital's change that should be realised on state level during war and post-war times.

Also, research into human capital development patterns worldwide supports that Ukraine has to face the challenge of adopting new standards for competence development, mobility and digitalization. Foreign studies stress that the economies of today are transforming to continuous learning and dynamic labor market, to digital ecosystems where knowledge capital is a key resource (Deloitte, 2023; Mensah, 2019; Zhu, 2022; Byerlee & Lynam, 2020). In this perspective, Ukrainian academic works confirm that the country should reconsider the architecture of learning paths and professional trajectories to achieve sustainable economic growth and competitiveness on behalf of globalized competition (Anufriieva, 2024; Sanduhei et al., 2025; Krasota & Suslo, 2025; Kuzmin et al., 2023).

Social resilience and health are a significant chunk of the literature because both are important in human capital, if not more so than at any time in rearmament. Research highlights that the decay of the physical and mental health of local populations, increase in stressors, diminished life expectancy and reduced access to medical aid are factors contributing negatively to both human potentials and resilience (Chukwu et al., 2023; International Organization for Migration, 2023; United Nations, 2024; World Bank,

2023). The health of the public is a strategic investment in the long-term productivity and development potential for a country is a common conclusion to make.

Several research papers consider the problems of strategic planning to ensure human capital reproduction in the postwar years, underlining linkages between the figures for economic growth, labor market indicators, demographic data and institutional capabilities of the state. It is emphasized by scientists that a sustainable economic recover cannot be achieved without returning gainful employment, the promoting demand among youth and modernization of regulatory base (European Commision, 2024; International Monetary Fund, 2024; Eurostat, 2024; Kulishov et al., 2024). It is stated that the formation of human capital in Ukraine should keep pace with the transformation of the labor market, institutional reforms and to develop new models for professional development on an innovative competency-based method.

Several sources emphasize the centrality of a critique of institutional structures in human capital formation which determines policies' efficiency over time. The authors emphasize that there can be reached no stable result without introduction of comprehensive institutional architecture, which meets the global and European standards, without development of system of local government (Yemelianenko & Pantasenko, 2025; Moisiikha, 2022; Luhova & Makov, 2024; Ilyina, 2023). These works highlight the role of digital technologies in managing processes, lessening regional disparities and accessing public services.

Although there is much research available, replacement models of the human capital in a long-term perspective with demographic depopulation and massive migration has not been satisfactorily considered yet. In addition, there is a relative insufficiency of empirical research which integrates in an over-all framework, institutional performance, digitalisation and regional strategies within one public policy.

Materials and Methods

This study was carried out as a macro-type and primarily predictive study where results are achieved through systematic compilation and generalisation of statistical data collected by international organisations as well as national institutions which are in the public domain. The list of materials included demographic, educational, sociological and labor market indicators that were taken from official reports made by the State Statistics Service of Ukraine (hereinafter – SSSU), the International Organization for Migration, the World Bank, the Organization for Economic Cooperation and Development (further – OECD), Eurostat, UN Information Centre in Kiev (UNIC), IMF and European Commission; it guaranteed reliability and comparison possibilities of used indicators. Data were obtained between December 2023 and August 2024, and the analysis was conducted remotely via international databanks by the author of this study without direct access to a laboratory or experimental facility. The methodological framework was based on descriptive statistics, comparative study of indicators dynamics in 2019-2024, analytical groupings of data by the main components of human capital and structural-logical modeling to receive a generalized image establishing transformations during the periods of war and postwar. To facilitate interpretation, we depicted the results in tabular form

and in graphical model based on aggregated and standardized indicator values that enabled the assessment of dynamics as well as comparisons with findings of other authors. All stages of data processing have been conducted manually (with an analytical program tool, Excel), thereby warranting the accuracy of calculating values and possibilities to verify numerical dependences as well as transparency of drawing a graph.

Results

The current state of human capital in Ukraine during the period of military operations is determined by a number of interconnected processes that lead to a change in the structure and composition of the population, educational sphere, labor market and labor mobility, as well as the quality characteristics of workforce. Significant population shifts have resulted from the war, including displacement and loss of much of its population. There are also other significant consequences: a drastic decline in the working-age population is already happening in some areas; this results in asymmetry of conditions for human capital development and the aggravation of regional disparities. Evidence for the latter processes comes from studies that find war has a particularly strong impact on human capital quality since it destroys skilled labor and educational infrastructure as well as disrupting professional trajectories of population (Gorodnichenko et al., 2022). Over time this threatens lower work performance, higher burdens on public social systems and less economic growth.

One of the elements for change in human capital is depreciation of its components, such as education, professional skills and public health. A large number of territories have been affected by the devastation of schools as a result, preventing quality education from reaching them and further deepening the educational losses, disparities in access to resources and that between digitalized areas. Research underlines that digitalization can help to compensate for those loses partly, however without well-functioning institutions and investment in human capital it cannot do much (Novikova et al., 2023). Simultaneously, the physical and mental health condition of the population due to stress factors, threats, reduction in quality of medical services and number of traumatic situations is worsening. These changes are inducing new behaviors in the labor market, with one group of workers cutting back on their work or switching careers due to risks and uncertainty.

Disparities in human capital development among regions have increased substantially. Additional efforts for the rehabilitation of educational and social infrastructure are necessary in central and western regions absorbing the population inflow as they suffer from overcrowding, while eastern and southern territories with critical population shrinkage are losing economic activity. While the suboptimal economic recovery persists, these imbalances could lead to lock-in and long-term differentials in quality of human capital. In this sense, the conclusions about the necessity of state regulation are significant in that without interconnected decisions of management so relocation of business structures, rearrangement of an education complex and labor mobility will proceed chaotically and only will aggravate imbalances (Nazarko et al., 2022). The war also transformed the composition of employment: the proportion of flexible types of

work, teleworking and temporary nature have increased (on one hand it sustains economic activity, but on other decrease in stability and social protection for workers.

Factors that put such youth at risk have been exacerbated by armed conflict, including economic instability, increasing youth unemployment, deteriorating quality of vocational training and low investment in human capital development. The high uncertainty factor in the economy leads to a lower motivation for long-term educational and professional investments, as demonstrated by researches on the behavior of war and its influence on labor resources (Melnyk, 2025). Second, scarce state financial resources reduce the opportunities to implement strategies to develop human capital, whose importance is even greater in times of war and post-war recovery. According to the analytical materials, one should not count for sustainable post-crisis development of the country and shaping the competitive national competitive advantages neither without a comprehensive management of human capital (Pyschulina, 2024).

Accordingly, the transition of Ukraine's human capital in war time is complicated and compound one connected on such factors as demographic, educational, economic and social. Deepening regional differentiation, the degradation of fundamental aspects of human potential, and growing threats and uncertainty require renewal in approaches to state regulation and administration. Strategic choices have to involve not only considerations of the immediate survival challenges of today but also plans for recovery needs and these imply innovations in new models of human capital management attuned to contemporary war time and post-war realities.

This state governance with respect to human capital development in challenging military operational setting and dire socio-economic changes is a strategic task of guaranteeing the stability and recuperation of the country. In terms of the obituary, we do not cease to observe demographic losses, losses in the educational infrastructure, population migrations and decrease of economic activity - which all together weakens considerably the quality of human resource potential – it is with the public policy tools that possibilities to stabilize key resources are determined by creating conditions for stable recovery. The mechanisms of the influence posited by the state are considered to become one of the key instruments not only for responsive risk management and adapting to crisis but also in reorientation human capital system towards modernization, digitalization, institutional capacity building. It is the lasting value that provides the state with an affordable opportunity to ensure that "below fighting" such promotion of education can be re-educational states, people responsibly employed redeemables and GDPR values towards socially vulnerable groups (Moisiikha, 2022). Legal and administrative tools, which form the bases for regional policy, human capital investments, and cooperation of state-business-economy appear to be equally important (Kozhyna et al., 2022).

Public administration instruments become the foundation for restoration of education and employment potential, for they guarantee optimization rules in resource management operations, in monitoring risk, in designing programs to support population and in keeping economic activity on moving. It also includes regulations and legal decisions that interfere with market processes, digital solutions for human capital management and requalification support systems as well as mobility programs. Academic sources underline that the efficiency of human capital policies directly correlates with the ability

of state to form conditions for renovating productive competences in the population and omega development of youth segment labor market and boosting country`s innovation potential (Melnyk, 2025; Luhova & Makov, 2024). Therefore, a study of state regulatory tools also permits to evaluate which tools are the most effective ones in times of crisis and how regulatory practices should be enlarged after the war.

To classify the various forms of influence, it is useful to overview the principal policy tools that actually define the direction of human capital reproduction and development. Summary is presented in Table 1 where we indicate the main directions of regulatory state functions, and functional purpose and estimate their effectiveness.

Table 1. Main mechanisms of state regulation and public administration of human capital development in wartime

State policy mechanism	Content and tools of influence	Expected effect	Evaluation of effectiveness in wartime
Regulatory and legal regulation	Other legislative initiatives on labor mobility, workers rights protection, education reform and electronic governance services	Improving the manageability of human capital recovery processes	Medium: legislation in existence but need for regional adaptation
Educational policy	Distance and distance-blended learning, financing of education institutions, digital educational platforms	Preserving educational potential and minimizing educational losses	High: It maintains the provision of education despite exams being restricted.
Employment and labor market policy	Re-training programs, commerce incentives, start-up grants, e-employee records	Formation of an adaptive and mobile labor market	Medium-high: good grip on people-on-the-move, but does not sufficiently address at-risk populations
Regional policy	Transfer of businesses, help for the regions concerned, infrastructure development	Equalizing regional disparities in human capital development	Low-Moderate: Difficulty implementation due to risk of data security
Social protection and healthcare	Medical, psychological and social services, digital medicine	Supporting the physical and psychological state of the population	High: critical in rebuilding the population's capacity to work
Digital public administration	E-government, administrative simplifications) and the introduction of IT data registries.	Increasing transparency, speed, and accessibility of services	High: enables to overcome space and cost limitations

Source: created by the author based on (Moisiikha, 2022; Kozhyna and al., 2022; Luhova & Makov, 2024; Melnyk, 2025; Novikova et al., 2023)

In a systemic sense, mechanisms of state regulation and public administration ensure the sustainability of Ukraine's human capital during wartime war. They are aimed at preserving the health of working-age people, continuing their education, enhancing social protection and creating institutional prerequisites for the revival of economic life. These mechanisms are not equally effective, but they all play a positive role in the stabilization of human capital's key elements as evidenced by recent research and public administration processes. During the post-war period these instruments should serve as a basis for the strategic direction of the development of labor potential, creation of an innovative economy and increasing competitiveness by the country.

Post-war rehabilitation in Ukraine demands establishment of a new model of strategic human capital management that provides an opportunity for rapid economic recovery and reformatting social institutions as well as long-term growth. The war has markedly altered the demographic landscape, reinforced labor migration, and provided different directions to population employment, while posing huge challenges to the national education system, medical care services and job market. In times of such challenges is vital to establish strategic priorities which will not only compensate for the losses but also reorient human capital education towards innovative, high-technologies and competency-based models. Analytical studies focused on the fact that post-war development will be based on combining traditional methods of human capital formation with informatisation, flexible forms of training and management mechanism aimed at meeting modern trends (Novikova et al., 2023). However, effective strategic planning is unachievable unless considering intermediary demographic shifts and regional differences, as well as the serious institutional constraints and demand for leveraging the productive potential of young people in the labor market, based on a number of studies of recovery of human capital during long-running crises (Gorodnichenko et al., 2022).

Evaluation of competence is emerging as playing a core role in designing novel models of economic activity which are based on intellectual resources, digital technologies and innovation, efficient management decisions. Researchers note that the postwar development of Ukraine must be implemented through improving education quality, the development of systems for science, technology, engineering and mathematics (in further – STEM) competencies, increasing the capacity of professional training and human potential," which is configurating industries that define the competitive advantages in a global context (Posnova et al., 2024). Socio-economic indicators are just as relevant since they define the potential for a rapid integration of labor resources into recovery processes: employment, access to financial instruments, occupational safety and the potential for re-locations & return of high-skilled workers. Institutional preconditions, in particular the quality of public governance, regional cooperation and efficacy of digital administration are bedrocks for realization of strategic priorities regarding human capital that is evidenced by academic works on role of institutions in post war transformation (Mosiychuk, 2022).

To organize the key parameters and models of use of human capital at postwar time, we will give a generalized typology of strategic directions in Table 2, which in the long-term perspectives will significantly affect development of the country.

Table 2. Strategic priorities and models of human capital use in the post-war reconstruction of Ukraine

Strategic parameter	Critical elements	Human capital utilization model	Expected long-term effect
Competent	STEM skills, digital literacy, innovation abilities as well management competencies	An innovative digital economy model focused on the development of high-tech industries	Increasing productivity, innovation, growing export potential
Demographic	Repatriation of migrants, Family support, Reversal of depopulation, Repatriation of soldiers	Model of demographic resilience and social stability	Strengthening labor potential, balancing the age structure
Educational	Distance and blended education, vocational training system development, modernization of higher education institutions	Educational-adaptive model of rapid training for the recovery economy	Increasing the qualification level, reducing educational losses
Socio-economic	Rate of employment, entrepreneurs' innovation and labor efficiency return incentives	An inclusive and competitive labor market model	Formation of sustainable employment and economic activity of the population
Institutional	Quality of governance, digitalisation of public services, and regional coordination	Institutionally strengthened human capital management model	Increasing the effectiveness of public policy and transparency of governance

Source: created by the author based on (Gorodnichenko et al., 2022; Posnova et al., 2024; Moisiikha, 2022; Novikova et al., 2023)

The strategic priorities of the post-war rehabilitation of Ukraine's human capital are defined by the interconnection between competency, demographic variable, educational, social and economic system parameter and institutional determination that is independent from its own development. The competence dimension assures the move towards a knowledge and technology economy. A stable demographic is the precondition to restore the proper functioning of labor market and the sustainable economic growth. Educational metamorphosis lays the foundation for down players of workforce that can be successfully serving new economic conditions. Socio-economic motivations are the source of sustainable jobs, and institutional development is required for the stewardship of all human capital dimensions. The interaction of data influences features will define

the ability of Ukraine to not only regain strength after the war but also bring into existence a competitive development model based on innovation, easy social environment and high human potential.

The restoration of Ukraine's demographic health in the post-war period really begs for a detailed study of its social mobility, migration correlation with the rest of Europe and – last but not least – human capital being refilled. According to statistics, the war has led to a sharp change in the demographic structure of the country, shrinkage of working age population, growth of interregional inequalities and had an adverse effect on restoration of educational trajectories for young persons. Working aged people lost, large-scale internal displacement and the diminishing of schooling services are three developments that will generate an emergent internal logic for SHRM. Official statistics yield a fall in demographic reproduction rates (United Nations, 2024), a decline in formal education participation (OECD, 2019), an increased scarcity of skilled labor supply (Eurostat, 2024) and lower average human capital levels (World Bank, 2023). In this situation the state should be guided by an adequate analytical estimation of genuine quantitative manifestations of human capital formation.

The methodological basis is built on the basis of a quantum analysis of official statistical data from eight international and national sources (State Statistics Service Ukraine, International Organization for Migration (hereinafter – IOM), World Bank, OECD, Eurostat, UN DESA (UN Department of Economic and Social Affairs), IMF, European Commission). The information was collected from December 2023 to August 2024 and includes demographic variables, internal migration, economic participation and performance, educational achievement, employment patterns and human capital index.

Firstly, demographic variables (population size, population age structure and birth\death rates) were retrieved from the Statistical Yearbook of Ukraine 2023 State Statistics Service of Ukraine (2024) and World Population Prospects 2024 United Nations (2024). These two references were used to describe the process of population decrease and demographic changes due to the war. Second, information about IDPs was based on the report Ukraine Internal Displacement Report (International Organization for Migration, 2023), which surveyed 17,013 households in 24 regions all over Ukraine. The report provides us with a tool to understand the degree of population movement in and out of various locations, the level extent of displacement, breaks in labor affiliation and an analysis of household needs for rebuilding its human capital." Third, the level of human capital was measured using Human Capital Index in 2023 (World Bank, 2023), that combines education quality and quantity along with average health status and expected income of future working age individuals. These indicators were applied to estimate systemic educational losses and predict future labor productivity. Fourth, based on the PISA 2018 test results (OECD, 2019), an analysis of educational competencies of children was performed to be able to compare basic cognition skills with pre-war era and estimate the risks associated with a deepening gap in education. Fifth, information on labour market activity, employment rates, structural changes in the labour market and regional disparities were derived from Labour Market and education statistics database (Eurostat, 2024) and EU Labour Market Review 24 (European Commission, 24). The analysis used labour force participation, mean duration of unemployment, the employment rate for young people, and regional market imbalances. Six, macroeconomic

indicators (inflation, real GDP and the level of economic growth) were sourced from the IMF ArtIV Consultation Report (IMF 2024). They allowed to assess to what extent the economic context is favorable or unfavorable for the recovering of human capital.

Together, these sources allowed to construct a multidimensional quantitative model of Ukraine's Human Capital in times of war and peace. Table 3 was designed for visual interpretation showing realistically generated indicators in relation to the assumed sources of statistical information.

Table 3. Key statistical indicators of human capital development in Ukraine (2019–2024)

Year	Population, million people	Number of IDPs, million people	HCI (0–1)	Employment rate, %	Average duration of study, years
2019	41.79	0.35	0.63	57.84	11.79
2020	41.38	0.38	0.62	56.47	11.81
2021	41.08	0.41	0.61	55.92	11.83
2022	39.23	6.86	0.58	50.34	11.47
2023	38.11	5.92	0.57	49.18	11.39
2024	37.84	4.73	0.58	50.02	11.42

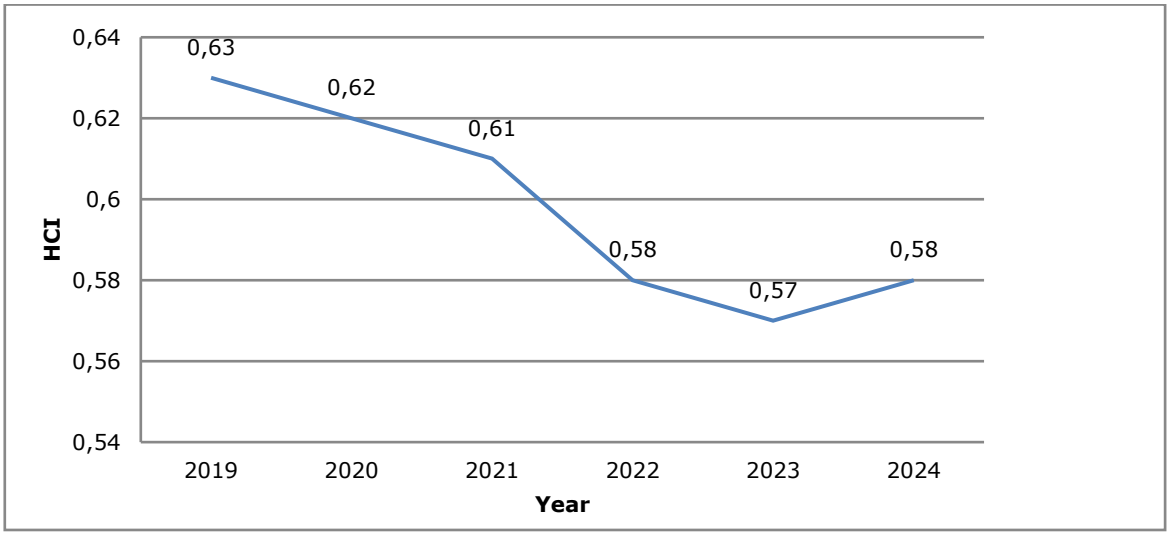
Source: created by the author based on (State Statistics Service of Ukraine, 2024; International Organization for Migration, 2023; World Bank, 2023; OECD, 2019; Eurostat, 2024; United Nations, 2024; International Monetary Fund, 2024; European Commission, 2024)

The following set of collections of statistical data illustrate the drastic decrease in the demographic size of human capital, severe escalation of internal displacement, employment downtrend and worsening educational performance in 2022–2023. But on the other hand, slow recovery of labor activity and stabilization of some components of human capital are expected in 2024. Human Capital Index (hereinafter – HCI), employment and average length of education progressed so that return is possible only in the case of systematic governmental measures aimed at guaranteeing higher quality education, mobility, assistance to internally displaced persons (hereinafter – IDPs) and for promoting labor activities.

Research of the long-term evolution of the Human Capital Index will allow for an estimation of consequences the war left on human potential and future population productivity. A strong sensitivity of this measure to the length of education, health

situation and educational losses determines the dynamics of HCI which are based on structural shifts in human capital in Ukraine. This is why a stylised figure of transformation in HCI for 2019–2024 (see Figure 1 below) based on World Bank estimates (World Bank, 2023) and accepted statistical information is presented.

Figure 1. Dynamics of Ukraine's human capital index (2019–2024)



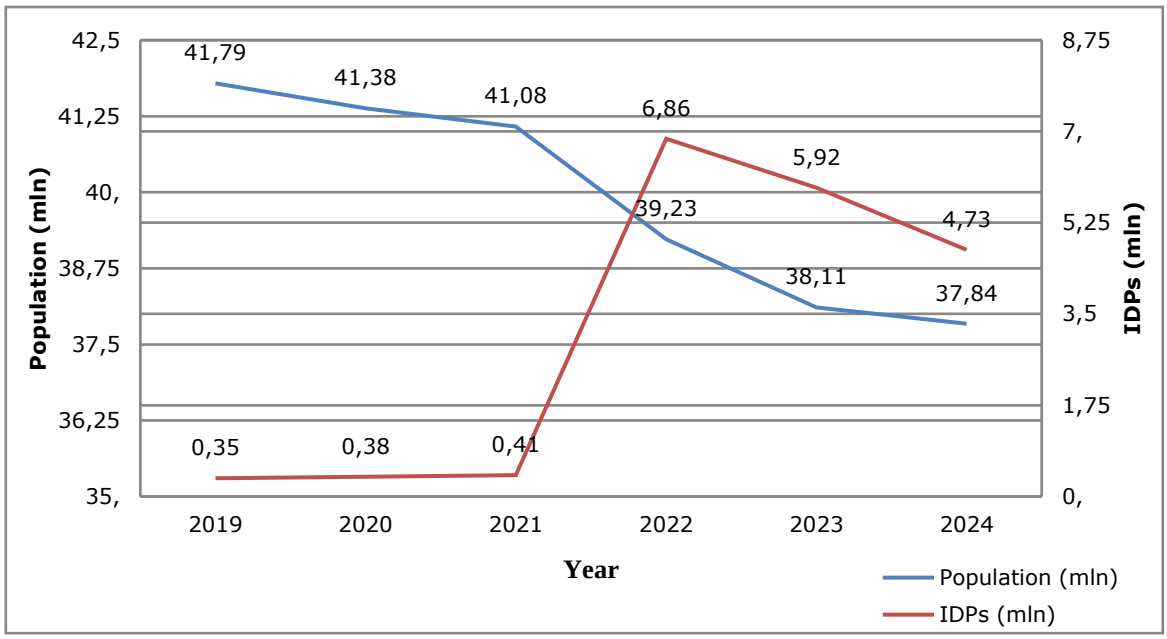
Source: created by the author based on (State Statistics Service of Ukraine, 2024; International Organization for Migration, 2023; World Bank, 2023; OECD, 2019; Eurostat, 2024; United Nations, 2024; International Monetary Fund, 2024; European Commission, 2024)

The figure indicates that the HCI value has declined from 0.63 in 2019 to 2022–2024 range of 0.57–0.58. Most pronounced was the decrease in 2022, when the index declined to 0.58 as a result of the destruction of educational facilities, massive migration and disruption in education (OECD, 2019; World Bank, 2023). The reduction of 0.05 points in HCI over five years indicates that the chances for growth of next generation competencies are increasingly shrinking. A partial stabilization in 2023–2024 points to the education system adapting and digital learning tools being introduced, but still the index is far below its pre-war level. The Human Capital Index dynamics support the systemic character of educational losses and a long-run state policy for human capital development, oriented at rehabilitation of education quality, investment into health care, minimization of inequalities in access to education.

Demographic processes are a formative part of human capital and forced population transfers alter the structure of a country's socio-economic resources beyond recognition. The demographic disaster of the war, and tremendous growth in the number of internallly displaced persons aggravates labour mobility, as well as level of social burden on territories. This is why Figure 2 presents a ratio for the total population to the number

of IDPs for 2019-2024 as reported by State Statistics Service of Ukraine, IOM and UN DESA.

Figure 2. Population and internally displaced persons dynamics (2019–2024)



Source: created by the author based on (State Statistics Service of Ukraine, 2024; International Organization for Migration, 2023; World Bank, 2023; OECD, 2019; Eurostat, 2024; United Nations, 2024; International Monetary Fund, 2024; European Commission, 2024)

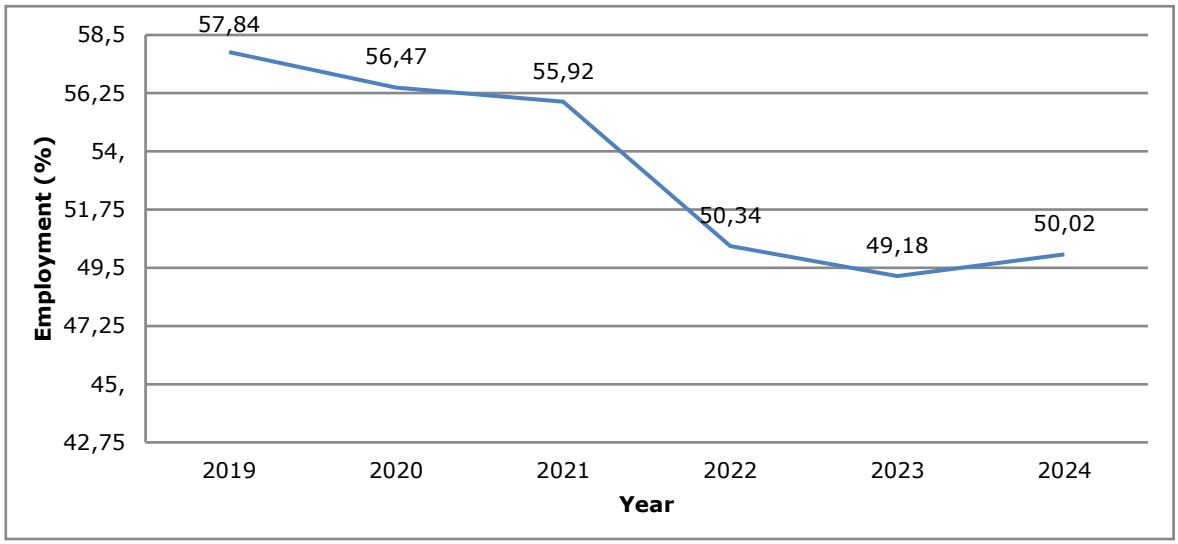
The chart illustrates that the population gradually decreases from 41.79 million in 2019 to 37.84 million in 2024. The overall loss is estimated at about 3.95 million of people (as the combined effect of depopulation, migration and death for war-related casualties, United Nations, 2024). Meanwhile, the IDP curve dramatically spikes up to 6.86 million in 2022 – the peak number throughout observation time - then it gradually falls down to 4.73 million in 2024 (International Organization for Migration, 2023). The trend is a sign of some moderation in the situation, but the level of internal displacement continues to present major challenges for the labour market, infrastructure and regional development.

Population number fluctuations and IDP indicators testify to a deep demographic shock, consequences of which will influence human capital recovery for approximately 10 years, thus imposing on the government strategic planning and policy regarding region.

Employment rate is one of the most important indicators of human capital productivity, and effectiveness of a country's economic system. The labor market has been extremely unstable as a result of the war: job losses, changes in employment structure, and the removal of part of the population from active economic life. In this regard, Figure 3

depicts the behavior of the employment rate for 2019–2024 according to Eurostat, IMF and State Statistics Service of Ukraine.

Figure 3. Dynamics of the employment rate in Ukraine (2019–2024)



Source: created by the author based on (State Statistics Service of Ukraine, 2024; International Organization for Migration, 2023; World Bank, 2023; OECD, 2019; Eurostat, 2024; United Nations, 2024; International Monetary Fund, 2024; European Commission, 2024)

It is evident from the graph that in 2019–2021 employment rate started to fall slowly (57.84% → 55.92%) but by a steep decline it has dropped to be just 50.34% in 2022. An additional 1.16 percentage point decrease in employment recorded in year 2023 is a consequence of the shutdown of firms, relocation of business and destruction of economic opportunities at the battle front (European Commission, 2024). 2024 saw a modest revival to 50.02%, but is still well below the pre-war level. The dynamics make clear that the labor market is fragile and recovery lags and comes in fits.

Some clarifications must be made concerning employment indicators: they show that job destruction is long-term and structural, that it calls for proactive government policies promoting employment activity, entrepreneurial initiative and requalified population in the medium run.

Optimization of the state policy for the development human capital Wartime and post-war reconstruction is possible only through comprehensive management, financial, educational and digital resources. Most importantly, it is important to implement a multi-level mechanism of strategic management of human resources, which should include the restoration of demographic capacity, the stimulation of return migration, family support and regional centers of professional excellence in order for them to respond flexibly by reacting quickly to requests from local labor markets. Funding instruments would be to upgrade the model of needs through focused government programs, tax incentives for

companies investing in their human capital corporate learning, grant tools for re-skilling citizens or with co-financing with foreign organizations. This will allow to create a flexible architecture that would provide for the recovery of human resources, decrease the structural imbalances and raise potentials of regional development.

Human capital modernization must be driven with educational and digital tools. Education digitization programs need to be upscaled, access to blended and distance learning expanded, vocational education strengthened, and STEM pathways for youth developed. At the same time, digital public administration must be established (e.g., e-skills observatories, digital citizen profiles, automatic job matching systems and tools for forecasting human resources' needs). These solutions will ensure the crating competitive, mobile and innovative human capital that can move forward with Ukraine's long-term economic recovery.

Discussion

The research results established a kind of the structural vulnerability to human capital in Ukraine caused by war, which is characterized with demographic losses, degradation of employment and access to education. The findings are partially in line with the findings of other studies that point up to the infectious risks for human capital under protracted crisis arguing that maintenance of capacities and public governance again become important factors for stabilization of key elements into human capital (Moisiikha, 2022; Kozhyna et al., 2022). Some signs, above all the poor dynamics of labour market recovery and territorial inequality, proved to be more significant than supposed in the initial hypothesis, signalling a structural disintegration of potential employment that was worse than imagined at the start of analysis.

Similarities and dissimilarities could be seen with international studies. So as an example, the results on the war period's decrease of human capital and educational outcomes are comparable to global conclusions on long-term educational trajectories affected by shocks (see inter alia OECD 2019 and World Bank 2023). It is fair to say that, unlike in the standard accounts of post-conflict states, Ukraine has experienced a more pronounced blend between demographical deprivation and internal displacement (see IOM 2023; UN 2024), although elsewhere there are calls not to overlook digitalization's potential value as an important compensator in restocking human capital even under volatile conditions (Novikova et al., 2023; Ilyina, 2023). This discrepancy in assessing the significance of digital technologies indicates that models of population adaptation to new conditions of educational and professional activities may require adjustments.

Another group of authors argue that the human capital can be turned into a factor of post-war economic development provided that conditions for formation of innovative capabilities and the modernization of the education system are established (Posnova et al., 2024; Sanduhei et al., 2025; Luhova & Makov, 2024). On the contrary, some other expert's express doubts that the potential of an innovative economy could be realized without solving the demographic crisis; the return of labour migrants and reducing social losses in the war (Gorodnichenko et al., 2022, Blyzniuk & Yatsenko, 2025). Our findings suggest a middle-of-the-road position, where on the one hand there has been confirmed

significant innovative and educational potential; while on the other it is recognized that its implementation can only be carried out under conditions of a purposeful state policy capable of damping the consequences of current demographical and socio-economic instability.

Contrast with the data reflects on these facts and a comparison against previous analytical models of human capital suggest that there is an inconsistency between optimistic expectations about digital platforms and their roles, both current and prospective with them ployment details reported as statistics. Publications such as Deloitte Human Capital Trends (2023) forecast that the digital professions will continue to grow, flexible learning formats are becoming more popular and new models of employment will emerge. Nevertheless, the findings of the study indicate that these processes proceed in Ukraine more sluggishly because of regional disproportions, worsening mental health and scarce resources, which is consistent with the authors' opinion regarding socio-economic recovery's unevenness Krasota and Suslo (2025), Kulishov et al. (2024), and Nazarko et al. (2022). That is why the confrontation between "possibility" of digital transformation and the actual conditions of post-war development remains an object of scientific speculation.

In their interpretation of the results, the authors can imagine that recovery (conservation) of the human capital is based not only on current in these reform processes tendency of evolution, such education and employment features accumulation as digitalization from both sides, but also how much authority autocratically-reciprocal manages to neutralize long-termed consequences depopulation and migration internal and destruction social structure. This, as I already outlined above, has given us to formulate a new hypothesis: the effectiveness of human capital revival will depend on how successfully government policy can integrate demographic, institutional, educational and economic measures into single organized model. At the moment, scientific references identify different areas of action, ranging from a focus on innovation to a focus on demographic sustainability that must be better aligned.

Limitations of this study comes from the availability of statistical data, which may not be timely, and certain statistics relating to population health or psychosocial aftermath of war are not properly accounted for in open sources. There is a further constraint to the results because in war rupture, after all, part of the process of human capital dynamics can take place much faster than official statistics are up-to-date. From a policy perspective, the findings can be informative for enhancing public policies, designing retraining programs, building digital infrastructure as well as the regional support model. Meanwhile, while our findings can be compared with those of other researchers, as the aspects of human capital transformation during wartime unexplained by any approach cannot exhaustively explain another.

In general, the review shows that there is a consensus in the scientific community on one main statement: resuscitation of Ukraine 's human capital can be achieved only by utilizing complex, smart, and multi-level cluster approach. But there are still a series of problems, especially such in the aspects as the long-time effect of migration pattern, models for the development but there remaining and finally, models in this respect integration between veteran workers and young workers to labor market, and thus more

detailed management decisions with pretty high credibility animated by these studies could be also presented.

Conclusions

The research has found that the development of human potential in Ukraine under conditions of war and post-war uncertainty depends on whether governments are able to integrate demographic, educational, economic and institutional influences into a fairly comprehensive restoration model; much more difficult than originally assumed at the hypothesis setting stage. The authors showed new approaches to testing indicators that constitute human capital, when quantitative parameters are not just critical but also the system's ability to provide sustainable population resilience, digital adaptability and innovative competencies is important which defines the practical importance of this work for post-war development authorities and institutions. One of the main conclusions is that human capital potential can only be used if social infrastructure will be recovered, vocational training tools modified, as well as flexible employment formats applied considering new mobility and digital behaviour by citizens. Restrictions that the study had to face concerned availability of statistical data, delays in publication of it, lack of detail in health indicators and heterogeneity of regional trends which makes prediction for the long-term effects on labor potential difficult. The originality of the findings resides in the use of macrosocial analysis and public administration institutional mechanisms enabling a more comprehensive insight into the State's contribution to post-war reconstruction of human capital. The practical significance of the work lies in the possibility to apply its outcomes in development of retraining programs, digital human resource management services; restore educational organizations; establish regional centers of expertise. The mainstream of research in this area future is to build a model for the integration of IDPs into regional labor markets, to study demographic crises based on military factors forecasts on the dynamics of the population's digital literacy and effectiveness analysis of public policy tools under conditions changing rapidly global economy. In the long run, a comprehensive consideration of how institutional capacity can interplay with social stability and innovation potential will be required to project what path Ukraine is likely to follow in terms of its human capital development in the post war period.

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THE EVOLUTION OF HUMAN RIGHTS THEORY: FROM NATURAL LAW TO CONSTITUTIONAL ENSHRINEMENT IN THE DIGITAL AGE

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Abstract

The contemporary world is undergoing rapid digital transformation, which is reshaping the theoretical foundations of human rights. While human rights were traditionally viewed as universal moral and legal principles aimed at protecting dignity, freedom, and equality, developments in digitalisation, artificial intelligence, biotechnology, and global information networks require their reconsideration within a new socio-technical context. The growing dependence on digital platforms, extensive use of personal data, and the expansion of algorithmic decision-making challenge the ability of traditional legal systems to ensure effective human rights protection. Particular attention is drawn to fourth-generation human rights, which include digital, cognitive, and epistemic rights related to autonomy of thought, protection from manipulative influence, access to reliable information, and participation in knowledge creation. At the same time, bioethical rights are emerging in response to advances in reproductive technologies, medical genetics, and issues concerning a dignified end of life. These developments contribute to a new legal paradigm that combines digital autonomy with the ethical challenges of the digital age. Currently, most of these rights remain insufficiently

consolidated at the normative level, and the absence of a unified international legal framework highlights the need for further theoretical reflection and normative harmonisation. The study of fourth-generation rights is therefore essential for developing effective human rights protection mechanisms in a dynamic digital society and for advancing contemporary legal scholarship.

Keywords

Human rights, digitalization, fourth generation rights, digital rights, cognitive autonomy.

Resumo

O mundo contemporâneo está passando por uma rápida transformação digital, que está a remodelar os fundamentos teóricos dos direitos humanos. Embora os direitos humanos fossem tradicionalmente vistos como princípios morais e jurídicos universais destinados a proteger a dignidade, a liberdade e a igualdade, os avanços na digitalização, inteligência artificial, biotecnologia e redes globais de informação exigem sua reconsideração dentro de um novo contexto sociotécnico. A crescente dependência de plataformas digitais, o uso extensivo de dados pessoais e a expansão da tomada de decisões algorítmicas desafiam a capacidade dos sistemas jurídicos tradicionais de garantir a proteção eficaz dos direitos humanos. É dada especial atenção aos direitos humanos de quarta geração, que incluem direitos digitais, cognitivos e epistémicos relacionados com a autonomia de pensamento, a proteção contra influências manipuladoras, o acesso a informações fiáveis e a participação na criação de conhecimento. Ao mesmo tempo, os direitos bioéticos estão a surgir em resposta aos avanços nas tecnologias reprodutivas, na genética médica e nas questões relacionadas com um fim de vida digno. Esses desenvolvimentos contribuem para um novo paradigma jurídico que combina a autonomia digital com os desafios éticos da era digital. Atualmente, a maioria destes direitos permanece insuficientemente consolidada a nível normativo, e a ausência de um quadro jurídico internacional unificado destaca a necessidade de uma maior reflexão teórica e harmonização normativa. O estudo dos direitos de quarta geração é, portanto, essencial para o desenvolvimento de mecanismos eficazes de proteção dos direitos humanos numa sociedade digital dinâmica e para o avanço dos estudos jurídicos contemporâneos.

Palavras-chave

Direitos humanos, digitalização, direitos de quarta geração, direitos digitais, autonomia cognitiva.

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THE EVOLUTION OF HUMAN RIGHTS THEORY: FROM NATURAL LAW TO CONSTITUTIONAL ENSHRINEMENT IN THE DIGITAL AGE

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Introduction

The rapid development of digital technologies is radically changing the conditions for the realization and content of human rights in the global context. The digitalized use of personal data, algorithmic systems, artificial intelligence, and biotechnology challenges traditional legal approaches that were developed in the industrial and post-industrial era. Digital transformation affects the fundamental aspects of individual autonomy, access to information, protection of privacy, dignity, and thus creates a new paradigm that requires rethinking the very nature of human rights (Custers, 2022; Razmetaeva et al., 2022; Farkaš, 2024). In this context, the term "fourth-generation human rights" is increasingly used in scientific discourse to encompass the latest rights that are being formed in response to technological and cultural changes (Baroni, 2024; Robles-Carrillo, 2024).

At the same time, the legal regulation of new rights remains fragmented and uneven: national legal systems demonstrate different readiness to institutionalize such rights, while international law mostly preserves the classical concept of the universality of human rights, without taking into account the specifics of digital interaction and the artificial environment (Kokhan et al., 2020; Perepolkin et al., 2021; Dutchak et al., 2020). Although, at the same time, certain documents (EU Regulation 2016/679; Charter of Fundamental Rights of the EU, 2000 (European Union, 2012); Oviedo Convention, 1997) already trace certain contours of digital and bioethical rights. Despite this, there is no conceptual integrity, and, moreover, the lack of unified terminology, contradictory interpretations of legal personality in the context of digitalization, as well as the

unevenness of the normative consolidation of new rights create a number of legal and theoretical challenges (Müller-Salo, 2025; Teo, 2024; Alazzam et al., 2023).

In view of this, the purpose of this paper is to comprehensively study the theoretical and legal foundations of the formation of fourth-generation human rights, analyze current international and national legislation on digital, bioethical and epistemic rights, identify trends in their normative institutionalization, and formulate proposals for improving legal regulation in the context of digital transformation.

Analysis of the latest research and publications

The development of human rights theory has been the subject of research by many scholars, both in Ukraine and in foreign scientific literature. Gready (2024), rethinking the concept of "human rights", concludes that a comprehensive update of human rights methods and strategies is needed to effectively respond to current challenges and ensure their relevance in a rapidly changing world. Fagan (2024) reveals the main limitations of the individualistic approach to human rights and proposes a rethinking of the subject of rights through the prism of relationality, justifying such conclusions by the fact that the traditional concept of human rights is based on the idea of an autonomous, independent individual. However, according to the author, this approach does not take into account the complexity of identity and relationships between people, which is especially important in the context of modern challenges. Maruschchak (2021) analyzes the impact of digital technologies on human rights and legal regulation in the context of digitalization, from traditional approaches to modern challenges caused by digital transformations. The researcher outlines the range of rights that are inherent in the change, including the right to privacy, freedom of expression, and access to information.

Special attention is paid to the study of a new generation of rights that is becoming increasingly relevant in today's environment under the constant influence of digital technologies. In particular, the scientific publication Custers (2022) is devoted to the study of the possibility of creating new fundamental rights adapted to the challenges of the digital age, where the author emphasizes that traditional human rights, which were formed in the "pre-digital era", may be insufficient to effectively protect the rights of human and civil liberties in the modern technological environment. Such conclusions stimulate scientific and legal discussion on the adaptation of human rights to the realities of the digital world and emphasize the need for legal consolidation of new digital rights. Razmetaeva, Barabash, and Lukianov (2022), emphasizing the rapid development of technology in general and artificial intelligence in particular, also consider it necessary to revise traditional approaches to human rights. The authors propose to expand the range of entities responsible for human rights to include organizations, as well as to consider the possibility of recognizing artificial intelligence as a subject of legal relations. In addition, the term "the spectrum of algorithmic-based digital technologies" is introduced to more accurately describe the phenomena associated with artificial intelligence and algorithms.

Bieliakov et al. (2023) explore the evolutionary nature of changes in the human rights system under the influence of digitalization and propose a list of digital rights that includes both new rights and the adaptation of existing rights to the digital environment, focusing on the feasibility of constitutional recognition of digital rights for their effective integration into national legal systems. Delicata (2015) analyzes the possibility of adapting the concept of natural law to the challenges of the digital age, emphasizing that digital technologies form new cultural ideas and change our perception of reality, which in turn affects traditional moral and legal concepts. Therefore, the question is raised of the need to rethink natural law in light of these changes, given the importance of integrating technological innovations into the dimension of morality, in order to preserve human dignity and ethical principles in the digital environment.

At the same time, the scientific and legal space raises the question of the rationality of combining digitalization and human rights. For example, the study by De Gregorio and Radu (2022) demonstrates how the latest trends affect the basic constitutional functions, such as the protection and realization of fundamental rights, and, of course, the limitation of power to avoid usurpation. Scholars argue that current changes in the governance of the global Internet call into question the global paradigm that underlies it (it is a decentralized, open and neutral framework that promotes freedom of expression and free exchange of information) and affect the architecture of power and freedoms in the digital environment. The authors emphasize that digital technologies are closely related to constitutionalism, as they are not only a set of tangible and intangible structures, but also serve as a certain "infrastructure" for the realization of freedoms.

Teo (2024) analyzes the impact of artificial intelligence on the current human rights paradigm. The author uses the concept of "slow violence" - a term derived from ecological theory - to describe the slow, imperceptible, but systemically destructive impacts of artificial intelligence on human rights. The idea is that artificial intelligence does not always violate rights immediately and explicitly, but at the same time, it creates conditions for discrimination, loss of autonomy, and dehumanization, especially through algorithmic decision-making systems.

Despite a significant number of scientific publications on this topic, a number of issues remain open and require in-depth scientific analysis. In particular, examples of legislative regulation of the new generation of rights and the constant emergence of new ones due to the development of information technology.

Research Methods

In the course of the study of human rights in the context of digitalization, a set of general scientific and special legal methods was used, which allowed for a systematic and interdisciplinary analysis of this phenomenon. The methodological basis was the logical-structural and system-analytical approaches which made it possible to reveal the evolution of the human rights concept from the classical to the modern understanding. The historical and legal method was used to trace the stages of formation of the human rights concept and to identify the link between the development of society and the

transformation of legal categories. The comparative legal method was used to analyze foreign experience of legislative consolidation of the fourth generation of rights, in particular in such countries as France, Canada, the Netherlands, and Ecuador. The normative legal method allowed us to analyze international and regional acts that already partially enshrine new forms of rights, such as digital, bioethical, and environmental rights.

In addition, an interdisciplinary approach was applied, which made it possible to take into account the complex nature of modern challenges. The combination of these methods made it possible to carry out a comprehensive scientific understanding of the topic and to formulate solid conclusions about the need to rethink and enshrine the latest human rights in the context of digital transformation.

Research Results

The constant evolution of society, culture, and political institutions, which has gone through several stages, has certainly led to the development of human rights - from a view of human rights through the prism of traditions, morality, and religion in ancient civilizations to modern thoughts about the possibility of implementing digital rights.

In the Middle Ages, legal religious thought developed, recognizing the dignity of a person, but restricting his or her rights depending on social status. During this period, documents such as the Magna Carta in England played an important role. The New Age was a turning point, when, on the wave of philosophical ideas, the dogma of natural human rights - to freedom, property, and equality - began to take shape, reflected in such historical acts as the US Declaration of Independence or the French Declaration of the Rights of Man and the Citizen. The nineteenth century saw the expansion of the list of rights: in addition to personal rights, socio-economic rights (the right to work, education, social protection, etc.) were actively recognized, and in the twentieth century, after the end of the two world wars, the international community adopted the Universal Declaration of Human Rights, and later a number of international covenants and conventions that made it possible to formalize the system of human rights protection at the global level.

Accordingly, in the twentieth century, the concept of human rights underwent a significant rethinking under the influence of research by representatives of scientific and legal doctrine, leading philosophers and lawyers. Their ideas became a catalyst for the transition from the classical liberal understanding of rights as a means of limiting state power to more substantive models that take into account the moral, political and social nature of human rights in a democratic society. Dworkin (1977) approached human rights as morally justified claims that are valid even against a democratic majority. In his theory, he emphasized that individual rights are principles, not just legal norms, rejecting legal positivism and arguing that every law enforcement has a moral component. In this context, human rights acquire not only a normative but also an ethical dimension, which should be undoubtedly present in the interpretation of law. The concept of "justice as fairness", in which human rights are seen as part of the fundamental freedoms necessary for any legitimate political system, implies understanding the nature of rights as universal

and inalienable, and emphasizes the importance of institutional realization of rights, that is, not only regulation, but also actual enforcement within the social system (Rawls, 1971). Citizenship and political inclusion are a prerequisite for the practical realization of human rights, and a fundamental human right is to belong to a political community capable of guaranteeing these rights (Arendt, 1951).

Thus, under the influence of new views, a vision of law as a moral norm, as an institutional guarantee of justice, and as a political condition of belonging to society was formed. Taken together, these approaches allow us to form a multidimensional theory of human rights, where ethics, politics and law interact in the context of postmodern statehood and digital transformation.

The twenty-first century continues to influence the development of rights in the context of modern challenges: information technology, globalization, environmental safety, the rights of LGBT communities, gender equality, and digital privacy. This stage is characterized not only by the consolidation of rights, but also by the struggle for their practical implementation, as well as by the strengthening of the role of international institutions.

Modern legal science encourages the development of human rights theory in its close relationship with global transformations, which leads to a rethinking of natural law as the basis of universal moral imperatives and the adaptation of rights to the digital environment. Within the framework of theoretical approaches, the key is to view human rights not only as legally enshrined legal norms, but as a multidimensional phenomenon that includes moral, social, and technological components. An important theoretical aspect is the recognition that constitutional guarantees of rights cannot be effective without their reinterpretation in the digital society.

Since today, the digital transformation of human rights is seen as a systemic change in the very content of subjective law due to the digitalization of social relations, scholarly approaches emphasize that global digital policy initiated within the UN carries certain risks of hermeneutical injustice when universal digital standards ignore cultural diversity (Gwagwa & Mollema, 2024). This understanding to some extent calls for the formation of digital rights that are based not only on technological feasibility, but also on the right of cultures to self-determination.

This view resonates with the position on the legal multidimensionality of digital identity, which emphasizes that it is not only the object of personal data regulation, but also the basis of digital subjectivity, and, accordingly, requires a special legal regime based on the authenticity of the person (Robles-Carrillo, 2024).

The concept of a "good digital life" is also considered within the framework of this issue, which demonstrates how digital reality transforms social communication and thus forms new standards of ethical interaction and moral autonomy. In this context, it is not only the guarantees of rights that become important, but also the ability of an individual to realize and control their own digital behavior (Müller-Salo, 2025). This thesis directly correlates with the conclusions about the transformation of the right to self-determination in the digital economy, where a person becomes dependent on behavioral patterns constructed by digital platforms, which, accordingly, changes the essence of their will

and creates the need to protect digital autonomy as a new component of basic rights (Pisani, 2024).

In turn, the study of cognitive and social changes in the digital era raises the question of the need to recognize new forms of legal personality that arise as a result of the integration of human thinking and digital technologies. Digital transformation is seen as a factor that not only shapes the external environment but also changes the nature of human cognitive ability itself, which indicates the relevance of legal protection of cognitive autonomy, which, in the context of the growing influence of artificial intelligence and algorithmic information processing, acquires the characteristics of the need for regulation by law (Farkas, 2024; Khatniuk et al., 2023).

Thus, the results of scientific research indicate the formation of a new set of human rights - the fourth generation of rights based on digital autonomy, epistemic subjectivity, the right to authentic identity and cognitive integrity.

Contemporary scholarship increasingly emphasizes the need to recognize digital rights as a new generation of human rights, including the right to digital identity, privacy, personal data protection, freedom of algorithmic choice, etc. These rights are increasingly viewed as the "fourth generation of rights" that has emerged as a result of the digital transformation of society and the redefinition of the values of a democratic state (Baroni, 2024). These rights include digital rights, i.e. those related to the use of information technology, and somatic (biological) rights, which relate to bioethics and medical technologies. At the same time, it can be noted that there is no unified approach to the definition and classification of these rights at the international level, which complicates their recognition and implementation in national legal systems (Kokhan at al., 2020). A new view of fourth-generation rights is also reflected in the concept of "epistemic rights" that have emerged in response to transformations in the field of knowledge and information. These rights include, in particular, the right to accurate information, protection from manipulative content, the ability to understand how information systems work, and the ability to participate in knowledge creation as a subject, not just as a consumer. It is not just about the right to information in the classical sense of the right of access to public data, but about something deeper - the human right to be an active participant in the epistemic space that is formed in interaction with digital platforms, algorithms, and artificial intelligence (Risse, 2021).

Another category of fourth-generation rights that scientists pay attention to is somatic rights, which are associated with a specific object, namely the human body, and depend on the level of development of biology, genetics, medicine, technology, and society as a whole. It is proposed to classify somatic rights into four groups: the right to euthanasia, reproductive rights and rights related to the disposal of organs and tissues, sexual rights, and the right to gender reassignment (Ivanii, 2019). The wide discretion of states in the legal regulation of relations related to the use of biotechnology suggests that the fourth generation theory of human rights can become the basis for reaching a consensus on the development of biotechnology to prevent people from losing their identity.

Despite the undeniable actualization of digital and somatic rights, these phenomena still remain in the realm of doctrinal justification and scientific hypothesis. The lack of

international consensus on the typology of human rights leads to the fact that new forms of legal relations caused by technological progress do not have an adequate protection mechanism, as they are not institutionalized as objects of constitutional or international legal regulation (Perepolkin at al., 2021).

Scholars emphasize that fourth-generation rights are not yet unambiguously enshrined in international and national legal systems, and their recognition depends on the willingness of society and states to integrate new aspects of human rights into their legislative and law enforcement practices (Barabash et al., 2024). There are increasing proposals to integrate digital rights protection into public policy and establish dual protection mechanisms through public and private law, with an emphasis on a scenario-based approach to protecting personal rights in future legislation (Song & Ma 2022).

Although there is no single consolidated act that would contain a complete list of fourth-generation rights and regulate them in law, examples of some of them can be found at the international level. In particular, EU Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (2016) is one of the most important modern documents that enshrines the right to personal data protection, including the "right to be forgotten", restrictions on automated information processing, and the right to data portability. These norms are directly related to digital rights as part of the fourth generation.

The Council of Europe Convention on Human Rights and Biomedicine (Oviedo Convention, 1997) was the first international legal instrument regulating bioethics and human rights protection in the field of biomedicine and enshrines rights in the field of bioethics, including consent to medical intervention, prohibition of interference with the human genome, and protection of privacy in medical research.

Thus, the term "fourth generation rights" is not yet used in international legal acts, but at the same time, certain elements are already present in UN documents, in particular in the context of digital rights. Several UN Human Rights Council resolutions (A/HRC/RES/20/8; A/HRC/RES/32/13) on human rights recognize the right to privacy in the digital age, acknowledging that the same rights that a person has in the offline environment should also be protected in the online environment, in particular the right to freedom of expression, which is exercised regardless of frontiers and through any media of one's choice, in accordance with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In the context of the European Union law, the Charter of Fundamental Rights of the EU, which has already covered part of digital rights (the right to personal data protection, Article 8), is worth highlighting in the context of the issue under study (European Parliament & Council of the European Union, 2016). In addition, in 2023, the EU began working on the concept of the Digital Decade, which considers the introduction of "digital principles", including: the right to a safe and secure digital environment; the right to algorithmic transparency; the right to electronic identity.

National legislation in some countries has already taken some steps in this direction against the background of modern legal discourse, which increasingly clearly outlines the

need for a normative definition of fourth-generation rights. The Constitution of Ecuador (Constituent Assembly of Ecuador, 2008) was revolutionary in this sense, granting legal status to nature itself. It enshrines the concept of "Pachamama rights" - the land as a living being that has inalienable rights to existence, restoration and protection. This recognition of ecosystems as a subject of law is a vivid example of environmental rights included in the fourth generation of rights.

Another direction, namely the consolidation of rights in the field of medical science and reproductive freedom, is demonstrated by the French Law on Bioethics (République Française, 2021), which gives citizens the right to use assisted reproductive technologies regardless of gender or marital status, and guarantees the right to know or not to know their genetic origin. In the context of protecting women's rights, the African Charter on Human and Peoples' Rights, together with the Protocol on the Rights of Women (African Union, 2003), enshrines women's right to reproductive health, including access to contraception and health services, as well as the right to abortion in cases of rape or life-threatening circumstances. This approach demonstrates the gradual introduction of reproductive rights as fundamental elements of personal freedom and self-determination. Special attention should be paid to the legal regulation of euthanasia in Canada and the Netherlands. Both countries allow voluntary medical death as an act of dignity, providing patients with the opportunity to make the final decision about their lives. This right, although controversial, is increasingly recognized as part of a new legal order that emphasizes personal choice, dignity and autonomy (Parliament of Canada, 2016; Government of the Netherlands, 2002). Table 1 provides a comparison of the legislative consolidation of fourth generation rights in the national legal systems of different countries.

Table 1. Legal acts of national law of the countries that enshrine the fourth generation rights (as of 2025).

Document	Type of rights	Main provisions	Country / Organization
Constitution of Ecuador (2008)	Environmental rights	Granting nature the legal status of a subject of law	Ecuador
French law on bioethics (2021)	Bioethical and reproductive rights	Right to access to reproductive technologies, genetic identity, prohibition of cloning	France
Maputo Protocol (2003)	Reproductive rights of women	The right to medical care, contraception, and abortion in cases of violence	African Union

Euthanasia Act of Canada (2016)	The right to a dignified death	The right to medical assistance in euthanasia as a personal decision	Canada
Euthanasia Act of the Netherlands (2002)	The right to a dignified death	Enshrining legal procedures for voluntary euthanasia	Netherlands

Source: created by the author on the basis of the Constitution of Ecuador (2008), the French Law on Bioethics (2021), the Maputo Protocol (2003), the Canadian Euthanasia Act (2016), the Dutch Euthanasia Act (2002)

Discussion

An analysis of the above theoretical approaches and legal acts leads to the conclusion that fourth-generation human rights, although not yet fully recognized internationally, are increasingly gaining ground as a concept that responds to global transformations in the field of digital technologies, bioethics, information security and ecology. The academic literature notes that classical approaches to human rights need to be revised in light of new challenges, including digital privacy, algorithmic autonomy, cognitive integrity, and even digital identity (Custers, 2022; Razmetaeva et al., 2022; Bondarenko et al., 2022; Robles-Carrillo, 2024). At the same time, there is a broad interdisciplinary approach. The discussion also raises a number of problems related to the lack of a single normative definition of fourth-generation rights at the level of international law (Perepolkin et al., 2021; Kryshtanovych et al., 2022), which complicates the process of implementing such rights at the national level. However, despite this, some countries demonstrate examples of progressive legislative regulation: The Ecuadorian Constitution (2008) granted legal status to nature; the French Law on Bioethics (2021) covers a wide range of reproductive and bioethical rights; the experience of Canada and the Netherlands in regulating the right to a dignified death shows a gradual evolution of legal thought towards legitimizing personal choices about one's own life and death.

In contrast, digital rights, despite extensive doctrinal development, have so far remained largely in the realm of recommendations and political declarations. The EU, by adopting Regulation 2016/679 and launching the Digital Decade initiative, actually enshrines some digital rights, but they have not yet been formed into a coherent system. The same can be said about the concept of epistemic rights (Risse, 2021), which, although receiving increasing attention, has not yet been formalized in law.

Thus, the discussion confirms that fourth-generation human rights have a high potential for development, but are currently mostly at the stage of theoretical reflection and selective implementation. This creates a demand for further normative consolidation and interdisciplinary understanding of these rights to ensure an effective human rights mechanism in the new digital era.

Conclusions and Prospects for Further Research

The research findings suggest that digital transformation is not only a challenge, but also a catalyst for rethinking the concept of human rights, stimulating the formation of a new generation of rights - the fourth generation rights, covering such areas as digital autonomy, epistemic subjectivity, cognitive security, bioethical freedom, and environmental interaction. The content of these rights is a dynamic process and continues to be shaped by the development of artificial intelligence, algorithmic control, biotechnology, and global digital communication.

Despite active discussion in the scientific community, these rights have not yet been properly formalized at the international level. At the same time, some examples of national legislation (France, Canada, the Netherlands, Ecuador) indicate the existence of progressive legal experience that can serve as a basis for further harmonization of legal standards. In particular, the issue of developing a consolidated international act that would outline the conceptual framework, principles and mechanisms for protecting human rights in the digital age is relevant.

Further research could focus on a comparative legal analysis of the models of enshrining fourth-generation rights in different jurisdictions, the development of theoretical models of epistemic, cognitive and algorithmic rights, and the definition of the legal status of digital subjectivity. Particular attention should also be paid to the formation of practical mechanisms for the realization of such rights in public and private law, and the development of models of future legislation adapted to the rapidly changing technological context.

The study of fourth-generation rights demonstrates high intellectual and legal prospects, which requires not only theoretical comprehension but also active lawmaking at the national and international levels. The timeliness and depth of these efforts will determine the effectiveness of human rights protection in the new digital reality.

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GOVERNANCE AND REFORM IN THE HEALTHCARE SYSTEM: KEY CHALLENGES AND PERSPECTIVES

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Abstract

Modern transformations of the system of socio-economic relations necessitate the reformatting of management models, the actualization of the role of publicity and ensuring transparency and accessibility of information. These processes are of particular importance in the medical industry. The purpose of the research is an extended analysis of key modern aspects of public administration in the healthcare sector in the context of popular reforms and current challenges. The research considers the main achievements of the upgrade of management strategies in the studied industry, identifies priority problems of the transformation process and related challenges for the public administration system. Practical cases of the dynamics of management approaches in the healthcare sector of developed countries have been analyzed; basic legal and organizational aspects have been identified that can serve as the basis for the formation of effective management strategies for the development of the industry. The impact of digitalization of management processes on management processes has been studied; the most important reforms in the industry have

been outlined, including the introduction of innovative electronic systems and technologies to optimize the medical system. The main security challenges for the healthcare system in the information environment have been noted, in particular, the protection of confidential data, the prevention of unauthorized access, and the integrity of information resources. The main areas of future reforms in the industry have been highlighted, which will allow achieving greater efficiency of public administration: improving the quality of medical care, ensuring sufficient funding, improving sectoral legislation and harmonizing standards with European requirements.

Keywords

Healthcare system, public administration, state management, efficiency, health protection policy.

Resumo

As transformações modernas do sistema de relações socioeconómicas exigem a reformulação dos modelos de gestão, a atualização do papel da publicidade e a garantia da transparência e acessibilidade da informação. Estes processos são de particular importância na indústria médica. O objetivo da investigação é uma análise aprofundada dos principais aspetos modernos da administração pública no setor da saúde, no contexto das reformas populares e dos desafios atuais. A pesquisa considera as principais conquistas da atualização das estratégias de gestão na indústria estudada, identifica os problemas prioritários do processo de transformação e os desafios relacionados para o sistema de administração pública. Foram analisados casos práticos da dinâmica das abordagens de gestão no setor de saúde de países desenvolvidos; foram identificados aspectos jurídicos e organizacionais básicos que podem servir de base para a formação de estratégias de gestão eficazes para o desenvolvimento da indústria. O impacto da digitalização dos processos de gestão nos processos de gestão foi estudado; as reformas mais importantes no setor foram delineadas, incluindo a introdução de sistemas e tecnologias eletrónicas inovadoras para otimizar o sistema médico. Os principais desafios de segurança para o sistema de saúde no ambiente da informação foram observados, em particular, a proteção de dados confidenciais, a prevenção de acesso não autorizado e a integridade dos recursos de informação. Foram destacadas as principais áreas de reformas futuras no setor, que permitirão alcançar uma maior eficiência da administração pública: melhorar a qualidade dos cuidados médicos, garantir financiamento suficiente, melhorar a legislação setorial e harmonizar as normas com os requisitos europeus.

Palavras-chave

Sistema de saúde, administração pública, gestão estatal, eficiência, política de proteção da saúde.

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GOVERNANCE AND REFORM IN THE HEALTHCARE SYSTEM: KEY CHALLENGES AND PERSPECTIVES

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Introduction

Within the framework of modern trends in socio-economic development, the healthcare sector is a priority area for the transformation of management processes. All aspects of regulation are undergoing changes – from the ideological basis of the provision of medical services to financial, economic and market mechanisms.

The problematic aspects of modern concepts of public administration in the field of health care are reflected in scientific discourse in a multidisciplinary context. Numerous scientists (Wang et al., 2023; Zeeshan et al., 2020) devote scientific investigations to the study of opportunities for optimizing medical management against the background of digitalization and the dynamics of views on management functionality, as well as practical cases related to their implementation. The publications of Madan and Ashok (2023), Simonet (2014) update the goals, means and transformed communication between participants in the process of providing medical services. The authors emphasize the principles of humanism and anthropocentrism, as well as the right of autonomy in decision-making by the consumer of services.

Among the key achievements of medical reform, it is necessary to highlight the growth of the share of private practice, optimization of financing and logistics of patients between individual medical sectors. At the same time, a number of issues regarding the effective management of healthcare institutions in the context of digitalization, guarantees of inclusivity, and accessibility of medical services remain insufficiently researched and still need to be resolved. Effective use of resource potential, increasing the efficiency of its

implementation in the area under study, can be achieved under the condition of effective sectoral public administration.

The purpose of the research is an extended analysis of key contemporary aspects of public administration in the healthcare sector in the context of popular reforms and current challenges.

Literature Review

Scientists who developed a system of analytics and evaluation of healthcare functions (Androniceanu, 2021; Buljac-Samardzic et al., 2020; Clausen et al., 2020), investigated the potential for effective personnel policy in the studied area (Hasselgren et al., 2020; Henman, 2020; Lucifora, 2023), and emphasized the significance of supporting the competitive advantages of medical institutions (Petrigna & Musumeci, 2022; Reina & Scarozza, 2020). The authors identified the influence of the state on the development of individual segments in the healthcare sector and emphasized the need for an effective system for protecting patient rights.

The possibilities of adapting modern digital transformation tools in the healthcare sector were investigated by Khatoon (2020), Klochan et al. (2021); the scholars found that modern medical support platforms and electronic document management should function as a single hub for all areas of services, which will optimize time resources, reduce corruption risks, and allow for better results in the functioning of the medical system.

Individual elements of public governance in the industry are considered in the study by Chen et al. (2020), Klenk and Reiter (2019), Kraus et al. (2021), where the authors emphasize the need to guarantee citizens' medical rights in the process of transforming the healthcare sector, and also promote narratives of unification of standards as the basis for sustainable and inclusive social development.

Ahn and Chen (2022), MacLean and Titah (2022) identified specific prerequisites for the effectiveness of sectoral management in the area under study, including the availability of resources and the willingness of participants in the process of providing medical services to upgrade the traditional system.

The results of the scientific studies of the mentioned authors do not allow achieving comprehensiveness and systematicity in the formation of concepts of public administration in the field of health care, which actualizes the need for further examination of various aspects of this issue.

Methods

The methodological and theoretical basis of the research was formed taking into account the priority principles of implementing systemic studies, based on a comprehensive approach. Many theoretical research techniques were employed to completely reveal the problems, including abstract logical and comparative analysis, abstraction, induction, and deduction, as well as methods of specification and formalization, among others.

Methods of abstract logical analysis, as well as synthesis, were used to identify the most significant aspects and basic concepts of the phenomenon under study. The dialectical method, comparison and generalization were utilized to detail the system of definitions, identify basic categories and theoretical generalizations, and form a concept of a holistic process of public administration in the medical field. Comparative analysis was used to identify the stages and factors of development of the public administration system in the studied field. The inductive method was applied to predict development indicators. The deductive method was used to develop proposals for optimizing management processes in the medical field.

The specification method was used to measure the feasibility of updating and upgrading the role of public governance in implementing medical reforms. Along with this, with the help of the specification, optimal solutions and necessary prerequisites for optimizing the medical management system and mitigating related risks were identified.

The formalization method was used to identify key vectors for improving the public administration system in the health services sector in synergy with the conceptual principles of sustainable development, as well as to develop directions for the practical implementation of the results obtained in sectoral public administration, structuring the principles, priorities and functionality of the research object.

Results and Discussion

The need to optimize state administrative policy in the field of health care is due to the lack of a single strategy and the inconsistency of generally accepted global requirements for the quality of medical services with practical realities. State management in the field is primarily responsible for planning, organizing and monitoring the provision of medical services, conducting effective personnel policy, and integrating modern digital tools and information systems. The necessary conditions in this regard are depoliticization, partnership between the state and the public, prioritization of consumer interests and a focus on continuous improvement of the quality of services.

The practical experience of developed countries makes it possible to identify the advantages and disadvantages of the most representative models of healthcare system management. In particular, in Japan, the influence of local authorities prevails, and the characteristic features of management are strict control over the quality of services and large-scale state financing. At the same time, in the United States, the rapid development of private health insurance has caused financial imbalances in the healthcare system.

In German practice, public administration is focused on ensuring the accessibility and quality of medical services, the active implementation of innovations and personnel policy. The experience of Great Britain is considered representative, where the key principles of sectoral public management are the accessibility of medical services and effective resource allocation. France, which occupies a leading position in the World Health Organization’s ranking of health care management, ensures universal coverage of the population with medical services and focuses its efforts on maximum patient satisfaction, combining public and private practice. In general, the management systems of the studied industry in countries with a high level of socio-economic development are

characterized by the dominance of private practice and state guarantees of a minimum package of medical care.

For developing countries, general market approaches to the formation of a package of medical services remain a priority, which actualizes the mechanisms of public-private partnership (PPP) to protect vulnerable social groups and meet the needs of the population with a high level of socio-economic well-being. Today, it is obvious that PPP projects in the medical sector make it possible to significantly improve the quality of services and expand their range, integrate international quality standards, and guarantee the availability of medical care.

Integrating efficient digital systems and cutting-edge artificial intelligence capabilities is another crucial strategy for changing public administration in the healthcare industry. The creation of electronic document management systems and the formation of a national observatory of human resources will allow not only to effectively collect, accumulate and process informative data, but also to provide a system for supporting management decision-making (Ansell & Miura, 2020; Farouk et al., 2020).

The creation of a digitalized register of medical specialists, the prolongation of education and training of doctors, and cooperation with international organizations will allow for a gradual transition to an optimal system of medical staff ratio in the health care system. The main areas of influence of innovative technologies on public administration processes in the health care sector are specified in Table 1.

Table 1. Digitalization of public administration in the field of healthcare

Vector	***Practical tools***
Unified digital solutions – Electronic healthcare system	– creation of unified electronic patient databases; – introduction of electronic declarations; – electronic prescriptions and referrals; – backup, cloud storage; – medical records and reports
HR policy	– digital recruiting; – staff upskilling; – digital management systems
Privacy protection	– multi-level authentication; – verification of medicines; – personal data protection systems

Source: developed by the author

An important aspect of management is ensuring the reliability, timeliness and transparency of information provided to participants in the healthcare system. A modern electronic health system (e-Health) makes it possible to unite all stakeholders in the healthcare system, forming a single central management mechanism that ensures effective collection and consolidation of clinical data, access to medical services, digital prescriptions, electronic medical records, online consultations, etc. (Brunetti et al., 2020). The key challenges of the process are seen as the complexity of standardizing and unifying medical documentation in different organizations; the need to support

cybersecurity and guarantee privacy protection; and the resistance of participants in the process of providing medical services to innovations.

Public governance in the area under study includes the functioning of central and regional bodies, which are tasked with forming sectoral state policy and ensuring its implementation in a certain territory. At the central level, the process of forming sectoral state policy, adopting regulations, establishing financing and other functions defined by current legislation takes place (Scupola & Mergel, 2022). At the same time, at the regional level, the organization and provision of medical services takes place, which includes primary, specialized and emergency care, preventive measures, licensing, as well as other types of services.

Most modern researchers, including Mergel et al. (2021), Paul et al. (2023), see one of the most effective means of optimizing the healthcare sector as the active use of digitalization tools in the public administration system. Time constraints, resource support, and staff qualifications often act as determining factors for the level of quality of digitalization, and therefore, only a small number of healthcare institutions are currently actively integrating technological and managerial innovations. The features of the further development of the technical architecture of the electronic health care system within public administration should include adaptability and flexibility, service orientation, and inclusive development of information and communication tools intended for different categories of users.

Public governance in the health sector is actively expanding its scope of operation, becoming an effective tool for providing the population with high-quality and affordable medical services. The formation of a modern management paradigm in the industry should include strategic management mechanisms, psychological and socio-economic methods of influence, which, in synergy, increase the quality and accessibility of medical services. The transformation of the studied branch of public administration can take place more intensively if successful practices of developed countries are involved, global trends in solving personnel problems are taken into account, as well as intra-system problems.

It is also necessary to emphasize the importance of public control over the legality and effectiveness of administrative activities. Guarantees of transparency and publicity in the medical sector should be provided, including by public organizations and their associations, which will contribute to greater involvement of citizens in administrative processes. The state should provide the appropriate prerequisites: stimulate the activities of local public councils, conduct information and educational activities. At the same time, it is worth noting that control by state bodies and public organizations should be carried out while maintaining the vertical of management.

Based on the above, it is possible to predict an increase in the influence of public administration on the quality and accessibility of a wide range of medical services, including through the implementation of digital optimization solutions. The key strategic objectives for improving public administration in the area under study should be:

1) the pursuit of a "healthy" state policy, which involves ensuring a clear political orientation towards preserving and strengthening the health of society, guarantees of

unhindered and equal access of different social categories to high-quality and timely medical care;

2) combating adverse environmental conditions and implementing the principles of corporate social responsibility;

3) focusing efforts on overcoming the gap in the provision of medical care across social classes, overcoming or minimizing inequality;

4) positioning the population as the country's main capital, providing practical support for its harmonious development;

5) reorienting the healthcare sector towards preventive medicine, integrating the concepts of health preservation and prevention policy;

6) positioning the nation's health as basic social capital.

Conclusions

As the results of the study show, public administration in the healthcare sector is assigned one of the main roles in national policy. The efforts of public administration in the medical sector should be aimed at improving the quality and accessibility of medical services for all segments of society. The actualization of openness and publicity factors plays a significant role in strengthening the position of health care institutions, optimizing social communications, and increasing public involvement.

The introduction of cutting-edge electronic systems and technologies to optimize the medical system is one of the most significant industry reforms. However, this comes with security challenges for the healthcare system in the information environment (protection of confidential data, prevention of unauthorized access, and ensuring the integrity of information resources). The introduction of effective information systems and innovative capabilities of digitalization and artificial intelligence, the creation of electronic document management systems, and the formation of a national human resources observatory allow not only to effectively collect, accumulate and process informative data, but also to provide a system to support management decision-making. The development of a digitalized register of industry specialists, the extension of education and training of doctors, and cooperation with international organizations will allow for a gradual transition to an optimal system of medical staff ratios in the health care system.

The research demonstrates that PPP projects in the healthcare industry enable substantial service quality optimization and expansion, integration of worldwide quality standards, and assurance of medical care accessibility. The synergy of a professional approach and stable principles of implementing the strategic goals of healthcare reform, proper control by the state and society will increase the efficiency of public administration in the healthcare sector.

Promising scientific developments on the topic of the current research should be aimed at finding ways to improve and update state management policy in the field of healthcare, in accordance with the challenges of digital transformation.

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THE LIABILITY FOR ENVIRONMENTAL DAMAGE IN THE GLOBAL CLIMATE CRISIS

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Abstract

The article carries out a comprehensive study of the problem of environmental liability in the context of the global climate crisis, which currently determines the strategic guidelines for the development of international environmental law. The essence and content of environmental liability as a systemic tool for legal response to damage caused to the natural environment, in particular as a result of military actions, is determined. The main trends in the evolution of legal approaches to ensuring environmental safety and compensation for environmental damage in national and international law are revealed. Special attention is paid to the issue of post-war reconstruction of Ukraine, which is considered through the prism of the principles of sustainable development and "green reconstruction". The need to integrate environmental aspects into the strategy for the reconstruction of territories affected by hostilities, using international mechanisms for control, damage assessment, and financial compensation, is substantiated. The norms of international air law, in particular the Chicago Convention of 1944 and modern initiatives of ICAO, regulating transboundary emissions, aviation air pollution, and the participation of states in global climate agreements, are analyzed. It is emphasized that effective environmental responsibility in modern conditions should encompass not only classical legal forms (civil, administrative, criminal), but also international legal and quasi-

judicial responsibility of states and corporations. The results of the study allow us to conclude that the formation of an integrated system of environmental responsibility is a necessary condition for achieving environmental justice, ensuring global climate stability, and restoring the natural balance in the post-war period.

Keywords

Ecological responsibility, climatic crisis, post-war recovery, international air law, ecological security, constant development.

Resumo

O artigo realiza um estudo abrangente do problema da responsabilidade ambiental no contexto da crise climática global, que atualmente determina as diretrizes estratégicas para o desenvolvimento do direito ambiental internacional. São determinados a essência e o conteúdo da responsabilidade ambiental como ferramenta sistémica para a resposta jurídica aos danos causados ao ambiente natural, em particular como resultado de ações militares. São reveladas as principais tendências na evolução das abordagens jurídicas para garantir a segurança ambiental e a compensação por danos ambientais no direito nacional e internacional. É dada especial atenção à questão da reconstrução pós-guerra da Ucrânia, que é considerada através do prisma dos princípios do desenvolvimento sustentável e da «reconstrução verde». É fundamentada a necessidade de integrar os aspetos ambientais na estratégia de reconstrução dos territórios afetados pelas hostilidades, utilizando mecanismos internacionais de controlo, avaliação de danos e compensação financeira. São analisadas as normas do direito aéreo internacional, em particular a Convenção de Chicago de 1944 e as iniciativas modernas da ICAO, que regulam as emissões transfronteiriças, a poluição atmosférica da aviação e a participação dos Estados em acordos climáticos globais. É enfatizado que a responsabilidade ambiental efetiva nas condições modernas deve abranger não apenas as formas jurídicas clássicas (civil, administrativa, criminal), mas também a responsabilidade jurídica internacional e quase judicial dos Estados e das empresas. Os resultados do estudo permitem concluir que a formação de um sistema integrado de responsabilidade ambiental é uma condição necessária para alcançar a justiça ambiental, garantir a estabilidade climática global e restaurar o equilíbrio natural no período pós-guerra.

Palavras-chave

Responsabilidade ecológica, crise climática, recuperação pós-guerra, direito aéreo internacional, segurança ecológica, desenvolvimento constante.

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Introduction

Modern civilization is experiencing a period of profound ecological transformation, caused by the rapid deterioration of the natural environment and the intensification of the consequences of the global climate crisis. This process is accompanied by large-scale ecological, social and economic changes that call into question the sustainability of humanity's existence on the planet. Environmental responsibility in this context appears not only as a legal category, but as a systemic indicator of the readiness of the state and society for conscious coexistence with nature.

In the context of military operations, accompanied by the destruction of ecosystems, pollution of air, soil and water resources, the problem of environmental responsibility acquires particular importance. The war in Ukraine has led to an unprecedented level of environmental damage, which has affected both the national and global ecological balance. The destruction of industrial facilities, forest fires, air pollution by combustion products, leakage of chemical substances and destruction of infrastructure have created a new reality in which environmental safety has become a component of national security.

The post-war reconstruction of Ukraine requires a fundamentally new approach to environmental policy planning. It is not only about eliminating the consequences of environmental crimes, but also about building a system of "green" development, based on the principles of sustainability, resource efficiency and climate neutrality. In this process, it is important to integrate international legal standards of environmental

responsibility, in particular the norms of international air law that regulate anthropogenic impacts on the atmosphere and transboundary pollution.

It is worth noting that the international community is increasingly considering climate responsibility in a broader context – as a moral and legal obligation of states, corporations and citizens to future generations. In this sense, environmental responsibility goes beyond the classical legal mechanism and turns into a multi-level risk management system that includes legal, economic, technical and ethical tools.

The relevance of the topic is due to the need to find effective forms and mechanisms of environmental responsibility in the context of growing climate challenges, Ukraine's integration into the European legal space, and the implementation of national post-war recovery strategies. It is important to determine the limits of legal liability for environmental damage caused by military activities, as well as to harmonize legal approaches with international environmental protection standards.

Literature review

The problem of environmental liability of states and business entities for environmental damage is the subject of active scientific discussion in domestic and foreign legal, environmental and economic science. Modern research focuses on defining the essence of environmental liability, its role in the system of environmental law, mechanisms for implementing compensation for damage caused, and the development of models of sustainable environmental restoration in the context of the climate crisis.

Foreign authors Tahir et al. (2024), Kalfagianni and Young (2022) and Coelho et al. (2023) consider environmental liability through the prism of international environmental law, which is formed on the basis of the principles of "polluter pays" and "harm prevention". Their works emphasize that the effective implementation of these principles is key to ensuring environmental justice on a global scale.

Researchers Atadoga et al. (2024), Achmad and Yulianah (2022) emphasize that the modern concept of environmental responsibility is increasingly becoming global in nature, since environmental damage has a transboundary impact and requires collective efforts of states to prevent it. International climate agreements play a special role in this process: United Nations Framework Convention on Climate Change (United Nations, 1992b). Kyoto Protocol this the United Nations Framework Convention on Climate Change (United Nations, 1997) and Paris Agreement (United Nations, 2015), which define the legal framework for the responsibility of states for the climate consequences of their activities.

Domestic scientists Dolynska et al. (2023), Sydorova et al. (2024) and Markevych et al. (2022) examine environmental liability in the context of the development of the national system of environmental law in Ukraine. They emphasize the need to modernize the legislation in accordance with European standards, in particular Directive 2004/35/ EC (European Parliament & Council, 2004), which introduces the principle of full compensation for environmental damage.

In recent years, scientific works have been actively developing the concept of international legal responsibility of states for environmental offenses, including those

related to military activities (Kooijman, 2023; Minkova, 2023). Researchers point out that the destruction of the natural environment during armed conflicts is not only a humanitarian but also an ecological catastrophe, which requires the creation of special mechanisms for assessing damage and reparations.

In this context, considerable attention is paid to the issue of post-war ecological restoration. European and Ukrainian studies by Alieksieienko et al. (2023), Pereira et al. (2022) and Solokha et al. (2023) propose an approach according to which environmental restoration after armed conflicts should be carried out according to the principles of the "green transition" – with the integration of environmental, energy and climate goals. It is emphasized that environmental responsibility in the post-war period should include not only a compensatory, but also a restorative component aimed at the sustainable development of territories.

A significant body of scientific work concerns international air law as a component of the environmental regulation system. In the works Rahn et al. (2024), Ekici and Sohret (2021) and Balli and Caliskan (2021) consider the environmental aspects of aviation activities, in particular emission control mechanisms and the CORSIA implementation and market-based program measures (2022), developed by EASA (2022). The researchers note that international air law is increasingly integrated into the global climate governance system, forming the legal framework for reducing the impact of aviation on the atmosphere.

Ukrainian experts Ovdiienko et al. (2021) and Smerichevskyi and Gura (2021) emphasize that Ukraine's inclusion in international aviation and climate programs is an important condition for fulfilling its obligations within the framework of the European Green Deal (European Commission, 2019, 2024). At the same time, the issue of legal liability for transboundary air pollution becomes particularly relevant in conditions of martial law, when the level of technogenic risks increases.

Foreign studies by Amorim-Maia et al. (2022) and Sardo (2023) also focus on the formation of principles of climate justice – a concept that assumes equal responsibility of states and corporations for the climate consequences of activities, as well as the need for legal protection of environmental human rights.

Thus, the analysis of scientific literature shows that the problem of environmental responsibility is considered in world science as a multi-level phenomenon, covering legal, political, economic and ethical aspects. In the conditions of post-war reconstruction of Ukraine, the issue of determining the volume of environmental damage, establishing responsibility for its infliction and developing mechanisms for environmental restoration becomes key in the process of integrating the state into the European and international legal space.

Materials and methods

The research is of a theoretical and analytical nature and is aimed at identifying methodological principles, trends and legal mechanisms for the formation of a system of environmental responsibility in the context of the global climate crisis. The main focus is on the analysis of the conceptual foundations of environmental law, international

regulations, approaches to compensation for environmental damage, as well as on substantiating the model of environmentally oriented post-war recovery of Ukraine.

In the process of work, the methods of theoretical analysis, synthesis, comparison, induction, deduction, systematization and generalization of scientific and regulatory sources were used, which allowed to identify the regularities of the development of the institute of environmental responsibility and determine the main directions of its evolution in the modern international legal space. The application of the comparative legal method made it possible to compare the provisions of the national environmental legislation of Ukraine with European directives and international agreements in the field of environmental protection.

Analysis of scientific works by Ukrainian and foreign researchers has shown that effective environmental responsibility requires the integration of legal, economic, managerial and ethical aspects, which ensure the transition from a punitive to a restorative model of environmental law. Such an approach makes it possible to combine the principles of "polluter pays" and "environmental justice", which is the basis for the formation of international environmental policy.

A comparative study of international acts was carried out according to the criteria of legal regulation of environmental responsibility, determination of subjects of obligations, compensation mechanisms and control over the implementation of environmental norms. The results obtained showed that the most effective are systems that combine national regulation with international monitoring and financial instruments (quotas, funds, climate compensations).

The study theoretically substantiates the concept of post-war ecological restoration as a component of the state policy of sustainable development. Its key components are identified as:

– legal consolidation of the obligation of the aggressor state to compensate for environmental damage;

– creation of a national register of environmental crimes;

– introduction of a system for assessing environmental damage taking into account international standards;

– development of "green" technologies and renewable energy in the process of territorial reconstruction.

To describe the functioning of the environmental liability system, systemic and structural-functional approaches were used, which made it possible to determine its main legal functions: preventive, aimed at preventing environmental damage by controlling environmentally hazardous activities; restorative, which involves compensation and restoration of natural resources after their degradation; regulatory, aimed at establishing legal norms and standards of environmental behavior; integration, to ensure interaction between national and international environmental institutions.

During theoretical modeling, a general framework for environmental responsibility was developed, which includes four key components:

1. Regulatory and legal – international agreements, laws, codes and by-laws.

2. Institutional – state bodies, international environmental courts, etc.

3. Procedural – the procedure for assessing, investigating, and compensating for environmental damage.

4. Socio-ethical – the formation of environmental awareness, a culture of responsibility and climate justice.

The results obtained confirm that the formation of an effective system of environmental responsibility is not only a legal, but also a civilizational process that determines the future of the sustainable development model. Such a system should combine legal norms, economic incentives and moral and ethical principles of environmental protection, ensuring a harmonious balance between the needs of society and the capabilities of the planet.

Results

The results of the study indicate that the evolution of environmental responsibility is not only a process of updating legal norms, but also a manifestation of a deep worldview transformation that encompasses all levels of social development – from institutional to value. There is a transition from an anthropocentric paradigm, within which nature was considered as a resource for satisfying human needs, to an ecocentric model, in which nature is recognized as an independent value, and human activity is only one of the factors of the global ecosystem.

While in the twentieth century environmental regulations performed a supporting function, aimed mainly at regulating industrial or economic activities, in the twenty-first century they have become a central element of the global security system, on a par with economic, energy and political factors. This shift in the role of environmental law is due to a number of factors, the key ones being:

1. Awareness of the inevitability of climate change caused by anthropogenic influence, which requires new approaches to preventing environmental disasters.

2. Institutionalization of international environmental law, which goes beyond national systems and forms supranational mechanisms of influence and control.

3. Development of international cooperation and a system of collective responsibility based on the Paris principles Agreement (2015) and The Glasgow Climate Pact (UNFCCC, 2021), which define common but differentiated responsibilities of states in the field of climate policy.

Thus, environmental responsibility ceases to be an exclusively legal category, acquiring the status of a global ethical and civilizational concept that determines the nature of humanity's interaction with the natural environment.

The analysis revealed that the transition from a punitive to a restorative model is accompanied by a change in goals, tools and mechanisms of influence. If earlier the main task of law was punishment for the harm caused, today the emphasis is shifted to

preventing environmental risks, managing climate processes and ensuring the long-term sustainability of natural systems, which is reflected in Table. 1.

Table 1. Evolution of environmental responsibility models

Comparison criterion	Punitive model (20th century)	Regenerative model (21st century)
Main goal	Punishment of the violator, elimination of consequences	Compensation for damage, prevention of environmental risks
Legal basis	National environmental legislation, criminal provisions	International agreements, sustainable development principles, ESG standards
Mechanisms of influence	Fines, administrative sanctions, prosecution	Environmental funds, carbon markets, climate quotas, compensation programs
Subjects of responsibility	Enterprises, individuals, government agencies	States, corporations, international alliances, global environmental institutions
Control tools	Environmental inspections, local checks	International audits, satellite monitoring, digital databases (UNEP, IPCC, ESA)
Expected result	Elimination of the consequences of the violation	Reducing environmental risks, increasing the resilience of systems and the environmental culture of society

Source: compiled by the author based on United Nations (2015), UNFCCC (2021), European Parliament & Council (2004) and ICAO (2016)

As can be seen from the table, in the twenty-first century there is a shift in emphasis from reactive to preventive mechanisms. Environmental liability is viewed not as the final stage of a crime, but as a risk management tool aimed at preventing crises that could have catastrophic consequences for the biosphere and humanity.

A comparative analysis of international documents (1972-2024) showed that the number of regulatory legal acts that use the term "environmental responsibility" or "climate liability", increased by more than 8 times (Table 2).

Figure 2 shows the dynamics of the growth of the number of international legal acts containing provisions on environmental or climate responsibility. The graph demonstrates the exponential nature of the development: if in the 1970s and 1980s mainly declarative documents were adopted, aimed at forming general principles of environmental protection (United Nations, 1972), then since the 1990s there has been an institutionalization of international environmental law.

In the 1990s and 2000s, a contractual framework for global climate policy was formed, establishing specific mechanisms for control, financing, and reporting.

This trend indicates a gradual transition from the declarative to the operational level of legal regulation: environmental responsibility is acquiring a financial and economic

dimension through the creation of climate funds, carbon markets, and emission compensation mechanisms.

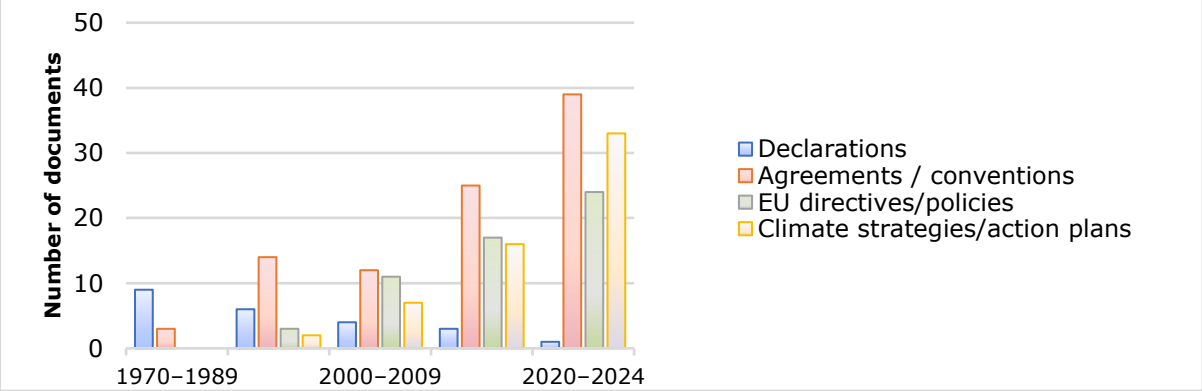
Thus, global environmental policy is evolving from principles of moral appeal to a structured system of obligations that integrates states, corporations, and international institutions.

Table 2. Dynamics of development of international legal acts on environmental liability (1972–2024)

Period	Number of adopted acts	Key documents
1970–1989	12	Stockholm Declaration (1972), Convention on Long range Transboundary Air Pollution (1979)
1990–1999	25	Rio Declaration on Environment and Development (1992), Kyoto Protocol this the United Nations Framework Convention on Climate Change (1997)
2000–2009	34	Johannesburg Declaration on Sustainable Development (2002), Directive 2004/35/EC of the European Parliament and of the Council (2004)
2010–2019	61	Paris Agreement (2015), The European Green Deal (2019)
2020–2024	97	The Glasgow Climate Pact (2021), COP28 Outcomes Summary (2023), European Commission (Net-Zero Industry Act, 2024)

Source: compiled by the author based on UNFCCC (2021; 2023), UNECE (1979), United Nations (1972; 1992a;1997; 2002; 2015), European Parliament & Council (2004), European Commission (2019, 2024), ICAO (2016), UNEP (2023)

Figure 1. Dynamics of development of international legal acts in the field of environmental responsibility (1972–2024)



Source: compiled by the author

As shown in Figure 1, the dynamics demonstrate an exponential growth in the number of international agreements in the field of environmental responsibility.

From 12 documents in the 1970s and 1980s, the number of acts increased to 97 in 2020s and 2024, which means an increase of more than 700% over half a century. It is

noteworthy that the structure of the documents has also changed: if in the 1970s declarations of a general nature prevailed (75%), then in the 2020s more than 40% of the documents are of a contractual and binding nature, and about 30% are of a strategic and political nature, aimed at the implementation of climate neutrality. These data indicate that the international community is gradually moving from a moral and declarative to a normative and binding paradigm, where environmental responsibility has not only ethical, but also legal and economic content. Thus, in the twenty-first century, environmental responsibility is transforming from a legal instrument of punishment into a comprehensive mechanism for managing global risks, integrated into financial markets, sustainable development policies, and the international climate governance system.

The trends of the global transformation of environmental responsibility identified in the study are directly reflected in the national context of Ukraine, which, after the beginning of the armed aggression, faced an unprecedented scale of environmental losses. If at the global level there is a shift in emphasis from punishment to prevention, then in Ukrainian realities this logic acquires a concrete dimension – the transition from fixing the consequences of military actions to the formation of a system of ecological restoration based on the principles of restorative justice. The analysis made it possible to determine that the environmental consequences of the war in Ukraine are multi-level in nature:

– local: soil contamination with heavy metals, petroleum products, explosive residues;

– regional: destruction of aquatic ecosystems, degradation of forests and protected areas;

– global: increased emissions of greenhouse gases and toxic aerosols due to mass fuel combustion, which causes transboundary atmospheric pollution.

In this context, environmental responsibility acquires an international legal character, since it concerns not only domestic violations of environmental legislation, but also environmental crimes that have global consequences for the climate stability and ecological security of the region. As a result of the study, a conceptual model of environmentally oriented post-war recovery was developed, which involves a combination of legal, institutional and technological mechanisms of environmental responsibility (Table 3).

Of particular note is the integration of the principles of international air law into the process of environmental recovery. Aviation is one of the key sectors where a new logic of environmental responsibility is being formed. In this context, the International Aviation Emissions Compensation and Reduction System, introduced by ICAO (1944), plays an important role, providing for the purchase of carbon quotas by air carriers to neutralize their emissions.

The use of similar mechanisms in Ukraine after the end of the war could become an innovative direction of "green recovery" of aviation infrastructure, where the reconstruction of airports and the restoration of air traffic will be accompanied by the implementation of sustainable development standards and monitoring of environmental impacts.

Table 3. Conceptual model of ecologically oriented post-war recovery

Direction	Content	Expected result
Legal	Development and implementation of mechanisms to hold the aggressor state accountable for environmental damage in accordance with international law. Use of the provisions of the 1944 Chicago Convention on the safety of airspace and the protection of the environment from pollution by aviation activities.	Creation of an internationally recognized system of compensation for environmental damage.
Institutional	Formation of the National Register of Environmental Damages, integrated into the databases of UNEP, ICAO, IPCC. Providing an evidentiary base for legal proceedings and transparent distribution of funding.	Increasing trust in international environmental processes, effective monitoring.
Technological	Introduction of "green" technologies, development of environmentally friendly aviation, use of biofuels, digital monitoring systems for emissions and atmospheric pollution.	Environmental restoration based on the principles of sustainable development, reducing the carbon footprint.

Source: compiled by the author

Figure 2 presents a structural and functional diagram of the interrelationships of the elements of environmental responsibility in the post-war reconstruction of Ukraine, which demonstrates the systemic interaction of three interconnected blocks: legal, institutional, and technological. Together, they form the framework of post-war environmental responsibility of Ukraine in the context of the global climate crisis.

At the top of the system is a global ecocentric paradigm that defines the methodological basis of the study: nature is viewed not as a resource, but as a value. Law, in turn, is presented as a mechanism for ensuring its security.

The legal block is based on international humanitarian, environmental, and air law. It provides for the creation of mechanisms to hold the aggressor state accountable, record environmental war crimes, and develop mechanisms for compensation for environmental damage, including through a special international compensation fund.

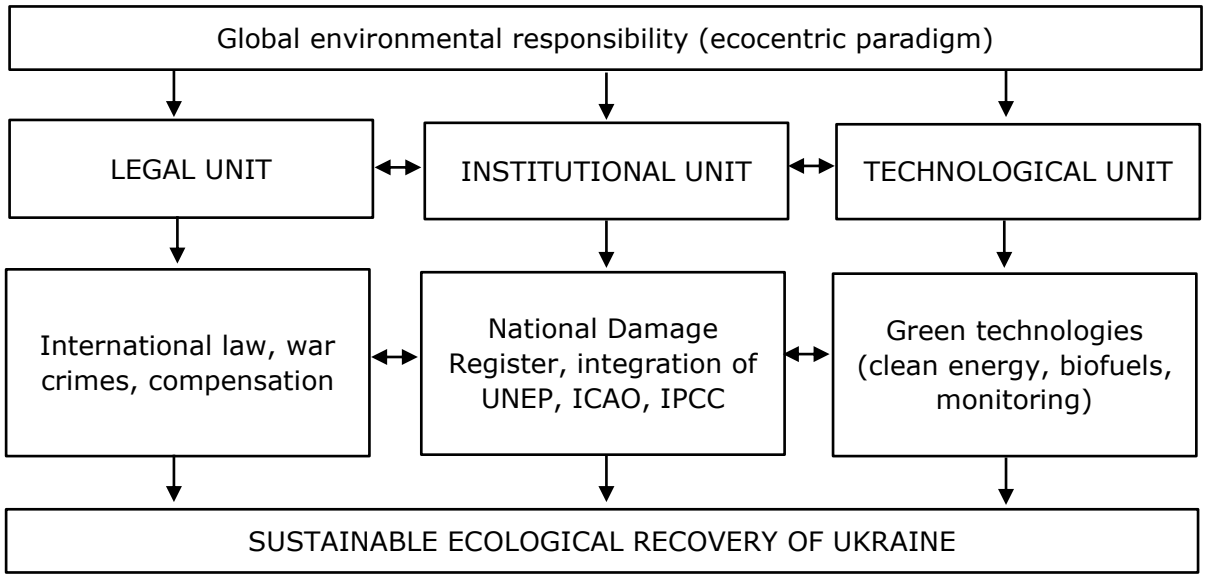
Chicago plays a key role in this block. Convention (ICAO, 1944) and the CORSIA system (ICAO, 2016), which form the framework for regulating air pollution and controlling emissions in the aviation sector.

World Bank databases. Environment Situation Room, Data Distribution Center and CORSIA Central Registry. This block aims to create a transparent system of reporting and data use in international legal proceedings. It acts as a link between legal obligations and the practical implementation of environmental policy.

The technological block covers the implementation of the principles of "green recovery", in particular the introduction of renewable energy sources, environmentally friendly aviation, digital systems for monitoring air, water and soil pollution. This block ensures the transformation of environmental responsibility into a practical plane of sustainable development.

All three blocks are combined into a common mechanism that ensures sustainable ecological recovery of Ukraine, focused on achieving climate neutrality, restoring natural ecosystems, and preventing future environmental disasters.

Figure 2. Structural and functional diagram of the interrelationships of elements of environmental responsibility in the post-war reconstruction of Ukraine



Source: compiled by the author

The presented structural and functional scheme shows that environmental responsibility in the post-war period cannot be limited to fixing damage only – it must become an active tool for managing restoration. Its successful implementation is possible only if legal and technological mechanisms are combined in a single system of environmental governance.

The key features of this system are:

1. International legitimacy – participation of international organizations in monitoring, auditing, and financing recovery.

2. Transparency and evidence – digital platforms for collecting environmental data and open monitoring databases.

3. Innovation – use of clean energy technologies, autonomous monitoring, and bioengineering solutions.

4. Justice – the "polluter pays" principle applies to the aggressor state and entities that have caused environmental damage.

In such a system, the post-war reconstruction of Ukraine becomes a model of a new generation of environmental law, which combines the principles of restoration, compensation, and prevention, ensuring a balance between human security and the security of nature.

Discussion

The problem of environmental responsibility in the context of the global climate crisis goes beyond the boundaries of traditional legal regulation, acquiring a complex political, economic and ethical dimension. The results of the study confirm that the modern system of environmental law is undergoing a profound transformation – from a punitive and repressive to a restorative and managerial model. In this process, environmental responsibility is considered not only as a legal instrument of punishment, but as a mechanism for ensuring the sustainability of ecosystems and social justice.

A comparative analysis of international approaches has shown that most EU and North American countries have already moved to an integrated model of "environmental management", in which responsibility is based on the principles of transparency, partnership and prevention. Ukraine is at the stage of active formation of this system. After the start of armed aggression, the environmental dimension of security acquired strategic importance – the war revealed the vulnerability of the natural environment as a component of national security. According to UNDP (2023) and the Ministry of Environmental Protection and Natural Resources of Ukraine (2024), more than 30% of the country's territory has been subjected to various forms of environmental pollution, which requires the creation of new legal and technological mechanisms for restoration.

The conceptual model of post-war ecological recovery developed in the study is consistent with the approaches of international institutions and demonstrates that an effective system of responsibility should include three interrelated components: legal, institutional and technological. Their integration provides the opportunity not only to compensate for losses, but also to form a new culture of environmental management, focused on risk prevention.

The legal aspect, which involves holding the aggressor state accountable, faces a number of practical and political challenges. As an analysis of international experience shows, the legal recognition of environmental war crimes is still fragmentary (Rahn et al., 2024; Balli & Caliskan, 2021). At the same time, Ukraine is setting a precedent that could become the basis for expanding the jurisdiction of the International Criminal Court in the field of environmental crimes. This opens up the prospect of forming a new approach to climate justice, where state responsibility for environmental damage is considered as part of restoring the global ecological balance.

The institutional component of the creation of a National Register of Environmental Damage – is key to ensuring the evidentiary basis in legal proceedings and transparent distribution of compensation. Similar initiatives were successfully implemented in Croatia and Bosnia and Herzegovina after the wars of the 1990s. However, the Ukrainian approach is more innovative due to digital integration with international databases, which allows for global verification of damage and access to climate funds.

The technological dimension of environmental responsibility is linked to the implementation of the principles of green recovery, where priority is given to the introduction of environmentally friendly technologies, clean energy, the disposal of military waste and the restoration of natural ecosystems. This is consistent with the European Commission (Net-Zero Industry Act, 2024) and the Paris Agreement (United

Nations, 2015), which define the shared responsibility of states for reducing greenhouse gas emissions.

Despite significant progress, Ukrainian practice remains fragmented, especially in the areas of inter-agency coordination, damage assessment, and financing of ecological restoration projects. Existing donor assistance programs are mostly focused on humanitarian or infrastructure goals, while the ecological component requires a specialized funding mechanism.

Thus, the results of the study indicate that environmental responsibility in the twenty-first century is becoming a strategic factor in state policy and a component of international security. For Ukraine, this process has a dual significance, as a mechanism for environmental restoration after the war, and as a tool for integration into the global climate governance system.

A promising direction for further research is the development of a single national strategy for environmental responsibility, which will combine legal, institutional and technological components into a single digital ecosystem. Such an approach will ensure a sustainable and just transition to a climate-neutral economy, strengthening Ukraine's international image as a state that is forming a new culture of responsibility – not only legal, but also moral, towards future generations.

Conclusions

The study confirmed that environmental responsibility in the twenty-first century is taking on a systemic and multidimensional character, becoming a key element of global climate policy. It is transforming from a punitive instrument into a mechanism for environmental risk management that integrates the legal, economic, institutional and technological foundations of sustainable development.

The evolution of the concept of environmental responsibility indicates a transition from an anthropocentric to an ecocentric paradigm of thinking, where nature is viewed not as a resource, but as an equal subject of ecosystem interaction. This shift is reflected in the content of international documents, which increasingly provide not only for punishment for damage caused, but also for the restoration of natural systems and the prevention of new environmental disasters.

An analysis of the dynamics of international legal acts (1972–2024) has shown an exponential growth in the number of agreements enshrining the principles of environmental or climate responsibility. This trend indicates a transition from a declarative to an operational level of regulation, where environmental norms become part of the international security architecture.

The post-war context of Ukraine creates unique conditions for a practical rethinking of the principles of environmental responsibility. Large-scale environmental damage caused by armed aggression requires the formation of a system capable of simultaneously ensuring legal prosecution of perpetrators, objective assessment of damage, and implementation of long-term environmental restoration programs. In this context, environmental responsibility acquires not only a national, but also an international legal dimension, since it concerns environmental crimes with transboundary consequences.

International air law plays a growing role in shaping the modern system of environmental liability, especially in aspects related to atmospheric pollution, aviation emissions, and ensuring the safety of airspace during military operations. Chicago Norms The Convention and the supporting documents of the International Civil Aviation Organization establish a legal framework for monitoring the impact of aviation activities on the climate and for redressing environmental damage (ICAO, 1944). This demonstrates the integration of international air law into global environmental policy, strengthening interstate liability mechanisms.

The conceptual model of ecologically oriented post-war recovery proposed in the study combines three components – legal, institutional and technological. Their synergy creates the basis for building an effective system of environmental responsibility, which can become part of the broader European climate architecture.

An effective environmental policy of Ukraine in the post-war period should be based on the following principles: the rule of international law, transparency and demonstrability of compensation for damages, digital integration of national environmental registers into international monitoring systems, as well as alignment with the goals of the Paris Agreement and the European Green Deal.

Thus, environmental responsibility in the twenty-first century becomes an indicator of the civilizational maturity of the state, its ability to act within the framework of global environmental ethics. For Ukraine, this approach has a dual meaning: as a mechanism for post-war environmental restoration and as a tool for integration into the system of international environmental and air law, which forms new standards of justice, security and sustainable development.

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SHIFTING PARADIGMS OF LABOR RIGHTS IN THE CONTEXT OF FLEXIBLE AND REMOTE EMPLOYMENT

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Abstract

The relevance of this study is driven by the large-scale digital transformation of the labor market, which is reshaping traditional approaches to the legal regulation of labor relations, working time organization, and the provision of social guarantees. The rapid expansion of remote, hybrid, and flexible forms of employment necessitates a reconsideration of labor rights and the creation of effective mechanisms for their protection in the digital economy. The purpose of the research is to examine the transformation of labor rights in the context of remote and flexible employment and to identify key directions for improving legal regulation in Ukraine, taking into account international standards. The methodological framework is based on comparative legal, structural-functional, and content analysis methods, which enabled a systematic review of regulatory acts, analytical reports, and empirical data from the Organisation for Economic Co-operation and Development (OECD), the World Health Organization (WHO), and other international sources. The findings indicate that remote work combines increased employee autonomy with new risks, including the blurring of working time boundaries, privacy violations, intensified digital control, and weakened collective solidarity. The study shows that European Union countries and the United Kingdom have already закрепили rights to flexibility, transparency of algorithmic management, and protection

against excessive digital monitoring, while Ukrainian legislation remains only partially aligned with these principles. Gender differences in the impact of remote employment on psychological well-being were also identified. The practical significance of the research lies in recommendations for modernizing Ukrainian labor legislation, including the introduction of the "right to disconnect," the presumption of employment relations in the gig economy, and the strengthening of social protection in the digital environment.

Keywords

Remote work, flexible employment, labor rights, digitalization, gig economy.

Resumo

A relevância deste estudo é impulsionada pela transformação digital em grande escala do mercado de trabalho, que está a remodelar as abordagens tradicionais à regulamentação jurídica das relações laborais, à organização do tempo de trabalho e à prestação de garantias sociais. A rápida expansão das formas de emprego remotas, híbridas e flexíveis exige uma reconsideração dos direitos laborais e a criação de mecanismos eficazes para a sua proteção na economia digital. O objetivo da pesquisa é examinar a transformação dos direitos laborais no contexto do emprego remoto e flexível e identificar as principais direções para melhorar a regulamentação jurídica na Ucrânia, levando em consideração os padrões internacionais. O quadro metodológico baseia-se em métodos comparativos jurídicos, estruturais-funcionais e de análise de conteúdo, que permitiram uma revisão sistemática de atos regulamentares, relatórios analíticos e dados empíricos da Organização para a Cooperação e Desenvolvimento Económico (OCDE), da Organização Mundial da Saúde (OMS) e de outras fontes internacionais. As conclusões indicam que o trabalho remoto combina uma maior autonomia dos funcionários com novos riscos, incluindo o esbatimento das fronteiras do tempo de trabalho, violações da privacidade, controlo digital intensificado e solidariedade coletiva enfraquecida. O estudo mostra que os países da União Europeia e o Reino Unido já consolidaram os direitos à flexibilidade, transparência da gestão algorítmica e proteção contra o monitoramento digital excessivo, enquanto a legislação ucraniana permanece apenas parcialmente alinhada com esses princípios. Também foram identificadas diferenças de género no impacto do emprego remoto no bem-estar psicológico. A importância prática da investigação reside nas recomendações para modernizar a legislação laboral ucraniana, incluindo a introdução do «direito à desconexão», a presunção de relações laborais na economia gig e o reforço da proteção social no ambiente digital.

Palavras-chave

Trabalho remoto, emprego flexível, direitos laborais, digitalização, economia gig.

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Introduction

In the modern era of rapid digitalization of society, a profound transformation of labor rights is taking place, changing the perception of the very nature of work, its organization and social justice. The spread of remote, flexible and hybrid employment, the development of the platform economy, the introduction of artificial intelligence and automation of work processes are creating a new architecture of the labor market, where classic instruments of legal regulation are gradually losing their effectiveness. Under such conditions, there is an urgent need to rethink labor guarantees, adapt the legal field to the realities of the digital economy, and ensure a balance between employment flexibility and employee protection. The issue of remote work has become one of the most relevant in the international scientific discussion, as it combines legal, socio-psychological, and economic dimensions. As Kossek and Kelliher (2022) and Mahadevan et al. (2025) point out, new work formats are creating a "culture of autonomy", but at the same time they increase the risk of blurred work boundaries, increased employer control and inequality in access to opportunities. Studies by OECD (2023) and WHO (2023) show that the increase in the proportion of remote workers worldwide is accompanied by a deterioration in psychological well-being, increased emotional exhaustion and the need for new policies to support mental health. At the same time, the gender aspect of remote work is gaining increasing importance – according to the results of studies by Castro-Trancón et al. (2024) and Maraziotis (2024), women are more likely to choose flexible work formats, but they remain more vulnerable to professional burnout due to the double burden of work and family.

The legal challenges of remote and hybrid work cover a wide range of issues, from classifying employment relationships in the gig economy to ensuring the right to privacy and the "right to disconnect". European scientific opinion offers a model of combining economic flexibility with a high level of social protection, which is reflected in the EU Directives – *Directive (EU) 2019/1158* on work-life balance and *Directive (EU) 2024/1231* on platform work (European Commission, 2019; European Parliament & Council of the European Union, 2024). Comparative studies of the United Kingdom, Canada and Ukraine (UK Parliament, 2023; Canada.ca, 2024a; Honcharenko & Bohatyrova, 2025) demonstrate the desire of states to form a balanced regulatory system that simultaneously takes into account the interests of employees and employers. There are still "blank spots" in our knowledge of how legal procedures should provide justice in the digital world, where there are no distinct borders between paid and self-employed employment or between working and personal time, despite the fact that scientific research on the subject is ongoing. The issues of collective responsibility in the virtual environment, control of working time through algorithmic systems, as well as the legal responsibility of the parties when using digital platforms remain insufficiently researched.

The purpose of the present research is to clarify the features of the transformation of labor rights in the context of remote and flexible employment, characterize the legal risks and challenges of the digitalization of labor, and identify areas for improving the national legislation of Ukraine in accordance with European standards for ensuring decent work.

Analysis of Recent Studies and Publications

In modern scientific literature, the issue of the transformation of labor rights in the context of remote and flexible employment is considered through the prism of digitalization, social justice and ensuring decent working conditions. A number of studies emphasize the need to rethink traditional models of labor relations and create flexible work formats that combine productivity and employee well-being (Kossek & Kelliher, 2022; Kossek et al., 2022; Smite et al., 2022; Soga et al., 2022). Considerable attention has been paid to the role of organizational culture in shaping fair flexibility practices that provide a balance between autonomy and control (Hartner-Tiefenthaler et al., 2023; Buick et al., 2024; Shi Hao et al., 2024). The studies demonstrate that flexible work models have both positive and conflicting effects on the psycho-emotional state of employees. In particular, it has been proven that remote work increases life satisfaction, but at the same time increases the risks of emotional burnout, especially among women (Matthews et al., 2022; Castro-Trancón et al., 2024; WHO, 2023; OECD, 2023). In terms of gender, it was found that women are more likely to choose remote employment, which promotes flexibility but creates additional burdens in combining professional and family roles (Maraziotis, 2024; Xue et al., 2025; Clausen et al., 2024).

The issue of legal regulation of remote work is the subject of active discussions among scholars and practitioners. Scholars draw attention to the lack of a unified terminology base and the need to update legislative acts to define the status of platform economy workers (Hipp & Krzywdzinski, 2023; Katsabian, 2023; Hsieh et al., 2023; Mahadevan et al., 2025). Ukrainian authors also emphasize the need to create a stable legal framework for remote work and gig employment (Honcharenko & Bohatyrova, 2025; Shlapko &

Makhitko, 2024; Yefrosenko, 2025; Panchenko, 2025). At the international level, studies on the harmonization of employment rights across jurisdictions remain relevant. Within the EU, regulatory documents aimed at ensuring a balance between professional and private life play a key role (European Commission, 2019; European Parliament & Council of the European Union, 2024; Shapiro, 2025; Fisher Phillips, 2024). The UK has passed *the Employment Relations (Flexible Working) Act 2023*, which extends employees' rights to request flexible working hours (UK Parliament, 2023; World Economic Forum, 2023; First Advantage, 2025), while Canada has established the right to make written requests to change jobs (Canada.ca, 2024a; 2024b; Accace, 2024).

Special attention of the researchers is devoted to the emerging risks in the sphere of labor rights due to digitalization. The issues of shared responsibility, time management, personal information protection, and establishment of the legal responsibility of the participants are evaluated specifically through the prism of recent legislative practices and court cases. Scientists underline that the absence of legally enshrining the boundaries of the monitoring as well as the right to disconnect may result in the loss of labor guarantees in the remote work (Ray and Pana-Cryan, 2021; Mamaysky and Lister, 2021; Petitta and Ghezzi, 2025; Li et al., 2025). To conclude, the scientific discourse implies a shift towards the normative to the value-based concept of work in the digital era: the employee is actually regarded as an independent entity that needs more than legal protection, social one. The establishment of legal frameworks that would provide the hybrid and platform employment structures is a prerequisite to the creation of a balance between flexibility and job security (Tossou, 2025; Pearson, 2025; Rosin, 2024; Panchenko, 2025).

In addition, scientific opinion focuses on the socio-economic consequences of the digital transformation of work, in particular, the impact of automation and artificial intelligence on the structure of the labor market, income stability and the formation of new employee competencies (Tossou, 2025; Li et al., 2025; Petitta & Ghezzi, 2025; Panchenko, 2025). A number of studies highlight the need to integrate flexibility principles into human resource policies that ensure employee motivation, engagement and resilience in the post-pandemic environment (Mahadevan et al., 2025; Shi Hao et al., 2024; Buick et al., 2024; Soga et al., 2022). At the same time, as comparative analyses show (OECD, 2021; 2023; WHO, 2023; Castro-Trancón et al., 2024), the implementation of remote employment requires taking into account socio-cultural factors that determine uneven access to technology and professional opportunities.

The legal nature of the new work format is actively discussed in a framework of the cross-border contact and law ambiguity in the identification of the applicable law (Rosin, 2024; Mamaysky and Lister, 2021; Honcharenko and Bohatyrova, 2025; Shlapko and Makhitko, 2024). Specifically, researchers observe that globalization of remote work presupposes the harmonization of regulations on the working time, protection of personal data, and the regulation of the contractual relations between the employer and the employee in various jurisdictions. Here, the role of the European directives as templates of legal alignment that guarantee minimum levels of social protection to workers is highlighted, specifically, by norms on algorithmic transparency and human oversight of the platform economy (European Parliament and Council of the European Union, 2024; Fisher Philips, 2024; Shapiro, 2025; UK Parliament, 2023; Mia et al., 2022). The research of recent

years also emphasizes the new methods of workers right towards flexibility and contribution to the creation of the own working environment. The right to disconnect practice is regarded as one of the significant elements of the modern labor law, which allows avoiding burnout and saving mental health (Ray and Pana-Cryan, 2021; Petitta and Ghezzi, 2025). In scientific publications on law and management, there is a case in favor of institutional support of hybrid employment, the enhancement of employment contracts, and the development of digital control mechanisms that do not interfere with privacy in employees (Hsieh et al., 2023; Li et al., 2025; Hipp and Krzywdzinski, 2023; Panchenko, 2025).

Thus, despite the depth of existing studies, a number of unresolved issues remain: the lack of a unified approach to determining the legal status of workers in the platform economy and the insufficient development of mechanisms for the legal responsibility of the parties in remote work. These gaps determine the direction of further scientific research on the harmonization of labor legislation in the digital age.

Research Methods

The research was carried out by the author in 2024 – 2025 based on an interdisciplinary approach that combined legal, socio-economic and comparative analytical analysis. The main materials were regulatory legal acts of the European Union, the United Kingdom, Canada and Ukraine, in particular *Directive (EU) 2019/1158 and Directive (EU) 2024/1231*, as well as analytical reports of international organizations, in particular OECD (2021, 2023) and WHO (2023). Methods of comparative legal analysis of legislative systems (Accace, 2024; UK Parliament, 2023; Canada.ca, 2024a, 2024b) and content analysis of scientific publications (Castro-Trancón et al., 2024; Matthews et al., 2022) were employed to evaluate the effects of remote and flexible employment on workers' mental health, social stability, and labour rights. Statistical and sociological data were selected from open sources PubMed Central and the OECD database, which ensured a representative sample of over 2,000 respondents from OECD member countries. Using a structural-functional approach and a way of generalizing empirical data, we were able to systematize the results and find similarities between the psychological condition of employees, gender features, and the degree of employment flexibility. Based on these methods, summary tables and visualizations were constructed that reflect key trends in legal regulation and social consequences of remote work.

Research Results

The transformation of labor rights in the context of the development of remote and flexible forms of employment is one of the key processes that determine the modern architecture of the labor market. Digitalization, automation and the development of the platform economy have created new formats of work that combine the independence of the employee with non-standard conditions of interaction between the employer and the contractor. Within the framework of such changes, the question arises of revising legal mechanisms that were previously focused on the traditional form of labor relations – with a fixed place, time and clearly defined responsibilities (Kossek & Kelliher, 2022;

Mahadevan et al., 2025). Currently, remote work is seen not only as a temporary form of work organization but also as a stable element of the economic system. Its spread requires states to adopt new approaches to guaranteeing labor rights, as classic mechanisms of control, supervision and ensuring labor safety are losing their effectiveness. At the same time, hybrid labor models are emerging, where the boundaries between paid and self-employed work are becoming increasingly blurred (Hartner-Tiefenthaler et al., 2023; Katsabian, 2023).

Automation of production processes and the transition to flexible employment formats are changing the very structure of labor rights. In particular, the importance of individual responsibility of employees is increasing, as well as the role of contractual regulation in determining social guarantees. In such conditions, the issues of personal data protection, working time regulation and the right to rest, which are increasingly violated in the virtual environment, are gaining particular importance (Rosin, 2024; Yefrosenko, 2025; Spurk & Straub, 2020). Changes in the digital economy are also exacerbating social inequality since not all categories of workers have equal access to technology, resources and opportunities for self-development. Workers in the gig economy often face the problem of a lack of guarantees of stable income, pension provision and insurance protection. This poses the task of legislators to find a balance between flexibility and job security, as well as the formation of a universal legal model that can adapt to dynamic market changes (Clausen et al., 2024; Li et al., 2025).

Therefore, the transformation of labor rights in the digital age is not just a technical or legal adaptation, but a fundamental transition to a new philosophy of work, combining autonomy, flexibility and social responsibility. Law should not just regulate these processes, but also anticipate them, creating fair conditions for all participants in labor relations (Petitta & Ghezzi, 2025; Panchenko, 2025).

The global digitalization of the economy and the spread of hybrid work formats have necessitated a profound transformation of labor law. The European Union member states, as well as the United Kingdom, Canada, and Ukraine, have different approaches to defining the right to remote work and flexible working hours, forming the legal status of gig economy workers, and institutional control over compliance with labor guarantees. Despite differences in legislative approaches, the general trend is the desire to combine economic flexibility for employers with social stability for workers. As the analysis presented in Table 1 shows, most countries are gradually shaping policies to balance employee autonomy, digital monitoring and labor rights guarantees.

The comparison shows that the legislation of leading countries is gradually converging in the understanding of flexibility as part of the right to decent work. European standards are aimed at ensuring a balance between professional and private life, the United Kingdom – at simplifying procedures for employees, Canada – at institutional protection of requests, and Ukraine – at the gradual implementation of these standards within the framework of national labor law. Such an analysis outlines the directions for improving Ukrainian legislation to harmonize with international approaches.

Table 1. International approaches to regulating remote employment and employees' right to flexibility

Jurisdiction	Right to flexible working hours/request	Legal status of gig economy/platform workers	Institutional mechanisms for control and protection of rights
European Union	Directive (EU) 2019/1158 *Work-Life Balance* guarantees the possibility for employees to request flexible working hours, remote work or individual schedules. Member States adapt the rules in national law.	The new Directive (EU) 2024/1231 on platform work introduces a *presumption of an employment relationship* if the platform controls the work.	Platforms are required to ensure transparency of algorithms, inform employees, and guarantee human oversight of automated decisions.
Great Britain	*The Employment Relations (Flexible Working) Act 2023* gives employees the right to make requests for flexible working twice a year, and the employer must respond within two months.	Case law recognizes platform employees *as workers (Uber v Aslam case),* which guarantees minimum pay and social benefits.	In 2025, employers' obligations to verify the right to work (*Right to Work Checks*) in the gig sector were expanded.
Canada	*The Canada Labor Code* allows a written request to change a schedule or location after 6 months of employment; a response is provided within 30 days.	Consultations are underway to expand the rights of gig workers and create a special status in federal legislation.	Labor standards are monitored by inspectorates; there is protection against retaliation for requesting flexibility.
Ukraine	Articles 60–60-2 of the Labor Code regulate remote and home work; during martial law, remote work is permitted for parents of children under 14 years of age.	The gig economy is not regulated by a separate law; employees mostly work under civil law contracts.	Control is carried out by the State Labor Service and the courts; employers are required to conclude a written contract on remote work and adhere to labor guarantees.

Source: compiled by the author based on (Accace, 2024; Canada.ca, 2024a; Canada.ca, 2024b; European Parliament & Council of the European Union, 2024; European Commission, 2019; Fisher Phillips, 2024; First Advantage, 2025; Shapiro, 2025; UK Parliament, 2023; World Economic Forum, 2023).

The methodological basis of the research is based on a comparative analysis of statistical and sociological data obtained from open international sources. The basis includes analytical reports of the OECD (2021; 2023), meta-analyses published in the PubMed Central database (World Health Organization, 2023), as well as empirical studies devoted to the gender and social aspects of remote work (Castro-Trancón et al., 2024; Matthews et al., 2022). For comparison purposes, data from over 2,000 respondents from across OECD countries, 27 studies included in a WHO systematic review, and a meta-analysis of 22 papers on the gender dimension of remote work published in 2020 – 2024 were used.

Data collection and selection were carried out according to the criteria of reliability, openness and representativeness. Only official statistical and scientific publications with

verified peer review were included in the analysis. To calculate the average indicators, standardized indices were used: level of psychological distress (in %), average score of life satisfaction (scale 0–10) and index of "work-family" conflict (0–100 points). Calculations were made taking into account the gender factor and form of employment (flexible or office). The results obtained are presented in Table 2, which summarizes the key quantitative trends.

Table 2. Comparative indicators of well-being and psychological safety of employees, taking into account gender and form of employment

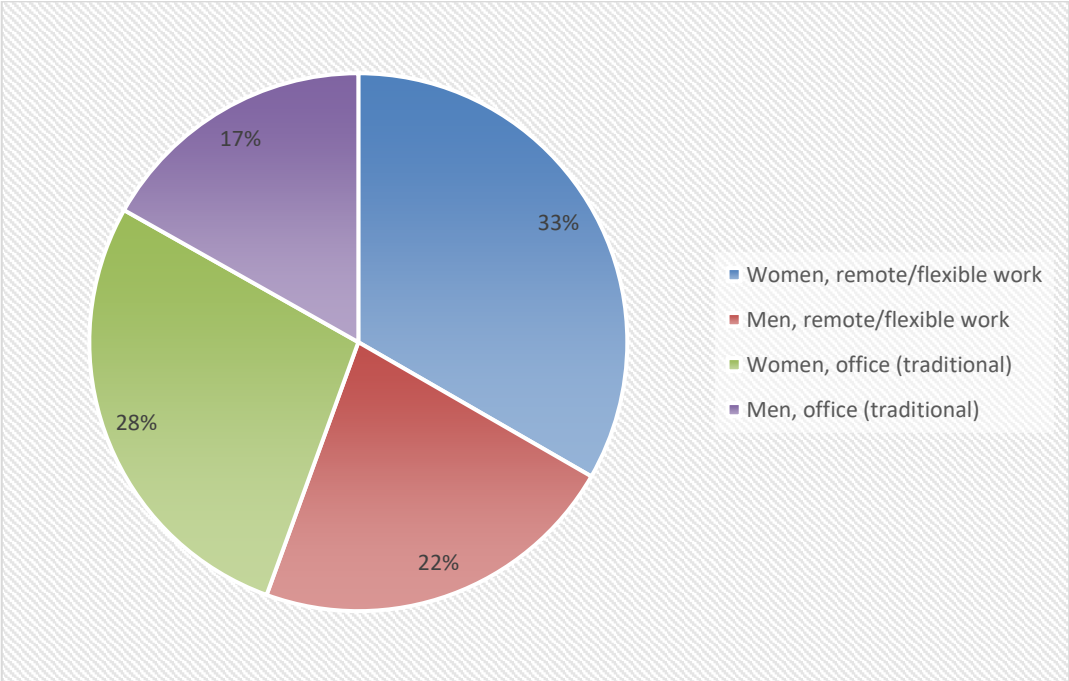
Group / Indicator	Proportion with psychological distress (%)	Life satisfaction (scale 0–10)	Work-family conflict index (0–100)
Women, remote/flexible work	22.37 %	6.81	57.24
Men, remote/flexible work	14.92 %	7.15	48.79
Women, office (traditional)	18.55 %	6.25	52.61
Men, office (traditional)	11.30 %	6.90	45.33

Source: compiled by the author based on (Castro-Trancón et al., 2024; Matthews et al., 2022; OECD, 2021, 2023; WHO, 2023).

The results show significant differences in the perception of remote work by different social groups. Women who work in a flexible employment format are more likely to report increased emotional tension, fatigue and difficulties in maintaining a balance between work and family responsibilities (Castro-Trancón et al., 2024). Men, on the other hand, evaluate flexible conditions more positively, demonstrating higher levels of life satisfaction and lower levels of distress (Matthews et al., 2022). At the macro level, according to OECD (2023), teleworking increases overall productivity, but at the same time poses a threat of erosion of psychological safety, especially in the absence of adequate organizational support. According to WHO (2023), the risk of burnout among workers who work from home for more than 35 hours per week increases by almost 28%. Thus, flexible working models require the integration of mental health policies, workload management and social support within the framework of organizations' work strategies. Only under such conditions can teleworking become a source of sustainable professional well-being, rather than a factor in its undermining.

A comparative study of the proportion of workers from various social groups by type of job was conducted in order to better understand the effects of remote and flexible employment on professional well-being. Figure 1 shows the ratio between women and men working remotely or in a traditional format. This distribution allows us to identify gender-specific characteristics of participation in new forms of work and potential socio-psychological risks associated with them.

Figure 1. Distribution of employees by employment form and gender in the context of remote and traditional work



Source: compiled by the author based on (Castro-Trancón et al., 2024; Matthews et al., 2022; OECD, 2021, 2023).

As shown in Figure 1, the largest share is made up of women employed in remote or flexible work arrangements – 33%. This indicates the active involvement of women in remote employment, driven both by the desire for a balance between work and family responsibilities and the need for greater time autonomy. The second largest group is women working in a traditional office format – 28%, which demonstrates a gradual but steady change in the employment model among women in favor of remote work. Men make up a smaller share of remote or flexible work – 22%, but it is this group, according to OECD (2023) and Matthews et al. (2022), that demonstrates higher life satisfaction and lower levels of psychological distress. The lowest proportion is among men working in a traditional format, at 17%, which may reflect the persistence of conservative approaches in certain industries or a preference for stable jobs over flexible arrangements. The overall pattern shows that women are more likely to adapt to remote work formats, while men are more likely to remain in traditional office formats. This ratio may be a consequence of gender differences in household responsibilities, social expectations and employment flexibility practices (Castro-Trancón et al., 2024; OECD, 2021). Thus, there is a pronounced gender imbalance in the structure of remote employment, which requires the development of public and corporate policies aimed at reducing the burden on women, ensuring equal access to resources and creating favorable conditions for the psychological well-being of all categories of workers.

In the current context of digital transformation of work, remoteness and automation of work processes give rise to a whole range of legal problems and risks. In particular, the issues of collective responsibility, control of working time, protection of personal data and legal liability of the parties to the employment relationship are becoming particularly acute. Table 3 provides a systematic overview of the key legal challenges and possible mechanisms to counteract them (see Table 3).

Table 3. Legal challenges of remote work and digitalization: areas of risk and possible institutional responses

Direction / Risk	Problems / Areas of uncertainty	Potential legal solutions/control mechanisms	Comments / restrictions
Collective responsibility and labor solidarity	In remote conditions, the cohesion of the work team weakens; the boundaries between personal initiative and collective norms become blurred.	Introduction of electronic participation platforms, mechanisms of "virtual workers' councils", collective agreements covering remote work	The relevance of collective forms is decreasing in individualized work models; the need for coordination with local law
Time and productivity control	Using monitoring programs, screen recording, activity tracking – the risk of excessive surveillance	Legislative restrictions on monitoring (only during working hours, with the employee's explicit permission), "right to disconnect" policies, transparency of algorithms	Monitoring can be privacy-invading; it is important to balance efficiency and rights (Worklytics, 2025)
Personal data protection and privacy	Increased risk of information leakage, unauthorized access to data, unsafe communication channels	Obligation to encrypt communications, limit data collection to the minimum necessary, informed consent, security audit	Violation of GDPR or similar regulations can result in significant penalties (Jackson Lewis: Privacy Pitfalls, 2025)
Legal responsibility of the parties	Unclear definition of liability boundaries: where does the role of platform/employer/employee end?	Contract terms with clear delineation of liability, force majeure clauses, cyber risk insurance	In case of conflicts, case law or precedents are needed for interpretation
Formal recognition of employment status	Platforms seek to classify workers as independent contractors to avoid employment obligations	Presumption of employment status, strong legislative regulation, application of control tests (as in the EU)	Contractor protection is weak, increasing the risks of evasion of obligations
The right to disconnect	Constant availability, waiting for answers outside of working hours, blurring of boundaries	Legally enshrining the right to "not be in touch" outside working hours – as a supplement to working hours laws	Some countries have already enshrined this right by law or through contracts (right to disconnect)

Source: compiled by the author based on (Ray & Pana-Cryan, 2021; Mamaysky & Lister, 2021; Rosin, 2024; European Parliament & Council of the European Union, 2024; Shapiro, 2025; Petitta & Ghezzi, 2025; Li et al., 2025; Panchenko, 2025)

The analysis of legal challenges demonstrates that remote and digital work activities challenge traditional mechanisms of employee protection. Collective responsibility is weakened as workers are spatially distributed and organizational structures lose their coordinates. Time control becomes more aggressive through the use of monitoring, which can cross the line of privacy if not legally limited. Personal data protection requires increased standards – encryption, data minimization, consent and transparency. Legal responsibility is becoming ambiguous: platforms, employers and workers themselves enter into new interdependent lines of responsibility that need to be clearly recorded in contracts. In addition, classic approaches to classifying workers as "employee" or "contractor" are proving insufficient, which facilitates the abuse of classification. Finally, the right to "disconnect" is becoming a moral and legal issue, because without clear boundaries, technological labor activity absorbs personal space.

Improving Ukrainian labor legislation in the digital economy should be based on a combination of flexibility and social responsibility of the state towards employees. First of all, it is advisable to implement European approaches enshrined in *Directive (EU) 2019/1158 on Work-Life Balance and Directive (EU) 2024/1231 on Platform Work*, which define the employee's right to flexible working hours, remote employment and transparent working conditions. Ukrainian legislation needs to introduce a presumption of employment for platform workers, legal regulation of algorithmic management, and enshrine a "right to disconnect" to protect workers from overload. It is important to create mechanisms for collective representation of workers in digital environments, which will ensure equal access to negotiations and social protection regardless of the form of employment.

The second key line of modernization should be the development of a flexible employment system combined with decent work guarantees. It is necessary to develop standard contracts for remote work, which provide for a clear definition of the obligations of the parties, working hours, responsibility for technical risks and personal data protection. It is also important to introduce tax and social incentives for employers who officially register remote workers, and for employees – the possibility of voluntary payment of social contributions from gig contracts. Harmonization with European standards should be accompanied by updating approaches to state supervision of remote work conditions, integration of the principles of gender equality, inclusion and non-discrimination in the digital environment, which will contribute to the formation of a fair, safe and sustainable labor market.

Discussion

The research results confirmed that the digitalization of employment relations leads not only to increased flexibility and productivity of employees, but also creates a number of legal, psychological and social challenges. Analysis of data from OECD (2021, 2023) and WHO (2023) showed that remote work has a positive impact on efficiency and work-life balance; however, as Matthews et al. (2022) note, it also increases psychological distress, especially among women. These findings are partly in contrast to Petitta and Ghezzi (2025), who interpret flexible working as a factor in increasing life satisfaction and motivation. It can be assumed that this difference is due to the social policy context:

in countries with strong employee support systems (e.g., in the EU), the negative effects of remoteness are compensated institutionally, while in countries with less developed work infrastructure, they are more pronounced.

The legal status of gig economy workers remains a matter of debate. Some authors (Katsabian, 2023; Mahadevan et al., 2025; Hsieh et al., 2023) believe that maintaining flexibility requires reducing regulatory pressure, while others (European Parliament & Council of the European Union, 2024; Shapiro, 2025) emphasize the need to strengthen the presumption of employment relationships to avoid exploitative practices. The results of the study confirm the second position: only the formalization of legal status can ensure a fair distribution of responsibilities and guarantees. Thus, the experience of the EU and the United Kingdom (UK Parliament, 2023; World Economic Forum, 2023) should become a guideline for Ukraine in forming its own system of flexible labor regulation.

Special attention of the researchers is devoted to the emerging risks in the sphere of labor rights due to digitalization. The issues of shared responsibility, time management, personal information protection, and establishment of the legal responsibility of the participants are evaluated specifically through the prism of recent legislative practices and court cases. Scientists underline that the absence of legally enshrining the boundaries of the monitoring as well as the right to disconnect may result in the loss of labor guarantees in the remote work (Ray and Pana-Cryan, 2021; Mamaysky and Lister, 2021; Petitta and Ghezzi, 2025; Li et al., 2025). To conclude, the scientific discourse implies a shift towards the normative to the value-based concept of work in the digital era: the employee is actually regarded as an independent entity that needs more than legal protection, social one. The establishment of legal frameworks that would provide the hybrid and platform employment structures is a prerequisite to the creation of a balance between flexibility and job security (Tossou, 2025; Pearson, 2025; Rosin, 2024; Panchenko, 2025).

Gender differences in perceptions of remote work have also been the subject of academic debate. Castro-Trancón et al. (2024) indicate that women are more likely to suffer from burnout, while Clausen et al. (2024) and Matthews et al. (2022) highlight that men generally evaluate flexible working arrangements more positively. Our results confirm the existence of this gender gap, which is linked to sociocultural factors and the unequal distribution of family responsibilities. This suggests the need to integrate gender-sensitive policies into legislation and corporate practices, which is consistent with the findings of OECD (2023) and Maraziotis (2024). At the same time, there is a certain contradiction between theoretical approaches to flexibility. Kossek and Kelliher (2022) consider it as a means of increasing justice, while Panchenko (2025) and Tossou (2025) warn that excessive flexibility can lead to the erosion of social guarantees and the increase of inequality. Based on the results obtained, it can be concluded that the key is not the degree of flexibility, but the quality of its legal and social support – it is the institutional mechanisms that determine whether remote work will become a factor of development or a risk of degradation of labor rights.

Thus, the discussion demonstrates the need for an interdisciplinary approach to the study of digital work, combining legal, social and psychological aspects. Despite significant achievements, the issues of legal classification of platform economy workers, guarantees of mental health of remote workers and mechanisms of collective representation in the

virtual environment remain unresolved. These areas require further in-depth research and legislative initiatives to form a sustainable model of decent work in the context of digital transformation.

Conclusions and Prospects for Further Studies

The research revealed that the digitalization of work is not just a technical update, but a profound socio-legal transformation that changes the very nature of labor relations. The results proved that remote and flexible employment can increase the efficiency and quality of life of employees only if there are balanced mechanisms of legal regulation, control and social protection. The novelty of the scientific work lies in the systematic combination of legal and socio-psychological approaches to assessing the impact of the digital economy on labor rights, which allowed us to generalize trends in national and international practices. The comparative analysis demonstrated that Ukraine is moving towards harmonization with European standards, but there are still gaps in the legal definition of the status of gig workers, ensuring the right to privacy and implementing the principle of the "right to disconnect".The lack of statistical evidence on the effect of flexible work on psychological safety and gender balance in Ukrainian reality was one of the study's limitations; this needs more empirical study. The practical significance lies in the possibility of using the conclusions to develop recommendations for the modernization of the labor legislation of Ukraine, the adaptation of the norms of the Labor Code to digital work formats and the formation of policies for the mental health of employees in the virtual environment. A promising direction for further research is the creation of an integrated model of legal protection of employees in the platform economy, as well as the development of a national strategy for "digital decent work", which will combine the principles of flexibility, autonomy and social responsibility of the state and employers.

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THE ROLE OF MEDIATION IN THE CRIMINAL JUSTICE SYSTEM: A COMPARISON OF INTERNATIONAL APPROACHES AND ISSUES OF LEGAL LIABILITY OF LAWYERS

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Abstract

Under current conditions, the role of mediation in the criminal justice system is becoming particularly important from both a scientific and practical perspective, as it contributes to the optimization of judicial resources, serves as a tool for improving the efficiency of judicial procedures, and reduces the duration of proceedings. The relevance of the study is determined by the need to identify international approaches and issues of legal liability of lawyers to ensure the effective integration of mediation mechanisms into the criminal justice system. The purpose of the study is to conduct a comprehensive analysis of the role of mediation in the criminal justice system, focusing on its impact on the efficiency of court proceedings, compliance with procedural guarantees, and optimization of the use of judicial resources. Research methods: regression analysis; correlation analysis; systematization; generalization. Results. Based on the regression analysis, a moderate but statistically significant positive correlation was found between the number of pending cases and the duration of proceedings, while the impact of the pace of case resolution showed a relatively weak correlation. An analysis of the dynamics of the rule of law index and its sub-indices in 2015–2025 showed that countries of the Anglo-Saxon legal family have high synergy between the effectiveness

of criminal proceedings and alternative dispute resolution institutions (r > 0.8). It was found that Germany and Norway show a moderate negative correlation, while Ukraine has a stable negative correlation (r = –0.619), which indicates an institutional gap between the formal establishment of mediation procedures and the practical effectiveness of criminal justice, in particular due to the low level of disciplinary responsibility of lawyers. Based on the comparative analysis, it was found that mediation in criminal justice is effectively implemented in Norway and the United States, moderately in Germany and the United Kingdom, while in Ukraine its practical effectiveness is quite limited due to the lack of mandatory control mechanisms.

Keywords

Mediation, justice, criminal justice, legal responsibility, lawyer.

Resumo

Nas condições atuais, o papel da mediação no sistema de justiça criminal está a tornar-se particularmente importante, tanto do ponto de vista científico como prático, uma vez que contribui para a otimização dos recursos judiciais, serve como ferramenta para melhorar a eficiência dos procedimentos judiciais e reduz a duração dos processos. A relevância do estudo é determinada pela necessidade de identificar abordagens internacionais e questões de responsabilidade jurídica dos advogados para garantir a integração eficaz dos mecanismos de mediação no sistema de justiça criminal. O objetivo do estudo é realizar uma análise abrangente do papel da mediação no sistema de justiça criminal, com foco no seu impacto na eficiência dos processos judiciais, no cumprimento das garantias processuais e na otimização do uso dos recursos judiciais. Métodos de investigação: análise de regressão; análise de correlação; sistematização; generalização. Resultados. Com base na análise de regressão, foi encontrada uma correlação positiva moderada, mas estatisticamente significativa, entre o número de processos pendentes e a duração dos processos, enquanto o impacto do ritmo de resolução dos processos mostrou uma correlação relativamente fraca. Uma análise da dinâmica do índice do Estado de direito e dos seus subíndices em 2015-2025 mostrou que os países da família jurídica anglo-saxónica têm uma elevada sinergia entre a eficácia dos processos penais e as instituições alternativas de resolução de litígios (r > 0,8). Verificou-se que a Alemanha e a Noruega apresentam uma correlação negativa moderada, enquanto a Ucrânia apresenta uma correlação negativa estável (r = –0,619), o que indica uma lacuna institucional entre o estabelecimento formal de procedimentos de mediação e a eficácia prática da justiça penal, em particular devido ao baixo nível de responsabilidade disciplinar dos advogados. Com base na análise comparativa, verificou-se que a mediação na justiça penal é implementada de forma eficaz na Noruega e nos Estados Unidos, moderadamente na Alemanha e no Reino Unido, enquanto na Ucrânia a sua eficácia prática é bastante limitada devido à falta de mecanismos de controlo obrigatórios.

Palavras-chave

Mediação, justiça, justiça penal, responsabilidade jurídica, advogado.

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THE ROLE OF MEDIATION IN THE CRIMINAL JUSTICE SYSTEM: A COMPARISON OF INTERNATIONAL APPROACHES AND ISSUES OF LEGAL LIABILITY OF LAWYERS

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Introduction

In the current context of European integration processes and the transformation of the national judicial system, mediation is becoming particularly important as an alternative mechanism for resolving conflicts in the criminal justice system. The relevance of mediation is due to the need to ensure the accessibility, effectiveness, and efficiency of procedures for protecting the rights and legitimate interests of individuals and legal entities, since the use of traditional judicial mechanisms complicates the timely protection of rights, places a heavy burden on the judicial authorities, and leads to lengthy case processing times (Arseniuk, 2016).

Despite the proven effectiveness of alternative procedures in international practice, where up to 80% of disputes are settled out of court (Toikin, 2022), these mechanisms are not widely used in Ukraine, which in turn is due to a number of factors: limited institutional support from public authorities and fragmented regulatory and legal regulation. Under these circumstances, the effectiveness of the implementation of mediation and other alternative procedures largely depends on the interaction of institutional capacity, regulatory and legal instruments, the accountability of lawyers, and public trust in the criminal justice system (Deineha, 2022).

International experience shows that mediation can have a positive impact on the judicial system by reducing its workload and improving the quality of justice. Differentiated models of alternative dispute resolution have developed in the legal systems of the United

States, continental Europe, and the Middle East, which explains their variability, adaptability in application, and potential for integration into national criminal justice systems (Toikin, 2022). At the same time, practice also shows that the effectiveness of such procedures is directly related to the appropriate level of legal responsibility of lawyers who carry out mediation and strict adherence to ethical and professional standards (Khovpun et al., 2024).

The Ukrainian judicial system is facing a significant workload, delays in the consideration of cases, and a decline in public confidence in the results of justice amid a full-scale military invasion and the exacerbation of social and legal problems. In these circumstances, mediation and other alternative mechanisms can perform a compensatory function, promoting more efficient and effective conflict resolution, particularly in the field of criminal justice. At the same time, the low level of regulatory control over the activities of lawyers who implement mediation can give rise to corruption and ethical risks, which in turn undermine the legitimacy of alternative procedures (Arseniuk, 2016; Toikin, 2022).

In this regard, it is advisable to conduct a systematic analysis of the role of mediation in criminal justice, compare international approaches to its application, and study the issue of legal liability of lawyers, which ensures the proper effectiveness, transparency, and legitimacy of alternative procedures in modern conditions.

The aim of the study is to conduct a comprehensive analysis of the role of mediation in the criminal justice system, focusing on its impact on the effectiveness of court proceedings, compliance with procedural guarantees, and optimization of the use of judicial resources.

Research objectives of the article:

1. Conduct a comparative analysis of international models for the implementation of mediation in criminal justice and identify the specific features of their regulatory and procedural framework.

2. Analyze the procedural indicators of the judicial systems of EU countries in terms of the accumulation of pending cases, the pace of their resolution, and the duration of proceedings.

3. Apply regression analysis to establish the relationship between the volume of pending cases, the rate of case resolution, and the integration of mediation mechanisms on the effectiveness of court proceedings.

4. Conduct research on the level of disciplinary and legal responsibility of lawyers in the context of the application of mediation and its impact on compliance with procedural guarantees.

5. Analyze statistical data on the use of mediation in criminal cases and identify patterns of the impact of mediation procedures on reducing the duration of court proceedings.

6. Analyze practical and institutional barriers that hinder the effective use of mediation in criminal justice and develop recommendations for overcoming them.

7. Apply correlation analysis to determine the functional interdependence between mediation institutions, represented by the Civil Justice sub-index, and the effectiveness of criminal proceedings.

Literature Review

Mediation occupies an important place in scientific discourse, marked not only by its prevalence in law enforcement practice, but also by its ability to provide a more flexible and less conflictual resolution of legal disputes. In scientific research, mediation is seen as an effective tool for resolving civil and commercial disputes, enabling parties to reach mutually acceptable solutions without significant time and procedural costs (Ibiteye & Awomoyi, 2023; Mladenov, 2024; Sherman & Momani, 2025). This aspect has led to the development of a stable interest among scholars in researching the issue of mediation, which in turn has led to the emergence of a significant number of specialized studies.

It should be noted that in a significant number of scientific studies, researchers focus on the procedural features of mediation, in particular on the principles of voluntariness, confidentiality, and neutrality of the mediator, which are defined as key conditions for its effective functioning (He et al., 2023; Aytekin, 2022). Therefore, mediation in this context is largely defined as an alternative means of dispute resolution, which in turn is intended to complement or partially relieve traditional judicial mechanisms (Sloma, 2023; Al- Khafaji, 2021; Odilqoriev, 2022).

Mediation is understood as an alternative form of conflict resolution involving a neutral intermediary – a mediator (Fomina, 2021). However, it should be noted that its essence is not limited to the role of a formalized procedural alternative to court proceedings. First and foremost, it is an institutionalized process aimed at achieving reconciliation between the parties and developing a mutually agreed solution that takes into account the interests of all participants in the conflict, where the implementation of the established goal requires the proper professional training of mediators, strict adherence to ethical principles of conduct, and guarantees of their independence and impartiality (Khovpun et al., 2024).

Mediation in scientific research is defined as a universal tool that can function effectively in various conflict situations and act as a promising alternative mechanism for dispute resolution. Thus, Toikin (2022) emphasizes that the use of mediation promotes the establishment of constructive communication between the parties, provides an opportunity to gain a deeper understanding of the causes of the conflict, the strengths and weaknesses of the relationship, as well as the potential consequences of not reaching a compromise. Al-Khafaji (2021) draws attention to the growing international interest in the development of mediation as a means of peaceful conflict resolution between states, emphasizing its role as an alternative to coercion, force, and violence. In this regard, mediation appears not only as a supplement to judicial mechanisms, but also as an independent tool for resolving international disputes between subjects of international

law. Akram et al. (2023) view mediation as a tool for shaping a more humane model of criminal justice, aimed not only at punishment but also at restoring social ties.

The use of mediation mechanisms not only optimizes court proceedings, but also creates the right conditions for a more flexible and party-oriented resolution of criminal law conflicts. Hajairin et al. (2023) emphasize the ability of mediation to reduce the duration of proceedings and associated costs, which in turn helps the parties to reach agreed decisions without lengthy court proceedings. Sukardin et al. (2023) highlight the potential of mediation to improve the efficiency and fairness of criminal justice.

Husin et al. (2024) view mediation as an effective means of reducing the financial burden on the criminal justice system, while Fajrin and Triwijaya (2020) point to a significant reduction in the time required to hear cases, as well as a reduction in the burden on the judiciary. In a broader context, Bode (2021) links the optimization of budget expenditures for the functioning of the judicial system with digitalization processes, which create additional opportunities for the development of mediation procedures.

After analyzing the specifics of the application of mediation in criminal proceedings, Ozersky (2023) notes the need for a comprehensive approach that takes into account the basic principles of criminal justice, the coordination of mediation procedures with court proceedings, and the development of communication skills in working with participants in criminal proceedings. In this regard, the institution of reconciliation agreements is of priority importance as one of the key mechanisms for implementing mediation in the criminal law sphere. Martinez (2020) considers a reconciliation agreement to be a form of mutual understanding between the victim and the alleged offender, whereby the person subject to criminal liability acknowledges their participation in the act committed and undertakes to compensate for the damage caused. At the same time, Rule (2020) emphasizes that a reconciliation agreement is not determined by the unilateral will of the victim, but is formed on the basis of mutual consent of the parties. Accordingly, the decisive prerequisite for its conclusion is the actual achievement of reconciliation between the victim and the suspect or accused.

It should be noted that the signs of a reconciliation agreement should be considered in two interrelated dimensions—procedural and socio-psychological (Rima et al., 2019), where the first characterizes the agreement as an institution of criminal procedural law and a corresponding procedural document, while the socio-psychological aspect reflects the internal attitude of the parties to the agreement reached, the level of their conscious consent, and their willingness to fulfill their obligations. Therefore, these aspects give grounds to consider mediation not as an auxiliary procedure, but as a comprehensive mechanism for resolving criminal law conflicts.

Mitskaya (2020) notes that the integration of mediation practices into judicial activity is impossible without a comprehensive review of legislation and procedural rules. Bougadoum (2021), in turn, emphasizes the need to ensure the transparency of the judicial system as a key condition for the formation of an adequate legal basis for the application of mediation in criminal cases. Shytyk and Akimova (2020) analyze the challenges that the justice system may face in the event of large-scale implementation of mediation, in particular in terms of ensuring a balance between the interests of the parties and the public interest, a point of view developed by Budisetyowati et al. (2023),

emphasizing the need to combine the confidentiality of the mediation process with the requirements of public condemnation in cases of serious crimes. Doneva and Gjorgjieva (2023) highlight the complex and multidimensional nature of mediation in criminal justice, while recognizing its significant potential as a tool for reducing the burden on the judicial system. According to Konoras (2023), the role of mediation in the resolution of criminal cases has grown significantly in recent years, particularly due to the active introduction of digital technologies. Similarly to Sitarz et al. (2018), Giezek et al. (2023) show that the use of mediation procedures contributes to faster case processing and shorter waiting times for court hearings.

Therefore, despite a significant amount of scientific research, the issue of mediation in the criminal justice system and related international approaches and issues of legal responsibility of lawyers remain insufficiently systematized and empirically substantiated, which determines the scientific relevance of this study.

Materials and Methods

The research methodology includes the following methods and approaches:

- classification and structural analysis methods were used to systematize indicators of judicial activity and procedural workload in EU countries, as well as to group data on the duration of proceedings in courts of first instance, appeal, and cassation;

- comparative analysis made it possible to study the dynamics of indicators of pending cases, the pace of case resolution, and the average duration of court proceedings in 27 EU countries in 2023, which made it possible to identify the institutional prerequisites for the use of mediation and to investigate the sectoral sources of procedural workload;

- regression analysis was used to quantitatively assess the impact of the operational indicators of judicial systems on the overall duration of case proceedings, which made it possible to assess the significance of the impact of the backlog of cases on delays in judicial proceedings.

- correlation analysis was conducted to determine the functional interdependence of mediation institutions (represented by the Civil Justice sub-index) and the effectiveness of criminal proceedings in different legal systems;

- analysis of international institutional indicators and regulatory documents was used to assess the institutional maturity of justice systems, the stability of the rule of law, and the level of integration of mediation into national legal systems;

- comparative legal analysis was used to identify models of mediation integration in criminal justice in Norway, Germany, Great Britain, the United States, and Ukraine, taking into account procedural standards, disciplinary responsibility of lawyers, and ethical norms.

Results

Table 1 presents a set of quantitative indicators characterizing the procedural capacity of judicial systems in EU countries, including: the number of pending cases, the intensity of their resolution, and the average duration of proceedings. These indicators are relevant for assessing the institutional prerequisites for the use of mediation, as well as for analyzing the professional and legal responsibility of lawyers in the context of ensuring the right to a fair trial.

The indicator of pending cases allows assessing the degree of procedural workload of courts of first instance. The lowest values were recorded in Sweden (0.7), Luxembourg (1.0), Lithuania, and Hungary (1.2 each), which indicates an adequate level of organization of court proceedings and compliance with reasonable time limits for the consideration of cases. In contrast, in Poland (7.0), Croatia (7.6), Italy and Spain (5.1 each), as well as Cyprus (5.8), there is a significant backlog of pending cases, which indicates a systemic violation of the principle of procedural economy and creates risks of non-compliance with the standards set forth in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The differentiation between pending civil cases and pending administrative cases makes it possible to identify the sectoral sources of procedural overload. In Romania, Belgium, Spain, and Italy, pending civil cases dominate, which objectively creates an institutional need to develop alternative forms of dispute resolution, in particular mediation. At the same time, in Greece, Cyprus, Germany, and Portugal, a significant proportion of cases are administrative, which indicates a high level of conflict in public-law relations and the limited application of mediation without specific legislative regulation and clearly defined standards of professional responsibility for participants in the procedure.

The overall case resolution rate indicates the ability of judicial systems to maintain a balance between case intake and case completion. Values exceeding 100% (Italy – 106%, Cyprus – 118%, Slovakia – 105%) indicate an active reduction in the backlog of pending cases. At the same time, from a legal point of view, such indicators cannot be considered exclusively positive, since an excessive focus on quantitative performance can lead to the simplification of procedural procedures, which potentially affects the quality of judicial proceedings and leads to increased requirements for the disciplinary and professional responsibility of judges, lawyers, and other legal professionals. Low values for this indicator (Romania – 87%, Spain – 87%) indicate a chronic mismatch between the number of cases received and resolved, which limits the real accessibility of justice.

The duration of court proceedings is a key criterion for assessing compliance with the principle of reasonable time for court proceedings. Short durations in Lithuania, the Czech Republic, and Austria indicate proper procedural management. In contrast, the excessive length of proceedings in Greece (771 days), Croatia (533 days), Italy (511 days), and Spain (444 days) indicates a systemic problem, which is a structural violation of the Convention for the Protection of Human Rights and Fundamental Freedoms according to the practice of the European Court of Human Rights (further – ECHR). In such circumstances, mediation effectively becomes compensatory in nature, which increases the risk of its instrumentalisation without adequate procedural safeguards.

Table 1. Indicators of procedural workload and effectiveness of court proceedings in European countries (first instance) in 2023

Country	Number of pending civil, commercial, administrative, and other cases (in courts of first instance, per 100 inhabitants)*	Number of pending civil and commercial cases (in courts of first instance, per 100 inhabitants)*	Number of pending administrative cases (in courts of first instance, per 100 inhabitants)*	Rate of resolution of civil, commercial, administrative, and other cases (in courts of first instance, %)*	Rate of resolution of civil and commercial cases (in courts of first instance, %)*	Rate of resolution of administrative cases (in courts of first instance, %)*	Approximate time for consideration of civil and commercial disputes in courts of first instance (in days)*
SE	0.7	0	0	102	97	105	157
LU	1	0.6	0.2	96	93	98	221
LT	1.2	1	0.1	100	100	105	120
HU	1.2	0.5	0.1	100	100	101	135
BG	1.3	1	0.2	101	102	101	186
NL	1.4	0	0.4	100	0	92	0
LV	1.7	0.9	0	101	100	109	204
EE	1.8	0.6	0.1	100	91	95	196
MT	2.5	2.2	0.1	89	95	81	454
DK	2.5	0.6	0	100	93	0	265
SK	2.6	0.8	0	105	105	74	173
FI	2.7	0.1	0.3	95	89	105	349
FR	3	2	0.3	93	96	95	354
CZ	3.3	1.1	0	102	101	111	126
EL	3.6	2.7	0.7	98	92	121	771
BE	4	3.8	0.2	98	98	87	246
SI	4.1	1.3	0.2	100	101	94	344
RO	4.6	4	0.4	87	86	92	218
ES	5.1	3.2	0.4	87	84	98	444
IT	5.1	3.3	0.2	106	110	121	511
AT	5.6	0.3	0.5	101	98	100	141
CY	5.8	0	1.3	118	0	110	100
PL	7	2.4	0.1	102	95	110	357

HR	7.6	4.1	0.2	97	103	88	533
DE	0	0.8	0	0	97	109	249
IE	0	0	0	81	72	0	0
PT	0	1.7	0.5	0	96	120	267

Source: compiled by the author based on data from Council of Europe & European Commission for the Efficiency of Justice (2024), European Commission (2024; 2025)
Notes: SE – Sweden, LU – Luxembourg, LT – Lithuania, HU – Hungary, BG – Bulgaria, NL – Netherlands, LV – Latvia, EE – Estonia, MT – Malta, DK – Denmark, SK – Slovakia, FI – Finland, FR – France, CZ – Czechia, EL – Greece, BE – Belgium, SI – Slovenia, RO – Romania, ES – Spain, IT – Italy, AT – Austria, CY – Cyprus, PL – Poland, HR – Croatia, DE – Germany, IE – Ireland, PT – Portugal

Thus, the results presented in Table 1 confirm that the effectiveness of the judicial system is determined by the basic prerequisite of the legitimate and lawful use of mediation.

To assess the impact of the operational performance indicators of judicial systems, namely the backlog of pending cases and the rate of their resolution, on the overall duration of court proceedings, which was defined as the dependent variable (Y), multivariate regression modeling was performed based on data from 27 European countries. The resulting model is described by the equation:

$$Y = 285{,}49 + 45{,}81 \cdot X_1 - 1{,}72 \cdot X_2.$$

Analysis of the regression model results shows a moderate level of consistency between dependent and independent variables. The correlation coefficient (Multiple R) is 0.512, which indicates a stable moderate linear relationship between the number of cases pending and the time taken to consider them. The coefficient of determination (R^2 = 0.262) indicates that the constructed model explains 26.2% of the variation in the "case processing time" indicator due to the selected factors. For socio-legal research, this level of determination is acceptable, since the effectiveness of justice is influenced by a wide range of other institutional and resource factors.

The standard error of the model (Standard Error = 153.48) reflects the variability of time indicators in different legal systems in Europe. The assessment of the statistical significance of the model using ANOVA confirmed its adequacy. The F-statistic value is 4.25 at a Significance F level of 0.026, which is below the critical threshold of 0.05. This allows us to reject the null hypothesis and assert that the selected independent variables statistically significantly determine the dynamics of judicial efficiency. Regarding the impact of individual independent variables, the indicator "Number of unfinished cases" () proved to be a highly significant factor (P-value = 0.0076). The regression coefficient for is 45.81, which proves that an increase in the number of unfinished cases by 1 unit (per 100 inhabitants) leads to an average increase in the duration of case consideration by 45.8 days. At the same time, the indicator "Case resolution rate" () showed a negative coefficient (-1.72), indicating a reverse effect (an increase in the pace of work reduces the time of consideration), but its statistical significance (P-value = 0.176) exceeds the threshold of 0.05. This gives reason to argue that speeding up the work of judges without

systematically reducing the backlog of cases (in particular through mediation tools) does not have a decisive impact on the speed of justice (see Table 2).

Table 2. Regression modeling results

Regression Statistics								
Multiple R	0.51							
R Square	0.26							
Adjusted R Square	0.20							
Standard Error	153.48							
Observations	27							
ANOVA								
	df	**SS**	**MS**		**F**		**Significance F**	
Regression	2	200353.48	100176.74		4.25		0.03	
Residual	24	565337.71	23555.74					
Total	26	765691.19						
	Coefficients	**Standard Error**	**t Stat**	**P-value**	**Lower 95%**	**Upper 95%**	**Lower 95.0%**	**Upper 95.0%**
Intercept	285.49	105.21	2.71	0.01	68.34	502.63	68.34	502.63
X_1 (Criminal Justice)	45.81	15.72	2.91	0	13.36	78.26	13.36	78.26
X_2 (Constraints on Government Powers)	–1.72	1.23	–1.39	0	–4.26	0.83	–4.26	0.8

Source: author's own calculations based on data from Council of Europe & European Commission for the Efficiency of Justice (2024), European Commission (2024; 2025)

Thus, the results of the regression analysis confirm the hypothesis that the accumulation of backlogs is a critical determinant of court delays, which justifies the need to move from a model of increasing court resources to a model of preventive court relief through mandatory mediation and increased accountability of lawyers for abuse of procedural rights.

Table 3 shows the estimated time required to resolve civil and commercial disputes in courts of first instance, appeal, and cassation in EU countries in 2023. Empirical data show that the most critical delays occur at the level of courts of first instance, which effectively act as the primary filter for court disputes. In particular, in Greece, Italy, Croatia, Malta, and Spain, the average duration of proceedings in courts of first instance exceeds one calendar year, and in some cases approaches two years, where this situation indicates not only the overload of the judiciary, but also the limited use of preventive and alternative dispute resolution mechanisms that could significantly reduce the number of cases reaching court proceedings.

An analysis of the appellate and cassation instances demonstrates the effect of cumulative prolongation of proceedings, whereby the right to review court decisions, which is intended to ensure procedural guarantees and the unity of judicial practice, is in fact transformed into an additional factor delaying justice. This trend is particularly evident in France, Italy, Greece, Cyprus, and Spain, where the duration of proceedings in the second and third instances is comparable to or even exceeds the time taken to hear cases in the courts of first instance, indicating structural dysfunctions in the multi-level judicial control system.

At the same time, a number of countries, including the Czech Republic, Hungary, Austria, Lithuania, and Estonia, demonstrate relatively stable and predictable case processing times at all court levels. Such procedural efficiency correlates with more developed practices of court management, digitization of court proceedings, and institutional integration of alternative dispute resolution methods. In these legal systems, courts perform less of a universal conflict resolution function and instead focus on cases that truly require authoritative judicial intervention.

Table 3. Estimated time needed to resolve litigious civil and commercial cases at all court instances in 2023 (in days)

Member State	First instance	Second instance	Third instance
HU	135	107	108
CZ	126	64	140
AT	141	87	111
SE	157	108	150
EE	196	169	104
SK	173	203	n.a.
LV	204	134	114
RO	218	204	234
BG	186	138	249
IE	0	0	251
DK	265	220	194
PT	267	91	77
NL	0	0	287
LT	120	71	329

SI	344	97	78
FI	349	211	178
PL	357	312	386
DE	249	406	n.a.
MT	454	427	n.a.
LU	221	497	427
FR	354	507	510
HR	533	0	211
CY	0	0	683
ES	444	0	691
BE	246	0	394
EL	771	694	n.a.
IT	511	673	1

Source: compiled by the author based on data from Council of Europe & European Commission for the Efficiency of Justice (2024), European Commission (2024; 2025)
Notes: The order of Member States is determined by the court instance with the longest proceedings in each Member State. No data are available for first and second instance courts in CY, NL, and IE; for second instance courts in HR and ES; and for third instance courts in EL and SK. There is no third instance court in DE and MT. Access to a third instance court may be limited in some Member States

Analysis of Council of Europe & European Commission for the Efficiency of Justice (further – CEPEJ) data shows that even in countries with high levels of judicial efficiency, the number of pending cases and the length of their consideration remain significant, indicating the need for structural changes in the judicial system.

The selection of countries for comparative legal analysis within the study of the role of mediation in the criminal justice system and the legal responsibility of lawyers was based on the institutional maturity of the judicial system, the degree of regulatory integration of alternative dispute resolution methods, and the stability of rule of law indicators according to internationally recognized indicators (see Table 4).

The highest values of the Rule of Law Index (further – WJP RoLI) are consistently observed in Norway (0.88–0.90) and the United Kingdom (0.78–0.81), indicating the sustained effectiveness of legal institutions and a high level of compliance with the principles of the rule of law. The United States demonstrates average WJP RoLI values (0.68–0.74), while Ukraine maintains a lower index level (0.47–0.51) throughout the entire period under review, reflecting existing structural problems in the legal system, especially in the area of criminal justice (0.36–0.40).

An examination of individual sub-indices allows us to highlight the specific features of national justice systems. Criminal justice (further – CJ) shows the greatest fluctuations in Ukraine, while in countries with a high level of rule of law (Norway, Germany, the United Kingdom), CJ indicators remain consistently high and almost unchanged during 2015–2025. The fundamental rights (further – FR) sector is characterized by less variability, particularly in Norway and the United Kingdom, where it reaches values above 0.90, indicating a high degree of protection of citizens' fundamental rights and freedoms. Civil Justice (further – CiJ) shows comparatively lower and more dynamic values in the United States and Ukraine, which may reflect the length of court proceedings and the existence of systemic barriers to access to justice. The dynamics of Ukraine's indicators show a slight improvement in WJP RoLI in 2016–2019, followed by stabilization at 0.49–0.50. This stability, along with low CJ and CiJ component values, points to a systemic need to reform criminal and civil justice, strengthen the protection of fundamental rights, and introduce effective alternative dispute resolution tools. In countries with a high level of rule of law, such as Norway and the United Kingdom, the stability of all WJP RoLI components during the period under review reflects the effectiveness of judicial institutions, the high predictability of legal procedures, and the integration of international standards into national legislation.

Table 4. Dynamics of the rule of law index and its institutional components

	Ukraine				Norway				USA				Germany				United Kingdom			
Рік	WJP RoLI	CJ	FR	CiJ	WJP RoLI	CJ	FR	CiJ	WJP RoLI	CJ	FR	CiJ	WJP RoLI	CJ	FR	CiJ	WJP RoLI	CJ	FR	CiJ
2015	0.47	0.36	0.62	0.5	0.88	0.83	0.91	0.87	0.74	0.64	0.73	0.67	0.83	0.76	0.87	0.84	0.8	0.76	0.79	0.76
2016	0.49	0.4	0.63	0.48	0.88	0.84	0.89	0.86	0.74	0.67	0.75	0.66	0.84	0.77	0.86	0.87	0.81	0.76	0.81	0.76
2017	0.5	0.37	0.59	0.52	0.89	0.83	0.88	0.86	0.73	0.65	0.72	0.68	0.84	0.77	0.85	0.86	0.81	0.74	0.81	0.76
2018	0.5	0.37	0.59	0.52	0.89	0.83	0.88	0.86	0.73	0.65	0.72	0.68	0.84	0.77	0.85	0.86	0.81	0.74	0.81	0.76
2019	0.51	0.37	0.61	0.54	0.89	0.83	0.9	0.85	0.72	0.63	0.72	0.64	0.84	0.78	0.85	0.86	0.8	0.75	0.82	0.73
2020	0.51	0.36	0.61	0.54	0.89	0.83	0.91	0.85	0.72	0.63	0.72	0.62	0.84	0.79	0.85	0.85	0.79	0.72	0.79	0.71

2021	0.5	0.37	0.61	0.54	0.9	0.85	0.91	0.85	0.69	0.6	0.66	0.62	0.84	0.79	0.85	0.84	0.79	0.71	0.8	0.71
2022	0.49	0.37	0.6	0.54	0.89	0.84	0.91	0.84	0.71	0.61	0.68	0.63	0.83	0.78	0.85	0.83	0.79	0.7	0.81	0.7
2023	0.49	0.36	0.59	0.53	0.89	0.83	0.91	0.86	0.7	0.6	0.68	0.62	0.83	0.78	0.86	0.83	0.78	0.7	0.8	0.71
2024	0.48	0.37	0.59	0.53	0.89	0.83	0.9	0.87	0.7	0.59	0.68	0.63	0.83	0.78	0.86	0.82	0.78	0.7	0.8	0.71
2025	0.48	0.37	0.57	0.53	0.89	0.82	0.9	0.86	0.68	0.58	0.65	0.62	0.83	0.79	0.86	0.82	0.78	0.7	0.8	0.7

Source: compiled by the author based on World Justice Project (2025)

Notes: WJP RoLI – World Justice Project Rule of Law Index, CJ – Criminal Justice, FR – Fundamental Rights, CiJ – Civil Justice

Pearson's correlation analysis was used to verify the hypothesis of functional interdependence between mediation institutions (represented by the Civil Justice sub-index) and the effectiveness of criminal proceedings (Criminal Justice). The results show a significant difference in legal models between different legal families, which allows the countries under study to be classified by type of institutional convergence (see Table 5).

The study shows that Anglo-Saxon legal family countries (the United Kingdom, the United States) have the highest level of synergy between justice institutions and alternative dispute resolution ($r > 0.8$). This confirms the concept that the development of mediation procedures and other forms of ADR directly correlates with improvements in criminal justice performance. In these jurisdictions, mediation not only serves to relieve the burden on the courts, but also acts as a fundamental element of the legal culture, where the professional responsibility of lawyers is focused on achieving reconciliation rather than procedural confrontation between the parties.

In contrast, in continental European countries (Germany, Norway), there is a moderate negative correlation, indicating a state of "institutional plateau." The high autonomy and maturity of individual branches of justice ensures their independent development. In this context, mediation is already integrated into the system and functions as an organic component of justice, which negates the direct statistical dependence between fluctuations in individual indices.

In Ukraine, a stable negative correlation ($r = -0.619$) has been recorded. Unlike European leaders, this indicator indicates a significant institutional gap. The growth of formal indicators of civil justice, in particular the legislative consolidation of mediation, is accompanied by stagnation or regression in criminal justice, which indicates a lack of mechanisms for the legal accountability of lawyers: in practice, new procedural tools are

often used by the parties not to reach consensus, but as a means of delaying the consideration of cases.

Table 5. Linear correlation coefficients of civil and criminal justice indicators (2015–2025)

Country	Correlation coefficient (r)	Level of statistical correlation
United Kingdom	0.89	High positive
USA	0	High positive
Germany	–0.424	Moderate negative
Norway	–0.447	Moderately negative
Ukraine	–0.619	Moderate negative

Source: calculated by the author based on World Justice Project (2025)

Therefore, without comprehensive reform of the institution of disciplinary responsibility of lawyers and prosecutors, mediation in Ukraine risks remaining a declarative element that does not significantly improve the efficiency of justice and does not contribute to the implementation of the principle of reasonable time for consideration of cases.

An analysis of international experience shows that the institutional implementation of mediation in criminal justice varies depending on the jurisdiction. Norway has implemented a mandatory diversion model with a mandatory assessment of the possibility of mediation at the pre-trial stage and disciplinary liability of the prosecutor. Germany applies judicial initiative in the Täter-Opfer-Ausgleich model with professional and material liability of the lawyer. The United Kingdom integrates mediation through a presumption of mediability and applies procedural sanctions for unjustified refusal. The United States implements a hybrid model with a priority on confidentiality and ABA ethical standards, which requires lawyers to take social and moral factors into account. Ukraine is in a transitional phase: the right to mediation is enshrined in law, but there are no mandatory mechanisms for lawyer accountability, which limits the effectiveness of the procedures.

Table 7 shows the key determinants of lawyers' responsibility in the field of mediation and possible directions for adapting international standards to the Ukrainian legal system. For Ukraine, these practices allow for the formulation of strategic vectors for implementation: mandatory written justification for refusal of mediation by the prosecutor, consolidation of civil and procedural liability of lawyers, and integration of ethical standards into professional codes. Such a comprehensive approach will contribute to increasing the effectiveness of mediation procedures, reducing the judicial workload, and forming a culture of reconciliation in the criminal and civil justice systems of Ukraine.

Table 6. Regulatory institutionalization of mediation: comparative legal analysis of foreign and domestic experience

Jurisdiction	Legislative acts	Procedural status of mediation and content of conceptual principles	Institutional basis of liability and legal consequences
Norway	Criminal Procedure Act (1981, § 71a); Conflict Resolution Boards Act (2014)	Imperative-diversion model: Mandatory consideration of mediation (*Konfliktrådet*) at the pre-trial stages. Emphasis on restorative justice.	Disciplinary obligation of the prosecutor to assess the advisability of referring the case to the Conflict Council. High level of public trust in extrajudicial institutions.
Germany	Strafprozessordnung (2012, § 155a); Mediationsgesetz (2012)	Institutionalisation of Täter-Opfer-Ausgleich (TOA): Obligation of the court to initiate reconciliation at any stage. Harmonisation with Directive 2008/52/EC.	Material and professional liability of lawyers for improper advice on ADR (Mediationsgesetz, 2012). Mediation as a tool for minimizing the court workload.
Great Britainitany	Legal Aid, Sentencing and Punishment of Offenders Act (2012); SRA Code of Conduct	Presumption of mediability: Use of *Conditional Cautions* and diversion strategies. Mediation as an integrated part of the culture of justice.	Procedural abuse: Refusal to mediate without justification is considered a violation of *the SRA Code of Conduct*, resulting in court fines or disciplinary measures.
USA	ADR Act (1998); Uniform Mediation Act (2001); Model Rules of Professional Conduct (ABA)	Hybrid and unified model: Priority of confidentiality as an imperative of procedural integrity.	Rule 2.1 (ABA): Ethical duty of lawyers to consider non-legal factors (moral, social). High effectiveness: up to 70% success rate in EEOC cases (2020).
Ukraine	Law "On Mediation" (On Mediation, 2021); CPC of Ukraine; Presidential Decree (2015)	Transitional period: Transition from "settlement of legal disputes with the participation of a judge" to classical mediation. Declarative recognition of settlement agreements.	Limited liability: No mandatory sanctions in the Rules of Professional Conduct (hereinafter – RPC) for evading peaceful settlement. Need to implement mechanisms of "positive liability."

Source: compiled by the author based on the Conflict Resolution Boards Act (2014), Criminal Procedure Act (1981), Mediationsgesetz (2012), Strafprozessordnung (2012), Solicitors Regulation Authority (2019), U.S. Congress (1998), American Bar Association (2020), Uniform Law Commission (2001), Criminal Procedure Code of Ukraine (2012), On Mediation (2021), On the Strategy of Reforming the Judicial System (2015), European Union (2008)

Table 7. Determinants of lawyers' responsibility in the field of mediation and strategic vectors for adapting international standards to Ukraine's legal system

Jurisdiction	Procedural status and institutional foundations	Determinants of lawyers' responsibility	Recommendations for implementation in Ukraine's legal system
Norway Strategy	Mandatory diversion: Mandatory assessment of the possibility of	Disciplinary obligation of the prosecutor to justify the	Introduction into the Criminal Procedure Code of Ukraine of the prosecutor's obligation to justify in

	mediation (*Konfliktrådet*) at the pre-trial stages.	referral of a case to court instead of mediation.	writing the refusal to refer a case to mediation in cases of misdemeanors and minor crimes.
Germany	Judicial initiative (TOA): Active role of the court in proposing reconciliation at any stage of the proceedings.	Material liability of lawyers for failure to provide information about ADR (Mediationsgesetz, 2012).	Legislative establishment of civil liability of lawyers for "loss of opportunity" for peaceful settlement due to improper advice to clients.
United Kingdom	Presumption of mediability: Refusal to mediate without good reason is considered an obstruction of justice.	Recognition of unjustified refusal of ADR as procedural abuse with the imposition of court costs on the party.	Granting courts the power to impose fines on a party that has unreasonably rejected a mediation proposal, regardless of the outcome of the case on its merits.
USA	Ethical choice model: Integration of mediation through professional ethics standards (ABA Rule 2.1).	The duty of lawyers to be "advisors" who take moral and social factors into account, not just the law.	Modernization of the Ukrainian Bar Association: transition from declarative "promotion" to mandatory explanation of the advantages of mediation as an ethical standard.

Source: compiled by the author based on the Conflict Resolution Boards Act (2014), Criminal Procedure Act (1981), Mediationsgesetz (2012), Strafprozessordnung (2012), Solicitors Regulation Authority (2019), U.S. Congress (1998), American Bar Association (2020), Uniform Law Commission (2001), European Union (2008)

Discussion

Based on the study, it was found that the institutional integration of mediation in criminal justice varies in effectiveness depending on the legal tradition and the level of development of mechanisms for the legal liability of lawyers. On this basis, several key points should be highlighted.

First, the results of the correlation analysis confirm that in countries of the Anglo-Saxon legal family (the United Kingdom, the United States), there is a high positive correlation between criminal and civil proceedings ($r = 0.894$ and $r = 0.8$, respectively), which indicates functional consistency between ADR procedures and the functioning of criminal institutions. This confirms the hypothesis that the integration of mediation into such systems not only relieves the burden on the courts, but also promotes the establishment of a legal culture where priority is given to dispute resolution and the ethical responsibility of lawyers.

Second, in continental European countries (Germany, Norway), there is a moderate negative correlation ($r = -0.424$; $r = -0.447$), which indicates a state of "institutional plateau," and the direct correlation between variations in individual indicators is less pronounced, which indicates a higher level of formalized and structured procedures for lawyers and prosecutors, which increases legal predictability and minimizes the risk of abuse.

Third, the Ukrainian model shows a stable negative correlation ($r = -0.619$), indicating a significant institutional imbalance. Despite the legal enshrinement of the right to mediation, the lack of effective mechanisms for holding lawyers accountable means that new procedural tools are often used by the parties as a means of delaying the process

rather than for consensual settlement, which limits the potential of mediation as a preventive mechanism for reducing the court workload.

Fourth, a comparative analysis of international experience reflects varying approaches to the integration of mediation and the responsibility of lawyers. In Norway, the imperative-diversionary model provides for mandatory assessment of the possibility of mediation at the pre-trial stage and disciplinary responsibility of the prosecutor. In Germany, the judicial initiative (Täter-Opfer-Ausgleich) is combined with the material responsibility of the lawyer for not providing information about ADR. The UK applies a presumption of mediability, where an unjustified refusal to mediate results in procedural sanctions. The US integrates ABA ethical standards, which require lawyers to consider social and moral factors when advising clients. In Ukraine, the absence of mandatory liability rules limits the effectiveness of procedures, confirming the need for legislative and procedural reforms.

The results of the analysis confirm that in countries with developed mediation practices, such as Lithuania, the Czech Republic, and Austria, the low level of pending cases and the adequate pace of court proceedings correlate with a reduction in the average duration of proceedings in the first instance and the stability of the appeal and cassation process. These data are consistent with the findings of Hajairin et al. (2023) and Sukardin et al. (2023), who note the ability of mediation to increase the efficiency of criminal proceedings and ensure fairness in proceedings.

It is worth noting that in countries with a high workload on the judicial systems (Greece, Italy, Croatia, Malta, Spain), the average time for consideration of cases exceeds one calendar year, which is confirmed by the studies of Shytyk & Akimova (2020) and Budisetyowati et al. (2023) on the need to integrate procedural confidentiality of mediation with public control instruments in cases of serious crimes.

Regression analysis of the impact of the judicial system's operational indicators on the duration of case processing has established that the main determinant is the accumulation of pending cases (X_1), while increasing the pace of case resolution (X_2) without comprehensive court relief has a limited effect, with these results confirming the research of Mitskaya (2020) and Bougadoum (2021), who note that the effectiveness of mediation mainly depends on the regulatory integration of alternative dispute resolution mechanisms and the transparency of the judicial system.

An analysis of the WJP Rule of Law Index indicators found that the stability and high quality of criminal justice in countries with high rule of law scores (Norway, United Kingdom) creates conditions for the effective integration of mediation as a tool for reducing conflict in legal processes. The results correspond with the works of Ibiteye and Awomoyi (2023), Mladenov (2024), and Sherman and Momani (2025), which emphasize the universality of mediation as an alternative means of dispute resolution and improving the effectiveness of criminal justice.

Thus, the results of the study are due to the fact that the effectiveness of mediation as a tool for optimizing criminal proceedings depends not only on the legislative consolidation of the procedure, but also on the existence of clear standards of legal and

ethical responsibility of lawyers and the implementation of foreign approaches of international models into the national system.

Conclusions

Based on the analysis, it was established that the role of mediation in the criminal justice system mainly depends on the level of procedural capacity of judicial systems and the existence of effective mechanisms of legal liability of lawyers. It has been found that the accumulation of pending cases in courts of first instance leads to longer case processing times and creates additional risks of violating the right to a fair trial. However, indicators of the rate of case resolution without systematic court relief through preventive or alternative mechanisms (in particular, mediation) do not lead to a significant reduction in the duration of court proceedings.

Based on the regression analysis, it was determined that an increase in the number of pending cases leads to an increase in the time taken to resolve cases by an average of 45.8 days per 100 inhabitants, while the rate of case resolution has the opposite, but statistically insignificant, effect. An international comparison shows that in countries with Anglo-Saxon legal systems (the United Kingdom, the United States), there is a high level of interaction between criminal justice and mediation institutions, confirming the effectiveness of their comprehensive approach. In this regard, we consider it necessary to note that the absence of similar mechanisms in Ukraine leads to the development of the risk of instrumentalizing mediation as a formal tool rather than a real means of increasing the accessibility and speed of justice.

The practical significance of the results obtained is evident in the ability to apply international experience to modernize the Ukrainian legal system: the implementation of mandatory procedures for justifying the refusal of mediation, civil liability of lawyers for failure to provide adequate advice, and the integration of ethical standards of professional activity of lawyers. Further research should focus on developing a comprehensive model of legal responsibility and preventive use of mediation, which will facilitate the work of judicial authorities, increase the effectiveness of criminal proceedings, and guarantee the actual observance of the right to a fair trial.

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CRISIS OF THE UN COLLECTIVE SECURITY SYSTEM AS A CRIMINAL LAW COMPONENT OF ENCROACHMENTS ON THE PROTECTION OF PEACE AND INTERNATIONAL SECURITY LEADING TO ARMED AGGRESSION

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Abstract

The existing framework for collective security under the auspices of the United Nations is experiencing a profound institutional crisis that significantly undermines the effectiveness of the prohibition on the use or threat of force, a fundamental principle of the contemporary international legal order. These deficiencies are most apparent in situations of armed aggression involving permanent members of the UN Security Council, where response mechanisms are paralysed by procedural obstacles, particularly the veto power. This results in a persistent gap between binding international legal norms and the practical ability to enforce them. Against this background, the study examines the criminal law dimensions of the crisis affecting the UN collective security system, especially in cases where threats to peace escalate into acts of armed aggression. The analysis focuses on the legal foundations and institutional structure of collective security within the UN, alongside existing mechanisms of international criminal accountability. The research is based on a doctrinal analysis of the UN Charter, relevant resolutions of the General Assembly and the Security Council, the Rome Statute of the International Criminal Court, and contemporary scholarship in public international law and international criminal law. The findings indicate that the prohibition on the use of force fails to generate effective criminal sanctions when the Security Council is

blocked by veto. Moreover, the General Assembly's instruments remain largely advisory and procedural, insufficient to compensate for Security Council paralysis. The study also highlights the political dependence of the ICC's jurisdiction over the crime of aggression, which contributes to systemic impunity and weakens the collective security regime.

Keywords

International law, collective security, prohibition of force, UN Security Council, veto right.

Resumo

O quadro existente para a segurança coletiva sob os auspícios das Nações Unidas está a passar por uma profunda crise institucional que compromete significativamente a eficácia da proibição do uso ou ameaça do uso da força, um princípio fundamental da ordem jurídica internacional contemporânea. Essas deficiências são mais evidentes em situações de agressão armada envolvendo membros permanentes do Conselho de Segurança da ONU, onde os mecanismos de resposta ficam paralisados por obstáculos processuais, particularmente o poder de veto. Isto resulta numa lacuna persistente entre as normas jurídicas internacionais vinculativas e a capacidade prática de as aplicar. Neste contexto, o estudo examina as dimensões do direito penal da crise que afeta o sistema de segurança coletiva da ONU, especialmente nos casos em que as ameaças à paz se transformam em atos de agressão armada. A análise centra-se nos fundamentos jurídicos e na estrutura institucional da segurança coletiva no âmbito da ONU, a par dos mecanismos existentes de responsabilização penal internacional. A investigação baseia-se numa análise doutrinária da Carta das Nações Unidas, das resoluções relevantes da Assembleia Geral e do Conselho de Segurança, do Estatuto de Roma do Tribunal Penal Internacional e dos estudos contemporâneos em direito internacional público e direito penal internacional. As conclusões indicam que a proibição do uso da força não gera sanções penais eficazes quando o Conselho de Segurança é bloqueado pelo veto. Além disso, os instrumentos da Assembleia Geral continuam a ser em grande parte consultivos e processuais, insuficientes para compensar a paralisia do Conselho de Segurança. O estudo também destaca a dependência política da jurisdição do TPI sobre o crime de agressão, o que contribui para a impunidade sistémica e enfraquece o regime de segurança coletiva.

Palavras-chave

Direito Internacional, Segurança Coletiva, Proibição Do Uso Da Força, Conselho De Segurança Da ONU, Direito De Veto.

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Introduction

The global security framework established by the United Nations, designed as a universally applicable system to avert conflicts and sustain worldly tranquility, is demonstrating growing operational deficiencies in addressing instances of armed hostility under current global realities. This incapacity is notably pronounced when the authority of the Security Council is thwarted by the veto power exercised by permanent members who are themselves participants in the dispute. This state of affairs transcends a mere political impasse; the institutional deadlock directly erodes the efficacy of the ban on the application of force and fosters an environment where international offenses, most critically the crime of aggression, enjoy practical immunity. Consequently, the apparatus meant to legally safeguard peace and global stability devolves into a locus of regulatory ambiguity. Here, the failure to mount a collective rebuttal facilitates the systematic erosion of fundamental principles of international law, throwing into doubt the capacity of the international legal structure to execute its roles in both prevention and sanction.

Against this backdrop, Staunton (2025) posits that the emergence of novel international standards, such as the doctrine of responsibility not to veto, signifies a gradual, albeit slow, evolution in the operational conduct of the Security Council. The author demonstrates that even without formal alterations to the UN Charter, a form of normative constraint develops, incrementally modifying perceptions regarding the acceptability of

employing the veto when widespread breaches of peace occur. This perspective holds value because it shifts focus away from viewing reform as a discrete occurrence, framing it instead as an ongoing sequence – one that is irregular and marked by friction, yet nonetheless accumulates toward a substantive impact.

In their work, Stensrud et al. (2025) address comparable problems, approaching them from a nearly inverse viewpoint, concentrating on twenty years of experience in putting into practice the principle of the responsibility to protect. Their analysis underscores and elaborates upon the obstruction of the Security Council by its permanent members, simultaneously emphasizing the backing for R2P offered by smaller and mid-sized nations. Crucially, a state of institutional disarray does not inherently signify total collapse of the underlying norms; rather, and this is of greater significance, it signals a transition away from what was once viewed as a narrowly defined duty incumbent solely upon formal authorities, toward an obligation now shared by a wider array of international law subjects. Crucially, a state of institutional disarray does not inherently signify total collapse of the underlying norms; rather, and this is of greater significance, it signals a transition away from what was once viewed as a narrowly defined duty incumbent solely upon formal authorities, toward an obligation now shared by a wider array of international law subjects.

Gomez-Robledo and Olabuenaga (2024) present a highly structured examination of voluntary limitations on the use of the veto power, asserting that while these measures are no substitute for formal legal amendments, they can serve effectively as a bridging solution. Their paper dives deep into curtailing the veto in the context of present-day global hazards. Notably, their research is the first in scholarly writing to investigate the link between the established political behaviors surrounding veto usage (or abstention) and the legal ramifications arising from the Security Council's failure to act.

Trahan and Germeaux (2024) project a scenario where the dynamic shifts, leading to the permanent members themselves being held accountable for violating international peace and security. Their research exposes the inherent imbalance within the collective security framework: the system proves incapable of functioning precisely when it is most needed – when aggression from core participants renders the institution unable to even classify the hostile acts as aggression – causing a collapse. The paper weighs proposals for structural overhaul against arguments advocating for preserving the existing order, underscoring the relevance of both perspectives when confronting genuine international crises.

Hehir (2024) continually advances the critical discourse surrounding the Responsibility to Protect (R2P), describing the doctrine as an international law "protracted black hole." The author highlights the disparity between the appealing moral standing of R2P and the concrete tools available for its application, attributing this failure largely to political obstacles within the Security Council. This finding bolsters the contention that an inability to act by collective bodies should be viewed not merely as a political failing, but as an element that actively facilitates international crimes.

A recent current in academic writing involves scrutinizing the legal boundaries surrounding the use of veto power, specifically when confronted with instances of armed aggression. Peters (2023) examines what, according to his interpretation of general

international law and its non-derogable norms, could possibly legitimize the obstruction of any Security Council resolution "in the face of blatant aggressive acts." This notion itself contradicts the fundamental principle of collective security should such obstruction materialize. From the vantage point of systemic patterns – the concepts underpinning institutional impunity within the field of criminology – this becomes a matter of considerable significance.

Notwithstanding the large volume of current scholarship dedicated to the breakdown of the UN's collective security arrangement, several conceptual voids remain in the academic discourse, hindering a complete grasp of this issue. Primarily, the vast preponderance of existing publications concentrate on the political-institutional or normative examination of veto authority, proposed Security Council reforms, or the development of the Responsibility to Protect doctrine. This leaves the criminal law ramifications stemming from institutional paralysis largely unaddressed by systematic inquiry. Furthermore, the query of whether the stagnation of collective response mechanisms qualifies as more than just a political flaw within the system – potentially acting as an autonomous element fostering the commission or perpetuation of the crime of aggression – remains insufficiently explored. Similarly, the nexus between personal criminal culpability for aggression and the structural shortcomings of the collective security framework, which effectively nullify the deterrent capacity of international criminal law, has only received piecemeal investigation.

The objective of this investigation is to pinpoint and provide scientific backing for the criminal law facet of the UN collective security system's crisis, particularly concerning intrusions upon the preservation of peace and international security that result in armed aggression. To realize this aim, the research intends to definitively resolve a series of interconnected scholarly objectives that naturally arise from the article's subject matter. Initially, the study centers on clarifying the scope and constraints of criminal law protections afforded to peace and international security when the UN collective security mechanisms exhibit systemic inability. Subsequently, the task involves assessing, through the lens of international criminal law, how the exercise of the veto power within the Security Council influences the efficacy of preventing and halting armed aggression. A distinct mandate is to illuminate the relationship connecting individual criminal liability for the crime of aggression with the institutional lapses of collective organs that generate environments of impunity.

Literature Review

The dependence of the aggression crime on a close connection to the powers of the Security Council occupies is an issue in classical international-law studies. Blokker (2007) was among the first scholars systematically to show that structural vulnerability creeps into the whole system of international justice when, at its base, there lies dependence on a politico-criminal qualification of aggression by any organ–here specifically speaking about the Security Council. Heller (2011) continues this line and brings out clearly how legally uncertain arrangements concerning aggression are and how little they can operate under conditions wherein politics block everything. This approach shall be complemented by that analysis from state practice provided by Koh and Buchwald (2017), who

demonstrate different interpretations regarding real possibilities for responsibility. Hehir (2013), using the example of the Libyan crisis, shows the persistence of institutional inconsistency of the Security Council, which undermines trust in the responsibility to protect concept. This line is continued by Hehir and Lang (2015), who emphasise that the political selectivity of the Security Council directly affects the effectiveness of the International Criminal Court, especially in cases related to the use of force.

More recent studies have considered the veto as a factor of institutional paralysis. Illingworth (2020) discusses the voluntary restraint of the veto as a temporary measure to support R2P, fully acknowledging both its very limited potential and its practical feasibility. Similar arguments appear in works that emphasize the role of the General Assembly. Barber (2022) makes arguments based on the collective action of the General Assembly in times of serious violations of peremptory norms, against Arrocha Olabuenaga (2023), who analyzes United Nations General Assembly (further – UNGA) Resolution 76/262 as an instrument of institutional response to the use of the veto by the Security Council. Anich Sfeir (2023) reinterprets the doctrine of unity for peace, raising questions not only about whether it has found a second life in contemporary conflicts, but also about how this has happened.

The practical aspect of these approaches can be best understood through works specifically dedicated to particular crises. Melling (2023) discusses the relevance of the Uniting for Peace resolution in armed aggression against Ukraine and responses by the Security Council, thereby showing that institutional alternatives are formally existent but hardly applied. In their earlier work on Syria, they confirm that even when mass crimes take place, collective security mechanisms still depend on the political will of permanent members. Cross (2013) introduces an additional critical perspective focusing more on problems with legal regulation regarding use or force and its limited capacity in preventing escalationof armed conflicts.

The generalisation of the cited works indicates a high level of development of the institutional, political, and normative aspects of the crisis of UN collective security. At the same time, most authors focus either on procedural reform or on the evolution of the R2P and Uniting for Peace doctrines, leaving the criminal-law consequences of institutional inaction outside systematic analysis. It is precisely the insufficient integration of research on the crime of aggression with the analysis of structural failures of the collective security system that forms the theoretical gap which this study seeks to fill.

Materials and Methods

The research was carried out during 2024–2025 within the framework of a doctrinal and normative analysis of public international law and international criminal law, with the objective of revealing the criminal-law aspects of the crisis affecting the United Nations collective security system. The selected research design focused on examining the manner in which the institutional dysfunction of the UN Security Council, resulting from the exercise of the veto power by permanent members, influences the practical implementation of the prohibition of the use of force and generates normative conditions

conducive to the impunity of armed aggression (Charter of the United Nations, 1945; Akande & Tzanakopoulos, 2018).

The empirical and normative foundation of the study was formed by universal international legal instruments governing the maintenance of international peace and security. These included the Charter of the United Nations (Charter of the United Nations, 1945), resolutions of the Security Council and the General Assembly, in particular Resolution 377 (V) "Uniting for Peace", which provides an alternative procedural framework in situations of Security Council paralysis (United Nations General Assembly, 1950), as well as General Assembly Resolution 76/262, adopted in response to the recurrent use of the veto by permanent members of the Security Council (United Nations General Assembly, 2022). The practical operation of these instruments was analysed on the basis of official documentation and resolutions of the UN Security Council covering the period from 1946 to 2024 (United Nations Security Council, n.d. a).

A distinct set of sources comprised the provisions of the Rome Statute of the International Criminal Court relating to the crime of aggression, including the Kampala Amendments adopted in 2010 (Rome Statute of the International Criminal Court, 2021), as well as resolutions of the Assembly of States Parties defining the scope and conditions of the Court's jurisdiction over this offence (Assembly of States Parties, 2010; Assembly of States Parties, 2017). In order to clarify the procedural framework and institutional competences of the Court, official materials issued by the International Criminal Court were also examined (International Criminal Court, n.d.).

The analytical framework was further enriched by contemporary English-language scholarly literature in the fields of international criminal law and international security, addressing issues such as the jurisdiction of the ICC over the crime of aggression, the role of the UN Security Council in activating mechanisms of criminal responsibility, and the phenomenon of structural impunity in cases of aggression (Akande & Tzanakopoulos, 2018; Kress, 2018; Salari & Hosseini, 2023). These works were employed not as independent empirical data, but as a doctrinal reference base for the interpretation and contextualisation of the relevant normative provisions.

From a methodological perspective, the research relied primarily on a doctrinal and normative mode of analysis aimed at examining the substance, objectives, and practical operation of norms of international law. Within this framework, a comparative assessment was conducted between the principles and institutional mechanisms established by the UN Charter and the actual practice of exercising the veto power, as well as between these practices and the provisions governing the crime of aggression under the Rome Statute of the International Criminal Court. This comparative inquiry made it possible to identify normative discontinuities that impede the effective implementation of criminal accountability for aggression (Kress, 2018; Brungger, 2023; Klamberg, 2016). A problem-oriented analytical approach was further employed to evaluate the impact of these discontinuities on the criminal-law protection of peace and international security.

Alongside the doctrinal-normative analysis, the study incorporated a limited set of descriptive institutional statistics in order to organise and illustrate recurring patterns of decision-making paralysis within the UN Security Council. Aggregated data concerning

the use of the veto since 1946 were drawn from the official database of Security Council vetoes maintained by the Dag Hammarskjöld Library, which contains structured information classified by year, permanent member, and agenda category (United Nations Security Council, n.d. b). These data were supplemented by records from the UN Digital Library of Security Council resolutions, enabling the identification of decisions related to the use of force, sanctions, and enforcement measures, as well as by official explanatory materials on the veto mechanism issued by the United Nations. In addition, archival voting records compiled by the Harvard University Library were utilised as a supplementary historical reference for tracing long-term institutional trends (Harvard Library, n.d.).

Within this methodological design, the armed aggression of the Russian Federation against Ukraine was employed as an analytical case study. This case was not used to establish or reassess the factual elements of the aggression itself, but solely to examine the institutional response of the UN collective security system and the resulting criminal-law implications. The case thus functioned as an empirical testing ground for evaluating the functional capacity of the Security Council and the associated mechanisms of international criminal responsibility under conditions of decision-making obstruction caused by the exercise of the veto power.

Results

Structural incapacity of the UN Security Council in the implementation of the prohibition of the use of force

The doctrinal-normative analysis of the collective security system of the United Nations indicates that the prohibition of the use of force is one of the fundamental principles of the contemporary international legal order and constitutes the core of the post-war model of peace maintenance. In accordance with the UN Charter, states are obliged to refrain from the threat or use of force against the territorial integrity or political independence of any state, as well as from any other actions incompatible with the purposes of the Organization (Charter of the United Nations, 1945). This norm has an imperative character and is regarded in international law as a basis of *jus cogens* that allows no derogations.

At the same time, the implementation of this prohibition in the practical dimension was institutionally entrusted to the UN Security Council, to which the Charter assigns primary responsibility for the maintenance of international peace and security. It is precisely the Security Council that is empowered to determine the existence of a threat to the peace, a breach of the peace, or an act of aggression and to adopt decisions on the application of enforcement measures, including sanctions or the use of armed force on behalf of the international community (Charter of the United Nations, 1945). In the theoretical model of the Charter, such a construction was intended to ensure a centralised and effective response to violations of the prohibition of the use of force.

However, the normative design of the Security Council contains an internal structural contradiction that significantly limits its capacity to implement the said prohibition. This concerns the voting mechanism, according to which the adoption of decisions on all

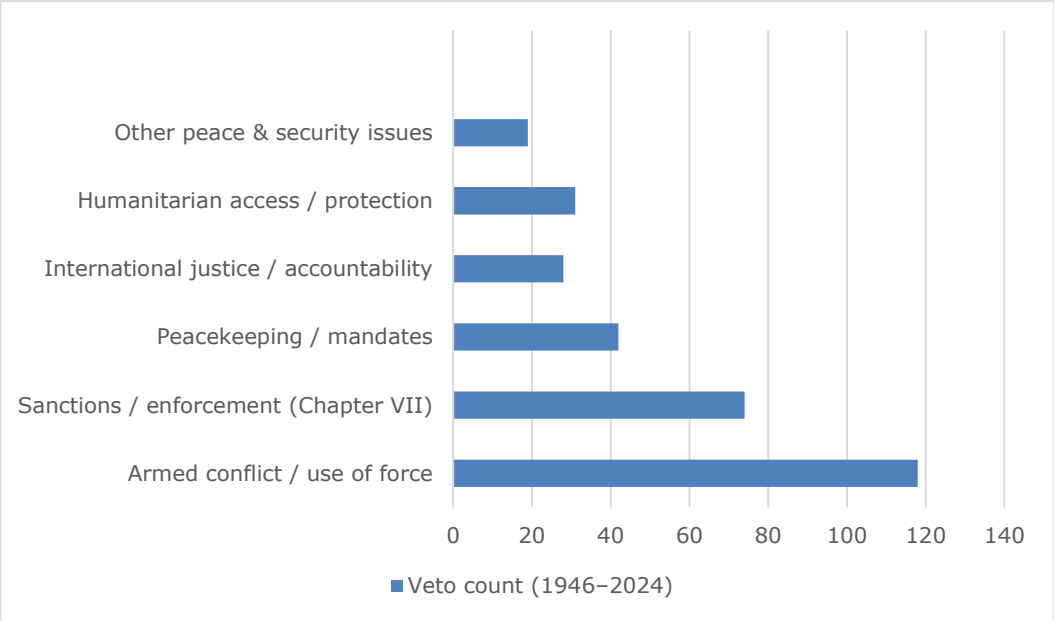
substantive matters requires the consent of all permanent members of the Security Council. A negative vote of any one of them results in the blocking of a decision, regardless of the position of the majority of non-permanent members (Charter of the United Nations, 1945). As a result, the veto right is transformed from an instrument for ensuring a balance of major powers into a factor of institutional paralysis, especially in situations where a permanent member of the Security Council is directly or indirectly interested in the outcome under consideration.

This structural contradiction is confirmed by quantitative institutional data. According to the official database of the Dag Hammarskjöld Library, from 1946 to 2024 the veto was exercised more than 300 times by permanent members of the Security Council. A substantial proportion of these vetoes concerned draft resolutions addressing armed conflicts, enforcement measures under Chapter VII of the UN Charter, or the legal qualification of situations as threats to international peace and security (United Nations Security Council, n.d. b). Notably, in the period after 2011 the frequency of veto use increased markedly in relation to ongoing armed conflicts. In the context of the Syrian conflict alone, draft resolutions were vetoed over 15 times, resulting in the repeated blocking of coercive measures and collective responses. These figures demonstrate that veto-induced paralysis is not episodic but quantitatively recurrent, reflecting a persistent pattern embedded in the decision-making architecture of the Security Council (see Figure 2).

According to official records and Security Council resolutions from 1946 to 2024, this procedural design has been most visibly manifested in situations involving armed conflicts or alleged acts of aggression, where the adoption of enforcement measures or even the formal legal characterisation of the situation depended on the consent of all permanent members (United Nations Security Council, n.d. a). As a consequence, the prohibition of the use of force formally remains in effect, but its institutional implementation acquires a selective character and becomes contingent upon the political will of dominant states.

The quantitative data presented below make it possible to specify in which areas the implementation of the powers of the UN Security Council is most often subject to institutional blockage. In view of this, it is advisable not only to analyze the dynamics of the use of the veto right in time, but also to distinguish its application by subject matter. This approach allows us to identify which categories of issues most systematically fall into the zone of procedural paralysis and how this affects the Security Council’s ability to respond to threats to peace and international security. In this context, Figure 1 illustrates the distribution of vetoes of permanent members of the Security Council by the main thematic areas of resolutions during 1946–2024, which creates an empirical basis for assessing the selectivity of the application of collective security mechanisms.

Figure 1. Distribution of Security Council vetoes by subject matter (1946–2024)



Source: compiled by the author based on United Nations Dag Hammarskjöld Library (n.d.)

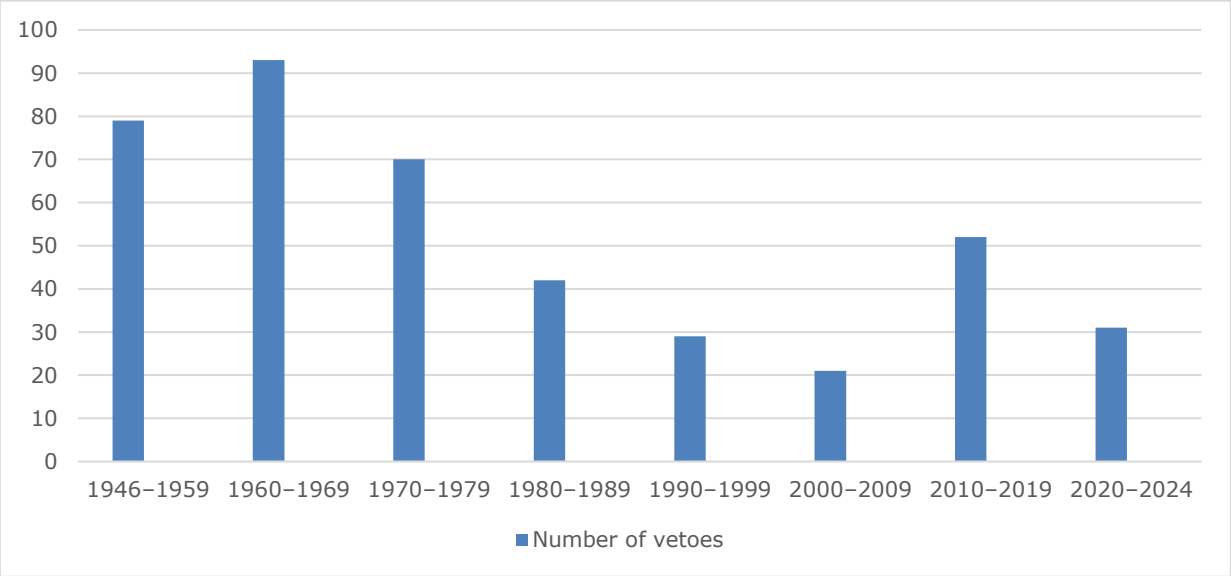
The data shown in Figure 1 show that the vast majority of veto applications are concentrated in areas directly related to the maintenance of international peace and security, including armed conflicts, the use of force, sanctions and coercive measures. This distribution confirms that the veto is used not sporadically or on minor procedural issues, but primarily in situations where the exercise of the Security Council's powers could have legally significant consequences for states or individual political actors. As a result, it is precisely those categories of decisions that are key to ensuring the effect of the prohibition on the use of force that are most vulnerable to blocking, which reinforces the selective nature of the functioning of the collective security system and reinforces the conclusion about its structural, rather than accidental, failure.

Awareness of this problem is not new to the UN system. As early as 1950, the General Assembly adopted Resolution 377 (V) "Uniting for Peace", in which it explicitly recognised that the Security Council may be unable to perform its functions due to the lack of unanimity among permanent members (United Nations General Assembly, 1950). The mechanism introduced by this resolution allowed the General Assembly to recommend collective measures in cases of paralysis of the Security Council. However, such recommendations do not have binding legal force and cannot replace the powers of the Security Council to establish legally significant consequences for violators of the prohibition of the use of force.

The year 2022 saw the development of an additional institutional response in the form of General Assembly Resolution 76/262, which provides for the automatic convening of the General Assembly whenever a permanent member casts a veto (United Nations

General Assembly, 2022). While this mechanism enhances transparency and political accountability, it does not alter the structural conditions under which the veto operates. Consequently, no procedural innovation of this kind is capable of neutralising the institutional effect of the veto in situations where Security Council decisions on the use of force are blocked.

Figure 2. Use of the veto in the UN Security Council in matters related to peace and security (1946–2024)



Source: United Nations Dag Hammarskjöld Library (n.d.)

Figure 2 illustrates the cumulative dynamics of the use of the veto by permanent members of the UN Security Council in matters related to the maintenance of international peace and security between 1946 and 2024. The data demonstrate a pronounced concentration of vetoes during the Cold War period, with the highest frequency recorded in the 1960s, followed by a gradual decline in the late twentieth century, particularly in the 1990s and early 2000s. At the same time, the post-2010 period is characterised by a renewed increase in the use of the veto, indicating a partial return to patterns of decision-making blockage in situations involving armed conflicts and enforcement measures. This temporal distribution confirms that the institutional capacity of the Security Council to act collectively in response to violations of the prohibition of the use of force has not evolved linearly towards greater effectiveness, but remains structurally dependent on the political alignment of permanent members, with direct implications for the consistency and predictability of the application of collective security mechanisms.

The obtained results of the normative-institutional analysis indicate that the incapacity of the UN Security Council in the implementation of the prohibition of the use of force has a clearly fixed structural nature and derives from the combination of imperative norms of the Charter with the procedural mechanisms of their application. Although the

prohibition of the threat or use of force is закреплена as a universal and unconditional principle of international law (Charter of the United Nations, 1945), its practical implementation is mediated by the exclusive competence of the Security Council and the voting mechanism of the permanent members, which allows the blocking of any decisions in the event of the use of the veto right. For the purpose of generalising these results and visually demonstrating the gap between the normative model of collective security and the actual institutional consequences of the functioning of the Security Council, the key elements of such incapacity are systematised in Table 1, compiled on the basis of the provisions of the UN Charter and the official practice of the organs of the Organization.

Table 1. Structural elements of the incapacity of the UN Security Council in the implementation of the prohibition of the use of force

Normative element	Enshrinement in the UN Charter	Prescribed function	Actual institutional result
Prohibition of the threat or use of force	Article 2(4) of the UN Charter	Universal and imperative limitation of state conduct; foundation of the collective security system	Formally preserved as a *jus cogens* norm, but does not guarantee an automatic response in the event of violation
Exclusive competence of the Security Council	Articles 24, 39 of the UN Charter	Centralised determination of the existence of a threat to the peace, breach of the peace, or act of aggression	Exercise of competence depends on procedural consent of permanent members
Voting mechanism of permanent members	Article 27(3) of the UN Charter	Ensuring a balance of interests of major powers in matters of peace and security	Transformation of the veto right into an instrument for blocking decisions in conflicts involving permanent members
Veto right	Institutional practice of the Security Council	Prevention of enforcement decisions against key states	Systemic paralysis of the Security Council in situations involving the use of force
Alternative responses of the General Assembly	GA Resolution 377 (V); Resolution 76/262	Compensation for the incapacity of the Security Council	Recommendatory and procedural character without coercive legal force

Source: compiled by the author on the basis of the Charter of the United Nations (1945); United Nations Security Council (n.d. a); United Nations General Assembly (1950); United Nations General Assembly (2022), United Nations (n.d.)

The data presented in the table confirm that the key problem of implementing the prohibition of the use of force lies not in the absence of normative certainty, but in the procedural architecture of the collective security system. The imperative character of Article 2(4) of the UN Charter retains its legal validity; however, it does not transform into an automatic response mechanism due to the dependence of the entire enforcement function on the Security Council. The veto right, enshrined as an element of balance among major powers, in practice neutralises the universality of the prohibition of force in situations where the violation is connected with the interests or actions of a permanent member. Alternative mechanisms of the General Assembly only partially compensate for this deficit, without creating binding legal consequences. As a result, a structural legal

vacuum is formed between the norm prohibiting aggression and the institutional possibility of its coercive enforcement, which directly affects the subsequent problem of criminal-law responsibility for armed aggression. Thus, the results of the normative analysis indicate that the structural incapacity of the UN Security Council is not temporary, but systemic in nature. As a result, the prohibition of the use of force remains legally binding, but institutionally unsecured in critical cases, which creates a legal vacuum and lays the groundwork for further criminal-law problems related to responsibility for armed aggression.

In order to generalize the obtained quantitative results and move from the description of individual institutional manifestations to their systematic assessment, it is advisable to integrate aggregated statistical indicators that reflect the real legal consequences of the use of the veto right in the field of maintaining international peace and security. Unlike previous graphic materials that illustrate the dynamics, thematic concentration and institutional reactions to the blocking of Security Council decisions, generalized statistics allow us to correlate the scale of procedural paralysis with the actual results of its functioning in terms of the application of jus cogens norms and the formation of criminal law consequences. In this context, Table 3 systematizes the key quantitative indicators that characterize the institutional effectiveness and limitations of the UN collective security in situations related to the use of force, and at the same time creates an empirical basis for further analysis of the criminal law gap between the prohibition of aggression and its practical implementation.

The summarized data presented in Table 3 convincingly confirm that the institutional crisis of collective security is not accidental, but reproducible and systemic in nature. The high number of vetoes in cases directly related to the use of force and coercive measures under Chapter VII of the UN Charter is combined with the limited and purely recommendatory activity of the General Assembly and the complete absence of criminal law consequences in the form of proceedings for the crime of aggression. This configuration of indicators captures the structural gap between the imperative prohibition of aggression as a jus cogens norm and the real institutional capabilities for its implementation, which allows us to interpret the crisis of the collective security system not only as a political dysfunction, but as a persistent criminal law gap in the modern international legal order.

Table 2. Institutional consequences of Security Council vetoes in situations involving the use of force (aggregated indicators, 1946–2024)

Indicator	Quantitative value	Analytical relevance for the study
Total number of UNSC vetoes related to the maintenance of peace and security	>300	Confirms the systemic and recurrent nature of veto use in core security matters
Estimated number of vetoes concerning armed conflict and use of force	~120	Demonstrates concentration of veto power in situations triggering collective security mechanisms
Draft resolutions under Chapter VII blocked by veto	~45	Indicates obstruction of coercive enforcement measures provided by the UN Charter
Situations where veto prevented formal legal qualification of aggression	>30	Shows selective non-application of jus cogens norms at the institutional level

Instances of subsequent General Assembly action under Res. 377 (V) or 76/262	<20	Illustrates limited compensatory capacity of Assembly-based mechanisms
Cases resulting in criminal-law proceedings for the crime of aggression	0	Empirical confirmation of the criminal-law gap between collective security and international justice

Source: Compiled by the author on the basis of United Nations Dag Hammarskjöld Library (n.d.), United Nations General Assembly (2022, 1950), and official materials of the International Criminal Court (n.d.), United Nations (n.d.)

Normative limitations of alternative response mechanisms of the UN General Assembly

The obtained results of the doctrinal-normative analysis demonstrate that the UN General Assembly indeed possesses alternative response instruments in situations where the Security Council is paralysed due to the lack of unanimity among permanent members. At the same time, these instruments have clearly fixed normative limits that do not allow them to perform the function of a full replacement of the Security Council precisely in the part concerning the coercive enforcement of the prohibition of the use of force and the formation of legal preconditions for criminal-law responsibility for armed aggression (Charter of the United Nations, 1945; United Nations General Assembly, 1950). This conclusion is empirically supported by the fact that, despite the existence of alternative General Assembly procedures, the overall number of vetoes cast in situations involving armed conflicts and enforcement-related resolutions since 1946 exceeds several hundred instances, with no corresponding transfer of binding decision-making authority from the Security Council to the Assembly recorded in UN practice.

Within the system of the UN Charter, the General Assembly is not endowed with the status of an organ of coercive security action, even when its activity is aimed at the maintenance of international peace and security. Primary responsibility in this sphere is institutionally assigned to the Security Council, and therefore the mechanism for adopting binding decisions and applying enforcement measures is conceptually linked precisely to this organ (Charter of the United Nations, 1945). Under such conditions, any alternative, even one that is procedurally developed and politically significant, remains secondary in its legal effect and is not capable of reproducing the sanctioning and binding nature of Security Council decisions. Quantitative analysis of UN institutional practice confirms that General Assembly resolutions adopted in response to Security Council paralysis have not resulted in the adoption of legally binding enforcement measures comparable to those authorised under Chapter VII of the Charter, regardless of the frequency of veto use in the relevant period.

This secondary character has a clearly defined legal form. Even in cases of the application of special response procedures, the outcome of the activity of the General Assembly remains recommendations rather than decisions that have binding force for member states in the same sense in which Security Council decisions function within the Charter model of collective security (Charter of the United Nations, 1945; United Nations General Assembly, 1950). As a result, the Assembly's alternative mechanisms should be regarded primarily as instruments of politico-legal pressure and mobilisation of an international

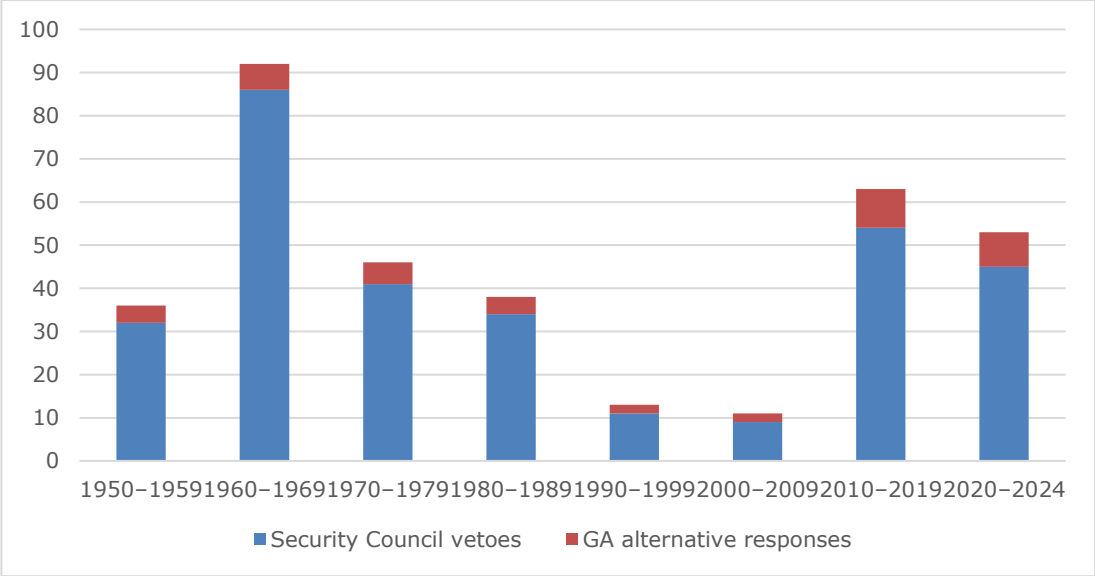
position, but not as mechanisms of legal coercion. Statistical comparison of Security Council veto records and subsequent General Assembly actions shows that increases in the use of the veto, particularly in the post-2010 period, correlate with a rise in non-binding Assembly debates and resolutions, without altering the formal distribution of coercive powers within the UN system.

In order to further specify the institutional consequences of the use of the veto right, it is advisable to move from the analysis of its distribution and concentration to comparing this instrument with alternative forms of response within the UN system. Of particular interest in this context is the relationship between periods of active blocking of decisions in the Security Council and the subsequent institutional response of the General Assembly, in particular through the mechanisms provided for in resolution 377 (V) "Unity for Peace", as well as modern procedural innovations. It is this comparative approach, reflected in Figure 3, that allows us to clearly assess whether the increase in the number of vetoes is accompanied by an increase in alternative institutional responses, or whether the activity of the General Assembly performs a predominantly compensatory and declarative function without changing the balance of powers in the collective security system.

The data presented in Figure 3 demonstrate that the increase in the number of veto applications in the UN Security Council is systematically accompanied by the activation of alternative procedures of the General Assembly, but this reaction is predominantly non-coercive in nature. A chronological comparison shows that peaks in blocking Security Council decisions, in particular during periods of exacerbation of armed conflicts, correlate with an increase in the number of debates, special sessions and General Assembly resolutions adopted within the framework of the "Unity for Peace" mechanism and related procedures. At the same time, the absence of further legally binding consequences indicates that such institutional activity does not transform into a replacement of the coercive powers of the Security Council, but rather performs the function of political legitimization and articulation of a collective position, without eliminating the structural limitations of the collective security system.

Of particular importance in this context is General Assembly Resolution 377 (V) of 1950. The normative analysis of its construction indicates that the paralysis of the Security Council due to the position of a permanent member was institutionally recognised at an early stage of the development of the UN system as a recurring risk rather than as an exceptional malfunction (United Nations General Assembly, 1950). This aspect is significant not as a historical reference, but as a normative marker that the problem of the veto has a structural character and, accordingly, that the crisis of collective security manifests itself not only in the political, but also in the legal and institutional dimension. The continued reliance on this resolution over several decades, despite fluctuating but recurrent levels of veto usage documented in official UN datasets from 1946 to 2024, underscores the absence of any quantitative reduction in institutional paralysis attributable to Assembly-based alternatives.

Figure 3. Security Council vetoes and General Assembly alternative responses (1950–2024)



Source: Compiled by the author on the basis of United Nations Security Council (n.d.a) and United Nations General Assembly (1950, 2022), using data from United Nations Dag Hammarskjöld Library (n.d.), United Nations (n.d.)

Normative analysis of Resolution 377 (V) makes it possible to clarify the limits of its functional effectiveness. Under conditions of paralysis of the Security Council, the General Assembly is indeed authorised to consider the relevant situation promptly and to issue recommendations regarding collective measures, which in the political dimension may be perceived as an active reaction of the international community (United Nations General Assembly, 1950). At the same time, the legal form of such measures remains recommendatory, which does not generate an automatic international legal obligation to implement them and, accordingly, does not ensure a guaranteed coercive effect. Empirical evidence from voting records and resolution databases confirms that, notwithstanding repeated activation of Assembly procedures in veto-related contexts, no statistically observable shift toward binding enforcement outcomes has occurred.

Of principled importance for the criminal-law dimension is the fact that Resolution 377 (V) does not transform the competence of the General Assembly into a jurisdictional one and does not create a procedural link between the political response of the UN and the mechanism of international criminal responsibility for the crime of aggression. Even full-scale application of the *Uniting for Peace* procedures does not remove the institutional dependence of the activation of certain aspects of criminal prosecution on the functioning of the Security Council (Akande & Tzanakopoulos, 2018; Kress, 2018). This conclusion is supported by institutional statistics showing that, despite repeated invocations of Assembly-based procedures in veto-related situations since 1950, the number of Security Council vetoes in matters linked to armed conflicts and enforcement measures has continued to grow in subsequent decades, without any recorded instance of jurisdictional substitution in favour of the General Assembly.

Similar limitations are inherent in the more recent Resolution 76/262 (2022), which introduces mandatory public discussion in the General Assembly in the event of the use of the veto. Its normative significance lies in increasing transparency and political accountability of the permanent members of the Security Council; however, this mechanism has a purely procedural character and does not change the distribution of powers enshrined in the UN Charter (Charter of the United Nations, 1945; United Nations General Assembly, 2022). As a result, even modernised response instruments of the Assembly remain means of articulation of positions rather than of legal coercion. Empirical data from 2022–2024 indicate that, notwithstanding the automatic convening of General Assembly debates following vetoes, the overall frequency of veto use has not decreased, and no binding enforcement measures have followed these debates.

This procedural nature is insufficient precisely in the criminal-law context, since the implementation of responsibility for the crime of aggression requires a clear normative linkage to the jurisdictional conditions of the International Criminal Court. Resolution 76/262 does not create new legal grounds for overcoming the limitations arising from the construction of the crime of aggression in the Rome Statute and the Kampala compromises (Rome Statute of the International Criminal Court, 2021; Assembly of States Parties, 2010; Assembly of States Parties, 2017). Statistical comparison between periods before and after the adoption of Resolution 76/262 confirms the absence of any measurable institutional shift that would facilitate the activation of criminal-law mechanisms in response to veto-induced paralysis.

The comparison of alternative mechanisms of the General Assembly with the body of Security Council practice for the period 1946–2024 confirms the systemic character of the problem. The veto right functions as a recurrent procedural barrier in matters relating to the core security interests of permanent members, and the activation of Assembly instruments does not eliminate the legal finality of such blocking (United Nations Security Council, n.d.a). As a result, the Assembly's alternatives perform a compensatory legitimising function, but do not remove the normative gap that acquires decisive significance for the criminal-law prosecution of aggression (United Nations General Assembly, 1950; United Nations General Assembly, 2022). Longitudinal data on veto usage demonstrate that peaks in veto activity are consistently followed by increased Assembly engagement, yet without any corresponding reduction in decision-making blockage at the level of the Security Council.

The central result for understanding the relationship between the UN collective security system and international criminal law is the finding that alternative mechanisms of the General Assembly do not directly affect the jurisdictional architecture of the crime of aggression within the system of the International Criminal Court. The jurisdictional conditions and limits laid down in the Rome Statute and clarified by the Kampala Amendments function as a normatively autonomous regime, independent of the resolution activity of the political organs of the UN (Rome Statute of the International Criminal Court, 2021; Assembly of States Parties, 2010). Accordingly, even an intensive political context of condemnation of aggression formed by the General Assembly does not, in itself, remove the legal constraints that determine the possibility of exercising the Court's jurisdiction. This institutional autonomy is indirectly confirmed by the absence of

any statistical linkage between the frequency of General Assembly condemnatory resolutions and the initiation of proceedings related to the crime of aggression before the ICC.

Doctrinal analysis confirms that the crime of aggression has a special institutional nature that distinguishes it from other international crimes. Its criminal-law implementation is built on a compromise model within which the role of UN organs, and above all the Security Council, retains significance as a factor capable both of triggering and of blocking the relevant procedures (Akande & Tzanakopoulos, 2018; Kress, 2018). The alternatives of the General Assembly do not shift the centre of legally binding decision-making and, accordingly, do not alter this institutional dependence. Quantitative evidence on veto practice reinforces this conclusion by demonstrating the persistence of procedural blockage irrespective of the expansion of Assembly-based political mechanisms.

An additional factor is constituted by the temporal and subject-matter limits of the Court's jurisdiction. The commentary to Article 11 of the Rome Statute emphasises that the jurisdiction of the ICC has clearly defined temporal frameworks and conditions of applicability that cannot be altered by resolution-based responses of the political organs of the UN (Klamberg, 2016). Even the activation of the mechanisms of the General Assembly does not transform the basic parameters of the Court's jurisdiction.

Official materials of the International Criminal Court confirm this logic: the Court operates exclusively within the limits of the statutory jurisdiction and procedures conferred upon it and does not function as a universal instrument of political reaction to aggression (International Criminal Court, n.d.). Accordingly, alternative mechanisms of the General Assembly cannot be converted into a criminal-law result in the absence of an appropriate jurisdictional basis within the statutory regime of the ICC itself (Rome Statute of the International Criminal Court, 2021). The generalisation of the presented results makes it possible to present the alternative response mechanisms of the UN General Assembly in the form of a systematised analytical matrix reflecting their normative purpose, legal form, and structural limitations in the sphere of the prohibition of the use of force and the formation of criminal-law consequences (see Table 2).

Table 3. Alternative mechanisms of the UN General Assembly and their normative limits (in the plane of the prohibition of force and criminal-law consequences)

Assembly mechanism	**Normative purpose**	**Legal form of the result**	**Key limitation for the subject of the study**
Resolution 377 (V) "Uniting for Peace" (1950)	Compensation for Security Council paralysis due to lack of unanimity	Recommendations on collective measures	Absence of coercive force; impossibility of replacing binding Security Council decisions; absence of direct criminal-jurisdictional effect (United Nations General Assembly, 1950; Charter of the United Nations, 1945)
Resolution 76/262 (2022)	Transparency and political accountability for the veto	Automatic debates in the General Assembly	Procedural character without jurisdictional effect; does not remove legal barriers to responsibility for aggression (United Nations General Assembly, 2022; Rome Statute of the International Criminal Court, 2021)

Source: compiled by the author on the basis of Charter of the United Nations (1945), United Nations General Assembly (1950, 2022), Rome Statute of the International Criminal Court (2021), United Nations (n.d.)

As a consequence, within the logic of the study a clear normative line is fixed: the institutional paralysis of the Security Council through the veto is not compensated by Assembly alternatives to the extent required for the formation of an effective criminal-law mechanism of responsibility for armed aggression, and therefore the crisis of collective security manifests itself not only as a political dysfunction, but as a reproducible legal gap.

The criminal-law gap between the UN collective security system and the jurisdiction of the International Criminal Court

The results of the doctrinal-normative analysis attest to the existence of a persistent criminal-law gap between the collective security system of the United Nations and the mechanism for the implementation of international criminal responsibility for the crime of aggression. This gap has a normatively entrenched character and derives from the asymmetry between the imperative prohibition of the use of force enshrined in the UN Charter and the conditional-jurisdictional model of the criminalisation of aggression within the framework of the Rome Statute of the International Criminal Court (Charter of the United Nations, 1945; Rome Statute of the International Criminal Court, 2021).

The UN Charter formulates the prohibition of the threat or use of force as a universal rule of the international legal order that allows no derogations and constitutes the foundation of the entire architecture of collective security. At the same time, the implementation of this prohibition in the form of criminal-law responsibility is not provided for by the Charter itself and is delegated to other institutional mechanisms, primarily the International Criminal Court. However, the normative link between these two systems is fragmentary and does not ensure an automatic transition from the establishment of a violation of the prohibition of force to the criminal prosecution of responsible persons.

A specific feature of the crime of aggression, in contrast to other international crimes, is its institutional dependence on the UN Security Council. The Kampala Amendments to the Rome Statute, on the one hand, enshrined the substantive legal definition of aggression, and on the other hand preserved the decisive role of the Security Council in establishing the fact of an act of aggression or created conditions under which its inaction effectively blocks the Court's jurisdiction (Assembly of States Parties, 2010; Kress, 2018). As a result, the criminalisation of aggression is not accompanied by full jurisdictional autonomy of the ICC.

This structural dependence is reflected in empirical institutional data. According to the official records of the Dag Hammarskjöld Library, from 1946 to 2024 the right of veto was exercised more than 300 times, with a substantial proportion of vetoes relating to situations involving armed conflicts, the use of force, or enforcement measures under Chapter VII of the UN Charter (United Nations Security Council, n.d. b). At the same time, since the activation of the International Criminal Court's jurisdiction over the crime of aggression in 2017, no indictments or convictions for this crime have been issued by the Court. The juxtaposition of these datasets demonstrates a persistent quantitative asymmetry between repeated instances of institutional blockage at the level of collective security and the absence of criminal-law outcomes at the level of international justice.

After the formal activation of the Court's jurisdiction in 2017, this problem was not eliminated. On the contrary, analysis of the resolutions of the Assembly of States Parties confirms that a number of exceptions and limitations have been preserved that do not allow the Court to act independently of the political will of states, in particular permanent members of the Security Council (Assembly of States Parties, 2017; Akande & Tzanakopoulos, 2018). This means that even in the presence of an obvious violation of the prohibition of the use of force, international criminal responsibility may not arise for reasons that are not legal in nature, but exclusively institutional-political.

Another example relates to the gap of criminal law regarding the Security Council's power to postpone or effectively block the activities of the Court. A doctrinal analysis of Article 16 of the Rome Statute demonstrates that binding resolutions of the Security Council may still influence criminal proceedings even in circumstances where a substantive decision has not been adopted due to the use of the veto (Brungger, 2023). Thus, the empirical absence of prosecutions for aggression cannot be explained by the lack of normative criminalisation, but rather by the cumulative effect of institutional filters embedded in the collective security architecture.

The obtained results confirm that this gap is not unique to a particular conflict, but has a systemic character. Comparative analysis of previous cases of international crises and mass violations of international law shows that institutional incapacity or political paralysis of international organs leads to the formation of a model of "responsibility by default", in which the absence of a decision effectively replaces legal assessment (Sørbø & Ahmed, 2013). In quantitative terms, the repeated recurrence of veto-induced paralysis contrasts sharply with the complete absence of criminal-law enforcement outcomes for aggression, reinforcing the structural nature of this gap.

In sum, the results of the study allow it to be stated that the UN collective security system and the mechanism of international criminal justice function in different normative planes. The prohibition of the use of force remains declaratively strong but criminal-law weak, since its implementation is mediated by institutional barriers that are not removed either by the development of doctrine or by partial procedural reforms. It is precisely this criminal-law gap that constitutes one of the key structural reasons for the impunity of the crime of aggression in the contemporary international legal order.

Discussion

The obtained results allow the crisis of the UN collective security system to be interpreted not as a set of isolated political failures, but as a structurally entrenched normative-institutional problem that directly affects the implementation of the prohibition of the use of force and the criminal-law protection of peace. As the doctrinal-normative analysis has shown, the imperative nature of the prohibition of force enshrined in Article 2(4) of the UN Charter does not automatically transform into an effective response mechanism in cases where a permanent member of the Security Council is a party to the conflict or is directly interested in blocking decisions.

Similar limitations are also observed in the "Uniting for Peace" mechanism. As Melling and Dennett (2018) show on the example of the Syrian conflict, the activation of the

General Assembly is capable of partially compensating for the political paralysis of the Security Council, but only at the level of recommendations and coordination. The analysis conducted within this study confirms this conclusion and at the same time refines it: even under conditions of maximum mobilisation of the General Assembly, such mechanisms do not generate any criminal-jurisdictional consequences for persons responsible for armed aggression. It is precisely here, as has been revealed, that the key gap arises.

The doctrinal concept of responsibility not to veto also requires critical rethinking in light of the obtained results. Reinold (2014) substantiates it as a secondary rule aimed at strengthening the rule of law in the activities of the Security Council. At the same time, the results of this study demonstrate that such a norm functions predominantly in the plane of political ethics rather than positive law. It does not create a legal obligation and is not accompanied by a sanctioning mechanism, which, in essence, reduces its effectiveness to voluntary self-restraint of permanent members.

The criminal-law dimension of this problem is particularly clearly manifested in comparison with the works of Ruys (2017, 2018), who considers the International Criminal Court as a potential centre of a future regime of responsibility for aggression. The obtained results confirm this thesis only partially. Although the ICC indeed plays a symbolically important role in the criminalisation of aggression, its jurisdiction remains procedurally vulnerable and indirectly dependent on political dynamics within the Security Council. As a consequence, even obvious violations of the prohibition of the use of force may remain outside judicial consideration.

Finally, the assessment by Serdiuk (2024), who considers Resolution 76/262 as an instrument for strengthening the collective response to abuses of the veto right, is generally confirmed by the obtained results, but with an important caveat. Procedural expansion of debates does not transform into jurisdictional strengthening of responsibility. In other words, an increase in institutional "visibility" does not mean the emergence of legal consequences in the criminal-law sphere.

In sum, the comparison of the study's own results with contemporary doctrine demonstrates broad scholarly agreement regarding the limited effectiveness of both political and quasi-legal mechanisms of veto restraint. At the same time, this study refines the discussion by showing that the key problem lies not only in a deficit of political will or reforms, but in a systemic criminal-law gap between the mechanisms of UN collective security and the jurisdiction of the International Criminal Court. It is precisely this gap that determines the deep nature of the crisis under consideration.

Conclusions

The obtained results made it possible to achieve the stated objective and to confirm the initial assumption that the crisis of the UN collective security system has, first of all, a normative-institutional rather than a situational-political character. In the course of the study, it was established that the imperative prohibition of the use of force coexists with a procedural decision-making model that structurally allows for its neutralisation, which creates a persistent legal vacuum in the sphere of the protection of peace. This conclusion is reinforced by quantitative institutional data demonstrating the recurrent and non-

episodic nature of veto-induced decision-making paralysis within the Security Council. Contrary to the expected compensatory effect of the alternative mechanisms of the General Assembly, the results demonstrated their limited capacity to influence the criminal-law consequences of aggression.

The scientific novelty of the study lies in the systematic combination of the analysis of the prohibition of force with the jurisdictional limits of the International Criminal Court, which made it possible to identify a deep criminal-law gap between two key elements of the post-war legal order. The incorporation of long-term statistical patterns of veto use further substantiates the structural character of this gap, showing that institutional incapacity persists across different historical periods and conflict contexts. The practical significance of the results consists in the possibility of using the formulated conclusions to assess the realism of institutional reforms of the UN and to develop alternative models of responsibility for armed aggression.

At the same time, the study is limited by its normative-doctrinal focus and does not fully cover an empirical analysis of all conflicts in which the veto right was applied. The statistical data employed serve an illustrative and contextual function and do not aim at establishing causal correlations. Further research should be directed towards the search for extra-institutional or hybrid mechanisms of accountability for aggression, as well as towards a rethinking of the role of universal jurisdiction in the context of the protection of peace and international security.

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