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НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

# **НАУКОВИЙ ВІСНИК**

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## Debt relief of debtors *de lege ferenda* and the protection of the creditor's property rights

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■ **Abstract.** The relevance of the research topic is in the need to develop new ideas on the possible development of insolvency law in the event of an unexpected and unforeseen serious commercial or financial crisis of a structural nature. The purpose of the presented text is to indicate the possible directions of changes in the specific and characteristic insolvency institution of “debt relief”. The text was prepared using mainly a formal-dogmatic research method as the study is a general reflection on debt relief of an insolvent debtor (bankrupt), not connected with any particular legal system. It is a well-known and popular institution in many insolvency legal systems worldwide. However, when it comes to the details of the regulation, there may be even serious differences. The problem of debt relief is considered in the context of the protection of property rights of creditors. The creditor’s claim is, after all, a component of his property. The study briefly discusses the arguments for the admissibility of debt relief in the context of the creditor’s property right. An important part of the study deals with the issue of collective (group) debt relief of many debtors at one time. In the event of structural crises or as a result of special disturbances (e.g. wars, natural disasters), individual debt relief procedures may be too heavy a burden for the judicial system, and thus insolvency courts (other organs), due to extraordinary situation may be ineffective. In the course of the study, attention was paid to some kind of redefinition of the insolvency debt relief structure. The practical value of the study is expressed in the possibility of its application in designing legal norms and establishing state policy in counteracting insolvency

■ **Keywords:** insolvency; bankruptcy; cancellation of liabilities; arrangement repayment plan; restructuring rule; household financial distress

### ■ Introduction

The significance of this study is already related to the theoretical and practical significance of debt institutions in today’s financial system. Thanks to different kinds of commercial loans, one can operate in business. The functioning of many households is founded on a consumer debt. The debt to which the study refers is therefore a common phenomenon. Further, the significance of this study is expressed in a new – more economical and simplified – approach to the restructuring of liabilities. When there is a structural disorder of the financial system, which is not a rare

phenomenon, structural insolvency occurs. Standard legal norms provided for in insolvency law are designed for normal, ordinary conditions, and not for pandemics, wars and other similar extraordinary events. They force thinking about the design of more effective forms of debt relief. However, on the other side of the debt relief relationship is the creditor. The legal system should take into account the debtor’s reasons and actual interests. Debt relief, in the circumstances of a structural debt, is one of the very important social functions of insolvency law. The

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construction of a debt relief should be designed in such a way that it is properly functional for society. This leads to the search for an effective model of debt relief *de lege ferenda*. The study proposes changes to the fundamental assumptions of the insolvency law.

The problem of the concept of changes to insolvency law in the event of a structural crisis that leads to mass insolvency proceedings of many debtors at the same time has hardly been studied in the scientific literature. This means that the hereby presented idea is fresh. Obviously, the profound academic discussion is needed. In the context of the COVID-19 pandemic, there was a discussion on simplifying and accelerating restructuring procedures; automating the restructuring procedure; applications of artificial intelligence. Nevertheless, these are issues that are just parallel to the problem discussed in this study. As the subject of this study is to present a new legal concept for academic discussion, the formal-dogmatic method is an adequate tool for presenting ideas about the possible shape of future legal norms. Nevertheless, it is worth mentioning a few studies that are relevant to this issue. A. Gurrea-Martínez (2022) generally deals with the COVID-19 crisis which has encouraged many countries to amend their insolvency laws (especially during the hibernation phase of the pandemic), both for a transitional period and on a permanent basis. The author of the article analyses the current trends, reforms and policy discussions, including hybrid procedures, which are expected to reshape the future of insolvency law in a post-pandemic world. S.F. Cherry *et al.* (2021) examine the post-pandemic debt crisis in the United States. The researchers identified social groups that are more likely to receive debt relief, established how debt relief functions in the US private and public sectors, and how debt relief correlated with the level of the pandemic (Volz *et al.*, 2020). R. Greenwood *et al.* (2020) suggest that there are two key issues in extraordinary circumstances: court congestion and excess liquidation and failure of small enterprises. R. Parry *et al.* (2017) review many aspects of various forward-looking solutions in the field of insolvency law.

Z. Roche (2021) researching the debt reform in Ireland in 2013. An attempt to ease the fate of debtors using the principles of neoliberal governance was made in Ireland in 2013, when the Insolvency Service (ISI) was established. The project provided for the possibility of debt relief for households based on the moral assessment of debtors. However, those who applied to the Service faced fierce opposition from their creditors. M. Kawai *et al.* (2013), discuss how financial crises in six Asian countries worked as catalysts for legal reforms. The authors state that reforms of economic laws alone cannot improve the quality of entire legal and judicial systems of countries and the crucial issue is the enforcement of substantive law by procedural law, the efficiency of the justice system, and other political and social factors.

The purpose of this study is to present a new concept of collective debt relief for many debtors at the same time, while respecting creditor's property rights.

In the implementation of this study, mainly the formal and dogmatic method was used. It is suitable for analysing the existing legal situation, as well as for drawing conclusions as to the need for future legal regulations (proposals *de lege ferenda*). An economic interpretation of the law was used as well. The presented considerations are based on the grounds of the legal culture of the European Union countries. It should be emphasized that European Union law has not completed the process of approximating the laws of individual countries in the field of insolvency law. However, seriously advanced work is currently underway on the so-called Bankruptcy Directive<sup>1,2,3</sup>, which will contribute to further harmonization of legislation in this field of insolvency law in the European Union countries.

### ■ The right to property and its limitation by coercion of the democratic state of law

The legal system in the democratic state of law should be based on a universal and correctly systematized foundation of values resulting from the achievements of civilization, selected – based on appropriately

<sup>1</sup> Directive EU No. 2019/1023 of the European Parliament and of the Council “On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and on Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)”.

<sup>2</sup> European Parliament Legislative Resolution No. P8\_TA(2019)0321 On the Proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures and Amending Directive 2012/30/EU (COM(2016)0723 — C8-0475/2016 — 2016/0359(COD)) P8\_TC1-COD(2016)0359 Position of the European Parliament Adopted at First Reading on 28 March 2019 with a View to the Adoption of Directive (EU) 2019/... of the European Parliament and of the Council on Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and on Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)”.

<sup>3</sup> Directive EU 2017/1132 of the European Parliament and of the Council of 14 June 2017 "On Relating to Certain Aspects of Company Law". (2017, June). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017L1132>.

important axiological justification – in the common interest of the addressees of legal norms. Sometimes the values classified as basic in certain areas may be contradictory to each other. The law should therefore establish the boundaries between these values in a balanced way. *Ius est ars boni et aequi*. Sometimes it can be a very difficult task.

In many legal systems, insolvency proceedings provide for the possibility of an individual cancelling unpaid liabilities of a debtor. Liabilities almost of all sorts and of any legal nature. Especially in the case of a debtor who is a natural person. Insolvency is a serious problem not only for entrepreneurs but also for “consumers” (households). With the progress of civilization, the explosion of the culture of mass consumption, as aftermath of financial crisis, wars, natural disaster financial debt has become a kind of social disease of the global common civilization. Presently, consumer bankruptcy is regulated by numerous laws around the world, as it is an important social phenomenon in the credit-based consumption model. At the same time, it is the subject of many theoretical dilemmas as to the premises of debt relief (Adler *et al.*, 2000; Foohey, 2019). The effects of debt relief are also controversial (Niemi-Kiesilainen, 1999; Mann & Porter, 2010).

Debt relief of a debtor (bankrupt) who is a natural person can take place using very different mechanisms. Debt relief of an insolvent debtor may take place by virtue of a final court decision/ruling (other authority) or by virtue of an arrangement concluded between the debtor (bankrupt) and at least a sufficient majority of his creditors, validly approved by the court (other authority). It should be remembered that the meaning of debt relief is usually built on the following assumption: the creditor has previously failed to obtain satisfaction from the debtor's assets, either voluntarily or using legal coercion of the democratic state of law. Debt relief is not a legal invention of modern times. Due to the serious risks of insolvency at that time (famine phenomena in the face of low levels of agriculture, epidemics, natural disasters, wars, etc.), debt relief covered entire social groups, and in some cases its cyclical character was predicted in advance (e.g. the Sabbath year, the jubilee year structurally based on the earlier Babylonian tradition (Hudson, 2018).

About the right of ownership and the legal protection thereof briefly as it is a basic and fundamental civil rule. The creditor is the owner of his claim: he may realize it (including set-off), may remain idle, may dispose of it or encumber it, may – with the debtor's consent – waive it or renew it (novation). Defining the essence of the right to property and its protection is one of the pillars of civil law in the democratic state of law. Ownership, as a rule, is the subject of strong protection:

- of the constitutional law in many countries;
- international law – global and regional (European) Conventions on Human Rights;
- national law. In the case of UE countries, it should be mentioned the strong protection of property in the UE law (Lach, 1999).

However, the ownership (property) protection is not absolute. *Relaxatio legis in casu particulari* is essential. In some situations, the owner's right to property may be limited to the realization of axiologically stronger values than the protection of the individual right to property. This opens up a legal possibility for debt relief for natural persons, in particular in those cases where the debtor's assets cashed in by the trustee in bankruptcy proceedings were not sufficient to fully cover all existing liabilities. In principle, there is a consensus that statutory debt relief (which is a type of state coercion) is sufficiently justified. It appears to be based on the following arguments: at the time of cancellation, the claim against the bankrupt is in principle economically worthless; the debtor fulfils (at least minimally) the criteria of payment morality; the claim has passed through the stage of compulsory recovery, which proved to be ineffective; debt relief “does not fall from the sky” but requires the debtor's involvement in appropriate proceedings, which performs preventive and educational functions as well as debt collection; debt relief is also carried out in the public interest; Insolvency – in the face of the construction of an economic system based on debt – is a common (mass) phenomenon. Finally, the principle of humanity speaks for debt relief. Long-standing dependence on creditors is a kind of modern economic slavery (LeBaron, 2020).

It should be argued that the creditor's right to property is one of the factors against the complete abolition of the census of the debtor's payment morality in order to allow debt relief. In addition, debt relief is usually preceded by the liquidation of the debtor's assets in bankruptcy proceedings and the implementation of a repayment plan (under certain rules, however, debt relief is possible even if there are no assets of the debtor suitable for liquidation and without establishing a repayment plan).

### ■ Debt relief *de lege lata*

Modern civilization is based on the economy of debt (Conti-Brown & Ohlrogge, 2022; Grigorian *et al.*, 2023). Societies adhere to the principle of consumerism (Adamus, 2020). Very low economic education does not prepare many people for rational management of their own expenses. Insolvency – which is the root cause of debt relief – has become a common problem in modern society. Insolvency can affect almost anyone in modern free-market states. It is not reserved only for the so-called social margins or people inheriting generational poverty. The

technological revolution associated with artificial intelligence may trigger delabourization, which will probably affect even more office-workers than physical workers. This is due to the essence of this phenomenon: it is to be replaced by human intelligence, not human work. The phenomenon of insolvency, and consequently the cancellation of liabilities of debtors who are natural persons, is a global problem. The problem of debt relief for individuals is currently emerging as a legal phenomenon even in those countries (China) where a very strong cultural code is to pay off one's own (including inherited) liabilities regardless of the circumstances (Yin, 2022).

What is very important in the context of constitutional protection of property rights, debt relief is made not only in the individual interest of the debtor but also in the general interest of society. The social benefits of debt restructuring are evidenced, in particular, by the macroeconomic impact of debt relief in the United States as a result of the Great Recession (Auclert *et al.*, 2019). The legitimacy of debt relief of a particular debtor goes beyond the legal relationship in question. It is therefore not considered only on a microscale. Thanks to debt relief, most often the debtor gets out of the gray zone, usually starts working again, paying taxes, social and health insurance contributions, there is a chance that he will cease to be a social burden for the state. Permanent insolvency usually deactivates the debtor professionally. It is the cause of depression and other mental disorders (Sweet, 2020; Amit *et al.*, 2020). The structural indebtedness of the population is a common, contemporary social phenomenon.

There is no doubt that debt relief of a natural person by a bankruptcy court is not a model way of cancelling the debtor's liability (Adamus, 2019). The main way of extinguishing an obligation is its performance by the debtor. The bankruptcy laws introduce a significant change in relation to the general principles. Pursuant to the decision of the bankruptcy court, the liabilities of the bankrupt natural person are written off, regardless of the source of their creation. Debt relief is *a lex specialis* both in relation to the provisions of civil law and the provisions of the tax law on the manner of performing the obligation.

The root cause of debt relief is the debtor's insolvency, i.e. a state of affairs for which the debtor is responsible himself, or which is the result of objective circumstances. Nevertheless, insolvency is a risk for the debtor. As a rule, the creditor is not responsible for the reason for the bankrupt's debt. However, as already mentioned, behind debt relief is not only the selfish interest of one person (the debtor) but also the wider general interest of society.

Cancellation of liabilities is compulsory, independent of the will or even knowledge of the creditor whose claims are remutant. What is more, debt

relief may also take place against the firm will of the creditor. Court debt relief may take place even if all creditors are against it. Creditors' instruments for counteracting debt relief from their debtor are very weak. In principle, if the statutory conditions for debt relief are met, the creditor will not effectively block the cancellation of the bankrupt's liabilities.

On the one hand, debt relief takes place without any formal compensation to the creditor, whose property rights are reduced. This is not a remission for "just" (or even any) compensation. On the other hand, in the event of the debtor's insolvency, an economic analysis of the law shows that it is not possible to use the denomination of the claim, but its market value calculated according to the potential possibility of satisfaction. After the liquidation of the bankrupt's assets and execution of the repayment plan, the market value of such a claim will basically be close to zero. From an economic point of view, the cancellation of claims against the bankrupt cannot be reduced to a common denominator with the case of expropriation of valuable real estate for public purposes.

However, the debtor is liable for his obligations with all his assets: present and future. As for the debtor's future assets, the creditor is not given the opportunity to obtain satisfaction even if after the final debt relief (and especially very shortly after) the financial situation of the former bankrupt improves significantly. The legislator did not introduce, as in the rebus *sic stantibus clause*, a substantive legal principle of the debtor's return to repayment – at least to the extent corresponding to the principles of social coexistence – in the event of an extraordinary and beneficial change in the property relations of the former bankrupt. Legislators usually do not provide for a procedural measure allowing for an extraordinary revocation of the court's decision on the cancellation of liabilities. In fact, in many legal systems, debt relief takes place regardless of the degree to which the creditor obtains satisfaction in the course of bankruptcy proceedings and regardless of the nominal amount of claims to be written off.

Debt relief is decided by the judiciary, regardless of the position of the creditors (in the case of debt relief by composition, the decision is "dispersed": the consent of the relevant majority of creditors and the approval of the arrangement by the court are needed). The creditor, in exchange for the cancellation of his claims by virtue of a decision of the bankruptcy court, does not receive any equivalent from the State Treasury (for example, in the form of a tax credit in income tax spread over years, etc.).

### ■ **Collective debt relief of many debtors *de lege ferenda***

Recently (2020-2023), there have been some kind of cases of collective debt reduction (restructuring),

and at least the effects of these regulations (from the period of the COVID-19 pandemic) have not lost their importance, if only because of the current constitutional doubts as to the solutions adopted at that time. As of 23 July 2021, Article 15 p. 1 of the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them<sup>1</sup>, and certain other acts, was in force, which introduced new solutions for tenants of premises in shopping malls. At the same time, as part of the amendment to the above-mentioned Act, Article 15 of the Act was repealed. The new regulation introduces the following solution with respect to lease, or other similar agreements concluded before 14 March 2020, which concern the commissioning of retail space in facilities over 2000 m<sup>2</sup>. Well, during the period of the ban on conducting business activity in the above-mentioned facilities, the amount of the benefit for the use of commercial space is reduced to 20% of the amount of the benefit. On the other hand, within three months from the date of lifting the ban, the amount of the benefit for the use of retail space is reduced to 50%. Retail space is defined as any area located in a commercial facility with a sales area of more than 2000 m<sup>2</sup>, regardless of the purpose for which the space is put into use, including in particular the sale of goods, provision of services and catering. With the entry into force of Article 15 p. 1, the original solutions introduced for tenants under the “Crisis Shield” have been repealed. Thus, as of 23 July 2021, the solution<sup>2</sup> according to which, during the period of the ban on conducting business in commercial facilities, the mutual obligations of the parties to a lease or other similar agreement expire if, within three months from the date of lifting the ban on conducting business, the tenant made an offer to the landlord to extend the validity of the agreement on the existing terms for the period of the prohibition on conducting business, extended for a further six months.

A doubt has arisen to what extent the state can interfere in the distribution of economic burdens within private relations, in the form of various legal regulations. The first example is the construction of statutory “credit holidays”. The restrictions introduced in connection with the COVID-19 pandemic

in conducting business activity and performing paid work have in many cases resulted in a reduction in the income of individual households (IEG, 2021). As a result, the real possibility of settling credit liabilities has decreased, especially for people who have lost their jobs or their source of income. In response to the situation, banks in Poland have introduced to their offer the possibility of suspending the repayment of loan instalments in connection with the COVID-19 pandemic, i.e. the so-called non-statutory credit holidays. On 2 April 2020, the EBA (European Banking Authority, hereinafter: EBA) published the “Guidelines on legislative and non-legislative moratoria on loan repayments applied in the face of the COVID-19 crisis” (EBA, 2020) indicating the criteria to be met by moratoriums that have been or will be granted by banks before 30 June 2020 which may result in long-term problems and, ultimately, insolvency in the long run. The moratoriums granted should also not be classified as *forbearance* or difficult restructuring. The purpose of the so-called non-statutory credit holidays (moratoria) should be to address short-term liquidity difficulties caused by the limited or suspended activities of many companies and individuals due to the COVID-19 epidemic. In a press release of 1 June 2020, the Polish Bank Association announced that work has been completed on the “Position of banks on the unification of the rules for offering assistance tools to banking sector customers” (ZPB, 2020), which is in force for aid instruments granted from 13 March 2020 to 30 September 2020. On 24 June 2020, the Act of 19 June 2020 on subsidies to interest rates on bank loans granted to entrepreneurs affected by COVID-19 and on the simplified procedure for approval of the arrangement in connection with the occurrence of COVID-19<sup>3</sup>, the so-called Anti-Crisis Shield 4.0, entered into force., which introduced rules governing the granting of so-called credit holidays for consumers (“statutory credit holidays”).

Second example – the regulation regarding the legal situation of tenants of premises, travel agencies. An example is the Act of the Sejm of the Republic of Poland, Dz.U. 2020 poz. 374<sup>4</sup>. Article 12(1) of the Act provides that in the event of withdrawal or termination of a contract for travel services in connection

<sup>1</sup> Act of the Sejm of the Republic of Poland No. Dz.U. 2020 poz. 374 “Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them”. (2020, March). Retrieved from <https://faolex.fao.org/docs/pdf/pol198652.pdf>.

<sup>2</sup> Act of the Sejm of the Republic of Poland No. Dz.U. 2021 poz. 1505 “On the Amending the Power Market Act and Certain other Acts”. (2021, July). Retrieved from <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001505/T/D20211505L.pdf>.

<sup>3</sup> Act of the Sejm of the Republic of Poland No. Dz.U. 2020 poz. 1086 “Act of 19 June 2020 on Subsidies to Interest Rates on Bank Loans Granted to Entrepreneurs Affected by COVID-19 and on the Simplified Procedure for Approval of the Arrangement in Connection with the Occurrence of COVID-19”. (2020, June). Retrieved from <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU2020001086/T/D20201086L.pdf>.

<sup>4</sup> Act of the Sejm of the Republic of Poland No. Dz.U. 2020 poz. 374 “Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them”. (2020, March). Retrieved from <https://faolex.fao.org/docs/pdf/pol198652.pdf>.

with the SARS-CoV-2 virus epidemic, both by the traveller and by the tour operator, the tourist entrepreneur is entitled to a refund of funds transferred to the Tourist Guarantee Fund. Apart from the case of the COVID-19 pandemic, statutory attempts to settle the debt of borrowers who incurred liabilities in foreign currency should be mentioned (Mišćenic, 2020). Collective debt reduction (restructuring) is already occurring today, but it requires theoretical and legal systematization, a clear ordering of axiological issues. Probably, collective debt relief could be a very useful tool in countries destroyed by wars.

In a rapidly changing world, it is worth pointing out some trends for the future. There is a very lively discussion in the literature on this matter. The impact of COVID-19 on legislation has been studied by A. Gurrea-Martínez (2022). A significant number of works are devoted to the impact of financial crises on legislation (Black, 2010; Manavald, 2010). The containment of financial crisis as a category of legal and political choices is considered by A. Gelpner (2009). Among more recent studies on this topic, it is worth mentioning the work of E.A. Prosner (2017). The impact of general civilizational progress on legislation also attracts the attention of researchers (Zywicki, 2003; Zywicki, 2015; Gurrea-Martínez, 2020).

It is worth considering the possible directions of development of debt relief. As of 2023, there is – which is an objective observation upon daily economic and political news – a significant accumulation of many factors that point to the possibility of major global financial crises. 1. A huge increase in the debt of states, entrepreneurs, households, accompanied by a serious increase in money printing (Ayhan Kose *et al.*, 2021). 2. Progressive social stratification and massive impoverishment of societies, as a result of which widespread debt may appear (Hoffman *et al.*, 2020; Bringel & Pleyers, 2022). 3. Geopolitical unrest and supply chain disruptions (Qin *et al.*, 2023). 4. The threat of delabouration, the disappearance of some professions due to the use of artificial intelligence (Rozum *et al.*, 2020). 5. Unfavourable demographic structure for the economy (Matysiak *et al.*, 2020). 6. numerous bank failures (Jones & Sims, 2023; European Central Bank, n.d.).

Experience to the present date has shown that during a severe financial crisis, general insolvency assumptions are reassessed and overvalued. (e.g. the obligation to file for bankruptcy is suspended, faster and simpler restructuring procedures are needed, etc.). Due to anticipated, potential cyclical or unforeseen financial (economic) crises, there is a very strong need to prepare legal concepts in advance in order to counteract the effects of such a potential crisis in a systemic and orderly manner. In the event of a structural crisis, the legal and economic situation of many debtors is very similar. In such situations,

conducting thousands of individual debt relief proceedings is inefficient, time-consuming, and expensive. Massive debt relief (restructuring) can be crucial for groups of debtors with a similar situation. Collective debt relief (restructuring) will inherently be more effective than conducting many individual proceedings against debtors.

The current model of bankruptcy proceedings is based on a scheme: one debtor and many creditors. In special situations, legislators allow for a model of conduct: one debtor, one creditor (consumer bankruptcy case). The existing solution is very time-consuming and costly for the justice system. The need for the following discharge of debt (restructuring) principle should therefore be considered: “many debtors and one or more creditors at a time”. However, the proposal presented here does not intend to replace the fundamental principle of “one debtor – many creditors”. The intention is only to supplement it. The axiology of collective (cumulative), and therefore simplified, debt cancellation and restructuring (both in the dimension of general axiology and axiological of detailed solutions) in the context of property rights is of fundamental importance.

The conditions for individual bankruptcy or restructuring require an individualized and in-depth examination of the debtor’s financial situation by the court or other authority. However, in the case of proceedings involving several debtors, very objective premises must be introduced. In such collective proceedings, a careful and in-depth examination of the general situation of debtors should be excluded. In individual proceedings concerning a single debtor, this may be “insolvency” and “threat of insolvency”. In collective proceedings, this should be “the existence of a specific/specific obligation”, “a certain level of income”, etc. The rationale for multi-debtor collective procedures should be very easy to use.

Another issue should relate to the clarification of the collective capacity of specific debtors. It would be necessary to describe entities covered by collective debt relief and the method of their identification (e.g. borrowers with some minimum debt, mortgage borrowers, educational borrowers, the unemployed, pensioners, people in a specific age group, people with a specific profile – education, people who lost property as a result of war, natural disasters, war veterans, etc.). The concept of changes should present the legal aspects of the potential scope of claims for debt relief/restructuring (public law, private law claims). It should be clarified which claims should be excluded from debt relief (restructuring). It is possible to cover only one type of debt with a massive debt write-off (restructuring).

As a rule, individual debt relief (restructuring) is complex because it takes into account the individualized situation of the individual debtor. It would be

different in the case of mass debt write-off (restructuring). The concept of changes should clarify the issue of total or only partial discharge of debts (restructuring) of many debtors. Sometimes it would be justified to omit an examination of the individual situation of debtors. It is possible to cancel all delayed unpaid property taxes for victims of floods, earthquakes, regardless of their personal financial situation. It is possible to set income limits for debt relief, etc.

The procedure for mass discharge of debts of many debtors (debt restructuring) is a key issue. It should be clarified how to conduct a massive discharge of debt (restructuring) procedure. Indicate how to confirm the results of the bail-in. There are many theoretical possibilities. The analysis of collective discharge proceedings/restructuring could include: (a) debt relief (restructuring) acting automatically by operation of law, (2) discharge of debt (restructuring) through collective judicial proceedings, (3) collective administrative proceedings, (4) a “mixed” manner. It should be remembered that the party to court and administrative proceedings should always be individually identified. Dealing with multiple participants is more prone to protracted procedures. However, the solution to this dilemma does not have to be complicated. The assumption of massive debt reduction (restructuring) should be formulated very generally. A special law should specify the conditions for mass debt write-off, the procedure, and the consequences. In administrative or judicial proceedings, the authority powers may be limited to confirming that the person concerned is subject to the regulation in question. Proceedings may be collective in nature involving multiple debtors and, once an objection has been lodged in a timely manner by a specific creditor or creditors (representing a certain amount of claim), may develop into individual debtor proceedings.

The concept of changes should take into account, in particular, respect for creditor’s property rights (erroneous regulation may bring the risk of compensation for creditors from the State Treasury). Many post-covid cases have shown very serious constitutional doubts about the arbitrary influence of the legislator on private relations (this applies to the previously given example of shopping malls and rent). The concept of change should offer a clear solution in this regard. Deprivation of the creditor’s rights should be duly justified.

The impact of insolvency prediction (including through artificial intelligence) on the use of collective restructuring and debt reduction solutions should be taken into account. The concept of changes should present possible general solutions *de lege ferenda* in the case of: a state of natural disaster, pandemic, state of emergency, war (so-called emergency situations). Several possible “alternative” methods should

also be considered: shortening limitation periods, limiting the time spent on enforcement proceedings, massive use of artificial intelligence in cases of individual debtors, etc. An alternative method is to prepare a quick procedure in simple cases. Sometimes the debtor has no assets. It is possible to prepare a standard list of questions for the debtor regarding the causes of insolvency. Based on the data provided (earnings, liabilities), thanks to the use of artificial intelligence, it would be possible to automatically generate an individual repayment and debt relief plan. In the absence of opposition from the debtor or creditors, a debt repayment and discharge plan could enter into force. The design of the changes should clearly define the relationship between “collective” and “individual” debt relief/restructuring. It would be possible (a) to conduct multiple “collective discharge procedures” against the same debtor, and b) to conduct a single “collective discharge of debt” procedure against the same debtor. The concept of changes should take into account the issue of the seasonality of legal regulations for debt relief (restructuring) of many debtors. The concept of changes should answer whether the debt relief mechanism (restructuring) of many debtors should be mandatory (automatic) or voluntary.

The institution of mass debt relief (restructuring) of many debtors may supplement the possibilities resulting from individual “individual” procedures. In crisis situations (structural or concerning only selected groups of debtors), speed of action is important. The proposed proposal is innovative and requires discussion. Nevertheless, the civil procedure, which is insolvency proceedings before the court, is quite flexible. In the event of such a specific social need – in particular, if debt relief could not be carried out by way of direct statutory regulation – the presented concept could possibly be implemented. the advantage of debt relief through court proceedings, even involving many debtors, is a better guarantee of protection of the creditor’s property right. In such a case, the court examines whether the debt relief is justified. the creditor may use the means of appeal, he may use in principle *audiatur et altera pars*.

The discussion on the presented content can be divided into several stages. The first stage should answer whether it is possible, and if so, what is the sense of implementing the recommended idea. A balance of benefits should be drawn up. In the second stage, it would be necessary to consider where the boundary should be drawn between the principle of legal automaticity and the action of the competent authority. The subject of discussion should be the formulation of the conditions for debt relief. The issue of subjective and objective limitations of debt relief needs to be considered. The discussion should also concern the legal nature of the regulation: whether

it should be *ex ante* regulation or *ex post* regulation. Another important issue for discussion should be whether this should be a separate proceeding from mainstream debt relief.

## ■ Conclusions

Every legal system is constructed for the “normal”, “typical”, “common” use of its institutions. However, in a situation where a procedure and the operation of an institution are necessary for the implementation of certain legal norms, a serious crisis situation may paralyse the justice system. Meanwhile, in the event of a cross-border situation, a very efficient operation of the justice system is needed. The correlate of the forced discharge of the obligation in favour of the debtor is the loss of title by the creditor. The deactivation of a significant proportion of citizens due to their insolvency is a real burden on society. Therefore, it is necessary to arrange in an appropriate order the relations between: the interest of the bankrupt, the interest of the creditor involved, the interest of the bankrupt, the interest of other creditors, the interest of society.

On the one hand, it would be difficult to overestimate the importance of the constitutional right to obtain – in justified (and exceptional) circumstances –

a discharge of debts (restructuring) for balancing the constitutional principle of protection of creditor’s property rights. However, sustainable collective debt relief (like individual debt relief) might be introduced regardless of any constitutional rights designed for debtors. On the other hand, the first big problem is with the legal justification of the existence of such a constitutional right. The second big problem is with the proper definition of debtor’s constitutional rights. Besides, if collective debt relief is just an exception to the general rule of property protection, it should always be limited to strongly justified situations.

This study introduced a new idea of the universal nature of. It therefore requires factual and profound criticism. It should not be forgotten that there are alternatives to it: by simplifying the system as much as possible, e.g. by entrusting certain competences to artificial intelligence. The possibility of applying technological innovations to solve the problem raised in this study requires further research.

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## ■ Conflict of Interest

None.

## ■ References

- [1] Adamus, R. (2020). *Debt relief in consumer bankruptcy and consumer arrangement*. Warsaw: Wydawnictwo Wolters Kluwer.
- [2] Adamus, R. (2019). Importance of payment morality in the Polish bankruptcy law. *Journal of Business Law and Ethics*, 7(1-2), 9-15. doi: 10.15640/jble.v7n1.2a2.
- [3] Adler, B., Polak, B., & Schwartz, A. (2020). Regulating consumer bankruptcy: A theoretical inquiry. *Journal of Legal Studies*, 29(2), 585-613. doi: 10.1086/468086.
- [4] Amit, N., Ismail, R., Zumrah, A.R., Mohd Nizah, M.A., Tengku Muda, T.E.A., Tat Meng, E.C., Ibrahim, N., & Che Din, N. (2020). Relationship between debt and depression, anxiety, stress, or suicide ideation in Asia: A systematic review. *Frontiers in Psychology*, 11, article number 1336. doi: 10.3389/fpsyg.2020.01336.
- [5] Auclert, A., Dobbie, W.S., & Pinkham, P.G. (2019). Macroeconomic effects of debt relief: Consumer bankruptcy protections in the Great Recession. *National Bureau of Economic Research Working Paper*, article number 25685. doi: 10.3386/w25685.
- [6] Ayhan Kose, M., Nagle, P., Ohnsorge, F., & Sugawara, N. (2021). *Global waves of debt: Causes and consequences*. Washington: The World Bank.
- [7] Black, J. (2010). *Managing the financial crisis – the constitutional dimension LSE law, society and economy*. London: School of economics and political science law department.
- [8] Bringel, B., & Pleyers, G. (2022). Introduction: A global dialogue on the pandemic. In *Social Movements and Politics During COVID-19* (pp. 1-14). Bristol: Bristol University Press. doi: 10.51952/9781529217254.int001.
- [9] Conti-Brown, P., & Ohlrogge, M. (2022). *Financial crises and legislation*. *Journal of Financial Crisis*, 4(3), 1-59.
- [10] EBA. (2020). *Guidelines on legislative and non-legislative moratoria on loan repayments applied in the face of the COVID-19 crisis*. Retrieved from <https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-legislative-and-non-legislative-moratoria-loan-repayments-applied-light-covid-19-crisis>.
- [11] European Central Bank. (n.d.). *Publications on Bank failure*. Retrieved from [https://www.ecb.europa.eu/home/search/html/bank\\_failure.en.html](https://www.ecb.europa.eu/home/search/html/bank_failure.en.html).
- [12] Foohey, P. (2019). *A new deal for debtors: Providing procedural justice in in consumer bankruptcy*. *Boston College Law Review*, 60(8), 2298-2345.
- [13] Gelpert, A. (2009). *Financial crisis containment*. *Connecticut Law Review*, 41(4), 1051-1106.

- [14] Greenwood, R., Iverson, B., & Thesma, D. (2020). [Sizing up corporate restructuring in the COVID crisis](#). In *COVID-19 and the economy: Part two* (pp. 391-432). Baltimore: The Johns Hopkins University Press.
- [15] Grigorian, A., Hainová, D., & Barbova, B. (2023). The past, present and future of the rescue and restructuring guidelines for undertakings in difficulty. *State Aid & Public Procurement in the European Union*. Retrieved from [https://www.maastrichtuniversity.nl/sites/default/files/2023-03/the\\_past-present\\_and\\_future\\_of\\_the\\_rescue\\_and\\_restructuring\\_guidelines\\_for\\_undertakings\\_in\\_difficulty.pdf](https://www.maastrichtuniversity.nl/sites/default/files/2023-03/the_past-present_and_future_of_the_rescue_and_restructuring_guidelines_for_undertakings_in_difficulty.pdf).
- [16] Gurrea-Martínez, A. (2020). [The future of reorganization procedures in the era of pre-insolvency law](#). *European Business Organization Law Review*, 21(4), 829-854.
- [17] Gurrea-Martínez, A. (2022). The future of insolvency law in a post-pandemic world. *International Insolvency Review*, 31(3), 385-402. doi: 10.1002/iir.1468.
- [18] Hoffmann, F., Lee, D.S., & Limieux, T. (2020). Growing income inequality in the United States and other advanced economies. *Journal of Economic Perspectives*, 34(4), 52-78. doi: 10.1257/jep.34.4.52.
- [19] Hudson, M. (2018). [... and forgive them their debts: Lending, foreclosure and redemption – from bronze age finance to the jubilee year](#). Glashütte: ISLET-Verlag.
- [20] IEG. (2021). *Evaluation of the World Bank Group's Early Response in Addressing the Economic Implications of COVID-19*. Retrieved from <https://documents1.worldbank.org/curated/en/995141636130549384/pdf/Evaluation-of-the-World-Bank-Group-s-early-response-in-addressing-the-economic-implications-of-COVID-19-Approach-Paper.pdf>.
- [21] Jones, H., & Sims, T. (2023). *EU stress test shows three banks falling short*. Retrieved from <https://www.reuters.com/markets/europe/eu-stress-test-shows-three-banks-falling-below-capital-requirements-2023-07-28/>.
- [22] Kawai, M., & Schmiegelow, H. (2013). [Financial crisis as a catalyst of legal reforms: The case of Asia](#). Tokyo: Asian Development Bank Institute.
- [23] Lach, I. (1999). European aspects of property law. In C. Mik (Ed.), *The 1997 Constitution of the Republic of Poland and Poland's membership of the European Union*. Torun: TNOiK.
- [24] LeBaron, G. (2020). [Combating modern slavery: Why labour governance is failing and what we can do about it](#). Cambridge: Polity Press.
- [25] Manavald, P. (2010). [Economic Crisis and the effectiveness of insolvency regulation](#). *Juridica International*, 17, 207-216.
- [26] Mann, R.J., & Porter, K. (2010). [Saving up for bankruptcy](#). *The Georgetown Law Journal*, 98(2), 289-339.
- [27] Matysiak, A., Sobotka, T., & Vignoli, D. (2020). The Great Recession and fertility in Europe: A sub-national analysis. *European Journal of Population*, 37, 29-64. doi: 10.1007/s10680-020-09556-y.
- [28] Mišćenic, E. (2020). [Currency clauses in chf credit agreements: A „Small wheel” in the „Swiss loans” mechanism](#). *Journal of European Consumer and Market Law*, 9(6), 226-235.
- [29] Niemi-Kiesilainen, J. (1999). [Consumer Bankruptcy in Comparison: Do we cure a market failure or a social problem](#). *Osgoode Hall Law Journal*, 37(1-2), 473-503.
- [30] Parry, R., & Paul, J.O. (Eds.). (2015). [International insolvency law: Future perspectives](#). Nottingham-Paris: INSOL Europe.
- [31] Prosner, E.A. (2017). [What legal authority does the fed need during a financial crisis?](#) *University of Chicago Law School Chicago Unbound*, 101(4), 1529-1578.
- [32] Qin, M., Su, C.-W., Umar, M., Lobont, O.-R., & Manta, A.G. (2023). Are climate and geopolitics the challenges to sustainable development? *Novel Evidence from the Global Supply Chain, Economic Analysis and Policy*, 77, 748-763. doi: 10.1016/j.eap.2023.01.002.
- [33] Roche, Z. (2022). Life after debt: The governmentalities of debt relief. *Irish Journal of Sociology*, 30(1), 48-68. doi: 10.1177/07916035211053257.
- [34] Rozum, D., Grazhevskaja, N., & Virchenko, V. (2020). Structural change in labor market influenced by artificial intelligence: Theoretical and empirical analysis. In *2020 10th international conference on advanced computer information technologies (ACIT)* (pp. 563-566). Deggendorf: IEEE. doi: 10.1109/ACIT49673.2020.9208838.
- [35] Cherry, F.S., Jiang, E.X., Matvos, G., Piskorski, T., & Seru, A. (2021). [Government and private household debt relief during COVID-19](#). *National Bureau OF Economic Research Working Paper*, 2, 141-221.
- [36] Sweet, E. (2020). Debt-related financial hardship and health. *Health Education & Behavior*, 48(6), 885-891. doi: 10.1177/1090198120976352.
- [37] Volz, U., Akhtar, S., Gallagher, K.P., Griffith-Jones, S., Haas, J., & Kraemer, M. (2020). [Debt relief for a green and inclusive recovery: A proposal](#). Berlin, London, Boston: Heinrich-Böll-Stiftung, SOAS, University of London, Boston University.

- [38] Yin, H. (2022). Practice approaches and future trends in the personal bankruptcy system in China. *International Insolvency Review*, 31(3), 474-493. doi: [10.1002/iir.1471](https://doi.org/10.1002/iir.1471).
- [39] ZPB. (2020). *Position of banks on the unification of the rules for offering assistance tools to banking sector customers*. Retrieved from <https://bsglogow.pl/stanowiska-bankow-w-zakresie-ujednoczenia-zasad-oferowania-narzedzi-pomocowych-dla-klientow-sektora-bankowego>.
- [40] Zywicki, T.J. (2003). [The past, present, and future of bankruptcy law in America](#). *Michigan Law Review*, 106(3), 2016-2036.
- [41] Zywicki, T.J. (2015). The rule of law during times of economics crisis. *George Mason University Legal Studies Research Paper Series*. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2651893](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2651893).

## Списання боргів боржників *de lege ferenda* і захист майнових прав кредиторів

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■ **Анотація.** Актуальність теми дослідження полягає в необхідності окреслення напрямів можливого розвитку законодавства про неплатоспроможність у разі несподіваної та непередбачуваної серйозної комерційної або фінансової кризи структурного характеру. Метою публікації є визначення шляхів удосконалення такого специфічного інституту неплатоспроможності, як списання боргів. Для цього використано формально-догматичний метод дослідження, оскільки публікація є загальним роздумом про списання боргів неплатоспроможного боржника (банкрута) без зв'язку з конкретною правовою системою. Це доволі поширений інститут з питань неплатоспроможності в різних правових системах, однак аспекти безпосереднього регулювання можуть істотно різнитися. Проблему списання боргів розглянуто в контексті захисту майнових прав кредиторів, оскільки вимога кредитора є складовою його майна. У дослідженні наведено аргументи на користь допустимості списання заборгованості в контексті права власності кредитора. Також проаналізовано питання колективного (групового) списання боргів значної кількості боржників одночасно. У випадку структурних криз або внаслідок особливих потрясінь (війни, стихійних лих) індивідуальні процедури звільнення від боргів можуть бути занадто важким тягарем для судової системи, а отже, суди (та інші органи) у справах про неплатоспроможність у зв'язку з екстраординарністю ситуації будуть неефективними. Загалом у межах статті переосмислено структуру списання боргів у справах про неплатоспроможність. Практична цінність дослідження полягає в можливості його застосування під час розроблення правових норм і формування державної політики у сфері протидії неплатоспроможності

■ **Ключові слова:** неплатоспроможність; банкрутство; анулювання зобов'язань; план погашення; правило реструктуризації; фінансові складнощі домогосподарств

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## Development of international legal standards in the field of economic and social human rights: Historical and legal analysis in the context of scientific discussion in the journal “Human Rights Quarterly”

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■ **Abstract.** The relevance of the study is conditioned by the lack of scientific consensus on the legal content and possible ways to implement social and economic human rights and the intensification of discussions around them in scientific and public discourse. The purpose of the study is a historical and legal analysis of the process of development of international legal standards in the field of economic and social human rights, options for their rationing in the text of international treaties that were developed based on the results of discussions in the late 1940s-early 1950s. The study involved archival materials of meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, which was based on the use of a set of methods of qualitative and quantitative analysis, synthesis, and a comparative legal method. The conducted research gave grounds to come to several reasoned conclusions. On the one hand, the analysis of individual papers and fairly broad scientific discussions helped to identify several main conceptual approaches to understanding the processes of developing and consolidating the most important legal norms that are aimed at regulating the sphere of economic and social human rights at the international level. On the other hand, based on a study of the protocols of meetings of both the Third Committee of the UN General Assembly and the Commission on Human Rights, it was established that the process of developing and adopting framework international covenants, which aimed to consolidate fundamental, legally binding norms of law, went through different stages and covered different conceptual approaches of participants in this process. Given the analysis of modern studies on the subject matter, the prerequisites

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and components of the process of development of international legal standards in the field of economic and social human rights which regulate it to this day were identified. The findings are of value primarily for other scientific developments devoted to the field of human rights, but they can also be applied in the process of law-making in accordance with the field of law

■ **Keywords:** Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; UN Commission on Human Rights

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## ■ Introduction

One of the ways to overcome the negative trends in ensuring human rights that emerged in the middle of the 20<sup>th</sup> century and are essential for the development of this sphere, as of 2023, was the consolidated position of the international community to establish and develop common international legal standards in the field of human rights. Solving the problem of ensuring human rights and freedoms has ceased to be a matter of legal regulation of a domestic nature, but has acquired all the signs of legal globalisation in the form of doctrines, standards and norms of international law. From the very beginning of the process of fixing in international law all the basic norms that are designed to ensure human rights and freedoms, the problem of establishing the individual as a subject of international law also arises. Given that the subject of international law is mainly interstate relations, the creators of the first international legal acts faced a difficult problem of adequately resolving this situation. The theoretical justification for solving this problem in the preparation of the first international laws and regulations in the field of human rights was the application of the principles of unity, indivisibility, and interdependence of rights. It was around both the interpretation and application of this principle that the main debate was held during the preparation and adoption of the main international covenants in the field of human rights. This aspect of the problem has become one of the main components of considering the topic of this study.

According to P. Rabinovych (2021), in the 21<sup>st</sup> century, approaches to the legal understanding of fundamental human rights are being reconsidered, new definitions are being introduced, the approach to determining the classification of rights standards is changing, and the range of interpretation of terminological concepts is significantly expanding. In particular, the understanding of international legal concepts of human rights regulation is developing. A good example is the approach by A. Nakonechna (2018), which considers the international law on rights in the context of the concept of “human needs”, building a certain structure and classification of them in accordance with the content and provisions of fundamental international human rights instruments. There is a process of modification of the more applied component aimed at certain aspects of

the application of human rights. Thus, in modern realities, changes in both legislation and law enforcement in relation to the rights of people with disabilities are being updated, which is demonstrated by N. Aliabieva & L. Kerymov (2022). In the context of understanding changes in approaches to social and economic rights, it is necessary to mention the paper by K.G. Young (2019), which has both predictive and summarising features. Considering the current state and trends in the development of the social and economic sphere of human rights, the researcher offers a rather original view of the needs and opportunities for changes in this area.

A characteristic feature of the social and political reality of the 20<sup>th</sup>-21<sup>st</sup> centuries is the constant confrontation between the interests of the individual and society, society and the state, the state and the individual. This issue has been vividly discussed in the scientific literature and the academic and journalistic press for more than fifty years. The range of views and investigations is extremely wide. S. DeGooyer *et al.* (2018) emphasise the variability of interpretation of human rights concepts and the “right to have rights” (by Hannah Arendt), which provides a basis for reflection. This feature makes the problem of human rights and freedoms as universal legal values one of the most important in the development of legal theory and practice. However, along with this understanding, a position is increasingly emerging that calls into question the prospects for human rights development. The basis for many reflections in this area is the views associated with an individualistic approach to understanding society and social relations, as noted by K. Lipartito (2020). B. Golder (2021) substantiates the position that today there is an increasingly clear shift away from the absolutisation of human rights as a universal panacea for all social ills and a gradual turn towards a critical perception of how these rights are exercised.

Given the relevance of the study of the problems of ensuring human rights and ways to implement theoretical provisions in practice, it is necessary to conduct a historical and legal analysis of the process of development of international law in the field of economic and social human rights, the content of which in the 21<sup>st</sup> century cause intense debate among researchers and public figures. The purpose of the

study is to investigate the process of development of the main legal norms that form the foundation of international legal standards in the field of economic and social human rights in the light of modern scientific discussions on this topic.

## ■ Materials and Methods

In the process of studying this problem, the authors relied on a system of methods of scientific cognition. The preparation of the paper was based on general scientific research methods. Thus, the use of the method of qualitative and quantitative analysis allowed not only to work out an extensive source base of materials from meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, but also to form an understanding of trends in considering various aspects of the problem at different stages of preparation of International Covenant on Economic, Social and Cultural Rights. Classification and comparison methods were used in the same aspect. The synthesis was used to form a holistic view of the evolution of the positions of different parties to the discussion of norms and principles that should be the basis of the International Covenant on Economic, Social and Cultural Rights. An important role in the establishment of the empirical base of the study was played by the dialectical method, which isolated the place of economic and social human rights in the process of forming the regulatory framework for the protection of human rights.

Formal legal and comparative legal methods played an important role in the study. Their application helped to distinguish and clarify in international legal documents the concept that all types of human rights have equal value and are inextricably linked in the context of their mutual implementation. In this regard, it is worth paying attention to the wide application of the method of historiographic analysis, which allowed, on the one hand, to establish the historiographic base of the study, and on the other – to classify and generalise scientific approaches to the problem under consideration. Here it is worth noting that the scientific discourse has a rather multi-industry character and therefore the analysis of the array of scientific papers needed some systematisation, since literary reviews on this issue are presented in historiography extremely limited.

To achieve the goals of the study, the work was based on the analysis of the documentary database of meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, which is presented in the United Nations Digital Library. The Proceedings of the meetings of the Third Committee and the Commission on Human Rights for 1948-1951 were considered. In order to clarify

certain aspects of the study, the authors turned to separate protocols for other years. When analysing the documents, the main attention was paid to identifying and studying the conceptual approaches of individual countries to the formation of the provisions of the International Covenant on Economic, Social and Cultural Rights. An important component was the analysis of the parties' discussions on the structure and content of the Covenant. The generally recognised classification of international acts, which are the main form of consolidating these standards and norms, is the definition of acts of a universal nature, acts of a special nature, and acts of a regional nature. According to the foundations of international cooperation, the provisions of these acts are directly or indirectly consolidated in national legal systems, which has become the subject of the study of many researchers, for example, C. Jung *et al.* (2014) or J. Koo & F.O. Ramirez (2009). Considering the specific weight of these materials during the preparation of the study, most of the information that was the basis of the work was obtained by the authors during the analysis of the minutes of meetings of the Third Committee of the UN General Assembly, although not all documentary sources could be presented within one paper.

## ■ Results

The search for answers to the global challenges of our time somehow leads to the need to develop a common policy of the world's states to create legal bases for regulating various spheres of international life. The main platform for finding such solutions was and still is the United Nations. From the very beginning of its existence, one of the main activities of the UN has been to ensure the full range of human rights declared in its Charter. Thus, Article 1, paragraph 3 of the Charter states: "To co-operate internationally in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion"<sup>1</sup>. It is necessary to pay attention to the fact that the Charter devotes a separate Chapter IX (Articles 55-60) to issues of international economic and social cooperation, and Chapter X (Articles 61-72) is devoted to such a structural division of the United Nations as the Economic and Social Council. Thus, even a cursory glance at the fundamental documents of the United Nations indicates the share of economic and social issues in its activities in general, and the problem of respect for human rights in these areas.

Considering the process of consolidating fundamental human rights in fundamental international legal instruments, N.B. Sedaca & K. Kennedy (2019)

<sup>1</sup> United Nations Charter. (1945, October). Retrieved from <https://www.un.org/en/about-us/un-charter/chapter-1>.

substantiate the origins and development of both the documents themselves and the genesis of the basic norms that make up their internal essence. This refers to the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights. However, the process of forming legal doctrines and standards that were supposed to form the basis of international legal acts in the field of human rights has passed quite a long and difficult path.

In 1946, the UN Human Rights Commission was established (in 2006 it was reorganised into the UN Human Rights Council). In 1976, as provided for in Article 28 of the Covenant on Civil and Political Rights<sup>1</sup>, the Human Rights Committee was established to monitor states parties' compliance with the provisions of the Covenant. Compliance with the provisions of the Covenant on Economic, Social and Cultural Rights<sup>2</sup> is monitored by the Committee on Economic, Social and Cultural Rights, established by the UN Economic and Social Council in 1985. There are several other UN committees in this area, in particular the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, etc.

The international community's awareness of the objective need to ensure the protection of all spheres of human life was embodied in the development and adoption of the Universal Declaration of Human Rights in 1948<sup>3</sup>. It is a well-known fact that in this document, economic, social and cultural human rights occupy a smaller part (specifically Articles 22 to 27) and have a fairly generalised wording. It is also known that the Commission on Human Rights, when forming the legal framework for ensuring human rights, proceeded from the idea that the general provisions set out in the declaration should be detailed in legally binding forms and consolidated in a number of relevant international treaties, as indicated by E. Tistoune (2020).

However, the process of developing a common position and formalising it in legal documents was much more complex than is commonly assumed. From the very beginning, both the Commission on Human Rights itself and all the other organisations

involved in the development of these fundamental legal acts did not have a clear conceptual vision of their structure and content. At the fifth session of the Commission on Human Rights, held in 1949, adopted a resolution by 12 votes to 3 abstentions and no votes against, that the entire range of human rights, i.e., civil, political, economic, social, and cultural, should be included in one international legal instrument<sup>4</sup>. However, already at its sixth session in 1950, the Commission, as a result of a complex debate, by 13 votes to 2, recognised the feasibility of creating two documents – one on the consolidation of civil and political rights, the other on economic, social and cultural rights<sup>5</sup>.

Understanding the fundamental nature of the problem of the structure of international legal acts in the field of human rights, its discussion was put on the agenda of the Third Committee of the UN General Assembly during the fifth session of 1950. In contrast to the decision of the Commission on Human Rights, the Third Committee, by a majority vote, recommended that the General Assembly include civil, political, economic, social, and cultural human rights in one International Covenant, which was implemented in General Assembly resolution 421 (V). This decision was motivated by the interpretation of all these types of human rights as interrelated and interdependent. Resolution 421 (V) explicitly stated that civil and political rights on the one hand and economic and social rights on the other were directly interrelated and mutually conditioned, and depriving a person of economic or social rights would directly contradict the provisions of the Universal Declaration of Human Rights. That is why the resolution identified the need to include economic, social and cultural rights in the Covenant on Human Rights<sup>6</sup>. Overall, resolution 421 (V) was adopted by 38 votes to 7, with 12 abstentions. Section E of the resolution, which referred to the unification of all these types of human rights in one covenant, was adopted by 35 votes to 9, with 7 abstentions<sup>7</sup>.

Thus, at that time, the General Assembly had clearly defined its position on understanding the indissolubility and interdependence of different types of human rights, which required their unification in

<sup>1</sup> International Covenant on Civil and Political Rights. (1966, December). Retrieved from <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

<sup>2</sup> International Covenant on Economic, Social and Cultural Rights. (1966, December). Retrieved from <https://www.ohchr.org/sites/default/files/cescr.pdf>.

<sup>3</sup> Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

<sup>4</sup> Report of the 5th Session of the Commission on Human Rights, UN docs. E/1371 (E/CN.4/350). (1949, June). Retrieved from <https://digitallibrary.un.org/record/574157>.

<sup>5</sup> Report of the 6th Session of the Commission on Human Rights, UN docs. E/1681 (E/CN.4/504). (1950, March-May). Retrieved from <https://digitallibrary.un.org/record/575150?ln=en>.

<sup>6</sup> Resolutions and Decisions Adopted by the General Assembly During its 5th session, Supplement No. 20, UN docs. A/1775. (1950, September-December). Retrieved from [https://undocs.org/en/A/1775%20\(Supp\)](https://undocs.org/en/A/1775%20(Supp)).

<sup>7</sup> 317<sup>th</sup> Plenary Meeting of the General Assembly UNA(01)/R3. (1950, December). Retrieved from <https://digitallibrary.un.org/record/737947>.

one legal document. However, given the lack of unanimity in the adoption of this decision, the General Assembly, by the same Resolution 421 (V)<sup>1</sup>, instructed the Economic and Social Council to conduct an expert assessment of the feasibility of combining all types of human rights into one international covenant. The consideration of the issue resulted in Economic and Social Council Resolution 349 (XII)<sup>2</sup>, which recommended that the Commission on Human Rights proceed with the preparation of a single international treaty that would include all types of human rights.

The decisions set out in General Assembly Resolution 421 (V) and Economic and Social Council Resolution 349 (XII) not only failed to resolve the issue of the format of the future covenant, but also stimulated further escalation of the confrontation. It is worth highlighting two key problems that led to the radical division of the participating countries into irreconcilable antagonists. The main problem remained the discussion of the expediency of combining political, civil, economic, social, and cultural rights in one document, or dividing them into two international treaties.

The reverse side of the main problem was the need to solve ways to implement all types of human rights, without which the consideration of the problem lost its meaning. The solution of this issue directly depended on the different nature of these types of rights. The implementation of political and civil rights was fundamentally possible at that time through the implementation of legally binding norms in the main legislative acts. But the nature of economic, social and cultural rights required not only the ratification of international treaties, but also the creation of a special mechanism for the implementation of this category of rights by making a large number of agreed corrections and additions in various branches of the national legislation of the participating countries.

It is worth considering the aggravation of the ideological confrontation in the world at this time, due to the active deployment of the Cold War, which objectively complicated the process of finding compromise solutions. The Cold War between the Soviet and Western military-political blocs significantly polarised the world and brought the rivalry between them to the level of a priori rejection of virtually any

initiatives expressed by the opposite side. This was clearly reflected in the participation of Western democratic countries on the one hand and the USSR and its satellites on the other in the discussions on the development and adoption of such fateful documents as human rights covenants. During 1950-1951, the Commission on Human Rights, the Economic and Social Council, and the Third Committee of the UN General Assembly launched a heated debate on the format for consolidating the entire range of human rights in international legal acts. In fact, a new round of confrontation began at the seventh session of the Commission on Human Rights, which is quite well traced in its official reports<sup>3</sup>.

A number of countries have expressed categorical objections to the preparation of two international treaties, considering the separation of different types of human rights artificial and contrary to the principle of interdependence and indivisibility of rights, consolidated in the Universal Declaration of Human Rights<sup>4</sup>. In this context, examples can be given by the representative of Chile, whose argument was based on the generally accepted postulate that it is impossible to oppose one type of right to another<sup>5</sup>. The need to observe the internal interdependence of various types of rights from the standpoint of ensuring their full implementation was considered a fundamental point, which the Soviet delegation especially insisted on<sup>6</sup>. In this aspect, special attention should be paid to the fact that, as a rule, the existence of infringement of political or civil rights was accompanied by the impossibility of full implementation of economic, social and cultural rights. This thesis is also supported by contemporary researchers. J. Donnelly & D.J. Whelan (2020) note that the violation of economic, social and cultural rights is often a manifestation of the inability to fully implement political and civil rights.

Supporters of the concept of one treaty directly accused countries such as the United States, Great Britain, Canada and France of defending their own narrow national interests, which was manifested by their desire to divide one pact into two. A striking example was the speech of the representative of Poland at the meeting of the Third Committee during the fifth session of the General Assembly in 1950. His statement referred to a veiled attempt by these states

<sup>1</sup> Resolutions and Decisions Adopted by the General Assembly During its 5th session, Supplement No. 20, UN docs. A/1775. (1950, September-December). Retrieved from [https://undocs.org/en/A/1775%20\(Supp\)](https://undocs.org/en/A/1775%20(Supp)).

<sup>2</sup> Draft International Covenants on Human Rights and Measures of Implementation: Future Work of the Commission on Human Rights No. E/RES/349(XII). (1951, February). Retrieved from <https://digitallibrary.un.org/record/212702?ln=ru>.

<sup>3</sup> Report of the 7<sup>th</sup> Session of the Commission on Human Rights, UN docs. E/1992 (E/CN.4/640). (1951, May). Retrieved from <https://digitallibrary.un.org/record/579458>.

<sup>4</sup> Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

<sup>5</sup> 5<sup>th</sup> Session of the General Assembly, 3<sup>rd</sup> Committee, 297<sup>th</sup> Meeting, UN docs. A/C.3/SR.297. (1950, October). Retrieved from <https://digitallibrary.un.org/record/816738>.

<sup>6</sup> *Ibidem*, 1950.

through the actual rejection of the principle of interdependence and indivisibility of rights to reduce the importance of economic and social rights and delay the process of ratification of regulations<sup>1</sup>.

However, no less weighty were the arguments of supporters of the idea of dividing the process of securing political, civil, economic, social and cultural rights into two treaties. The discussion papers on this issue at the meetings of the Third Committee during the fifth session of the General Assembly clearly show the position of states that supported the two separate covenants. Undoubtedly, the leaders in this group were the United States of America and the United Kingdom, but they were joined by other countries, such as the Netherlands and Canada<sup>2</sup>.

The debate on the preparation of human rights covenants began with renewed vigour at the sixth session of the General Assembly. The Soviet Union and its allies focused mainly on criticising the position of countries that supported the adoption of two international treaties, focusing on the political component of the problem. The speech of the representative of the Ukrainian SSR can be considered indicative in this context. Presenting in fact the position of the USSR, he noted that attempts to conclude two pacts are nothing more than “a reason for evading any obligations in the economic and social spheres”<sup>3</sup>.

Their opponents took a consolidated position based on a clear scheme of argumentation. Here two fundamental theses were defined, which formed the basis for the theoretical justification of the need to prepare and adopt certain international legal acts in the field of human rights. The starting point of the argument was the statement of the artificial nature of the thesis about the violation of the internal interdependence of different types of rights and the opposition of some types of rights to another. From the standpoint of proponents of this concept, the essential problem has already arisen at the level of definition of concepts. On the one hand, economic, social, and cultural rights, due to their rather specific nature, were more difficult to define than political and civil rights. On the other hand, the rationale for the adoption of the two covenants was based on the thesis that it is necessary to distinguish between the concepts of unity of rights themselves and uniformity

in ensuring their implementation. In the context of this argument, it was also emphasised that it is necessary to consider the existence of essential differences between the very concept of the unity of human rights in principle and their differentiation in practical application. The speeches of representatives of New Zealand and Lebanon were notable<sup>4</sup>.

A separate problem that made it inappropriate to adopt a single covenant was the impossibility of defining and applying at least more or less uniform mechanisms for the implementation of various types of rights. The source of this problem is objectively two interrelated positions. Firstly, as noted above, different types of rights had certainly different mechanisms for their practical implementation. This fact was often emphasised by representatives of those countries that insisted on the preparation and adoption of two international acts in the field of human rights<sup>5,6</sup>. This problem remains relevant to this day. In particular, L.Garcia-Martín (2022), M. Freeman (2022) and A.F. Bayefsky (2021) focused on finding new ways to implement economic and social human rights both through the adoption of new international legal acts and the transformation of national mechanisms for their implementation. Secondly, the fundamental problem in finding mechanisms for the implementation of economic, social and cultural rights was the huge gap in the level of development and the economic situation of different countries of the world. This made it almost illusory to hope to find at least more or less uniform ways to implement different types of human rights. This was very aptly stated by the representative of Liberia in his speech at the meeting of the Third Committee during the sixth session of the General Assembly<sup>7</sup>.

Thus, the process of developing and adopting the first international legal acts that established the main standards in the field of human rights turned out to be very difficult, multifaceted and, one might say, multi-layered in its development. The analysis of the documentary base presented in the archives of the Third Committee of the UN General Assembly and the Commission on Human Rights showed that the discussions clearly identified two groups of antagonistic countries that had conceptually different approaches to understanding the principles of

<sup>1</sup> 5<sup>th</sup> Session of the General Assembly, 3<sup>rd</sup> Committee, 297<sup>th</sup> Meeting, UN docs. A/C.3/SR.297. (1950, October). Retrieved from <https://digitallibrary.un.org/record/816738>.

<sup>2</sup> *Ibidem*, 1950.

<sup>3</sup> 6<sup>th</sup> session of the General Assembly, 3<sup>rd</sup> Committee, 394<sup>th</sup> meeting, UN docs. A/C.3/SR.394. (1952, January). Retrieved from <https://digitallibrary.un.org/record/738869?ln=en>.

<sup>4</sup> *Ibidem*, 1952.

<sup>5</sup> 6<sup>th</sup> session of the General Assembly, 3<sup>rd</sup> Committee, 360<sup>th</sup> meeting, UN docs. A/C.3/SR.360. (1951, December). Retrieved from <https://digitallibrary.un.org/record/738839?ln=en>.

<sup>6</sup> 6<sup>th</sup> session of the General Assembly, 3<sup>rd</sup> Committee, 362<sup>nd</sup> meeting, UN docs. A/C.3/SR.362. (1951, December). Retrieved from <https://digitallibrary.un.org/record/732501?ln=en>.

<sup>7</sup> 6<sup>th</sup> session of the General Assembly, 3<sup>rd</sup> Committee, 366<sup>th</sup> meeting, UN docs. A/C.3/SR.366. (1951, December). Retrieved from <https://digitallibrary.un.org/record/732503?ln=en>.

concluding international treaties to consolidate human rights. Using the same legal basis, the opponents had a rather different interpretation of the fundamental principles and norms, which was primarily manifested in the example of discussing the application of the principle of interdependence and indivisibility of rights, and various aspects of opportunities in the implementation of these types of rights. The discussions that began on the sidelines of the United Nations in the middle of the 20<sup>th</sup> century have their echoes in the 21<sup>st</sup> century in modern scientific discourse.

## ■ Discussion

The scientific community has developed a large number of studies on this topic. It is advisable to focus on certain debatable aspects of discussing the problems of economic, social, and cultural human rights in periodicals. The problem of institutionalisation of economic and social human rights, and the process of their consolidation in international regulatory documents, was quite vividly discussed in journals in the field of political and legal sciences. In this context, it is worth paying attention to a fairly broad discussion that unfolded in the respected journal "Human Rights Quarterly". This discussion is fundamentally important for understanding modern approaches to the analysis of the processes that have unfolded in world politics in general, and in individual countries in particular, in the context of the development and adoption of framework international covenants in the field of human rights. It is important that this discussion was devoted to the issues related specifically to the consolidation of economic and social human rights and determined the areas of research on this issue for years to come.

The starting point of the scientific discussion was the paper by D.J. Whelan & J. Donnelly (2007). In general, the paper was aimed at refuting a fairly common thesis that the appearance of provisions in international covenants devoted to the consolidation of human rights that fixed economic and social rights became possible only due to the efforts of the USSR and its allies. D.J. Whelan & J. Donnelly (2007) based their concept on the fact that the countries of Western democracy, among which the United States and Great Britain played a dominant role, perfectly understood and accepted the need to consolidate social and economic rights at the international level, and their role in this process was even more significant than the countries of the Soviet bloc and their allies among the third world countries. Even more than that, D.J. Whelan & J. Donnelly (2007) argued that the question of the need to normalise economic and social rights at the international level was formed in the American and British institutions long before the end of World War 2. That is why the researchers defined the statement about the negative attitude of

Western countries to the consolidation of economic and social rights, and at the same time their desire to level these rights, based on mercantile considerations of large corporations, as a "myth".

The study was based on the analysis of a wide source base and offered a new, at that time, narrative about the problem. Investigating the position of leading Western countries on the definition and consolidation of social and economic rights in international covenants, D.J. Whelan & J. Donnelly (2007) sought to justify the need to apply an evolutionary approach to the consideration of this topic. Taking the conclusion of the Atlantic Charter of 1941 as a reference point in their argumentation scheme, the researchers, step by step, demonstrated the presence of economic and social rights in all the fundamental documents that Western democracies and their allies prepared and proposed for international ratification. Together with this D.J. Whelan & J. Donnelly (2007) paid considerable attention to the value aspect of the problem. According to them, the consideration of economic and social rights is impossible without understanding not only the unity and interconnectedness of all human rights in a complex, but also without understanding the fact that the observance and development of these rights is one of the most important foundations of the ideology of a democratic world. Therefore, any narratives that promote the thesis of Western countries' refusal to consolidate economic and social human rights, according to the researchers, contradict not only historical facts and legal documents, but also common sense.

D.J. Whelan & J. Donnelly (2007) produced a number of research papers, some of which were a direct response to the researchers, and some were positioning on certain aspects of the problem that the researchers brought up for discussion. The first reaction to this paper was the publication by A. Kirkup & T. Evans (2009). One of the most fundamental comments made by researchers was the denial of the positive perception of the motivational foundations of US policy regarding the consolidation of economic and social human rights in international regulatory documents. Researchers suggest that in fact, the US position on economic and social rights (and especially economic ones) was far from as unambiguous as it was presented in the paper by D.J. Whelan & J. Donnelly (2007). A. Kirkup & T. Evans (2009) cite many stories that call into question both the general desire of the United States to support the economic bloc in the field of human rights and the unanimous support for securing these rights among American political elites and leading lawyers. The researchers defined the view of D.J. Whelan & J. Donnelly (2007) on the process of implementation of economic and social rights in international covenants as "distorted" and "limited". A. Kirkup & T. Evans (2009) categorically

rejected their position on the universality of human rights and the development of global principles for the implementation of these rights. The fundamental position of criticism was the thesis about the “isolation” of the position of opponents from reality, which consisted in the beginning of the development of post-war global markets and the struggle for the dominance of financial and business interests. In view of these processes, the US government, on the one hand, accepted the concept of economic and social rights as an integral basis for building a system of global human rights, but on the other hand, resisted the adoption of international treaties that would impose legal obligations on both the state itself and market participants (Kirkup & Evans, 2009).

In response to this criticism, the publication “Yes, a myth: A reply to Kirkup and Evans” was published by D.J. Whelan & J. Donnelly (2009b), based on the theses stated in the first article, followed the path of significantly expanding factual argumentation. As can be seen from the title, the authors have not deviated from their original position regarding the interpretation of the actions of the United States, Great Britain and their allies in the issue of fixing the block of social and economic rights in international legal documents. The researchers tried to provide the most complete response to the criticism expressed, especially in the context of the questioned desire of the United States to include economic rights in international covenants.

In the context of the discussion, it is worth paying attention to studies by S.L. Kang (2009). First, the researcher denies the thesis about the role of Western elites in the process of institutionalising economic and social rights expressed by D.J. Whelan & J. Donnelly (2007). In this context, S.L. Kang (2009) proceeds from the claim that American elites were not at all in favour of adopting a separate covenant on economic and social rights based on their corporate interests. Secondly, the researcher seriously criticises the statement about the priority of economic and social human rights both in the domestic policy and legislation of Western countries, and, accordingly, their foreign policy activities. Using the examples of the United States and Great Britain, the researcher sought to demonstrate that the recognition of economic and social rights was only the result of a social compromise aimed at maintaining stability in states, and not a reflection of deep ideological beliefs. Similarly, in the international arena, Western powers viewed this block of human rights as a derivative of political and civil rights (Kang, 2009). D.J. Whelan & J. Donnelly (2009a) built their response on the fact that their first paper already essentially defines all the main theses. In fact, the authors went by providing additional statistical arguments regarding the deep development by the governments of the United States and Great Britain of social programmes that

were designed to protect the economic and social rights of citizens. D.J. Whelan & J. Donnelly (2009a) were deeply convinced that it was the countries of Western democracy that were the first to take the path of consolidating and implementing economic and social rights, and the conclusion of international pacts was the logical conclusion of this progress. Data and conclusions given by D.J. Whelan & J. Donnelly (2009a) correlates with other studies in this area. For example, K. Alper *et al.* (2021) conducted a thorough analysis of the development of relative market income poverty among the working-age population in 22 developed industrial democracies. The researchers came to the fundamental conclusion that it is the regulation of social rights that should be defined as the main determinants of poverty reduction processes in the world.

Also directly related to this discussion is the paper by S.-A. Way (2014), who worked for a long time at the Office of the United Nations High Commissioner for Human Rights. The researcher focused, on the one hand, on the analysis of the process of adopting major international covenants on human rights, and on the other – on the position of the United States in this process. S.-A. Way (2014) considers it exclusively in the context of her research, but she is quite clear about her own opinion on the issue. The researcher does not deny that the United States administration generally supported the inclusion of economic, social, and cultural human rights in the framework international covenants. However, an in-depth analysis of archival documents of both the UN itself and various US authorities has shown a very difficult way to change American proposals to international covenants on human rights or to change the position of the United States elites on these rights. Opinions on economic rights were particularly controversial, because they directly affected the interests of large businesses (Way, 2014).

In general, the study agrees with the opinion expressed by S.L. Kang (2009) and S.-A. Way (2014) on the importance of solving the problem of interdependence between corporate interests, state policy, and public interests in the field of economic and social rights of citizens. In this context, a number of papers that are consonant with their views can be cited. J. Curtis (2023) covers a much wider range of issues than the paper discussed above. However, given the interest in the question of the relationship between the state and individual rights, the study agrees with the researcher, who speaks about the insufficiency of the theoretical development of the legal doctrine of systemic neutrality. This doctrine is intended to justify, among other things, the possibility of exercising socio-economic rights in virtually any political and economic system. The researcher also suggests an approach to solving the contradictions of the neoliberal

model on this basis (Curtis, 2023). Another example of considering the problem of exercising this category of rights in the United States is the paper by F. Big-nami & C. Spivack (2014), in which the researchers raise the question of how much the degree of protection of economic and social rights of citizens corresponds to international legislative acts. An important aspect that is raised in the article is the analysis of practical problems in the implementation of these types of human rights, which very often becomes a real stumbling block in the transition from theoretical provisions to their practical implementation. As noted by P. Gonalons-Pons (2022), the countries of Western democracy today face a whole host of similar problems, in particular, in the sphere of regulating the social and economic rights of hired domestic workers, which is closely related to the problems of migration, regulating wage labour, and the like. The researcher draws attention to the relationship between ensuring the legal regime of respect for human rights and the interests of society and the state in various spheres – from public well-being to state security.

The problem of inequality of countries and societies in world development has been and remains today one of the most controversial in the fields of both international organisations and scientific discourse. In this aspect, it is advisable to consider the conclusions obtained by J. Dehm (2019) when analysing the activities of UN human rights structures in the context of overcoming economic inequality between countries of the world in different historical periods. Analysing the period of development of human rights standards (1945-1968) and the discussions that accompanied these processes, the researcher emphasises the prolongation of existing problems and the need to consider errors in the search for solutions.

In the context of today's understanding of the realisation of economic and social human rights and the problems caused by inequality in world development, it is necessary to pay attention to the issue of poverty and the need to overcome it as an absolute component of ensuring basic economic and social human rights, as emphasised by L.D. Graham (2022). The content of this paper consists of six sections, each of which analyses different aspects of the problem of poverty, based on the application of an interdisciplinary methodology of legal research. In general, from the author's perspective, economic inequality creates not only significant challenges for the exercise of human rights, but also undermines the basic principles of human rights law consolidated in the international framework. In this case, it is extremely appropriate to consider the possibilities of applying the equalising potential of human rights both in the aspect of developing legal standards and in the aspect of forming global and regional strategies for the redistribution of economic opportunities.

## ■ Conclusions

The uncertainty and vagueness of many formulations of the Universal Declaration of Human Rights have become a source of quite significant differences in understanding the further development and consolidation of international law in this area. However, the international community was still able to reach a common denominator in solving this problem, which gave the basis for a modern system of consolidating human rights. The process of developing and adopting the framework documents was accompanied by lengthy discussions at the meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, during which conceptual approaches to understanding the nature, interdependence, and principles of implementing these types of rights were finally clarified. This paper traces the process of building a consensus on the understanding and acceptance that all types of human rights, civil, political, economic, social and cultural, have the same value and are inextricably linked in the context of their mutual implementation. As a separate component of the consensus process, the development of the provision that the nature of economic and social human rights is more complex than civil and political rights is considered. An important factor in the process of consolidating economic and social rights was determined to have too large a difference in the level of development of the world's states, which certainly entailed different opportunities in the implementation of political or economic rights. The effect of these factors has led to the recognition of the need for different mechanisms for the exercise of various types of rights, which is particularly pronounced in the field of economic rights. The harmonisation of these postulates established the basis for solving the problem of institutionalisation of economic and social rights in international covenants adopted under the auspices of the United Nations.

In the course of the analysis of modern studies, it was possible to identify the main conceptual approaches to understanding both the historical processes of developing and adopting international legal standards in the field of economic and social rights, and the main trends in the study of this issue today. On the one hand, there is still a fairly high level of invariance in the interpretation of the origins of the development of the basic principles of securing economic and social rights, which clearly requires further scientific research. On the other hand, the development of this issue has a fairly multi-industry spectrum, covering the scope of general theoretical research on the nature of economic and social rights, the specifics of their implementation, including consideration of regional differences, the ratio of corporate, state, and public interests, etc.

A significant expansion of the scientific horizon opens up opportunities for further research, where work in the field of combining the legal regulation of corporate, state, and public interests is particularly promising.

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#### ■ Conflict of Interest

None.

#### ■ References

- [1] Aliabieva, N., & Kerymov, L. (2022). The right to social protection of persons with disabilities according to international standards. *Social and Legal Studies*, 5(1), 63-69. doi: [10.32518/2617-4162-2022-5-63-69](https://doi.org/10.32518/2617-4162-2022-5-63-69).
- [2] Alper, K., Huber, E., & Stephens, J.D. (2021). Poverty and social rights among the working age population in post-industrial democracies. *Social Forces*, 99(4), 1710-1744. doi: [10.1093/sf/soaa073](https://doi.org/10.1093/sf/soaa073).
- [3] Bayefsky, A.F. (2021). *The UN Human Rights treaty system: Universality at the crossroads*. Norwell: Kluwer law international.
- [4] Bignami, F., & Spivack, C. (2014). Social and economic rights as fundamental rights. *The American Journal of Comparative Law*, 62, 561-587. doi: [10.5131/AJCL.2013.0036](https://doi.org/10.5131/AJCL.2013.0036).
- [5] Curtis, J. (2023). Socioeconomic rights, competition, and systemic neutrality: Approaching the right(s) contribution to emancipatory social movements. *Indiana Journal of Global Legal Studies*, 30(1), 273-331. doi: [10.2979/gls.2023.a886169](https://doi.org/10.2979/gls.2023.a886169).
- [6] DeGooyer, S., Hunt, A., Maxwell, L., & Moyn, S. (2018). *The right to have rights*. New York: Verso Books.
- [7] Dehm, J. (2019). Righting inequality: Human rights responses to economic inequality in the United Nations. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 10(3), 443-459. doi: [10.1353/hum.2019.0022](https://doi.org/10.1353/hum.2019.0022).
- [8] Donnelly, J., & Whelan, D.J. (2020). *International Human Rights*. New York: Routledge. doi: [10.4324/9780429266072](https://doi.org/10.4324/9780429266072).
- [9] Freeman, M. (2022). *Human rights*. Cambridge: Polity Press.
- [10] Garcia-Martín, L. (2022). [Agenda 2030 and sustainable development: Some reflections on its legal nature and implementation on international law for States and business](https://doi.org/10.1080/00141801.2022.2088888). *Iberoamerican Journal of Development Studies*, 11(2), 126-142.
- [11] Golder, B. (2021). Critiquing human rights. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 12(2), 226-238. doi: [10.1353/hum.2021.0014](https://doi.org/10.1353/hum.2021.0014).
- [12] Gonalons-Pons, P. (2022). Servants of production: The politics of domestic workers' labor rights. *Social Politics: International Studies in Gender, State and Society*, 29(3), 932-954. doi: [10.1093/sp/jxab047](https://doi.org/10.1093/sp/jxab047).
- [13] Graham, L.D. (2020). *International human rights law and destitution: An economic, social and cultural rights perspective*. New York: Routledge.
- [14] Jung, C., Hirschl, R., & Rosevear, E. (2014). Economic and social rights in national constitutions. *The American Journal of Comparative Law*, 62(4), 1043-1093. doi: [10.5131/AJCL.2014.0030](https://doi.org/10.5131/AJCL.2014.0030).
- [15] Kang, S.L. (2009). The unsettled relationship of economic and social rights and the West: A response to Whelan and Donnelly. *Human Rights Quarterly*, 31(4), 1006-1029. doi: [10.1353/hrq.0.0106](https://doi.org/10.1353/hrq.0.0106).
- [16] Kirkup, A., & Evans, T. (2009). The myth of Western opposition to economic, social, and cultural rights?: A reply to Whelan and Donnelly. *Human Rights Quarterly*, 31(1), 221-237. doi: [10.1353/hrq.0.0063](https://doi.org/10.1353/hrq.0.0063).
- [17] Koo, J., & Ramirez, F.O. (2009). National incorporation of global Human rights: Worldwide expansion of national human rights institutions, 1966-2004. *Social Forces*, 87(3), 1321-1354. doi: [10.1353/sof.0.0167](https://doi.org/10.1353/sof.0.0167).
- [18] Lipartito, K. (2020). The ontology of economic things. *Enterprise & Society*, 21(3), 592-624. doi: [10.1017/eso.2020.42](https://doi.org/10.1017/eso.2020.42).
- [19] Nakonechna, A. (2018). The International Bill of Human Rights through the lens of a needs-based approach. *Bulletin of the National Academy of Legal Sciences of Ukraine*, 25(3), 28-45. doi: [10.31359/1993-0909-2018-25-3-28](https://doi.org/10.31359/1993-0909-2018-25-3-28).
- [20] Rabinovych, P. (2021). Universal standards of humanity as a conceptual basis for anthropocentric legal understanding. *Law of Ukraine*, 1, 76-87. doi: [10.33498/louu-2021-01-075](https://doi.org/10.33498/louu-2021-01-075).
- [21] Sedaca, N.B., & Kennedy, K. (2019). Human rights: Progress, opportunities, and challenges. *Georgetown Journal of International Affairs*, 20, 16-26. doi: [10.1353/gia.2019.0025](https://doi.org/10.1353/gia.2019.0025).
- [22] Tistounet, E. (2020). *The UN Human Rights Council, a practical anatomy*. Massachusetts: Edward Elgar Publishing.
- [23] Way, S. (2014). The "Myth" and mystery of US history on economic, social, and cultural rights: The 1947 "United States suggestions for articles to be incorporated in an International Bill of Rights". *Human Rights Quarterly*, 36(4), 869-897. doi: [10.1353/hrq.2014.0052](https://doi.org/10.1353/hrq.2014.0052).
- [24] Whelan, D.J., & Donnelly, J. (2007). The West, economic and social rights, and the global human rights regime: Setting the record straight. *Human Rights Quarterly*, 29(4), 908-949. doi: [10.1353/hrq.2007.0050](https://doi.org/10.1353/hrq.2007.0050).

- [25] Whelan, D.J., & Donnelly, J. (2009a). The reality of western support for economic and social rights: A reply to Susan L. Kang. *Human Rights Quarterly*, 31(4), 1030-1054. doi: [10.1353/hrq.0.0110](https://doi.org/10.1353/hrq.0.0110).
- [26] Whelan, D.J., & Donnelly, J. (2009b). Yes, a myth: A reply to Kirkup and Evans. *Human Rights Quarterly*, 31(1), 239-255. doi: [10.1353/hrq.0.0054](https://doi.org/10.1353/hrq.0.0054).
- [27] Young, K.G. (Ed.). (2019). *The future of economic and social rights*. Cambridge: Cambridge University Press. doi: [10.1017/9781108284653](https://doi.org/10.1017/9781108284653).

## **Формування міжнародно-правових стандартів у сфері економічних і соціальних прав людини: історико-правовий аналіз у контексті наукової дискусії на сторінках журналу «Human Rights Quarterly»**

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■ **Анотація.** Актуальність дослідження зумовлена браком наукового консенсусу щодо правового змісту й можливих шляхів реалізації соціальних та економічних прав людини, а також загостренням дискусій довкола них у науковому і публічному дискурсі. Метою дослідження є історико-правовий аналіз процесу формування міжнародно-правових стандартів у сфері економічних і соціальних прав людини, варіантів їхнього унормування в тексті міжнародних договорів, які розробляли за результатами дискусій наприкінці 40-х – початку 50-х років минулого століття. Робота передбачала вивчення архівних матеріалів засідань Третього комітету Генеральної Асамблеї ООН і Комісії з прав людини, що ґрунтувалося на застосуванні сукупності методів якісного та кількісного аналізу, синтезу, а також порівняльно-правового методу. Здійснене дослідження дало підстави дійти низки аргументованих висновків. З одного боку, аналіз як окремих наукових праць, так і доволі широких наукових дискусій дав змогу виокремити декілька основних концептуальних підходів до розуміння процесів розроблення та закріплення найважливіших правових норм, які спрямовані регулювати на міжнародному рівні сферу економічних і соціальних прав людини. З другого боку, на основі дослідження протоколів засідань як Третього комітету Генеральної Асамблеї ООН, так і Комісії з прав людини встановлено, що процес розроблення та прийняття рамкових міжнародних пактів, які мали на меті закріпити принципи, юридично зобов'язувальні норми права, пройшов різні стадії та охопив різні концептуальні підходи учасників цього процесу. З огляду на аналіз сучасних наукових праць з порушеної проблематики, визначено передумови та складові процесу формування міжнародно-правових стандартів у сфері економічних і соціальних прав людини, які регулюють її донині. Отримані висновки мають цінність насамперед для інших наукових розробок, присвячених сфері прав людини, проте можуть бути також застосовані в процесі правотворчості відповідно до галузі права

■ **Ключові слова:** Загальна декларація прав людини; Міжнародний пакт про громадянські і політичні права; Міжнародний пакт про економічні, соціальні і культурні права; Комісія ООН з прав людини

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## Prosecutor's supervision of detection and investigation of drug crimes: International standards and best practices

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■ **Abstract.** The rapid spread of drug addiction makes it necessary to step up counteraction to drug crimes (while the police strictly observe human rights), which is possible only if the prosecutor's supervision is effective, which determines the relevance of the study of its problems. The purpose of the study is to characterise the state of legal regulation and practical implementation of prosecutor's supervision over operational and investigative counteraction and pre-trial investigation of criminal offences in the field of drug trafficking in terms of compliance with international law, and also to formulate recommendations for borrowing positive practices of other countries in terms of such supervision. Using systematic and structural, comparative legal, and logical legal methods, a number of acts of international law and legislation of Ukraine and other states are comprehensively investigated. It is proved that the content of international standards of prosecutor's supervision over the detection and investigation of drug crimes is made up of separate provisions available in various sources of international law, recommendations are developed on the activities of national prosecutor's offices in the field of countering crime in general and the activities of state bodies on criminal law, special criminological, operational and investigative, and criminal procedural counteraction to drug-related crimes. The use of these methods and materials helped to determine that Ukraine complies with the standards under study (even at a higher level than some member states of the European Union), in particular, regarding the independence of the prosecutor's office from the executive and judicial authorities, the concentration of basic functions in the field of criminal justice, ensuring effective supervision of pre-trial investigations in the form of procedural guidance. However, in Ukraine, it is advisable to continue working on: introducing the specialisation of prosecutors in supervision of the detection and pre-trial investigation of drug crimes and the development of methods for countering drug crimes by law enforcement agencies; expanding the discretionary powers of the prosecutor and ensuring real independence and independence of their use; ensuring supervision of the police's compliance with the rule of law during the initiative detection of drug crimes. The results of the study can be used to improve the legislation of Ukraine and the practice of its application

■ **Keywords:** narcotic drugs; prosecutor's office; legality; discretionary powers; human rights; operational and investigative activities

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## ■ Introduction

An integral requirement for the practical implementation of Ukraine's course of accession to the European Union (EU), as declared in the Constitution of Ukraine<sup>1</sup>, is to bring the legal regulation of state institutions in line with the standards of this international organisation. This applies, among other things, to the criminal justice authorities, in particular, the prosecutor's office. Similarly, the legal regulation of certain areas of law enforcement activities should be brought into line with the requirements of international laws and regulations. This, in particular, applies to countering illegal trafficking in narcotic drugs, psychotropic substances, their analogues and precursors. The above determines the need for a comprehensive assessment of the current state of legislative regulation of the status and functions of the prosecutor's office and its role and place in the fight against illegal drug trafficking – according to the criteria of effectiveness and compliance with international standards. It is necessary to establish how these standards are implemented (or not implemented) in the practice of other countries in order to suggest optimal ways to implement them in domestic legislation. An analysis of EU practices shows that deviations from certain standards due to national peculiarities can have different consequences, ranging from acceptable to extremely negative.

Thus, on May 27, 2019, the Court of Justice of the European Union (CJEU) declared the Office of the German Federal Public Prosecutor (Staatsanwaltschaft) legally incompetent to issue European Arrest Warrants (EAW) due to its lack of institutional independence<sup>2</sup>. As a consequence, S. Glaser & S. Hartmann (2022) raised the question of how the German criminal prosecution system differs from the approaches of other European countries that issue European Arrest Warrants, as well as the question of whether the prosecutor's office in Germany is really not sufficiently independent in this regard. According to the conclusions of B. Sramel & L. Klimek (2022), in the Slovak Republic, the prosecutor's office has a complete monopoly on prosecution, which is a negative consequence of the 1948 coup d'état and the subsequent rise of the communist regime. This minimises the possibility for other entities (for example, the victim) to exercise their natural rights.

Ukrainian researchers have already studied both the implementation of the provisions of international agreements in the legislation of Ukraine on the prosecutor's office, and the experience of foreign countries in this area. Thus, R.M. Bilokin (2023) found that international standards in the activities

of the prosecutor's office include the entire array of international legal acts regulating relations in this area and international judicial practice. The researcher investigated the standards of prosecutor's supervision over the legality of criminal proceedings and came to the conclusion that domestic legislation is more adapted to them, but implementation is still taking place today.

L.T. Riabovol (2021) considered the legal acts of the EU governing bodies as the basis for reforming the prosecutor's office in Ukraine. The researcher concludes that the specific place of the prosecutor's office in the mechanism of the state and functions in different states are not the same. However, in all European countries, prosecutors operate on the same principles consolidated in the documents of the Council of Europe. The researcher considers compliance with the requirements of these documents by Ukraine mandatory. V. Nalutsyshyn (2021), after examining the European experience of legal regulation of the status and functions of the prosecutor's office, came to the conclusion that the experience of foreign countries does not exclude the assignment of supervisory functions to the prosecutor's office, which ensure the rule of law and order in society. The researcher suggests that the general trend in the development of the prosecutor's office of Ukraine should be the expansion of its functions, non-interference of the legislative and executive authorities in the activities of the prosecutor's office. The conclusions of the above-mentioned Ukrainian researchers are to some extent debatable and subject to verification.

In parallel with these studies, research was also conducted on the introduction of international standards in Ukraine and the use of the experience of other countries in countering drug crime. Thus, the paper by V.V. Solovei (2023) is dedicated to international standards and foreign experience in countering drug crimes committed by organised groups. The researcher concludes that it is necessary to reform the national system of drug crime prevention in terms of expanding the powers of information and analytical police units to accumulate and process operational information. Consent to this conclusion automatically raises the question of the means of ensuring the rule of law in the event of the proposed expansion of powers.

V.H. Yarmaki (2021), investigating the experience of foreign countries in countering drug crimes, came to the conclusion that measures to counteract illegal drug trafficking fall within the internal competence of each individual state. However, the use of domestic means alone to combat international drug

<sup>1</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>2</sup> Judgment of the Court (Grand Chamber) in Joined Cases No. C508/18 and No. C82/19 PPU. (2019, May). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?docid=214466&doclang=en>.

crimes is not always sufficient. This struggle must be international, since an individual country is not able to effectively resist transnational drug crime. T.V. Serhiieva (2020) investigated the results of the implementation of the norms of international treaties on countering drug trafficking in the legislation of Ukraine. She considers the measures taken by Ukraine to contribute to the harmonisation of Ukrainian legislation with international standards for combating illegal drug trafficking and improve the effectiveness of international cooperation in this area. The researcher suggests that further improvement of the national legislation on combating drug trafficking is necessary (but does not make specific proposals).

The above-mentioned studies on the introduction of international standards and the use of foreign experience have always been conducted separately: 1) on the activities of the prosecutor's office; 2) on countering illegal drug trafficking. So far, they have not intersected and have not been comprehensively investigated. This is an additional argument in favour of the need to conduct this study, the purpose of which was to determine the compliance of the legal regulation and the actual state of prosecutor's supervision over the detection and investigation of drug crimes in Ukraine and other countries, international standards, and to make proposals on the use of foreign experience of such supervision in Ukraine.

## ■ Materials and Methods

With the help of the logical and legal method, the concept was developed and the content of international standards in the field of legal regulation of countering drug crimes was revealed; the main international standards for the activities of the prosecutor's office on countering crimes in the field of countering illegal trafficking in narcotic drugs, psychotropic substances, precursors and their analogues were highlighted. Using the systematic and structural method, the role of the prosecutor's office in the

implementation of these standards was determined, and the practical activities of the national prosecutor's office were evaluated from the standpoint of the above-mentioned standards. The comparative legal method was used in the analysis of the international experience of the prosecutor's office in countering drug crimes and determining those elements that are appropriate to use in Ukraine.

In the course of the study, the provisions of a number of international legal acts were analysed and summarised, including: the UN Guidelines on the Role of Prosecutors (Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. Havana, Cuba, August 27-September 7, 1990)<sup>1</sup>; Unified Convention on Narcotic Drugs No. 1137 of 30.03.1961<sup>2</sup>; Convention on Psychotropic Substances of 21.02.1971<sup>3</sup>; United Nations Convention Against Trafficking in Narcotic Drugs and Psychotropic Substances, 1988<sup>4</sup>; Standards of professional responsibility, a statement of the main duties and rights of prosecutors, adopted by the International Association of Prosecutors (1999); Recommendation REC (2000) 19 of the Council of Europe "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System" (Adopted by the Committee of Ministers on 6 October 2000 at the 724<sup>th</sup> meeting of the ministers' deputies)<sup>5</sup>; PACE Recommendation 1604 (2003) 11 "Role of the public prosecutor's office in a democratic society governed by the rule of law" of 27 May 2003<sup>6</sup>; PACE Resolution No. 1549 (2007) of April 19, 2007 "Functioning of Democratic Institutions in Ukraine"<sup>7</sup>; European Guidelines on ethics and conduct of public prosecutors: the Budapest Guidelines Adopted at the 6<sup>th</sup> Conference of European prosecutors General in Budapest on 31 May 2005<sup>8</sup>. The results of the analysis and generalisation of these documents were compared with the provisions of the Constitution of Ukraine<sup>9</sup>, Criminal Code (CC)<sup>10</sup> and Criminal Procedural Code (CPC) of Ukraine<sup>11</sup>, Laws of Ukraine "On the Prosecutor's

<sup>1</sup> UN Guidelines on the Role of Prosecutors Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. (1990, September). Retrieved from [https://pravo.org.ua/wp-content/uploads/old/files/oon\\_com\\_split\\_1.pdf](https://pravo.org.ua/wp-content/uploads/old/files/oon_com_split_1.pdf).

<sup>2</sup> Single Convention on Narcotic Drug. (1961, March). Retrieved from [https://ips.ligazakon.net/document/view/mu61k02u?an=2&ed=1961\\_03\\_30](https://ips.ligazakon.net/document/view/mu61k02u?an=2&ed=1961_03_30).

<sup>3</sup> Convention on Psychotropic Substances. (1971, February). Retrieved from <https://ips.ligazakon.net/document/mu71016?an=&ed=&dtm=&le=>.

<sup>4</sup> United Nations Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (1988, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_096#Text](https://zakon.rada.gov.ua/laws/show/995_096#Text).

<sup>5</sup> Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from [https://supreme.court.gov.ua/userfiles/Rec\\_2000\\_19\\_2000\\_10\\_6.pdf](https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf).

<sup>6</sup> PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from <https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en>.

<sup>7</sup> Resolution of the Parliamentary Assembly of the Council of Europe No. 1549 "Functioning of Democratic Institutions in Ukraine". (2007, April). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_760#Text](https://zakon.rada.gov.ua/laws/show/994_760#Text).

<sup>8</sup> European Guidelines on Ethics and Conduct for Public Prosecutors. (2005, May). Retrieved from [https://library.nlu.edu.ua/POLN\\_TEXT/SENMK/pr\\_osn1.pdf](https://library.nlu.edu.ua/POLN_TEXT/SENMK/pr_osn1.pdf).

<sup>9</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>10</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>11</sup> Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

Office”<sup>1</sup>, “On the Operational and Investigative Activities”<sup>2</sup> and other laws and regulations of Ukraine. At the next stage, according to the national legislation acts of other states and the analysis of foreign legal practice, the features of advantages and disadvantages of prosecutorial activities for detecting and investigating drug-related crimes abroad were established.

## ■ Results

**International standards of prosecutor’s supervision.** In the theory of law and legal practice, issues of certain international standards (their concept, content, classification, forms) are most often raised in the context of human rights. The terms “international legal standards of human rights”, “international human rights standards”, “international standards of human and civil rights and freedoms”, etc., are used. The main features of such standards are that they are: first, consolidated in acts of international law (conventions, treaties, directives, recommendations, decisions, etc.); second, that they define the minimum necessary and/or desired list of content and scope of specific human rights. According to international standards, states must guarantee and ensure: the human right to life, the right to liberty and security of person, the right to respect for dignity, the right to respect for private and family life, the inviolability of the home, the exclusion of inhuman treatment, etc.

The implementation of this task involves the introduction of appropriate standards, first of all, in the work of law enforcement agencies. These bodies, on the one hand, provide protection of the individual and society from illegal encroachments on life, personal inviolability, property, housing, etc., and on the other hand, they themselves can unjustifiably restrict human rights when it comes to detainees, arrests, suspects, accused, convicts, persons against whom compulsory medical measures are supposed to be applied, etc. Therefore, international human rights standards should be directly embodied in the activities of law enforcement agencies. In accordance with this, the activities of law enforcement agencies of individual states are also subject to international standardisation.

In the vast majority of countries of the world, the key body of the law enforcement system is the prosecutor’s office, which is entrusted with the function of prosecution in criminal proceedings, and supervision of compliance with the rule of law by other law

enforcement agencies (both during pre-trial investigations and during some other types of law enforcement activities). Therefore, it is quite natural that the activities of the prosecutor’s office should be evaluated, among other things, from the standpoint of compliance with international standards.

Investigating the international standards of the prosecutor’s supervision of compliance with the rule of law in criminal proceedings, R.M. Bilokin (2023) attributed to the sources of such standards not only the entire set of acts of international law, the subject of which is the activities of the prosecutor’s office, but also the practice of the European Court of Human Rights (ECHR). In addition, the researcher agreed with the widespread view that these sources also include international legal customs. Admittedly, the decision of the ECHR is a guide for Ukrainian prosecutors, which is conditioned by the provisions of the Law of Ukraine “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights”<sup>3</sup>, and Part 2 of Article 8, Part 5 of Article 9 of the Criminal Procedural Code of Ukraine<sup>4</sup>, where these decisions are recognised as the source of Criminal Procedural Law. However, it is inappropriate to classify international legal customs as international standards. Ultimately, a characteristic feature of the latter is uniformity and formal certainty. The content of standards can be borrowed from customs, but the customs themselves should not be identified with standards, as evidenced by the results of research (Hrystova, 2023; Klymchuk, & Stetsyk, 2023).

In addition, considering the analysis carried out above, the provisions of international human rights instruments should also be included in the sources of international standards of prosecutorial activity. Among the key international documents that consider the main aspects of the legal status of a prosecutor in the field of criminal proceedings, the following can be distinguished:

- UN Guidelines on the Role of Prosecutors (Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. Havana, Cuba, August 27 – September 7, 1990)<sup>5</sup>;
- Standards of professional responsibility, a statement of the main duties and rights of prosecutors, adopted by the International Association of Prosecutors (1999);
- Recommendation REC (2000) 19 of the Council of Europe “To Member States on the Role of the Public

<sup>1</sup> Law of Ukraine No. 1697-VII “On the Prosecutor’s Office”. (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

<sup>2</sup> Law of Ukraine No. 2135-XII “On the Operational and Investigative Activities”. (1992, February). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2135-12>.

<sup>3</sup> Law of Ukraine No. 3477-IV “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

<sup>4</sup> Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

<sup>5</sup> UN Guidelines on the Role of Prosecutors Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. (1990, September). Retrieved from [https://pravo.org.ua/wp-content/uploads/old/files/oon\\_com\\_split\\_1.pdf](https://pravo.org.ua/wp-content/uploads/old/files/oon_com_split_1.pdf).

Prosecutor's Office in the Criminal Justice System" (Adopted by the Committee of Ministers on 6 October 2000 at the 724<sup>th</sup> meeting of the ministers' deputies)<sup>1</sup>;

- PACE Recommendation 1604 (2003) 11 "Role of the public prosecutor's office in a democratic society governed by the rule of law" of 27 May 2003<sup>2</sup>;

- PACE Resolution No. 1549 (2007) of April 19, 2007 "Functioning of Democratic Institutions in Ukraine"<sup>3</sup>;

- European Guidelines on Ethics and Conduct for Public Prosecutors: Budapest guidelines. Adopted at the 6th Conference of the General Prosecutors of Europe in Budapest on 31 May 2005<sup>4</sup>.

In addition to these documents, among the sources of international standards determining the legal status of a prosecutor in the field of criminal justice, it is advisable to consider the numerous advisory opinions, reports and comments received from the European Commission for Democracy through Law (Venice Commission). It is also necessary to consider the legal positions of the ECHR, which are expressed during the consideration of individual cases. The analysis of the above-mentioned documents and the summary of their provisions allows identifying the standards of the prosecutor's activity in terms of ensuring the prosecution function that are important for this study.

The first of these standards is the introduction of specialisation of prosecutors in procedural guidance and support of public prosecution in certain categories of criminal proceedings. Such categories can be distinguished depending on the severity of the committed criminal offences, the scope of commission (banking system, foreign economic activity, road safety, functioning of computer systems, etc.), public relations that they encroach on, subjects of criminal offences, etc. The main criterion for such specialisation should be the object of criminal encroachment. This standard is introduced in Articles 7 and 8 of Council of Europe recommendation REC (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System"<sup>5</sup>.

The second standard is to assign to the competence of the prosecutor questions about the possibility of applying measures alternative to criminal punishment to a person. Among other things, these are compulsory measures of a medical and educational nature, exemption from criminal liability in connection with effective repentance or reconciliation of the guilty person with the victim, or the transfer of a person on bail, or the loss of public danger to the guilty person. The standard for such content is provided, in particular, in Articles 18 and 19 of the UUN Guidelines on the Role of Prosecutors<sup>6</sup>, and in Article 3 of Recommendation REC (2000) 19 of the Council of Europe "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System"<sup>7</sup>.

The third standard is the independence and functional and organisational isolation of the prosecutor's office from law enforcement agencies, which are responsible for preventing, detecting, suppressing, and investigating criminal offences. This standard is contained in paragraph "I" of Article 7 of PACE Recommendation 1604 (2003) 11 of 27.05.2003.<sup>8</sup> This requirement, among other things, is embodied in the fact that the prosecutor should not independently carry out measures to search for and record factual data on criminal acts of individuals, collect evidence, organise investigative search actions and generally conduct a pre-trial investigation. But the prosecutor is authorised to observe how all this is done by operational units and pre-trial investigation bodies. This gives the opportunity to impartially and objectively assess the actions of these divisions and bodies from the standpoint of compliance with the rule of law.

The fourth standard should be called rational, active and effective performance by the prosecutor of supervisory powers in terms of providing instructions to the investigator on the use of specific procedural means of collecting evidence, their scope, extending the terms of pre-trial investigation, etc. This standard is reflected in the norms of numerous international legal acts. One of these norms is contained in

<sup>1</sup> Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from [https://supreme.court.gov.ua/userfiles/Rec\\_2000\\_19\\_2000\\_10\\_6.pdf](https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf).

<sup>2</sup> PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from <https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en>.

<sup>3</sup> Resolution of the Parliamentary Assembly of the Council of Europe No. 1549 "Functioning of Democratic Institutions in Ukraine". (2007, April). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_760#Text](https://zakon.rada.gov.ua/laws/show/994_760#Text).

<sup>4</sup> European Guidelines on Ethics and Conduct for Public Prosecutors. (2005, May). Retrieved from [https://library.nlu.edu.ua/POLN\\_TEXT/SENMK/pr\\_osn1.pdf](https://library.nlu.edu.ua/POLN_TEXT/SENMK/pr_osn1.pdf).

<sup>5</sup> Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from [https://supreme.court.gov.ua/userfiles/Rec\\_2000\\_19\\_2000\\_10\\_6.pdf](https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf).

<sup>6</sup> UN Guidelines on the Role of Prosecutors Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. (1990, September). Retrieved from [https://pravo.org.ua/wp-content/uploads/old/files/oon\\_com\\_split\\_1.pdf](https://pravo.org.ua/wp-content/uploads/old/files/oon_com_split_1.pdf).

<sup>7</sup> Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from [https://supreme.court.gov.ua/userfiles/Rec\\_2000\\_19\\_2000\\_10\\_6.pdf](https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf).

<sup>8</sup> PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from <https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en>.

Paragraph “A” of Article 22 of the Council of Europe Recommendation REC (2000) 19 “To Member States on the Role of the Public Prosecutor’s Office in the Criminal Justice System”<sup>1</sup>. Among other things, it states that the government of the state should promote legal consolidation and ensure the ability of the prosecutor to give the investigative body appropriate instructions to effectively ensure the priorities of criminal policy, which mainly concerns decisions on the work of personnel, methods of collecting evidence, terms of pre-trial investigation, information that the prosecutor receives, etc.<sup>2</sup>

The fifth standard is the duty of the prosecutor’s office to objectively assess the legality of police actions, respect for human rights when collecting information necessary to start or continue criminal prosecution. This standard is set out in Article 21 of the Council of Europe Recommendation REC (2000) 19 “To Member States on the Role of the Public Prosecutor’s Office in the Criminal Justice System”<sup>3</sup>.

The last, sixth standard, is the inexpediency of assigning to the prosecutor’s office any functions that do not belong to the sphere of criminal justice. The practical implementation of this requirement should be restricted to limiting the powers of the prosecutor’s office only to those that are necessary for the exercise of the prosecution function, through which the tasks of protecting the interests of society and the state are performed. The requirement for such content is contained, in particular, in paragraph “C” of Article 7 of the already mentioned pace recommendation 1604 (2003) 11<sup>4</sup>, and Article 1 of Council of Europe Recommendation REC (2000) 19 “To Member States on the Role of the Public Prosecutor’s Office in the Criminal Justice System”<sup>5</sup>.

These standards are not fully implemented in Ukrainian law enforcement practice and criminal proceedings. Among the standards already implemented, it can be noted that in functional and organisational terms, the prosecutor’s office is clearly separated from supervised law enforcement agencies (in particular, pre-trial investigation bodies) by the provisions of the Constitution of Ukraine (Article 131-1)<sup>6</sup>, the Law of Ukraine “On the Prosecutor’s Office”<sup>7</sup>,

CPC of Ukraine<sup>8</sup>. In addition, by defining in Article 36 of the Criminal Procedural Code of Ukraine<sup>9</sup> the requirement for an active form of exercise of supervisory powers by the prosecutor as the procedural head of the pre-trial investigation has been implemented.

Among these powers, there are also those that allow the prosecutor, based on the results of a pre-trial investigation, if there are relevant factual grounds, to apply to the court not with an indictment, but with a request to release a person from criminal liability or with a request to apply compulsory measures of a medical or educational nature. Having deprived the prosecutor’s office of the function of general supervision of compliance with laws, the domestic legislator left it certain powers that are directly unrelated to pre-trial investigation and judicial proceedings in criminal cases (representation of the interests of a citizen or the state in court in claim proceedings in cases of recognition of unjustified assets and their recovery into state income).

Ukraine has only partially introduced the principle of specialisation of prosecutors depending on the object of criminal attacks and other factors. The expediency of its introduction is fully justified by the validity of the statement that the specialisation of the prosecutor in one specific area of combating crime will lead to an increase in professionalism and improve the quality of criminal prosecution. The outlined standard is particularly relevant in the field of the subject of this study, since hypothetically the introduction of specialisation of the prosecutor in criminal proceedings related to drug crimes will contribute to the growth of the qualification of prosecutor’s personnel. As of 2023, the specialisation of prosecutors has found its embodiment only at the institutional level – in the creation of a specialised anti-corruption prosecutor’s office and specialised prosecutor’s offices in the field of defence.

**International legal standards for countering criminal offences in the sphere of trafficking in narcotic and psychotropic substances.** International standards that establish requirements for prosecutor’s supervision over the detection and investigation of drug crimes should include not only

<sup>1</sup> Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 “To Member States on the Role of the Public Prosecutor’s Office in the Criminal Justice System”. (2000, October). Retrieved from [https://supreme.court.gov.ua/userfiles/Rec\\_2000\\_19\\_2000\\_10\\_6.pdf](https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf).

<sup>2</sup> Ibidem, 2000.

<sup>3</sup> Ibidem, 2000.

<sup>4</sup> PACE Recommendation No. 1604 “On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law”. (2003, May). Retrieved from <https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en>.

<sup>5</sup> Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 “To Member States on the Role of the Public Prosecutor’s Office in the Criminal Justice System”. (2000, October). Retrieved from [https://supreme.court.gov.ua/userfiles/Rec\\_2000\\_19\\_2000\\_10\\_6.pdf](https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf).

<sup>6</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>7</sup> Law of Ukraine No. 1697-VII “On the Prosecutor’s Office”. (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

<sup>8</sup> Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

<sup>9</sup> Ibidem, 2013.

the requirements put forward by conventions, declarations and recommendations for the activities of the prosecutor, but also the requirements established by international laws and regulations to counteract illegal trafficking in narcotic drugs, psychotropic substances, precursors and their analogues.

Among such acts, it is worth highlighting global-level acts – United Nations documents: Unified Convention on Narcotic Drugs No. 1137 of 30.03.1961<sup>1</sup>; Convention on Psychotropic Substances of 21.02.1971<sup>2</sup>; United Nations Convention Against Trafficking in Narcotic Drugs and Psychotropic Substances, 1988<sup>3</sup>. The latter is the most universal act that has incorporated the conceptual provisions of previous documents. The preamble to this Convention (hereinafter – the Convention, 1988)<sup>4</sup> focuses attention on the special danger and criminal illegality of illegal trafficking of these funds and substances, its indissoluble connection with other forms of organised crime, cross-border nature, and the receipt of super-profits from drug trafficking by criminal formations of different countries. Such trafficking is considered a threat to the national security and sovereignty of all countries of the world.

In Article 3 of the Convention, 1988<sup>5</sup> minimum standards are established for the criminalisation by states parties of specific acts related to illicit trafficking in narcotic drugs and psychotropic substances, and the circumstances of their commission are determined, which must be legally normalised as aggravating penalties. In addition, it is noted that the severity of the punishment established by national legislation for a particular type of act corresponds to its public danger. This article focuses on the possibility of applying measures of influence to those responsible for committing drug crimes, which are an alternative to conviction and criminal punishment: treatment for addiction with subsequent monitoring of the patient, education and re-education, restoration of working capacity and social reintegration of the offender. Paragraph (6) of this article provides for ensuring (in accordance with their own national legislation) that the parties legally assign to the relevant law enforcement agencies such discretionary powers that will enable them to effectively prevent, detect, stop and investigate drug crimes<sup>6</sup>.

The analysis of national legislation and the practice of its application indicates that at present the above standards have already been implemented in the legal acts of Ukraine, which means that law enforcement agencies, in particular, the prosecutor's office, adhere to them in their daily activities. The discretionary powers of the prosecutor do not allow independently making a decision on applying measures alternative to criminal punishment to the person guilty of committing a drug crime, releasing them from criminal liability or serving a sentence. These issues in Ukraine are resolved exclusively by the court, at the request of the party to the proceedings.

The same can be said about ensuring the standards of mutual (international) legal assistance, which is established by Article 7 of the 1988 Convention<sup>7</sup>. It provides for the delivery of international legal assistance in countering drug crimes, in particular: collecting evidence, conducting certain procedural actions (detention, inspection, search), familiarisation with the materials of criminal proceedings, and exchanging information. However, Article 9 of the 1988 Convention provides that each party develops and implements professional training programmes for law enforcement and other bodies specialising in countering drug crimes. Such programmes should include the study of: modern methods of detecting and suppressing drug crimes; routes and means used by drug criminals; organisation of operations to monitor the movement (including cross-border) of drugs and psychotropic substances; methods of tracking assets obtained from the drug business; means of conspiracy of criminal activities in the field of drug trafficking, etc.<sup>8</sup>

The introduction of this standard in the activities of law enforcement agencies in Ukraine today lacks attention from the legislative and executive authorities. Moreover, there is a certain regression in this issue. Thus, by the resolution of the Cabinet of Ministers of Ukraine of January 13, 2023, No. 131, the Department for Combating Drug Crimes of the National Police was liquidated as a legal entity under public law<sup>9</sup>. Even earlier, specialised universities of the Ministry of Internal Affairs of Ukraine stopped the work of faculties that trained specialists in the field of countering drug crime. Currently, this area

<sup>1</sup> Single Convention on Narcotic Drug. (1961, March). Retrieved from [https://ips.ligazakon.net/document/view/mu61k02u?an=2&ed=1961\\_03\\_30](https://ips.ligazakon.net/document/view/mu61k02u?an=2&ed=1961_03_30).

<sup>2</sup> Convention on Psychotropic Substances. (1971, February). Retrieved from <https://ips.ligazakon.net/document/mu71016?an=&ed=&dtm=&le=>.

<sup>3</sup> United Nations Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (1988, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_096#Text](https://zakon.rada.gov.ua/laws/show/995_096#Text).

<sup>4</sup> *Ibidem*, 1988.

<sup>5</sup> *Ibidem*, 1988.

<sup>6</sup> *Ibidem*, 1988.

<sup>7</sup> *Ibidem*, 1988.

<sup>8</sup> *Ibidem*, 1988.

<sup>9</sup> Resolution of the Cabinet of Ministers of Ukraine No. 131 “On the liquidation of the territorial body of the National Police”. (2023, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/131-2023-%D0%BF#Text>.

of training is represented only by separate academic disciplines included as variable (subject of free choice), taught by future investigators and operatives of the criminal police.

The prosecutor's office of Ukraine does not specialise in overseeing the detection and investigation of drug crimes. There is also no systematic training of prosecutors in this area of countering crime. The Prosecutor General's Office is taking certain steps to remedy this situation (for example, in 2022, the Training Centre for Prosecutors of Ukraine conducted a course on "Participation of the prosecutor in criminal proceedings regarding criminal offences in the field of drug trafficking" (Participation of the prosecutor..., 2022), but they are not systematic.

UN documents on countering drug crime have also found their direct imprint in EU regulations. Thus, Article 83 of the Treaty on the functioning of the European Union states that the European Parliament and the council, through the adoption of directives under the usual legislative procedure, are authorised to establish rules for the criminalisation of certain illegal acts and the establishment of responsibility for their commission in relation to particularly serious crimes of a cross-border nature, in particular, and those related to the illegal trafficking of narcotic drugs and psychotropic substances<sup>1</sup>.

Based on the provisions of this norm on 25.10.2004 and on the norms of the UN Convention of 1988<sup>2</sup>, Framework Decision 2004/757/JHA of the Council of the European Union was adopted establishing minimum rules on the constituent elements of crimes and sanctions in the field of illicit drug trafficking<sup>3</sup>. Among other things, this regulation provides for the establishment in national legislation of liability in the form of imprisonment from 5 to 10 years if the act concerned the trafficking of a significant amount of drugs or especially dangerous drugs, or if this act caused harm to the health of several persons. If the crime was committed as part of a criminal organisation,

the penalty for its commission must be at least 10 years in prison. Analysis of Article 305-320 of the Criminal Code of Ukraine<sup>4</sup> suggests that this standard has been observed by the domestic legislator.

Attention is drawn to the incentive provisions of Article 5 of Framework Decision 2004/757/JHA<sup>5</sup>, which stipulates that the penalty can be significantly reduced in cases where the offender: refused criminal activities in the field of drug trafficking; provided law enforcement and judicial authorities with information about the preparation and commission of other drug crimes, which could not be obtained in any other way; assisted them in preventing or mitigating the consequences of the offence, or actively assisted in collecting evidence, identifying and bringing to justice other drug criminals. This provision was partially implemented in the norm of Part 4 of Article 307 of the Criminal Code of Ukraine<sup>6</sup>, where it is stated that those who voluntarily handed over drugs and reported the source of their receipt (or contributed to the exposure and investigation of drug crimes) are exempt from criminal liability for their illegal production, manufacture, acquisition, storage, transportation, shipment, provided for in Part 1 of this article and Part 1 of Article 309 of this Code<sup>7</sup>.

However, the standard provided for in Article 5 of Framework Decision 2004/757/JHA<sup>8</sup> deserves a wider introduction into domestic law-making and law enforcement practice. Ultimately, the legislator provided only for exemption from punishment and only in the case of committing a criminal offence (Article 309 of the Criminal Code of Ukraine<sup>9</sup>) and the least serious of the crimes provided for in Article 307 of the Criminal Code of Ukraine<sup>10</sup>. However, for real assistance in exposing and investigating any serious and especially serious drug crimes, it would be advisable to provide for a significant reduction in the penalty, up to the application of a penalty below the lower limit provided for by the sanction of the relevant Article (part of the Article of the Criminal

<sup>1</sup> Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union (2010/c 83/01). (2010, March). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_b06#Text](https://zakon.rada.gov.ua/laws/show/994_b06#Text)

<sup>2</sup> United Nations Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (1988, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_096#Text](https://zakon.rada.gov.ua/laws/show/995_096#Text).

<sup>3</sup> Framework decision No. 2004/757 "Minimum Provisions on the Constituent Elements of Criminal Acts and Penalties in the Field of Illicit Drug Trafficking". (2004, October). Retrieved from [https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk\\_j9vvik7m1c3gyxp/vitbgifqmyz](https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vitbgifqmyz).

<sup>4</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>5</sup> Framework decision No. 2004/757 "Minimum Provisions on the Constituent Elements of Criminal Acts and Penalties in the Field of Illicit Drug Trafficking". (2004, October). Retrieved from [https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk\\_j9vvik7m1c3gyxp/vitbgifqmyz](https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vitbgifqmyz).

<sup>6</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>7</sup> Ibidem, 2001.

<sup>8</sup> Framework decision No. 2004/757 "Minimum Provisions on the Constituent Elements of Criminal Acts and Penalties in the Field of Illicit Drug Trafficking". (2004, October). Retrieved from [https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk\\_j9vvik7m1c3gyxp/vitbgifqmyz](https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vitbgifqmyz).

<sup>9</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>10</sup> Ibidem, 2001.

Code of Ukraine<sup>1</sup>). It is necessary to legally regulate the specifics of confidential cooperation of persons against whom criminal prosecution is carried out for committing drug crimes with pre-trial investigation bodies and their conclusion of cooperation agreements with the prosecutor. Thus, opportunities for persons involved in illegal drug trafficking should relate not only to the production, manufacture, purchase, storage, transportation, transfer of narcotic drugs and psychotropic substances, but also to their smuggling, use of profits from drug trafficking, cultivation of narcotic plants, etc.

**World experience of prosecutor's supervision over the detection and investigation of drug crimes.** The work of law enforcement agencies in different countries to identify and investigate drug crimes, and supervision of this work, is based on the norms of substantive and procedural law of specific states. Among them are the provisions of the Constitution and special laws regulating the status of the prosecutor's office, Criminal and Criminal Procedural Codes, laws and regulations establishing the procedure for conducting operational and investigative activities. It is advisable to start the analysis of these norms with those that establish criminal liability for the commission of certain drug crimes.

As for the criminal law regulation of liability for drug crimes, there is a well-established opinion in science about the division of all states of the world into three main groups: "strict policy", "strict control" and "liberal approach" (Yarmaki, 2021; Maksymenko, 2022). The first group ("strict policy") includes countries whose legislation provides for total control over drug trafficking and the most severe types and amounts of punishment for committing drug crimes (up to the death penalty). These countries include Egypt, Iran, China, Malaysia, Pakistan, the United Arab Emirates (UAE), Turkey, Singapore, Saudi Arabia, etc.

In the UAE, drug use is punishable by imprisonment, and the death penalty is provided for their distribution. The legislation does not establish a minimum amount of narcotic drugs for the possession of which criminal liability occurs. In Saudi Arabia, a person sentenced to death for drug trafficking will be beheaded (up to 40 people can be executed in a month). The number of people who are executed annually in Iran for committing particularly serious drug crimes in some years reached 500 people (executions are usually carried out in public places). In China, people are executed, including for illegal drug trafficking, more than worldwide (more than a thousand people a year) (From fines to the death penalty..., 2017). Article 347 of the Criminal Code of the People's Republic of China establishes a penalty of 15 years' imprisonment or life imprisonment or

the death penalty for the following acts: smuggling, sale, transportation and manufacture of opium in the amount of more than 1,000 g, heroin or methylphenylamine in the amount of more than 50 g, and other drugs in large quantities; leading a group that commits smuggling, sale, transportation and manufacture of narcotic drugs; armed cover for smuggling, sale, transportation, and manufacture of drugs; resisting with the use of violence the inspection, detention and arrest of persons involved in the crime drug trafficking, under aggravating circumstances; participation in organised trade in international-level narcotic drugs (Voinova & Stanich, 2021).

The second group ("strict control") includes countries where illegal production and sale of narcotic drugs are punishable by long terms of imprisonment, but the most severe types of criminal penalties for committing drug crimes are not applied. A wide range of general social and special criminological measures to counteract illegal drug trafficking has been introduced there, strict control over their legal production and use has been established, but the most severe types (sizes) of criminal penalties for committing drug crimes, as a rule, are not applied. These countries traditionally include the United States, Great Britain, France, Germany, etc. However, approaches to the problem differ significantly both within this group of countries and within individual states.

Thus, in the United States, some states are criminalised not only for possession, but also for the use and attempted purchase of drugs, and in others, the use of marijuana as a drug is normalised (Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington). A rather tough approach to responsibility for drug crimes has been applied in New York. The terms of punishment for these criminal offences range from 1 year to life imprisonment. A person who has first committed the sale of drugs of the fifth degree is sentenced to imprisonment from 1 to 2.5 years. For selling small batches of drugs on a permanent basis, a person can face a penalty of 8 to 20 years in prison (with five years of supervision after release). The minimum sentence for drug trafficking in Category I or II is 10 years. Persons who re-commit drug-related crimes are punished with imprisonment for a term of 12 to 20 years, and persons who are engaged in drug trafficking in large quantities – from 15 years with the possibility of life imprisonment (From fines to the death penalty..., 2017).

In general, the United States is actively countering illegal drug trafficking by federal and local law enforcement agencies. Today, in this country, one state body (Drug Enforcement Administration (DEA)) combines various functions related to countering drug trafficking, namely: prevention of drug crimes, their

<sup>1</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

detection and pre-trial investigation (in particular, criminal offences related to the forceful support and corruption cover-up of illegal drug business, the use of proceeds obtained, cross-border organised drug crime, drug trafficking and drug terrorism as part of regional and international groups, violation of the rules for the legal circulation of controlled pharmaceuticals preparation of criminal cases on these crimes for consideration in court; coordination of the activities of federal and regional law enforcement agencies through the exchange of information, joint investigations, training, creation of target groups; interaction with other states in the field of countering drug crimes, providing mutual international legal assistance; ensuring the proper supply of narcotic drugs for legitimate medical, commercial and scientific purposes; working with communities through local partnerships for the prevention of drug addiction (Bukovskyi, 2023). In the 21<sup>st</sup> century, in countries belonging to the “strict control” group, along with strengthening control over drug trafficking, there is a tendency to legalise the use of certain types of drugs for medical purposes and decriminalise the storage of a small amount of narcotic drugs intended for personal use.

The countries of the “liberal approach” group include those where the sale of “light” drugs is de jure and/or de facto allowed, which is combined with effective state control over their accounting, distribution and sale, and over the turnover of other (more potent) drugs. The law enforcement agencies of these countries pay considerable attention to identifying and exposing persons involved in organised drug crime. If proven guilty, such persons face long prison terms. Among the most famous countries of this group are the Netherlands, Malta, and Belgium.

The policy of specific states to counteract illicit drug trafficking, among other things, is embodied in the detection and investigation of drug crimes. The public prosecution service (prosecutor’s office) plays an important role in ensuring the effectiveness and legality of such activities. An analysis of the legislation of the member states of the European Union suggests that not all standards of the prosecutor’s office are provided for in the recommendations REC (2000) 19 of the Council of Europe<sup>1</sup> and PACE Recommendations 1604 (2003)<sup>2</sup> were taken into account by national legislators.

In general, in the countries of the European continent, there are no common approaches to normalising the place of the prosecutor’s office in the system

of state bodies, its organisational structure, functions and powers in terms of ensuring the detection and investigation of criminal offences (Drach, 2020; Banakh, 2020). What is common in all EU member states is that the prosecutor’s office is tasked with initiating criminal prosecution, bringing charges, presenting them during court proceedings, and filing appeals against court decisions. But there are significant differences in the legal assignment of functions to prosecutors that go beyond criminal justice. Moreover, prosecutors in different countries have excellent powers directly in the field of criminal justice.

The prosecutor’s offices of France and Hungary have the widest range of powers among European countries (European Information and Research Centre, n.d.). According to French law<sup>3,4</sup> the prosecutor’s office is entrusted with the functions of criminal prosecution at all stages of criminal proceedings, and participation in administrative and judicial proceedings and bankruptcy cases in the interests of society and the state. Directly in the field of criminal justice, French prosecutors have broader powers than prosecutors in many other EU countries. This, in particular, is manifested in the fact that they supervise the activities of the judicial police, initiate criminal prosecution on their own initiative, can independently conduct a pre-trial investigation, are authorised to participate in any investigative actions, give mandatory instructions to the pre-trial investigation body, and make decisions on choosing a preventive measure and closing criminal proceedings outside of judicial procedures. Therefore, in France, the prosecutor controls all processes that take place during the pre-trial investigation, which, according to the criminal procedural law of this state, consists of an inquiry, initiation of criminal prosecution, and preliminary investigation.

The inquiry is conducted by the judicial police. This is not only the stage of pre-trial investigation, but also a specific type of activity, which, among other things, is aimed at: urgent identification and detention of persons who have committed criminal offences in conditions of evidence; detection of previously unknown crimes, search for persons involved in their commission, obtaining evidence of their guilt, and, if necessary, establishing the location of such persons; clarification of the causes of death of a person under suspicious circumstances; search for missing persons and persons who evade investigation, trial, and serving a criminal sentence. Police officers use both

<sup>1</sup> Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 “To Member States on the Role of the Public Prosecutor’s Office in the Criminal Justice System”. (2000, October). Retrieved from [https://supreme.court.gov.ua/userfiles/Rec\\_2000\\_19\\_2000\\_10\\_6.pdf](https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf).

<sup>2</sup> PACE Recommendation No. 1604 “On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law”. (2003, May). Retrieved from <https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en>.

<sup>3</sup> Constitution of France. (2023, December). Retrieved from <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/>.

<sup>4</sup> Criminal Procedural Code of France. (2020, January). Retrieved from [https://legislationline.org/sites/default/files/documents/6e/France\\_CPC\\_am022020\\_fr.pdf](https://legislationline.org/sites/default/files/documents/6e/France_CPC_am022020_fr.pdf).

public and secret methods, act both on their own initiative and on behalf of the investigator and only under the supervision of the prosecutor<sup>1</sup>.

The approach in which, under the supervision of the same prosecutor, both the detection of crimes and the identification of those who committed them, the collection of evidence in criminal proceedings, is considered quite justified and relevant for the purpose of practical application in countering drug crime in Ukraine. The effectiveness of the French model is an additional confirmation of the thesis that we have justified in the past that “the detection and investigation of drug crimes are two successively located in time components (stages) of a single process that has its own characteristics due to the specifics of illegal activities. This process objectively requires external monitoring (with the possibility of intervention and adjustment) due to the high risks that its subjects (operational units and pre-trial investigation bodies) may ignore the requirements of the legislation. The role of such monitoring is theoretically and practically played only by prosecutor’s supervision (Shelikhovska, 2023).

So there are significant differences in the understanding of the concept of inquiry in Ukraine and France. If in Ukraine an inquiry is a form in which a pre-trial investigation of criminal offences is carried out (according to a simplified procedure), then in France it is a search work conducted by public and secret methods. What these countries have in common is that it is conducted under the supervision of a prosecutor.

The German prosecutor’s office also has a wide range of powers in the field of criminal justice. But it should mainly be considered an investigative body, whose main task is to conduct a preliminary investigation by clarifying both incriminating and exculpatory circumstances leading to the possible prosecution (Glaser & Hartmann, 2022). According to the German Code of Criminal Procedure<sup>2</sup>, it is this body that is responsible for investigating crimes (inquiry), collecting evidence, and evaluating them. The prosecutor has the right to fully manage the course of the inquiry, determine the specifics of its organisation, and make appropriate procedural decisions. However, in practice, specific public and secret investigative search actions are carried out by the police on behalf of the prosecutor. In fact, prosecutors personally participate in the investigation of only serious and

especially serious crimes. In order to resolve the issue of bringing charges, the prosecutor establishes circumstances relevant to the criminal proceedings. It can question the accused, the victim, witnesses, experts, give instructions to conduct a search, inspection, seizure, etc. (Nalutsyshyn, 2021). An inquiry under German law covers almost all actions that are carried out in Ukraine within the framework of investigative and search actions and pre-trial investigation. The German legislator does not link the inquiry with the investigation of criminal offences of a certain degree of severity, as is done in Ukraine. A judicial investigator (District Judge-Inquirer) participates in an inquiry only when making the most important decisions or deciding on the legalisation of evidence (Baranets, 2023).

In the Czech Republic, the function of public prosecution is assigned to the prosecutor’s office of the republic by the provisions of Article 80 of the Constitution of this country<sup>3</sup> and a separate law establishing the structure, system of organisation of work and competence of this state body<sup>4</sup>. The Criminal Procedural Code of this state defines the main function of the prosecutor’s office at the stage of pre-trial investigation as supervision of the activities of police investigators. The prosecutor is granted the right to participate in any investigations, personally conduct individual ones, independently conduct a pre-trial investigation and make any procedural decision<sup>5</sup>. The Prosecutor’s Office of the Czech Republic has powers that go beyond the criminal justice system. They relate to civil cases in terms of establishing legal capacity; declaring a person dead, etc. (Nalutsyshyn, 2021).

The Estonian Prosecutor’s Office is a government agency that is managed by the Ministry of Justice and is independent in performing its tasks arising from the law. The prosecutor’s office manages pre-trial criminal proceedings, ensuring their legality and effectiveness; supports the state prosecution in court, participates in the planning of operational and investigative activities necessary for detecting, stopping, and solving crimes, gives permission to the pre-trial investigation body to conduct certain operational and investigative activities, and performs other duties assigned to the prosecutor’s office by law<sup>6</sup>. The prosecutor has the right to give instructions to the pre-trial investigation bodies regarding the collection of evidence and, in accordance with the factual data obtained, decides to bring charges against specific persons<sup>7</sup>.

<sup>1</sup> Criminal Procedural Code of France. (2020, January). Retrieved from [https://legislationline.org/sites/default/files/documents/6e/France\\_CPC\\_am022020\\_fr.pdf](https://legislationline.org/sites/default/files/documents/6e/France_CPC_am022020_fr.pdf).

<sup>2</sup> German Code of Criminal Procedure. (1987, April). Retrieved from [https://www.gesetze-im-internet.de/englisch\\_stpo](https://www.gesetze-im-internet.de/englisch_stpo).

<sup>3</sup> Constitution of Czech Republic. (1992, December). Retrieved from <https://bit.ly/38ZekWD>.

<sup>4</sup> Law of the Czech Republic No. 283/1993 “On the Public Prosecutor’s Office”. (1993, November). Retrieved from <https://bit.ly/3rLjyPc>.

<sup>5</sup> Law of the Czech Republic No. 141/1961 “On Criminal Procedure (Criminal Procedure Code)”. (1962, January) Retrieved from <https://www.zakonyprolidi.cz/cs/1961-141>.

<sup>6</sup> Law of the Estonia No. RT I 1998, 41, 625 “On the Public Prosecutor’s Office”. (1998, May). Retrieved from <https://www.riigiteataja.ee/akt/12749278>.

<sup>7</sup> Estonia Code of Criminal Procedure. (2004, July). Retrieved from <https://www.riigiteataja.ee/akt/121122012010>.

Article one of the Estonian Criminal Procedural Code not only provides that the scope of this law extends not only to pre-trial and judicial criminal proceedings (Article 1, Paragraph 1), but also defines the grounds and procedure for conducting operational and investigative activities (Article 1, Paragraph 2). This activity is regulated by a separate chapter (chapters 3-1) of this Code. The grounds for conducting it, among other things, are: the need to collect information about the preparation of a crime in order to prevent or solve it (Paragraph 1 of Article 126-2)<sup>1</sup> – on the one hand, the need to collect information about the crime in the framework of criminal proceedings. Thus, operational and investigative activities can not only accompany criminal proceedings, but also precede them. This activity is carried out under the supervision of the prosecutor, who not only grants the police permission to conduct certain secret actions and applies to the court with relevant petitions, but also participates in the planning of operational and investigative activities.

According to the Law of the Republic Of Moldova “On the Prosecutor’s Office” of 25.02.2016<sup>2</sup>, the competence of this “autonomous public institution” is limited only to the sphere of criminal justice. This law provides that the prosecutor: directs and carries out criminal prosecution, supports the prosecution in court (Paragraph “A” of Article 5); monitors compliance with the legislation on special search activities (paragraph “C” of Article 5); initiates disciplinary proceedings in cases of violation of the law, failure or improper performance of duties in criminal proceedings by criminal prosecution officers, employees of ascertaining bodies, employees of bodies engaged in special search activities, and employees responsible for registering messages (Paragraph “B” of Article 6). The principle of specialisation is embodied in Article 9 of the Law of the Republic Of Moldova “On the Prosecutor’s Office” of 25.02.2016<sup>3</sup>. In particular, Moldova has introduced an anti-corruption prosecutor’s office and a prosecutor’s office for combating organised crime and special cases.

All the countries discussed above, including Ukraine, belong to the Romano-German legal system. Therefore, taking this experience into account is an important factor in improving prosecutor’s supervision over the detection and investigation of drug crimes in Ukraine (Likhovyt’skyi, & Spiridonova, 2023). However, R.V. Zvarych *et al.* (2023) argue that in recent years, there has been an active mutual borrowing of the best elements (principles, legal means, methods, tools) of the Romano-Germanic

and Anglo-Saxon legal families in order to protect the interests of society and the state, and ensure human rights. These trends are also evident in Ukraine, where, among other things, judicial precedents characteristic of the Anglo-Saxon legal family are widely used in law enforcement.

Consequently, international standards of prosecutor’s supervision over the detection and investigation of drug crimes do not have a single source and are a purely criminological concept. Their content consists of separate norms of international legal acts, which define the minimum requirements for: the work of law enforcement agencies, ensuring human rights and freedoms, countering crimes in the field of drug trafficking, and the powers of the prosecutor’s office in the field of criminal justice. Approaches to the implementation of these standards are purely individual in each state: there are various combinations that are destablished due to consideration of some requirements and recommendations and neglect of others. In a democratic society, it is advisable to introduce these standards as widely as possible.

## ■ Discussion

Problematic issues of legal regulation and the practice of prosecutor’s supervision are widely discussed by researchers from different countries. Their assessments are important for this study, as they provide an insight into the advantages and disadvantages of organising and implementing prosecutor’s supervision using specific examples. Some of these examples are not directly related to the detection and investigation of drug crimes, while others are directly related to this activity. However, both the former and the latter deserve attention as they analyse the prosecutor’s activity in the field of criminal justice.

Researchers from the USA, S. Bonnes & S.A. Tosto (2023), examined the tactics of the prosecutor’s support in court in cases of sexual violence committed by (and against) members of the armed forces of a state. Researchers have shown that in support of the charge, prosecutors actively use information that is not evidence of the actual circumstances of the crime (especially in cases where there is not enough direct evidence of the event of the crime and the guilt of the person). This refers to, in particular, data on the accused that contradict the established ideas of the US military about the standards of behaviour of soldiers and officers. In addition, prosecutors also rely on military jargon and the values of the military court to encourage jurors to find the accused guilty and convince them of the need to impose a specific

<sup>1</sup> Estonia Code of Criminal Procedure. (2004, July). Retrieved from <https://www.riigiteataja.ee/akt/121122012010>.

<sup>2</sup> Law of the Republic of Moldova No. 3 “On the Prosecutor Office”. (2016, February). Retrieved from [https://www.legis.md/cautare/getResults?doc\\_id=140236&lang=ro](https://www.legis.md/cautare/getResults?doc_id=140236&lang=ro).

<sup>3</sup> Ibidem, 2016.

sentence. Moreover, prosecutors emphasise that the victim meets the expectations of the military and the image of an ideal serviceman. This tactic often works, as judges and jurors are themselves military personnel. This leads to the conviction of persons whose guilt has not actually been proven beyond a reasonable doubt.

There are no such problems in Ukraine, which is due, among other things, to differences in the judicial system. There are no specialised military courts in Ukraine, and in cases of sexual violence, prosecutors usually rely on direct evidence confirming the fact and circumstances of the crime. The problems of the prosecutor's use of data describing a person (information about criminal records, drug addiction, behaviour in everyday life, employment, etc.) in support of their guilt, in particular, in drug crime proceedings, should be studied separately. In the meantime, this study provides recommendations for Ukraine to borrow the best international prosecutorial practices in the field of countering drug crime.

The topic of the prosecutor's activities in criminal cases related to sexual violence is raised by researchers not only in terms of certain categories of accused or victims, but also in general. Thus, T. Slovinsky & S.J. Brubaker (2022) developed tactics for protecting the prosecutor from the traumatic effects of procedural and non-procedural factors, and the work to prevent secondary and repeated victimisation of victims of sexual violence. In drug crime proceedings, for the most part, there are no victims and there is no such traumatic effect. However, in Ukraine, the issues of emotional balance of the prosecutor's activities, the means of their psychological protection are currently extremely relevant for any category of criminal proceedings. Ultimately, the armed aggression of the Russian Federation has become a catalyst for polar phenomena in the prosecutor's environment: the activation of civil position against the aggressor, professional and behavioural destructions that can lead to the end of the prosecutor's career (Khotynska-Nor *et al.*, 2023).

A lot of scientific research is devoted to the psychological and moral aspects of the activities of prosecutors in UK. L. Soubise (2023) drew particular attention to the insufficiently investigated aspect of the professional identity of public prosecutors – moral legitimacy and, in particular, self-legitimacy, that is, the belief of prosecutors in their own competence to make decisions in individual cases. As a result of direct observations and interviews, a sense of loss of their own legitimacy by employees of the Crown Prosecution Service of Great Britain was revealed due to the constant monitoring of their decisions by colleagues and managers. This comprehensive managerism, according to the researcher, undermines the very legitimacy (and, consequently, transparency),

the development of which the prosecutor's office has had to work hard since its inception.

This problem is certainly inherent in Ukraine. Ukrainian prosecutors must coordinate with the management almost every decision in any criminal proceedings, including cases of drug crimes. This, among other things, concerns the details of notifying a person of suspicion and the content of the indictment, determining the type of preventive measure, concluding a plea agreement, applying to the court with a request for exemption from criminal liability, etc.

In another plane, the issue of moral legitimacy and self-legitimacy of prosecutors was considered by American researchers. For the most part, such studies are directly related to the problems of illicit trafficking in narcotic drugs and psychotropic substances. In particular, this is the issue of determining by the prosecutor the expediency of criminal prosecution for possession of a small amount of drugs (for their own use). As stated by S.B. Baughman & M.S. Wright (2020), over-active criminal prosecution for these and other minor criminal offences has led to mass incarceration of people for long periods of time. This, in turn, led to a loss of confidence on the part of a significant number of the population in the courts, the prosecutor's office, and the police. These institutions have lost their moral correctness in the eyes of community residents. Most of the people who fell under the repression were descendants of immigrants from the African continent, which outraged broad segments of the US population belonging to this category (their opinion was shared by other Americans).

The consequence of these events was the emergence of a "progressive" movement in the prosecutor's environment. It consists in introducing practices aimed at preventing mass incarceration, eliminating racial inequality (racially disproportionate consequences of charges), waiving charges of committing minor drug crimes, and giving preference to the use of medical and educational measures (including compulsory ones) and social rehabilitation over criminal punishment. Thus, "progressive" prosecutors try to assert their moral authority (legitimacy) both in the eyes of their fellow citizens and in their own conviction.

Thus, A.L. Cox & C. Gripp (2022), exploring the strategies of ordinary prosecutors in Belton (USA), among other things, made the following conclusions: 1) recognising the problem of legitimacy faced by prosecutors in general, Belton prosecutors seek to dissociate themselves from their colleagues (other prosecutors, police, judges) whom they consider responsible for mass incarceration; 2) by doing so, they seek to assert their moral, intellectual, and social superiority; 3) by staying away from the police, prosecutors simultaneously demonstrate their ability to influence its decisions, stop its illegitimate activities and bring to justice officers guilty of violating

the law; 4) recognising the systemic the injustice and challenges faced by those accused of a crime, prosecutors are inclined to apply to the latter measures that are alternative to criminal prosecution.

These alternative measures are implemented under special programmes that provide for the use of special treatment, education, social rehabilitation of offenders with their involvement in socially useful work, etc. These programmes are often criticised. R.F. Wright & K.L. Levine (2022) criticise them for their lack of specific standards and established criteria. The lack of common approaches to the content and form of such programmes is due to the fact that their development and implementation are carried out by the prosecutor's offices of US states that do not have a single subordination and act independently of each other. In addition, the conflicting legislation of individual states does not contribute to the proper implementation of such programmes. E. O'Brien (2020) notes that Wisconsin has a drug-related homicide act passed back in 1986. This law was intended to expose and convict drug dealers. However, its provisions made it possible to bring to justice and severely punish drug addicts who are not involved in the drug business. This refers to friends, relatives, or acquaintances of the deceased from a drug overdose, who found another dose for the victim or shared it. Thus, addicts face the possibility of being charged with murder when they call for medical attention for an overdose victim. Since 2014, another law has been in force in Wisconsin, providing such individuals with treatment for drug addiction and protecting them from prosecution. However, its implementation faces problems due to the active implementation of the provisions of the 1986 law. In connection with the above, the researcher rightly suggests adjusting both the legislation and the prosecutor's practice.

Another feature of the activities of "progressive" US prosecutors in cases of illegal drug trafficking is the active use of the Institute of plea agreements. C.A. Grodensky *et al.* (2023), investigating this issue, interviewed prosecutors who described working to achieve five major progressive goals in their plea bargain decisions: dropping charges of drug possession in small quantities; avoiding excessive punishment, especially for crimes without victims; avoiding prosecution in obviously weak cases; encouraging open communication with the defence; and promoting racial equality. Prosecutors' descriptions of how these goals were guided by case decisions show how progressive prosecution can affect the criminal justice system through plea bargaining.

However, A.M. Gershowitz (2021) points to the unjustified extension of the liberal policy of "progressive" prosecutors to numerous cases against doctors who massively prescribe narcotic drugs to patients without appropriate medical indications. Despite the

fact that such doctors were deprived of their licenses due to abuse of the right to prescribe narcotic drugs to patients (proving their guilt was not complicated), prosecutors refused to prosecute them. The researcher quite justifiably compares these doctors with street drug dealers, and also rightly notes that their use of drug licenses to cover up their illegal business only increases the public danger of illegal actions committed by them.

A.M. Gershowitz (2021) argues the need for criminal prosecution of doctors who unreasonably issue prescriptions for the purchase of drugs. The practices of "progressive" US prosecutors regarding the use of their discretionary powers to avoid criminal and public prosecution in certain categories of drug crimes deserve attention, as they save state resources and comply with the principles of functioning of a democratic society.

Thus, the generalisation of the studied standards, according to the acts of these organisations, together with the analysis of the experience of developed democratic countries and the analysis of scientific literature, highlight the most useful and valuable approaches and practices in the field of prosecutor's supervision over the detection and investigation of drug crimes. Ukraine needs to follow a further course towards the introduction of effective special criminological programmes and methods of combating drug crimes with the assignment of the responsibility for their development and implementation to specially created police units (national and local levels) – with the involvement of scientific institutions. It will be effective to introduce the specialisation of prosecutors in supervising the detection and pre-trial investigation of drug crimes, followed by the support of public prosecution in court. It is important to ensure that the severity of punishment for drug crimes corresponds to their public danger through adequate, progressive use of discretionary powers in bringing and maintaining public prosecution (within the limits of the types and amounts of punishment established by the legislator). The prosecutor's competence should include resolving issues related to the application of alternative measures to criminal prosecution and prosecution in relation to persons who have committed drug crimes (treatment for addiction with subsequent monitoring of the patient, upbringing and re-education, restoration of working capacity and social reintegration of the offender). It is also necessary to ensure that the prosecutor has the discretionary power (under certain conditions) to discontinue criminal prosecution or drop charges against a person who has committed a criminal offence or a minor crime in the field of illicit drug trafficking. The prosecutor's office should be charged with ensuring the legality of the actions of law enforcement agencies to obtain the information necessary to start continuing

the criminal prosecution of a person for committing drug crimes. It is also important to ensure the moral legitimacy and self-legitimacy of prosecutors through the organisation of such conditions for their use of discretionary powers, in which individual procedural decisions and legal position do not need to be coordinated with the leadership of the prosecutor's office.

## ■ Conclusions

International standards of prosecutor's supervision over the detection and investigation of drug crimes are a set of separate provisions of various international laws and regulations, which establish minimum requirements and recommendations in terms of: rationing at the level of national legislation the activities of law enforcement agencies to counteract illegal trafficking in narcotic drugs, psychotropic substances and their analogues – on the one hand, as well as the legal status of the prosecutor's office, its functions and powers in the field of criminal justice – on the other. These standards do not have a single regulatory source and are determined based on the results of a comprehensive analysis of these provisions.

The analysis of the UN and EU regulations, as well as the practice of implementing their provisions in different countries of the world, allowed for the conclusion that there are different approaches to the implementation of provisions related to prosecutor's supervision of the detection and investigation of drug crimes. This led to the existence of various models of a special criminological system for countering drug trafficking: from the repressive role of the prosecutor's office in combining a significant excess of the recommended limits of criminal punishment (up to the death penalty) to the legalisation of drug use and possession (without the purpose of selling) in combination with rationing the prosecutor's ability to drop charges and apply measures alternative to criminal prosecution to the guilty person. Each of the models has its own disadvantages and advantages and is

determined by national legal traditions. However, in order to ensure the balance of interests of a democratic society and respect for the rights and freedoms of a particular person in the fight against illegal drug trafficking, it is important that the prosecutor's supervision of the detection and investigation of drug crimes is based as the most complete consideration of international standards.

Ukraine occupies a leading position in the implementation of the standards under study, ahead of many other states, including developed democratic ones. This is due to Ukraine's political orientation and active work on joining the EU. Among other things, significant achievements of Ukraine on this path are to ensure: independence and organisational separation of the prosecutor's office from the executive branch, the court and law enforcement agencies that are entrusted with conducting criminal investigation and pre-trial investigation; giving the prosecutor the authority to conduct procedural management of inquiry and pre-trial investigation; limiting the competence of the prosecutor's office (with minor exceptions) to the sphere of criminal justice; establishing by the legislator penalties for committing drug crimes within the limits recommended by UN and EU documents.

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## ■ Conflict of Interest

None.

## ■ References

- [1] Banakh, S.V. (2020). International experience of the organisation of the prosecutor's office. *Bulletin of V.N. Karazin Kharkiv National University*, 29, 276-280. [doi: 10.26565/2075-1834-2020-29-37](https://doi.org/10.26565/2075-1834-2020-29-37).
- [2] Baranets, V.A. (2023). Foreign experience of investigation of criminal offences in the form of inquiry. *Kyiv Journal of Law*, 1, 331-336. [doi: 10.32782/klj/2023.1.51](https://doi.org/10.32782/klj/2023.1.51).
- [3] Baughman, S.B., & Wright, M.S. (2020). [Prosecutors and mass incarceration](#). *Southern California Law Review*, 94(5), 1123-1190.
- [4] Bilokin, R.M. (2023). International standards of prosecutor supervision over legality in criminal proceedings. *Scientific Bulletin of the Uzhhorod National University*, 78(2), 256-262. [doi: 10.24144/2307-3322.2023.78.2.40](https://doi.org/10.24144/2307-3322.2023.78.2.40).
- [5] Bonnes, S., & Tosto, S.A. (2023). Prosecuting military sexual assault: The entanglement of military discourse and victim stereotypes in prosecutor case strategies. *Feminist Criminology*, 18(5), 459-489. [doi: 10.1177/15570851231197913](https://doi.org/10.1177/15570851231197913).
- [6] Bukovskiy, Yu.D. (2023). The experience of the United States in organizing the activities of units to combat illegal drug trafficking. *Legal Scientific Electronic Journal*, 1, 258-262. [doi: 10.32782/2524-0374/2023-1/61](https://doi.org/10.32782/2524-0374/2023-1/61).
- [7] Cox, A.L., & Gripp, C. (2022). The legitimization strategies of "progressive" prosecutors. *Social & Legal Studies*, 31(5), 657-678. [doi: 10.1177/09646639211060814](https://doi.org/10.1177/09646639211060814).

- [8] Drach, D. (2020). Prosecutorial supervision: Ukrainian and European experience. *Entrepreneurship, Economy and Law*, 5, 132-136. doi: [10.32849/2663-5313/2020.5.23](https://doi.org/10.32849/2663-5313/2020.5.23).
- [9] European Information and Research Centre. (n.d.). *Functions of prosecutor's offices in European countries: Informational reference prepared by the European Information and Research Center at the request of the People's Deputy of Ukraine*. Retrieved from <https://infocenter.rada.gov.ua/uploads/documents/29323.pdf>.
- [10] From fines to the death penalty: How drugs are punished in different countries. Ukraine is criminal. (2017). Retrieved from <https://cripo.com.ua/stories/?p=224675/>.
- [11] Gershowitz, A.M. (2021). [Opioid doctors: Is losing your license sufficient punishment for drug trafficking?](https://doi.org/10.1017/glj.2021.36) *Hastings Law Journal*, 72(3), 871-918.
- [12] Glaser, S., & Hartmann, S. (2022). CJEU: Germany's public prosecution authorities cannot be regarded as a "Judicial authority" with regard to EAWs – the truth or a misconstrual of the legal reality? *German Law Journal*, 23(4), 650-660. doi: [10.1017/glj.2022.36](https://doi.org/10.1017/glj.2022.36).
- [13] Grodensky, C.A., Crozier, W.E., Gifford, E.J., & Garrett, B.L. (2023). Understanding plea bargaining in a new progressive DA's office: How line prosecutors understand and implement progressive goals through plea decisions. *Criminal Justice and Behavior*, 50(3), 429-453. doi: [10.1177/00938548221140356](https://doi.org/10.1177/00938548221140356).
- [14] Hrystova, Yu. (2023). International standards for ensuring the security of justice. *Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*, 2, 234-243. doi: [10.31733/2078-3566-2023-2-234-243](https://doi.org/10.31733/2078-3566-2023-2-234-243).
- [15] Khotynska-Nor, O., Bakaianova, N., & Kravchenko, M. (2023). Prosecutor's office of Ukraine under martial law: Challenges, trends, statistical data. *Access to Justice in Eastern Europe*, 3, 40-53. doi: [10.33327/AJEE-18-6.3-a000303](https://doi.org/10.33327/AJEE-18-6.3-a000303).
- [16] Klymchuk, M.P., & Stetsyk, B.V. (2023). International legal standards for the protection of a person's defender or representative from interference in their activities. *Electronic Scientific Publication "Analytical and Comparative Jurisprudence"*, 4, 471-476. doi: [10.24144/2788-6018.2023.04.76](https://doi.org/10.24144/2788-6018.2023.04.76).
- [17] Likhovyt'skyi, Ya.O., & Spiridonova, A.Yu. (2023). The legal system of Ukraine: Changes in the conditions of necessary accession to the European Union. *Scientific Bulletin of the Uzhgorod National University*, 77(2), 299-303. doi: [10.24144/2307-3322.2023.77.2.51](https://doi.org/10.24144/2307-3322.2023.77.2.51).
- [18] Maksymenko, V. (2022). Analysis of the legislation of EU member states regarding control in the sphere of circulation of narcotic drugs, psychotropic substances and precursors. *The Grail of Science*, 22, 101-103. doi: [10.36074/grail-of-science.25.11.2022.15](https://doi.org/10.36074/grail-of-science.25.11.2022.15).
- [19] Nalutsyshyn, V. (2021). Legal status and functions of the prosecutor's office: European experience. *University Scientific Notes*, 6(84), 17-27. doi: [10.37491/UNZ.84.2](https://doi.org/10.37491/UNZ.84.2).
- [20] O'Brien, E. (2020). A Willful Choice: The ineffective and incompassionate application of Wisconsin's criminal laws in combating the opioid crisis. *Wisconsin Law Review*, 5, 1065-1105. doi: [10.2139/ssrn.3675887](https://doi.org/10.2139/ssrn.3675887).
- [21] Participation of the prosecutor in criminal proceedings regarding criminal offences in the field of illegal drug trafficking. (2022). Retrieved from <https://ptcu.gp.gov.ua/uk/2022/01/uchast-prokurora-u-kryminalnomu-provadzheni-shhodo-kryminalnyh-pravoporushen-u-sferi-nezakonnogo-obigu-narkotychnyh-zasobiv/>.
- [22] Riabovol, L.T. (2021). Documents of the bodies of the Council of Europe as a basis for reforming the prosecutor's office in Ukraine. *Proceedings*, 10, 9-14. doi: [10.36550/2522-9230-2021-10-9-14](https://doi.org/10.36550/2522-9230-2021-10-9-14).
- [23] Serhieieva, T.V. (2020). Implementation of the provisions of international agreements on combating illegal drug trafficking in the legislation of Ukraine. *Law and Public Administration*, 3, 65-69. doi: [10.32840/pdu.2020.3.9](https://doi.org/10.32840/pdu.2020.3.9).
- [24] Shelikhovska, I.Yu. (2023). Supervision of detection and investigation of drug crimes as a specific area of prosecutorial activity. *New Ukrainian Law*, 2, 163-169. doi: [10.51989/NUL.2023.2.22](https://doi.org/10.51989/NUL.2023.2.22).
- [25] Slovinsky, T., & Brubaker, S.J. (2022). Prosecution as a "Soul Crushing" job: Emotional labor and secondary trauma in working sexual assault cases. *Violence and Victims*, 37(5), 588-609. doi: [10.1891/VV-2021-0060](https://doi.org/10.1891/VV-2021-0060).
- [26] Solovei, V.V. (2023). International practice and foreign experience of preventing criminal offences committed by organized groups and criminal organisations in the field of illegal trafficking of narcotic drugs, psychotropic substances or their analogues. *Scientific Bulletin of the Uzhhorod National University*, 78(2), 228-233. doi: [10.24144/2307-3322.2023.78.2.36](https://doi.org/10.24144/2307-3322.2023.78.2.36).
- [27] Soubise, L. (2023). Professional identity, legitimacy and managerialism at the Crown Prosecution Service. *Legal Studies*, 43(3), 425-442. doi: [10.1017/lst.2022.47](https://doi.org/10.1017/lst.2022.47).
- [28] Sramel, B., & Klimek, L. (2022). The prosecutorial monopoly of the Slovak Public Prosecution Service: No access to justice for the injured party? *Access to Justice in Eastern Europe*, 2(14), 22-45. doi: [10.33327/AJEE-18-5.2-a000201](https://doi.org/10.33327/AJEE-18-5.2-a000201).

- [29] Standards of professional responsibility, a statement of the main duties and rights of prosecutors, adopted by the International Association of Prosecutors. (1999). Retrieved from [https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-\(1\)/Ukrainian.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-(1)/Ukrainian.pdf.aspx).
- [30] Voinova, A.O., & Stanich, V.S. (2021). *Criminal code of the China*. Kyiv: OVK.
- [31] Wright, R.F., & Levine, K.L. (2021). Models of prosecutor-led diversion programs in the United States and beyond. *Annual Review of Criminology*, 4, 331-351. doi: 10.1146/annurev-criminol-061020-022236.
- [32] Yarmaki, V.H. (2021). Combating illegal trafficking of narcotic drugs, psychotropic substances and precursors: Experience of foreign countries. *South Ukrainian Legal Journal*, 1, 70-74. doi: 10.32850/sulj.2021.1.12.
- [33] Zvarych, R.V., Druchek, O.V., & Novikova, M.M. (2023). The legal system of Ukraine in the paradigm of the Anglo-Saxon legal family in the conditions of martial law. *Legal Scientific Electronic Journal*, 1, 694-697. doi: 10.32782/2524-0374/2023-10/168.

## Нагляд прокурора за виявленям та розслідуванням наркозлочинів: міжнародні стандарти і світовий досвід

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■ **Анотація.** Стрімке поширення наркотизму зумовлює необхідність активізації протидії наркозлочинам (з одночасним суворим дотриманням поліцією прав людини), що можливо лише за умови ефективного прокурорського нагляду, чим і зумовлена актуальність дослідження його проблем. Мета статті – схарактеризувати стан правового регулювання та практичного здійснення прокурором нагляду за оперативно-розшуковою протидією та досудовим розслідуванням кримінальних правопорушень у сфері наркообігу в площині дотримання норм міжнародного права, а також сформулювати рекомендації щодо запозичення позитивної практики інших країн у частині такого нагляду. Послугуючись системно-структурним, порівняльно-правовим і логіко-юридичним методами, комплексно досліджено низку актів міжнародного права та законодавства України й інших держав. Обґрунтовано, що зміст міжнародних стандартів прокурорського нагляду за виявленям і розслідуванням наркозлочинів становлять наявні в різних джерелах міжнародного права окремі положення, розроблено рекомендації щодо діяльності національних прокуратур у сфері протидії злочинності загалом і діяльності державних органів з кримінально-правової, спеціально-кримінологічної, оперативно-розшукової та кримінальної процесуальної протидії наркозлочинам. Використання зазначених методів і матеріалів надало можливість визначити, що Україна дотримується досліджуваних стандартів (навіть на вищому рівні, ніж деякі країни – члени Європейського Союзу), зокрема щодо незалежності прокуратури від виконавчої та судової влади, концентрації основних функцій у сфері кримінальної юстиції, забезпечення ефективного нагляду за досудовим розслідуванням у формі процесуального керівництва. Водночас в Україні доцільно продовжити роботу щодо: запровадження спеціалізації прокурорів нагляді за виявленям і досудовим розслідуванням наркозлочинів, а також розробленням методик протидії наркозлочинам правоохоронними органами; розширенням дискреційних повноважень прокурора та забезпеченням реальної незалежності й самостійності їх використання; забезпеченням нагляду за дотриманням поліцією законності під час ініціативного виявлення наркозлочинів. Результати проведеного дослідження може бути використано для вдосконалення законодавства України та практики його застосування

■ **Ключові слова:** наркотичні засоби; прокуратура; законність; дискреційні повноваження; права людини; оперативно-розшукова діяльність

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## Legal challenges and innovations in executive proceedings in Ukraine and the world: A comparative aspect

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■ **Abstract.** The relevance of the study is due to some changes at both the global and national levels that significantly affect the process of exercising the rights and freedoms of individuals, rendering a fair judgment and its enforcement. Such changes include the introduction of martial law in Ukraine and the digitalization of several legal processes. In view of this, the purpose of the research work is to analyse the main problems in the field of enforcement of decisions that impede the enforcement of court decisions and ensure the principle of justice and the rule of law in Ukraine and in the world. The following methods were used in the study: historical, statistical, comparative, formal and logical. The results of the study showed that enforcement proceedings in Ukraine are regulated by a mixed system that includes both public and private enforcement officers. The study highlights the fact that Russia's full-scale invasion of Ukraine has had a significant impact on the enforcement of court decisions. This has led to the need for legislative changes and practical challenges for the enforcement system. The experience of other countries, including the United States and China, demonstrates that the introduction of digital technologies to automate judicial, and enforcement procedures can be effective in further reforming this system in Ukraine. Despite some progress in implementing the reform in Ukraine, there are still problems with the efficiency and accessibility of enforcement proceedings, especially under martial law. To overcome them, it is necessary to use the best practices of the EU countries, in particular, in terms of digitalization of the process, introduction of alternative methods and ensuring equality between private and public executors, as well as to create a transparent control system. The results of the study contribute to the doctrine of the institute of enforcement proceedings and create an effective theoretical basis for the practical implementation of methods to improve the enforcement of decisions

■ **Keywords:** reformation; digitalization; martial law; fair judgment; management

### ■ Introduction

The relevance of the study is determined by several current trends. The aggravation of geopolitical conflicts and the rise of authoritarian tendencies pose threats to the fundamental civil rights of people. Another important component of relevance is the rapid development of digital technologies. This process creates new challenges for the protection of citizens' rights and freedoms, in particular in the area of privacy and information security. In addition, migration

crises are another significant reason that makes the study relevant. In Ukraine, the problems associated with the proper enforcement of court decisions are exacerbated by the ongoing war.

The specifics of the enforcement proceedings were studied by I.L. Bulyk (2021). Thus, the author points out that enforcement proceedings should not be equated exclusively with court decisions, as the nature of this process is that it is a combination of

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both civil and judicial proceedings, the purpose of which is the parties' common desire to protect and restore violated rights and obligations. The researcher also points out that enforcement proceedings should be considered as another final stage of judicial proceedings, and therefore, it should be based on general legal principles of legality, equality, and justice.

Regarding the current problems of enforcement of court decisions, it is worth paying attention to the work of O. Vorobiov (2022). The researcher notes that, in general, Ukraine's transition to a private-public system of enforcement proceedings was a positive step that significantly improved the enforcement processes, however, the structure of the general system of enforcement bodies, which turned out to be too complicated and requires significant funding from the state, without showing the expected efficiency, still remains a problem.

The tasks and legal essence of the enforcement proceedings were studied by N.A. Serhienko (2019), who believes that the enforcement proceedings are a system consisting of various elements that interact with each other. This system has an internal structure and integrity, in particular, this connection is manifested in the fact that although the subjects of the enforcement proceedings are different, they are united by a common goal – the enforcement of the decision, and their activities must comply with the principles of timeliness, impartiality, independence, and completeness.

The relationship between enforcement proceedings and court decisions is outlined in the work of N.M. Grabar (2023). Thus, according to the author, such a feature of a legitimate court decision as binding nature necessitates its enforcement; in order for a certain connection to arise between the two objects, an element of unlawfulness is required, which consists in failure to comply with the requirements of the court decision, i.e. refusal to voluntarily comply by the party to which such an obligation is imposed. The researcher also points out that the initiation of enforcement proceedings does not always mean achieving the original goal, which is to return the property to the claimant.

The issue of shortcomings in the field of enforcement of decisions is discussed in the study by M. Stefanchuk (2019). In general, the author points to a systematic problem of non-enforcement of court decisions, which was also highlighted by the European Court of Human Rights (ECHR), which stated that the lack of effectiveness and binding nature of a court decision violates fundamental human rights and freedoms and requires a comprehensive solution. The article emphasizes the need to strengthen the role of private enforcement officers in the enforcement system, in particular, based on the experience of Lithuania, where private enforcement officers have completely

replaced state enforcement officers, which has led to an increase in the timeliness and efficiency of court judgments due to, first, the competitive element and, second, the financial motivational element.

The legal regulation of the enforcement of judgments in the jurisdictions of various European countries was also studied by M.M. Malskyy (2022). The author emphasizes the need to improve the enforcement process by studying the experience of EU countries and gradually introducing procedures aimed at simplifying the process of enforcement of foreign judgments rendered in EU Member States. The article also highlights the problems in the area of recognition and enforcement of judgments, such as insufficient regulation and lack of clarification on the procedure for resolving relevant cases.

In turn, M.S. Ferro (2019) reviews the legal status quo in the European Union regarding the binding nature of decisions of state enforcement authorities in subsequent competition law cases. The article discusses various aspects, including decisions on anti-trust infringements, commitment decisions, and decisions on merger control and state aid infringements. M.S. Ferro (2019) argues that case law already provides answers to many of the questions that may arise, thanks to the systematic and consistent interpretation of general principles of EU law as explained by the Court.

It is worth noting that the issue of enforcement proceedings has been widely covered in academic works, but researchers have not yet addressed the peculiarities of the process of enforcement of decisions during martial law, as well as the analysis of the innovative component in this process. Thus, given the respective shortcomings of these works, the purpose of this research is to identify the main problematic aspects of the functioning of the enforcement proceedings in Ukraine during the period of the full-scale invasion of the Russian Federation, as well as its changes in view of global trends in digitalization and the introduction of electronic services.

## ■ Materials and Methods

To achieve this goal, the study used a number of special legal and general scientific methods. The historical method helped to clarify the processes of development of the institute of enforcement proceedings. The comparative legal method was useful in studying the distinctive features of the activities of public and private enforcement officers, which include financial, motivational, and legal aspects. This method was also used to study the peculiarities and positive decisions in the field of enforcement proceedings abroad, in particular in the EU countries.

The quantitative method was used to determine the performance of private and state enforcement officers, based on a comparison of the number of cases,

their actual resolution, closure, and the amount of money recovered. The sources used to research and present relevant statistical data are the statistical reports of the Agency for the Enforcement of Decisions (2022) and eu-LISA Consolidated Annual Activity Report 2022 (eu-LISA, 2023).

It is also worth noting the use of the method of legal hermeneutics, which was used to study the main legal acts related to the enforcement of decisions, its methods, peculiarities of the proceedings, and persons with relevant powers. The objects of study, according to this method, are: Law of Ukraine “On Executive Proceedings”<sup>1</sup>, Law of Ukraine “On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies”<sup>2</sup>, Draft Law on Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings<sup>3</sup>, and Regulation No. 1215/2012 of the European Parliament and of the Council “On jurisdiction and the recognition and enforcement of judgments in civil and commercial matters”<sup>4</sup>. Based on the results of using this method, the author interpreted the concepts of enforcement proceedings, enforcement authorities, private enforcement officers, and state enforcement officers. A more in-depth study of the subjects of enforcement proceedings was made possible by the use of a systemic and structural approach.

Analytical methods made it possible to identify issues related to the main legal challenges and obstacles, characteristics of the institution, legal nature and peculiarities that currently exist in the field of enforcement proceedings. In particular, the impact of martial law on the territory of Ukraine was analysed in order to identify those powers of bailiffs that were restricted. The method also helped to identify the problems of innovation in this area of justice, the effectiveness of bailiffs' activities in times of war and the impact of the suspension of the reform of the enforcement proceedings. It should be added that the use of the analysis method additionally allowed studying foreign experience in reforming and improving the field of enforcement proceedings, introducing innovative technologies, and automating the activities of bailiffs.

Taking into account the relevant data obtained using the above methods of scientific knowledge, the forecasting method made it possible to identify ways to improve and increase the efficiency and

effectiveness of private and public bailiffs, to observe the principle of fairness of a court decision and its binding nature as a guarantee of enforcement of a court decision or a decision of other authorities, and also helped to identify a list of specific steps that will lead to positive changes, given the global digitalization and state challenges.

## ■ Results

Enforcement proceedings are a set of actions aimed at enforcing court decisions, which in general is an important element of the legal system of Ukraine. It ensures the enforcement of court decisions and decisions of other bodies (officials), which is a guarantee of protection of the rights and interests of citizens and legal entities (Aldyan & Negi, 2022). This institution has a number of general legal functions, which include ensuring the enforcement of court decisions, which exercises the right to judicial protection and a fair court decision; protecting the rights and interests of citizens; establishing the regime of legality and the rule of law; and encouraging individuals to comply with the provisions of legal acts and obligations imposed on a person in accordance with a specific court decision.

Enforcement proceedings in Ukraine are regulated by the Law of Ukraine “On Executive Proceedings”<sup>5</sup>. Referring to the provisions of this regulatory act, it is important to add that the activities of bailiffs are aimed not only at the enforcement of judicial decisions, but also at the executive inscriptions of notaries, certificates of the commission in resolving labour disputes, decisions of the National Bank of Ukraine that are recognized as enforceable, as well as decisions of the ECHR. Another characteristic of enforcement proceedings is that they are not unique to one branch of law. Thus, this activity takes place in commercial, administrative, criminal and civil proceedings.

Enforcement proceedings are initiated under certain conditions, the first of which is the debtor's refusal to voluntarily comply with a court decision or a decision of other authorities, and the second is the existence of an enforcement document, which is issued at the request of either the claimant or the prosecutor, or through the receipt of such a document from the court. In this case, it is necessary to

<sup>1</sup> Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

<sup>2</sup> Law of Ukraine No. 1403-VIII “On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/1403-19#Text>.

<sup>3</sup> Draft Law of Ukraine No. 9363 “On Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings”. (2023, June). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/42073>.

<sup>4</sup> Regulation of the European Parliament and of the Council No. 1215/2012 “On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters”. (2012, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215>.

<sup>5</sup> Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

identify the authorized persons to perform actions to enforce the debtor's obligations in favour of the creditor. Article 1 of the Law of Ukraine "On Executive Proceedings"<sup>1</sup> clearly states that such activities are entrusted to the state executive service, i.e., state enforcement officers, and in cases provided for by the Law of Ukraine "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies"<sup>2</sup>, to private enforcement officers. Thus, it can be stated that Ukraine has a mixed system of enforcement proceedings, which is a public-private form.

It is advisable to dwell on a more detailed analysis of the issue of a private enforcement officer in enforcement proceedings, as this is a fairly new institution that creates new challenges for legal regulation and the system as a whole. In accordance with the Law of Ukraine "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies"<sup>3</sup>, a private enforcement officer may be a person at least 25 years of age with a higher legal education, who speaks the state language, has experience in the field of law and has passed the relevant qualification examination. The training of such a person is carried out by the Ministry of Justice of Ukraine. Upon receipt of the relevant certificate, information about the private enforcement officer is entered into the Unified Register of Private Enforcement Officers, which allows him or her to exercise powers directly and legally. A special feature is that the legislator defines a certain list of cases that cannot be submitted to a private enforcement officer for enforcement. These include, in particular, cases related to decisions on deprivation of a child, decisions in which the state or government officials are the debtor, decisions of administrative courts, the ECHR, decisions on eviction and accommodation of individuals, and decisions on confiscation of property. Also, the activities of public and private enforcement officers differ in the source of funding for the enforcement process, since while the costs of the public enforcement officer are covered by the state budget, the costs of the private enforcement officer are covered by the advance payment of the creditor, as well as from the funds collected from the debtor for the costs of the enforcement proceedings (Cualain & Tawiah, 2023).

Instead, enforcement proceedings in the EU are regulated by Regulation No. 1215/2012 of the European Parliament and of the Council "On juris-

isdiction and the recognition and enforcement of judgments in civil and commercial matters"<sup>4</sup>. This regulation establishes general rules for the recognition and enforcement of judgments between EU Member States (Article 36). These general rules apply to all judgments rendered by the courts of EU Member States in civil and commercial matters. In order for a judgement to be recognized and enforced in another EU Member State, it must meet certain requirements. One of the main requirements is that the judgement must be rendered by a court having territorial jurisdiction over the case. Other requirements are that the decision must be final, made in accordance with the law of the issuing country, and not contradict the rule of law (Wurmnest & Gömann, 2022).

In EU countries, enforcement proceedings have a number of common features that are due to the common legal framework. For example, in all EU countries, enforcement proceedings are aimed at enforcing court decisions, as well as decisions of other bodies with enforcement power. However, there are also certain differences in the regulation of enforcement proceedings in the EU countries. In some EU countries, enforcement proceedings are carried out exclusively by state authorities, while in other EU countries, private enforcement officers are allowed to participate. The main problems in the enforcement process in the EU include the following: the enforcement process is often lengthy and expensive, and does not guarantee the enforcement of a court decision; the enforcement process is often non-transparent for the parties, which makes it difficult to understand and control; the enforcement process is often not accessible to all who need it.

To address this problem, various innovations are being introduced in EU countries, such as automation of the enforcement process, the use of digital technologies and alternative methods of enforcement. For example, Germany has implemented an electronic enforcement system that automates many of the enforcement procedures. France and Spain are actively using digital technologies to increase the transparency of the enforcement process. Sweden and Denmark have introduced alternative methods of enforcement, such as negotiation and mediation (Nagy, 2022). It is expected that further digital transformation and the development of alternative methods of enforcement will help to increase the efficiency and fairness of the enforcement process in EU countries. Despite certain

<sup>1</sup> Law of Ukraine No. 1404-VIII "On Executive Proceedings". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

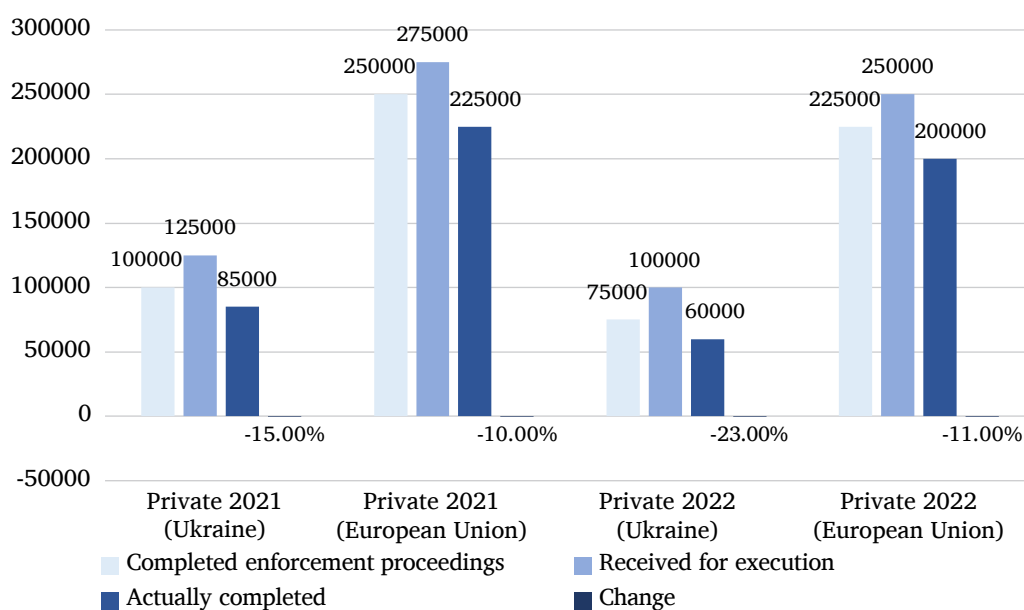
<sup>2</sup> Law of Ukraine No. 1403-VIII "On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/1403-19#Text>.

<sup>3</sup> *Ibidem*, 2016.

<sup>4</sup> Regulation of the European Parliament and of the Council No. 1215/2012 "On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters". (2012, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215>.

limitations on the range of cases that can be handled by a private enforcement officer, it is worth noting

that this institution has already shown some positive results since its launch (Fig. 1).



**Figure 1.** Results of the activities of private performers during 2021-2022

**Source:** Agency for the execution of decisions (2022) and eu -LISA (2023)

It should also be added that the total amount recovered in proceedings in 2021 in Ukraine is UAH 6.6 billion. At the same time, this amount is 3.2% of the total amount of proceedings, and as for the performance of state enforcement officers, they recovered only 2.4% of the total amount of open proceedings, which indicates that the efficiency of private enforcement officers was higher, which is especially significant given that there are significantly fewer private enforcement officers (276) than state enforcement officers (4134) (Opendatabot, 2021; Agency for the execution..., 2022). In general, the introduction of private bailiffs should be considered a reform of the entire enforcement system, but due to the circumstances caused by the full-scale invasion of the Russian Federation, this reform was suspended.

With the onset of the full-scale invasion, the activities of private bailiffs were suspended for a while, and therefore, debt collectors applied only to state representatives of the enforcement service, which led to a decrease in the number of enforcement proceedings received by private bailiffs by almost three times compared to the number of enforcement proceedings. The actual amount recovered in enforcement proceedings is also indicative, amounting to UAH 3.0455 billion. However, even this amount is 30% of the total amount of opened proceedings, as opposed to 70% of the total amount to be recovered in proceedings opened by state enforcement officers (Agency for the execution..., 2022).

The legal challenges that need to be addressed to effectively change the system of court decision enforcement include several aspects: equalization of rights between state and private bailiffs, creation of either a separate body to cover and monitor the activities of private bailiffs or a unit within the Ministry of Justice (Temirova, 2022). Equalization of rights is necessary, first, and foremost, to increase the effectiveness of the enforcement of court decisions related to the state and state bodies by providing access to them not only to the state but also to private bailiffs, who are independent in their activities and have greater motivation given their funding, which does not depend on state budget expenditures. Also, the issue of monitoring the activities of private bailiffs and reporting the exact results of their activities remains quite problematic, as there is no specialized body with the appropriate authority to do so, which creates a significant bias towards state bailiffs (Kononets, 2020).

One of the priority areas for the development of the judicial system in Ukraine is the reform of the system of enforcement of court decisions. The reform aims to improve the efficiency and transparency of the enforcement process and ensure that justice is accessible to every citizen. The plan allows the reform to be implemented in stages. From 2016 to 2020, a mixed system of enforcement of court decisions was introduced, which included private and state bailiffs. In the second phase, which began in 2021, the enforcement process is being transformed

into a digital one. The transformation involves the introduction of electronic registers of enforcement proceedings, automation of enforcement procedures and the creation of the unified information and analytical system for enforcement proceedings.

The reform of the judgement enforcement system is carried out in accordance with the following legislation: Law of Ukraine “On Enforcement Proceedings”<sup>1</sup>, Law of Ukraine “On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies”<sup>2</sup> and Decree of the President of Ukraine “On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023”<sup>3</sup>. The main provisions of the reform of the court decision enforcement system are as follows:

- introduction of a mixed system of enforcement of court decisions, which involves the participation of both public and private enforcement officers;
- digital transformation of the enforcement process, which involves the introduction of electronic registers of enforcement proceedings, automation of enforcement procedures, and the creation of the unified information and analytical system of enforcement proceedings;
- strengthening control over the enforcement of court decisions, in particular through the introduction of an electronic monitoring system for enforcement proceedings;
- ensuring access to justice for all citizens, in particular by introducing the procedure of an authorized body representing the interests of persons who are unable to protect their rights in enforcement proceedings on their own.

The full-scale invasion not only halted the process of reforming the enforcement system, but also significantly limited and modified the general and usual activities of both public and private enforcement officers. In other words, in general, it had a direct impact on the element of the obligation to enforce court decisions, as well as on the right of individuals to obtain a fair decision in a legal dispute. In particular, for the period of martial law in Ukraine, individuals who are debtors and whose funds have been seized are allowed by the legislative changes to use funds from their accounts, but the amount cannot exceed two minimum wages per month. Legal

entities are also allowed to use the seized funds to pay salaries, but the total amount cannot exceed five minimum wages per month per employee. Another important amendment is the prohibition on enforcement actions in proceedings involving defence and industrial enterprises, military units, military educational institutions, and units of the Armed Forces of Ukraine<sup>4</sup>. This ensures that these enterprises are supported during martial law, allowing them to focus more on their direct responsibilities in the field of defence provision (Prytyka *et al.*, 2022).

The impact of martial law in Ukraine on the execution of court proceedings is multifaceted and includes both legislative changes and practical challenges. On the one hand, there have been amendments<sup>5</sup> to the Law of Ukraine “On Enforcement Proceedings”<sup>6</sup>, which include the transfer of enforcement proceedings to other courts located outside the martial law area and the exemption of private enforcement officers from liability for violation of the deadlines for enforcement of decisions due to martial law. These amendments are aimed at ensuring the protection of citizens’ rights and facilitating the enforcement of court decisions during wartime.

On the other hand, there are practical challenges associated with martial law, such as lower incomes, which makes debt collection more difficult, restricted access to information about debtors, and a reduced level of security, which affects the work of private enforcement officers. These problems require additional measures, including raising incomes, developing new mechanisms for accessing information about debtors, and ensuring the safety of private enforcement officers (Zhukevich, 2022). In general, martial law has significantly affected the enforcement of court proceedings in Ukraine, creating new challenges and requiring adaptation in both legislative and practical aspects. It is important that the measures taken ensure the protection of the rights and interests of citizens during this difficult period, and help to maintain the fairness and efficiency of the judicial system.

It is important to note that in the digital era, innovations are being used as an auxiliary tool for a number of processes, including those regulated by the state (Kuenzler, 2019). Technologies in the field of enforcement proceedings should be linked to the

<sup>1</sup> Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

<sup>2</sup> Law of Ukraine No. 1403-VIII “On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/1403-19#Text>.

<sup>3</sup> Decree of the President of Ukraine No. 231/2021 “On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023”. (2021, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/231/2021#Text>.

<sup>4</sup> Law of Ukraine No. 1404-VIII “On Executive Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

<sup>5</sup> Law of Ukraine No. 2455-XI “On Amendments to Certain Laws of Ukraine Regarding the Activities of Private Enforcement Officers and the Enforcement of Court Decisions and Decisions of Other Bodies (Officials) During the Period of Martial Law”. (2022, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2455-20#Text>.

<sup>6</sup> Law of Ukraine No. 1404-VIII “On Enforcement Proceedings”. (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

electronic seizure of debtor's funds, but the system is currently not fully operational, for example, private bailiffs have access only to the exchange of information between the bank regarding the seizure of funds or other property values; such information is exchanged through the Automated System of Enforcement Proceedings (Marković-Bajalović, 2020). This process is not fully automated and is dependent on human intervention, which in turn requires more resources and time, which again does not solve the issue of the efficiency of electronic arrest through automatic debiting; another problem is the lack of comprehensive connection of Ukrainian banks to this system, which creates conditions for debtors to continue to ignore payment requests.

Concerning reforming the enforcement system in Ukraine, it is worth paying attention to foreign experience, including the experience of the United States. The peculiarity of enforcement proceedings in this country is that the number of private enforcement officers exceeds the number of state enforcement officers and deals with a larger number of cases, while state enforcement officers are involved in the process of enforcement of decisions in cases of increased complexity (Norris, 2022). Another means of influencing debtors is a reputational warning, which is a notification by a credit reporting agency of the fact of debt, which affects credit opportunities, a person's rating, and also plays a significant role when applying for a loan, obtaining a travel permit or employment (Stones, 2019). For example, Lithuania also has a successful automated system of writing off and seizure of funds, similar to the Ukrainian one, but the difference is that, at the electronic request of the executor, the system sends notifications to banks, which automatically seize the debtor's property; the notification can apply not only to banking companies but also to other financial institutions (Prytyka & Maliarchuk, 2022). Once the funds are seized and the bailiff's demands are met, all restrictions are automatically lifted. A decentralized system of enforcement proceedings has also developed in France, i.e. enforcement of decisions is provided by private individuals who, on the one hand, have the functions of administering justice in the country, which gives them a monopoly on certain actions and a wide range of powers, and, on the other hand, are independent in their activities (Luchtman, 2020).

Given this experience, it should be added that it is now necessary to equalize the rights and obligations between private and public bailiffs to ensure equality and decentralization of enforcement processes; it is also important to ensure timely and efficient enforcement of decisions by bailiffs under martial law, in particular through the introduction

of wider technological capabilities, i.e. to automate routine processes as much as possible, including submission of documents, requests, and the involvement of artificial intelligence in enforcement processes. Blockchain systems can be useful for creating transparency in the area of automatic debiting of funds to reduce corruption risks and fraud.

It is worth noting that some of these provisions are contained in the Draft Law "On Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings"<sup>1</sup>, among which the introduction of the obligation for Ukrainian banks to connect to the automated seizure system, and the automation of the removal of a person's data from the Unified Register of Debtors after the claims of the executor are satisfied, in particular after the automatic debit of funds, are among the important provisions. These provisions demonstrate the real intention of the Ukrainian authorities, firstly, to optimize enforcement processes, ensure their efficiency and timeliness, as well as transparency, which is also necessary in the process of European integration and harmonization of legislation in line with European standards. However, legislators should also pay special attention to decentralization of enforcement, in particular by making private enforcement officers equal in rights to state enforcement officers, which will create the necessary conditions for the development of private enforcement proceedings, which are currently proving to be more effective than state enforcement officers.

One of the most progressive examples of digitalization and automation in the field of court decision enforcement is the experience of the United States of America. The United States has implemented an electronic court system that allows litigants to access information on the status of cases, submit documents and perform other procedural actions electronically (Kryvosheina *et al.*, 2022). Another example of successful digitalization and automation in the field of court decision enforcement is the experience of the United Kingdom. The UK has implemented an electronic enforcement system that allows court decision enforcers to obtain information about debtors and their assets electronically (Onțanu, 2022).

## ■ Discussion

In order to form a general vision and understanding of the institution of enforcement proceedings, it is worth analysing some works on the relevant topic. For example, A. Patta (2023) investigated the correlation between a sufficient level of competence of the subjects of enforcement proceedings and the efficiency of justice. The work identifies the main trends in the development of European criminal and civil procedure in terms of digitalization. The author points

<sup>1</sup> Draft Law of Ukraine No. 9363 "On Amendments to Certain Laws of Ukraine on Digitalization of Executive Proceedings". (2023, June). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/42073>.

out that both procedural and enforcement issues require an appropriate level of awareness and understanding of the specifics of the field, and it is precisely because of this need that the researcher analyses the EU-funded training project for court officials and bailiffs; the project aims to train approximately 500 court officials and bailiffs through interactive and practical legal training in civil and criminal law.

It is worth noting that the launch of a similar programme in Ukraine will bring the process of European integration one step closer, and improving the knowledge and skills of both private and public bailiffs will help guarantee the enforcement of judgments and their binding nature. In particular, this project will be important in the context of martial law in Ukraine as another legal challenge for the bailiffs' field, and the training will help to navigate the proper rights and obligations, limitations and optimization of the work of both private and public bailiffs in view of the obstacles that have arisen due to the full-scale invasion. It is important to understand that such a curriculum should include several opportunities to get involved: remotely or physically. Thus, a project can play an important role in the process of improving the quality of justice.

Issues related to the role of private enforcement officers in the process of ensuring the implementation of legislative requirements and decisions of authorized bodies are outlined in the work of A.P. Komninos (2021). The author argues that private enforcement is important for the effective implementation of the requirements of the EU Digital Markets Act (DMA)<sup>1</sup>. Thus, victims of violations of the relevant law will have a wider range of opportunities to obtain appropriate compensation under a lawsuit filed with the court, and this process will be faster and more efficient due to the equal distribution of cases between private and public enforcement officers. The researcher also proposes to improve the sphere of private enforcement, in particular by expanding the scope of powers of bailiffs, which will optimize and ensure a wider range of rights of persons independent of the state, and reduce corruption risks.

The author's findings partially coincide with the results of this paper, in particular, with regard to the need to expand the rights of private enforcement officers. In Ukraine, the institute of private enforcement is relatively new and is still under development, but the activities of private enforcement officers are considered to be more efficient and motivated, as well as more effective than those of persons authorized by the state. In view of this, the issue of

equating private and public bailiffs in rights is fair and natural, and therefore needs to be addressed in the process of further reforming the enforcement system in general.

The shortcomings of the American system of private enforcement are disclosed in the article by D.L. Noll & L.P. Norris (2023). The authors argue that the federal rules of enforcement in civil proceedings are not adapted to the modern times, in particular, due to the complex form of opening enforcement proceedings. Thus, the article proposes to reform this system in such a way as to reduce the existing number of requirements that must be met in order to initiate enforcement proceedings, since they are too formalized and impede the efficient and prompt operation of bailiffs. The state lacks clear and up-to-date rules for their activities, which leads to the conclusion that the sphere of private enforcement of judgments of judicial and other authorities both abroad and in Ukraine is underdeveloped and requires significant improvements.

It is also worth paying attention to the Bulgarian experience of introducing the legal profession of a private enforcement officer. As noted by D. Yordanov (2021), private enforcement was introduced in Bulgaria in 2005 as part of a broad judicial reform aimed at making the judicial system more efficient and effective, as well as reducing the burden on public courts. Private bailiffs are responsible for the enforcement of court decisions in civil cases, such as the payment of debts or the vacating of premises, and the delivery of legal documents. The author argues that the introduction of this institution is also intended to increase the chances of debt collectors to recover their money. The researcher also draws attention to the problems faced by private bailiffs, including a lack of awareness of private enforcement among the public, as well as a lack of sufficient regulation of the rights and obligations of private bailiffs.

It is worth noting certain similarities between the Bulgarian and Ukrainian experience of introducing a new institution in the field of enforcement, which manifests itself in the lack of precise regulation of the main provisions relating to the relevant institution. In general, the issues of introducing innovations in this area also need to be developed, since most countries choose a more traditional and conservative approach to enforcement proceedings. However, in the context of technological development of enforcement proceedings, it is advisable to pay attention to the experience of Bulgaria, where most debt collection

<sup>1</sup> Regulation (EU) of the European Parliament and of the Council No. 2022/1925 "On Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) No. 2019/1937 and (EU) No. 2020/1828 (Digital Markets Act)". (2022, September). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A265%3ATOC&uri=uriserv%3AOJ.L\\_.2022.265.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A265%3ATOC&uri=uriserv%3AOJ.L_.2022.265.01.0001.01.ENG).

cases are considered electronically, i.e., the need for personal presence of the parties to the enforcement proceedings is eliminated. Applications for enforcement and seizure of funds are also submitted online through the relevant service (Terziev *et al.*, 2021).

It is worth paying attention to the article by J. Malinauskaite (2020), which discusses the issue of private enforcement in Central and Eastern Europe. The author notes that most countries had little or no experience with private enforcement before joining the EU in 2004 and 2007. However, as a condition of accession, the CEE countries had to implement the EU directive on damages, which provides a common set of rules for private actions for damages for infringements of competition law. The author points out that enforcement proceedings in this context play an important role in the process of enforcement of competition law, helping to ensure the effective implementation of decisions made by the relevant authorities within their binding powers.

It is worth noting that enforcement proceedings are generally an effective tool for ensuring that a court or other decision or order is understood to be binding. It is the executive authorities that are the main component of guaranteeing justice, the rule of law and the restoration of violated rights and obligations of debt collectors. In the context of competition issues, as pointed out by J. Malinauskaite (2020), the executive service can ensure the collection of debts and fines from enterprises and institutions that do not comply with the regulations established by law. However, it is worth noting that in some cases, the use of the resources of the state enforcement service alone may be insufficient or ineffective due to, for example, low motivation of the executors; in this regard, it is advisable to pay attention to independent private executors who have both more resources and more motivation in certain cases.

## ■ Conclusions

The data provided by the author allowed for a deeper analysis and identification of important elements of the institute of enforcement proceedings, its effectiveness and impact on the efficiency and binding nature of court decisions. The author identifies the concept of enforcement proceedings and its main

## ■ References

- [1] Agency for the execution of decisions. (2022). Retrieved from <https://www.ae.org.ua/stat2022/>.
- [2] Aldyan, A., & Negi, A. (2022). The model of law enforcement based on Pancasila justice. *Journal of Human Rights, Culture and Legal System*, 2(3), 178-190. doi: 10.53955/jhcls.v2i3.51.
- [3] Bulyk, I.L. (2021). Features of executive proceedings in Ukraine. *Kyiv Journal of Law*, 1, 65-71. doi: 10.32782/kj/2021.1.10.
- [4] Cualain, G.O., & Tawiah, V. (2023). Review of IFRS consequences in Europe: An enforcement perspective. *Cogent Business & Management*, 10(1), article number 2148869. doi: 10.1080/23311975.2022.2148869.
- [5] eu-LISA. (2023). *eu-LISA consolidated annual activity report 2022*. Retrieved from <https://www.eulisa.europa.eu/Publications/Corporate/Consolidated%20Annual%20Activity%20Report%202022.pdf>.

features, attributes, and principles in this area. The author examines the special legal acts regulating this institution and defining the principles of activity of persons authorized to enforce decisions of both courts and other authorities. The author shows that such persons may be both private and public bailiffs.

The introduction of private enforcement officers has already brought positive results in terms of the efficiency of recovery, but further improvements are needed. The Russian aggression in Ukraine has had a significant impact on the enforcement of court decisions, leading to legislative changes and challenges for the enforcement system. To further develop the institution of private enforcement officers, it is necessary to grant them equal rights with state enforcement officers and introduce technological innovations to automate the enforcement process. The draft law on the digitalization of enforcement proceedings contains important provisions in this regard. The experience of other countries, such as the United States and China, shows the effectiveness of digital technologies in automating judicial and enforcement procedures, which may be useful for further reforms in Ukraine. EU countries also face challenges in the area of enforcement proceedings, and to address them, they are introducing innovative approaches, such as automation and alternative methods of enforcement. Despite the progress made, it is important for Ukraine to further improve its enforcement system, especially in the context of the conflict, and to adopt best practices from EU countries to increase the efficiency and transparency of the process.

For further research on related topics, it is proposed to investigate the following issues: the problem of systematic non-enforcement of ECHR judgments: ways to overcome it, automation of the bailiff's activities in the context of digitalization: opportunities and prospects, comparative analysis of foreign experience in introducing the institute of a private bailiff, mediation in the field of enforcement.

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## ■ Conflict of Interest

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- [6] Ferro, M.S. (2019). Antitrust private enforcement and the binding effect of public enforcement decisions. *Market and Competition Law Review*, 3(2), 51-80. doi: [10.7559/mclawreview.2019.1830](https://doi.org/10.7559/mclawreview.2019.1830).
- [7] Grabar, N.M. (2023). Court decisions as a ground for executive proceedings in Ukraine. *Current Issues in Modern Science*, 7(13), 284-294. doi: [10.52058/2786-6300-2023-7\(13\)-285-294](https://doi.org/10.52058/2786-6300-2023-7(13)-285-294).
- [8] Komninos, A.P. (2021). [The digital markets act and private enforcement: Proposals for an optimal system of enforcement](#). In N. Charbit & S. Gachot (Eds.), *Eleanor M. Fox: Antitrust ambassador to the world. Liber amicorum* (pp. 425-444). London: Concurrences Books.
- [9] Kononets, V. (2020). Approaches to understanding the administrative-legal mechanism of enforcement of court enforcement of judgments. *Juridical Science*, 2(104), 166-175. doi: [10.32844/2222-5374-2020-104-2.20](https://doi.org/10.32844/2222-5374-2020-104-2.20).
- [10] Kryvosheina, I., Zhornokui, V., Kronda, O., But, I., & Panfilov, O. (2022). Digitalization of the activities of the ECtHR in civil and commercial proceedings and the problems of their enforcement: International legal experience. *Amazonia Investiga*, 11(59), 35-42. doi: [10.34069/AI/2022.59.11.3](https://doi.org/10.34069/AI/2022.59.11.3).
- [11] Kuenzler, A. (2019). Competition law enforcement on digital markets-lessons from recent EU case law. *Journal of Antitrust Enforcement*, 7(2), 249-278. doi: [10.1093/jaenfo/jnz001](https://doi.org/10.1093/jaenfo/jnz001).
- [12] Luchtman, M. (2020). Transnational law enforcement cooperation – Fundamental rights in European cooperation in criminal matters. *European Journal of Crime, Criminal Law and Criminal Justice*, 28(1), 14-45. doi: [10.1163/15718174-02801002](https://doi.org/10.1163/15718174-02801002).
- [13] Malinauskaite, J. (2020). Harmonisation of private enforcement in the Central and Eastern European countries. In *Harmonisation of EU Competition Law Enforcement* (pp. 227-272). Cham: Springer. doi: [10.1007/978-3-030-30233-7\\_7](https://doi.org/10.1007/978-3-030-30233-7_7).
- [14] Malskyy, M.M. (2022). Legal regulations of enforcement procedure in selected foreign jurisdictions. *Comparative Law Review*, 28, 393-409. doi: [10.12775/CLR.2022.013](https://doi.org/10.12775/CLR.2022.013).
- [15] Marković-Bajalović, D. (2020). [Competition enforcement models in the western Balkans countries – The rule of law still terra incognita?](#) *Yearbook of Antitrust and Regulatory Studies*, 13(22), 27-66.
- [16] Nagy, C.I. (2022). 13 – What role for private enforcement in EU competition law? A religion in quest of a founder. In T. Tóth (Ed.), *The Cambridge handbook of competition law sanctions* (pp. 218-229). Cambridge: Cambridge University Press. doi: [10.1017/9781108918015.014](https://doi.org/10.1017/9781108918015.014).
- [17] Noll, D.L., & Norris, L.P. (2023). [Federal rules of private enforcement](#). *Cornell Law Review*, 108, 1-70.
- [18] Norris, L.P. (2022). [The promise and perils of private enforcement](#). *Virginia Law Review*, 108(7), 1483-1545.
- [19] Onțanu, E.A. (2022). Normalising the use of electronic evidence: Bringing technology use into a familiar normative path in civil procedure. *Oñati Socio-Legal Series*, 12(3), 582-613. doi: [10.35295/osls.iisl/0000-0000-0000-1304](https://doi.org/10.35295/osls.iisl/0000-0000-0000-1304).
- [20] Opendatabot. (2021). *The share of private enforcement officers in debt collection has quadrupled in 2 years*. Retrieved from <https://opendatabot.ua/analytics/private-executors-2021>.
- [21] Papagianneas, S. (2022). Towards smarter and fairer justice? A review of the Chinese scholarship on building smart courts and automating justice. *Journal of Current Chinese Affairs*, 51(2), 327-347. doi: [10.1177/18681026211021412](https://doi.org/10.1177/18681026211021412).
- [22] Patta, A. (2023). Court staff and bailiffs' training in European civil and criminal law: A modern and practical approach to judicial training for court staff and bailiffs in Europe. *ERA Forum*, 23(4), 439-445. doi: [10.1007/s12027-023-00740-1](https://doi.org/10.1007/s12027-023-00740-1).
- [23] Prytyka, Yu., & Maliarchuk, L. (2022). The path to the introduction of automated funds seizure in Ukraine: International experience and prospects for its implementation. *International Comparative Jurisprudence*, 8(2), 209-219. doi: [10.13165/j.icj.2022.12.007](https://doi.org/10.13165/j.icj.2022.12.007).
- [24] Prytyka, Yu., Izarova, I., Maliarchuk, L., & Terekh, O. (2022). Legal challenges for Ukraine under martial law: Protection of civil, property and labour rights, right to a fair trial, and enforcement of decisions. *Access to Justice in Eastern Europe*, 3(15), 219-238. doi: [10.33327/AJEE-18-5.2-n000329](https://doi.org/10.33327/AJEE-18-5.2-n000329).
- [25] Serhiienko, N.A. (2019). [Concepts, tasks and structure of executive proceedings](#). *Juridical Science*, 11(101), 215-225.
- [26] Stefanchuk, M. (2019). The practice of the Supreme Court as an indicator of the defects in legislation on enforcement proceedings. *University Scientific Notes*, 1-2(69-70), 49-59. doi: [10.37491/UNZ.69-70.4](https://doi.org/10.37491/UNZ.69-70.4).
- [27] Stones, R. (2019). Commitment decisions in EU competition enforcement: Policy effectiveness v. The formal rule of law. *Yearbook of European Law*, 38, 361-399. doi: [10.1093/yel/yez011](https://doi.org/10.1093/yel/yez011).
- [28] Temirova, M.M. (2022). The current state of law enforcement by prevention inspectors. *Asian Journal of Research in Social Sciences and Humanities*, 12(5), 253-256. doi: [10.5958/2249-7315.2022.00278.7](https://doi.org/10.5958/2249-7315.2022.00278.7).

- [29] Terziev, V., Angelov, G., & Ivanov, I. (2021). [Prosecutor's Office of the Republic of Bulgaria: Ensuring compliance with law in the course of investigations](#). In J. Janjusevic, B. Taheri & M. Kozina (Eds.), *Proceedings of the 69th International Scientific Conference on Economic and Social Development – "Sustainability and Post Covid World"* (pp. 245-251). Dubai: Varazdin Development and Entrepreneurship Agency.
- [30] Vorobiov, O. (2022). [Problems of the development of the executive proceedings system in Ukraine](#). In *Innovative tools to ensure investment and infrastructure development of territories and communities* (pp. 77-79). Dnipro: Dnipro University of Technology.
- [31] Wurmnest, W., & Gömann, M. (2022). Comparing private enforcement of EU competition and data protection law. *Journal of European Tort Law*, 13(2), 154-182. doi: 10.1515/jetl-2022-0009.
- [32] Yordanov, D. (2021). Private enforcement agents: The newest legal profession in Bulgaria. In G. Barrett, J.-P. Rageade, D. Wallis & H. Weil (Eds.), *The future of legal Europe: Will we trust in it?* (pp. 833-848). Cham: Springer. doi: 10.1007/978-3-030-68253-8\_42.
- [33] Zhukevich, I.V. (2022). Peculiarities of enforcement of court decisions in Ukraine during the period of martial status. *Legal Scientific Electronic Journal*, 8, 424-426. doi: 10.32782/2524-0374/2022-8/96.

## Правові виклики та інновації у виконавчому провадженні в Україні та світі: порівняльний аспект

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■ **Анотація.** Актуальність дослідження зумовлена низкою змін як на світовому, так і державному рівні, що безпосередньо впливають на процес реалізації прав і свобод осіб, винесення справедливого рішення та його виконання. Такі зміни полягають у введенні воєнного стану на території України, а також цифровізації низки юридичних процесів. З огляду на це, метою науково-дослідної роботи є аналіз основних проблем у сфері примусового виконання рішень, які перешкоджають виконанню судових рішень і забезпечення принципу справедливості й верховенства права в Україні та світі. У роботі було використано такі методи: історичний, статистичний, порівняльний, формально-логічний. Результати дослідження засвідчили, що виконавче провадження в Україні регулюється змішаною системою, яка охоплює як державних, так і приватних виконавців. Дослідження висвітлює той факт, що повномасштабне вторгнення Росії в Україну суттєво вплинуло на виконання судових рішень. Це зумовило необхідність внесення законодавчих змін і виникнення практичних викликів для системи виконавчого провадження. Досвід інших країн, зокрема США та Китаю, демонструє, що впровадження цифрових технологій для автоматизації судових і виконавчих процедур може бути ефективним для подальшого реформування цієї системи в Україні. Попри певний прогрес у реалізації реформи в Україні, залишаються проблеми, пов'язані з ефективністю та доступністю виконавчого провадження, передусім в умовах воєнного стану. Для їх подолання доцільно використовувати найкращий досвід країн Європейського Союзу, зокрема щодо цифровізації процесу, упровадження альтернативних методів і забезпечення рівності між приватними й державними виконавцями, а також створити прозору систему контролю. Результати дослідження роблять внесок у доктрину інституту виконавчого провадження і формування ефективного теоретичного підґрунтя для практичної реалізації методів удосконалення сфери примусового виконання рішень

■ **Ключові слова:** реформування; цифровізація; воєнний стан; справедливе судове рішення; управління

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## The decision of the European Court of Human Rights and the issue of determining the content of evaluation features

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■ **Abstract.** Resolving controversial issues related to the content of evaluative features in the context of the judgments of the European Court of Human Rights is important for the development of legal science and practice, since increased integration within Europe requires national governments and judicial systems to pay increased attention to the practice of supranational bodies. The purpose of this study is to analyse the judgments of the European Court of Human Rights, aimed at determining the content of the evaluative features in the context of human rights. For this purpose, the author uses the methods of legal literature analysis, comparative analysis of case law from different countries, synthesis, comparison, and modelling, as well as logical and systematic approaches to the analysis of court decisions. The article establishes that the assessment criteria are an important tool for determining human rights violations and require an objective and proportionate approach. Attention is focused on the role of the European Court of Human Rights in ensuring a balance between freedom of expression and the protection of human rights. The author identifies the need to adapt concepts to digital environments and take into account new challenges. The author analyses the process of determining the evaluative features and demonstrates its significance for establishing the scope of human rights protection. The author identifies different approaches of the European Court of Justice to determining the content of evaluative features in human rights judgments. The emphasis is placed on the interpretation of such concepts as “adequacy”, “excessiveness” and “necessity” in the context of human rights restrictions. The author identifies changes in the court's approach to these concepts over time and changes in the social and political context. The study is important for an in-depth understanding of the interpretation of human rights by the European Court of Human Rights, as well as for the formation of a unified methodology for interpreting the evaluative features in the judgments of courts of different jurisdictions

■ **Keywords:** court decisions; international law; national law; legal standards; protection of rights

### ■ Introduction

In the context of the growing importance of legal protection of human rights in the international community, the European Court of Human Rights (ECHR) is a key body for the protection of human rights in Europe. However, one of the main and complex challenges facing this court is to determine the content of the

evaluative elements in judgments concerning human rights violations. Evaluative features are an important tool for identifying violations of specific human rights and ensuring their proper protection. However, their definition and understanding can determine the scope of protection for each right. The issue of

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defining these evaluative features is of great importance for striking a balance between freedom of expression and protection of individuals' rights, as well as for establishing consistent and transparent standards. The ECtHR's approaches to determining the evaluative features may reveal ways to ensure proper protection of human rights, which is a relevant and important topic for scientific research. An analysis of the court's judgments in this context can contribute to an understanding of the basic principles and approaches to determining the evaluative features, which has practical application for the legal community and the human rights protection system as a whole.

It is necessary to consider additional aspects that may affect the understanding of the binding nature of the European Court's judgments. For example, it should be noted that there are certain exceptional circumstances when states may have justified grounds for refusing to comply with judgments. This may include situations where the judgments of the European Court contradict the basic principles of the national constitutional legal order or where the execution of judgments leads to serious national security or public interest. Such exceptional situations may limit the binding effect of the Court's judgments (Pankratova & Lubenets, 2019).

Researcher U.Z. Koruts (2017) has determined that in the Romano-Germanic legal system, which includes most European countries, the judgments of the European Court are usually considered a source of law on a par with national legislation. This means that the Court's judgments are directly binding and can be applied in national courts. On the other hand, in Anglo-Saxon law systems, which are typical for countries such as the United Kingdom and the United States, the Court's judgments may have precedential value and influence the development of future law.

The authors A.Y. Badida & V.V. Lemak (2017) found that in Muslim countries, where Islamic law (sharia) has a significant influence on the legal system, the perception of the European Court's judgments may differ. In such countries, there is a need to take into account Islamic principles and traditions when applying the Court's judgments, especially if they relate to religious aspects, family law or freedom of religion. In turn, N. Vogiatzis (2022) examines how the Court interprets the right to translation under Article 6(3)(e) of the Convention, which is one of the rights of defence in criminal proceedings. The author shows that there is actually a "cautious evolution": The Court has gradually – but also cautiously-developed standards and guarantees of this right, which is a requirement of a fair trial (Vogiatzis, 2022).

S.K. Dudar (2019) focuses on specific aspects of case law, such as the "reasonable time" for the consideration of a case or the quality criteria of a law. This allows considering the impact of the court on specific

aspects of the legal system. S.M. Zadorozhna, (2019) examines the impact of various aspects of international law on the court's activities. It provides an understanding of how external factors affect the process of human rights interpretation. This study helps to expand the understanding of the impact of external factors, such as international law, on the work of the ECtHR. It adds to a deeper understanding of the context in which the court operates. The analysis of the above studies confirms that the topic of determining the content of evaluative features in the ECtHR judgments is relevant and important.

The purpose of the article is to analyse the role of the ECtHR in determining the evaluative features and their impact on human rights.

The following methods of scientific research were used in this article. The method of legal document analysis was used to analyse certain provisions of the European Convention on Human Rights. The comparative-analytical method allowed the author to use scientific sources which study the issues of determining the content of evaluation criteria and the role of the European Court of Human Rights in the protection of human rights. The methods of interpretation and synthesis were used to analyse the information from the collected sources, interpret it and formulate conclusions. By summarizing the approaches discussed in the scientific literature, the key conclusions were formulated regarding the definition of the content of the evaluation features in modern scientific discussions. At the same time, the use of analysis and interpretation methods helped to establish links between various aspects of the issue of determining the content of evaluative features and the role of the ECtHR in protecting human rights.

### ■ The European Convention on Human Rights in the ECHR

The issue of determining the content of evaluative features in the judgments of the European Court of Human Rights (ECHR) is very important in terms of human rights protection and development of legal standards. The issue reflects the complexity and depth of the tasks faced by the court in ensuring justice and protecting fundamental freedoms and rights. It is important to recognize that in today's world, society is constantly evolving, and with this evolution, the concepts of what is just and worthy of protection change. Such an understanding requires judges to analyse in depth and take into account social changes in their decisions. It is necessary to keep in mind the balance between the interests and rights of the individual and the interests of society as a whole. There are cases when interference with the rights of one individual may be justified from the point of view of the general welfare. It is important to ensure proportionality and to take into account that the fair

balance may vary depending on the context. Dialogue between the Court and national courts should be maintained. This helps to ensure uniformity in the interpretation of the convention and a level of stability in law enforcement. However, it can also lead to variations in judgments, as different courts may assess the circumstances of a case differently.

In general, these issues show that the work of the European Court of Human Rights requires great sensitivity, analysis, and a desire to ensure fair protection of human rights and freedoms in a constantly changing environment. This is a complex task that requires the involvement of various branches of government, legal experts and the public to achieve an optimal balance between the interests and protection of human rights. The European Court of Human Rights is the judicial body responsible for hearing cases of violations of human rights and fundamental freedoms under the European Convention on Human Rights. This court is of great importance for the protection of human rights in the member states of the Council of Europe.

With regard to the issue of determining the content of evaluative features in the ECtHR judgments, it is worth considering some general principles and approaches applied by the Court:

1. Principles of universality and development of human rights. The European Court recognizes that the content of human rights may evolve over time. It emphasizes the need to interpret human rights in the light of modern realities and social changes.

2. Application of interpretation in the spirit of the Convention. The Court tries to find solutions that are in line with the general spirit and objectives of the European Convention on Human Rights. <sup>1</sup>It proceeds from the assumption that human rights should be interpreted in such a way that their protection is as effective as possible.

3. The principle of proportionality. The ECtHR adheres to the principle of proportionality when assessing interference with human rights. It analyses whether the interference was necessary and appropriate in a democratic society.

4. The right to broad access to the courts. The Court emphasizes the importance of ensuring that human rights violations can be challenged. This includes the ability of citizens to go to court and receive adequate compensation.

5. Judicial precedent. The judgements of the European Court of Human Rights set precedents that may influence the further consideration of similar cases. The Court tries to ensure unity in the interpretation of the Convention and to provide a certain degree of stability in law enforcement.

6. Dialogue with national courts. The ECtHR maintains cooperation with national courts and recognizes that they play an important role in the protection of human rights at the domestic level.

To summarize, the European Court of Human Rights decides cases based on the above-mentioned principles and those laid down in the European Convention on Human Rights. The court's judgments often become important legal precedents that influence the protection of human rights in the Council of Europe member states (Tarasenko *et al.*, 2023). It is recognized that international organizations are a form of cooperation between states that combines respect for their sovereignty with restrictions on their independence in some areas of their domestic policy (Grigorenko, 2019).

The annual growth in the volume of social relations regulated by both domestic and international legal norms increases the importance of adapting national institutions of individual states to the requirements of international law. At the same time, the role of international bodies and political mechanisms is increasing, as states become interdependent, there is a need to improve the efficiency of governance within international relations and the development of European regional and sub-regional integration. All of this requires the regulation of behaviour, coordination of actions and interests, establishment of a hierarchy between national and international bodies and institutions, definition of their competence and development of a mechanism for distinguishing between national and integrated law. Furthermore, the uniqueness and independence of national legal systems, which determines state sovereignty, requires the integration and unification of national legal norms based on a thorough study of national legal practice and international experience (Antoniazzi, 2019). This is the reason why in some countries, generally accepted international legal norms are not part of national law and do not have greater legal force than the constitution. However, there are countries, such as the Netherlands, where the Convention is given higher legal force than national laws, including the Constitution (Dmitrieva, 2020).

Analysis of an international legal instrument involves identifying its provisions. These provisions can be expressed as declarations, recommendations, principles, or binding generally recognized principles and norms. In the case of decisions in a particular case, the issue of compliance with the principles and norms of international law becomes important. The principles and norms of international law, when consistent with national law, retain their international legal specificity. They are incorporated into the legal

<sup>1</sup> Convention on the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights). (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

system on the basis of the general principles inherent in this system, and are consistent with the national constitution and constitutional norms. All of the above also applies to the Convention<sup>1</sup>. There are international institutions that make decisions based on international law, which creates precedents and authoritative interpretations of international law. Despite this, questions arise about the binding nature of these precedents and interpretative acts for national legislation, their place, and incorporation into the legal system (Zavhorodniy, 2020; Jafarov *et al.*, 2022).

The legal effect of a judgment of the European Court, in accordance with the principles of public international law, is directed primarily at the state party to the Convention. The Convention itself is not intended to directly interfere with the national legal system and is neutral with respect to national legal systems. The Convention does not provide for internal mechanisms to ensure its legal force – this is the task of the States Parties, which must establish internal procedures to ensure its implementation. The principles and norms of the Convention cannot be effectively implemented without external support. The mechanisms for integrating the Convention's provisions into national legal systems may vary. Conflicts between the provisions of the Convention and national law are theoretically possible. The problem lies in the restriction of states in granting additional rights that are not provided for in the Convention, especially in those areas where the rights of different parties will collide in such a way that the expansion of the rights of one party will necessarily lead to the restriction of the rights of the other (Zadorozhna, 2019).

In all legal systems where the national constitution takes precedence over international law, international law has a lower status. From the standpoint of international law, national courts that give priority to the national constitution in a conflict with the provisions of an international agreement violate international law. In the case of a conflict between the provisions of the Convention and the national constitution, international law requires that the constitution comply with the Convention. Otherwise, there is a conflict between the two legal systems for which there is no clear solution (Zadorozhna, 2019). The decisions of the European Court are subsidiary in nature, so its interaction with the highest judicial bodies of European states cannot be viewed as a unilateral process. The problem of implementing the judgments of the European Court into the practice of national courts remains a subject of debate. According to some foreign scholars, the current understanding of the “implementation of the European Court's

judgments” is based on the fact that its judgments are not only advisory in nature, but also have the form of “soft law” (Karavatsyka, 2019b).

It is worth noting that the judgments of the European Court are placed on a par with the Convention. The legal implications of such qualification of the European Court's judgments are not defined. The assertion that the judgments of the European Court are a source of law without any restrictions and clarifications is not sufficiently substantiated, although the Court interprets the provisions on human rights and freedoms enshrined in the Convention and is the judicial body that establishes the facts of violations by the respondent states. It is noted that the problem can be solved only by amending the Convention or its interpretation, which would oblige member states to introduce procedures for the implementation of the European Court's judgments in case of violations of the Convention by the state or its bodies, including the courts (Karavatsyka, 2019a). It is also generally accepted that the principles and norms of international law have legal force only when they are implemented (legitimized in some form) in national law. Thus, the legal force of the principles and norms of international law depends, in particular, on the legal force of the act that officially recognizes their binding nature.

The importance and role of the European Court's case law is determined by the status of the Convention. According to Article 32 of the Convention<sup>2</sup>, the European Court has the right to decide on the interpretation and application of the provisions of the Convention and its Protocols. If a violation is established, the relevant acts must be cancelled or officially promulgated in accordance with the decision of the European Court. The situation that existed before the acknowledged violation of the Convention should, if possible, be restored, and the ongoing violation should be stopped (Koruts, 2017).

In a Romano-Germanic legal system, the European Court's reasoning should have the same weight as the law. In the Anglo-Saxon system, they should be considered alongside the precedents of the highest force, and in systems where doctrine is the main source of law, they should be equated with doctrine. As national legal systems are subject to internationalization, the judgments of the European Court should take precedence. In the current context, it is premature to consider the judgments of the European Court as part of national law; the formula “part of the legal system” is more appropriate (Horobets & Leleka, 2023). At the same time, the specifications of national and international legal systems are preserved. Instead,

<sup>1</sup> Convention on the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights). (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

<sup>2</sup> Ibidem, 1950.

the emphasis is on finding the optimal interaction between them within the national legal regulation mechanism. The legitimacy of the European Court's judgments in the national legal system depends on the bodies that conclude and ratify the relevant treaty. In countries where the judiciary operates independently of the executive and legislative branches, the effect of the European Court's judgments is determined by the judiciary (Garasimiv, 2017).

According to the Convention<sup>1</sup>, the activities of the European Court are a subsidiary mechanism for the protection of human rights and freedoms, and the main responsibility for guaranteeing them lies with national governments. States parties have an obligation to ensure the rights and freedoms enshrined in the Convention to everyone within their jurisdiction. In this regard, States have wide discretion to choose the means and ways of implementing and protecting the rights set out in the Convention, taking into account their particular circumstances, such as their historical, economic, political and cultural context. In making this choice, states cannot ignore the requirements of the Convention and the judgments of the European Court.

### ■ The process of determining evaluative features in the practice of the ECtHR

The European Court of Human Rights is one of the most influential and prestigious international legal institutions specializing in the protection of human rights in Europe. Founded on the European Convention on Human Rights, the ECtHR has an important task of ensuring that the rights and freedoms enshrined in the Convention are respected. One of the main objectives of the European Court of Human Rights is to resolve complaints filed by individuals from Council of Europe member states regarding alleged violations of their rights. This includes cases related to violations of freedom of expression, the right to private and family life, the right to a fair trial, freedom of thought, conscience and religion, and many other rights guaranteed by the Convention. In addition to hearing specific cases, the ECtHR sets standards and interprets the norms contained in the European Convention on Human Rights. These standards influence the national justice systems of member states and provide guidance to courts and authorities in the application and interpretation of human rights at the national level (Denysova *et al.*, 2022).

The judgments of the European Court of Human Rights have an impact on the development of legal standards in Europe. They are taken into account as precedents in further proceedings before the ECtHR, as well as in the national courts of member states

(Bilius *et al.*, 2021). This contributes to a unified and progressive interpretation and application of human rights in the region. The ECtHR also plays an important role in enhancing dialogue and cooperation between Council of Europe member states. The Court's judgments are a mechanism that promotes mutual respect for human rights and reforms in national justice systems to improve the protection of human rights. However, it is important to note that the ECtHR has limited powers. It cannot amend the European Convention on Human Rights itself, but it can interpret and apply its provisions. Final judgments of the European Court of Human Rights can be appealed only to the Supreme Court of Europe (Dudar, 2019). Overall, the European Court of Human Rights plays an indispensable role in ensuring the protection of human rights in Europe. Its influence helps to maintain a high level of human rights protection and contributes to the development of a just and humanitarian society. The problem of determining the content of the evaluative features is one of the challenges faced by the ECtHR.

Evaluative indicators are an important tool for determining whether specific human rights have been violated in a given situation. They help to assess the information, circumstances and other factors related to the case and establish the degree of violation of rights. The court must distinguish when a statement is of an evaluative nature. Evaluative statements involve conclusions, judgements, or assessments of a particular situation or behaviour. This can be important for determining the scope of protection afforded to a particular human right (Zavhorodniy, 2016).

In the process of determining the evaluative features, the Court pays attention to several factors. Firstly, the form of the statement plays an important role. Evaluative statements are often subjective in nature and express the author's view or opinion, as emphasized by V. Kosovych & T. Pashuk (2022). In addition, the context in which the statement is used matters. Determining whether a statement is evaluative requires an understanding of the purpose, intentions, and circumstances in which the statement was made. To establish the evaluative nature of a statement, the Court also looks at the perception of the audience. If a statement is considered a generally accepted way of expressing an opinion or is a known fact, it may be considered a statement rather than an opinion. But if the statement contains a subjective judgement or conclusion, it will be considered an opinion. Determining the content of an opinion is important for determining the scope of protection afforded to a particular human right. This may affect decisions on the liability of parties, the application of restrictions on freedom of expression or the protection of the

<sup>1</sup> Convention on the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights). (1950, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

interests of persons who may be subjected to an opinion (Karaman & Kozina 2015). This problem is only exacerbated by the metaphorical wording of some articles of the Convention (Slosser, 2019; Borzovic, 2022).

The problem of defining evaluative features is complex due to their subjective nature and potential differences in interpretation. This can be a source of disputes and misunderstandings in cases. However, by analysing the context, intentions and other factors, the Court tries to find a rational and objective solution to these issues. A comprehensive study and analysis of the definition of the content of evaluative features will contribute to the development of legal practice and ensure a more accurate and transparent interpretation of human rights. This is an important aspect in protecting human rights and ensuring fairness in court decisions.

The process of determining the content of evaluative features requires careful analysis of factors such as the linguistic context, the author's intentions, audience perception and relevant legal standards. This is a difficult task, as the assessment can be subjective and dependent on individual beliefs and cultural characteristics. The decisions of the European Court of Human Rights on the definition of the content of evaluative features are of great importance for the development of legal standards and the protection of human rights. They influence the national justice systems of member states and set precedents that are used in future cases. This contributes to stability, uniformity of interpretation and protection of human rights in Europe. With the growth of technological development and social challenges, the issues of determining the content of evaluative features are becoming particularly relevant. The ECtHR must take these challenges into account to ensure adequate protection of human rights in a changing world and to promote the development of a just and equal society (Manukyan, 2019).

Continuing the study of the issue of defining the content of evaluative features, it is important to note that this raises the need to strike a balance between freedom of expression and protection of the interests and dignity of persons who may be subject to evaluation (Fuley, 2015). On the one hand, freedom of expression is one of the core values of a democratic society and should be protected. This includes the right of citizens to express their opinions, ideas, criticisms, and assessments of various aspects of public life. Protecting freedom of expression contributes to the disclosure of truth, debate, and the progress of society. On the other hand, it is necessary to ensure that individuals are protected from unfair, offensive or harmful statements that may violate their dignity, cause harm or promote discrimination. Such statements can affect a person's psychological state, individual and group identity, reputation and social integration (Tsyukalo, 2014).

Striking this balance requires an objective and proportionate approach to defining the evaluative characteristics. Legislation and jurisprudence should take into account the specific circumstances of the case, the context of the statement, its purpose, the intention of the author, as well as the possible consequences for the persons who may be subjected to evaluation. When considering cases, the ECtHR should be open to different approaches and opinions, adhering to the principle of proportionality and the need for restrictions on freedom of expression when justified in order to protect the rights of others or public order (Slobodianyuk, 2023). One of the challenges is adapting concepts and standards that have evolved in the context of traditional media to modern digital environments. The growing importance of social media and online platforms as a source of information raises the question of their responsibility to control the evaluative statements disseminated through them (Sydorenko, 2015). In the future, the ECtHR should continue to analyse new challenges and trends related to the definition of the content of evaluative features, in particular in the field of digital media. A proper balance between freedom of expression and protection of human rights is the basis for the sustainable development of a democratic society in Europe.

Therefore, an analysis of the context and other factors helps to find rational solutions to the definition of evaluative features. The role of the European Court of Human Rights in this process is important, as its judgements influence the development of standards and the protection of human rights in Europe.

### ■ Problems of evaluative features in scientific literature

In the study on determining the content of evaluative features in the judgments of the European Court of Human Rights, several aspects have been identified which mark the similarities and differences between this work and the studies of other authors. Many studies, including those by K.P. Gromovenko (2016), M.M. Dmitrieva (2020), U.Z. Koruts (2017), follow a common direction, which focuses on the role of judgments of the European Court of Human Rights (ECHR) in influencing national legislation and case law. This approach clearly demonstrates the importance of determining the content of evaluative features in court decisions to ensure compliance of national norms with international standards, which is also emphasized by V.I. Tsyukalo (2014), M. Kravchuk (2018).

T. Sever (2018), T. Altwicker (2018) and T.M. Slobodianyuk (2023) consider how the ECtHR judgments influence the formation and improvement of national laws and legal practice. They emphasize that the court's judgments can influence the development

of new regulations or the revision of existing ones, directing national legislation to ensure the protection of human rights in accordance with international standards. This approach emphasizes that the content of the evaluative features in the ECtHR judgments is not only an academic aspect, but has direct implications for legal practice and legislative activity in the Council of Europe member states. These studies remind us that judgments in this context function as a mechanism that not only establishes norms, but also influences the formation of legal culture and the legal environment.

D. Voorhoof *et al.* (2016) focuses on the role of the European Court of Justice in the protection of freedom of speech in Europe. The author analyses the principles and criteria that guide the Court in determining the limits of this important legal freedom. The author examines the role of the European Court of Justice in protecting freedom of speech, which is one of the key legal guarantees in the European context. The researcher analyses the principles and criteria used by the Court to determine the limits of freedom of expression. This analysis may include legal standards, case law and approaches to dispute resolution. The author also points out that the Court takes into account the context and circumstances of each case. This indicates the importance of an individual approach to the consideration of cases and determining the scope of freedom of speech in each case. Thus, the importance of flexibility and adherence to an individual approach to the consideration of cases in the context of this right is emphasized (Voorhoof *et al.*, 2016).

Studies by authors such as A.Y. Badida & V.V. Lemak (2017), A.O. Grigorenko (2019) aim to consider the state's obligations to protect human rights. This focus of research emphasizes the urgency of the problem of national and international requirements for the state to ensure an adequate level of protection of citizens' rights and fulfilment of its obligations. The researchers analyse how state bodies are accountable to national and international human rights norms and standards. O.A. Pidoprigora & E.O. Kharitonov (2022) and G. Yurovska (2021) examine whether adequate guarantees are provided to citizens at the state level, and whether the obligations stipulated by laws and international agreements are fulfilled. This approach helps to highlight the importance of the state's role as a guarantor of human rights. It emphasizes that the protection of human rights is not only the task of the court, but also the task of the state, which is obliged to ensure these rights at the national level. This approach also reveals the relationship between international norms and domestic legislation, and emphasizes the need for state authorities to fulfil their obligations to citizens and the international community.

In the study by K.P. Gromovenko (2016) found that the legal system of each particular state plays a major role in the perception of the European Court's judgments. Different legal systems, such as Romano-Germanic or Anglo-Saxon, have different approaches to the interpretation and adoption of external decisions. For example, in the Romano-Germanic legal system, the judgments of the European Court may be considered alongside the law, while in the Anglo-Saxon system they may have the value of a precedent of the highest force. It is also worth taking into account the peculiarities of perception of the European Court's judgments as a source of law in Muslim countries, where special cultural and religious perspectives on human rights may arise.

S.B. Karavatsyka (2019) emphasizes the importance of the court's interpretive activity as an important aspect of determining the content of evaluative features in judgements. This approach reflects the importance of interpreting and specifying various concepts, especially those with elements of subjectivity, to ensure an adequate level of human rights protection. The author emphasizes that evaluative features such as "appropriate", "reasonable", "relevant", etc. may contain different subjective connotations depending on the context and circumstances. This can lead to different interpretations and understandings. Therefore, the court's interpretive work becomes a key point in order to avoid misunderstandings and ensure that the content of these evaluative features is in line with international standards and ensures proper protection of human rights. The analysis of this paper emphasizes that the interpretive work of the court requires judges not only to understand the text, but also to take into account the context, goals, and values underlying a particular decision. This helps to ensure that the court's decisions are consistent with international standards and that their decisions truly comply with the spirit and letter of human rights. In conclusion, this paper emphasizes the role of the court's interpretive activity as an important element in determining the content of evaluative features in the judgments of the European Court of Human Rights.

## ■ Conclusions

The study of the issue of defining the content of evaluative indicators provides an in-depth insight into the complexity of this issue and its significance in the context of human rights guarantees. Evaluative features are a key means of establishing violations of rights and ensuring an appropriate level of protection. The analysis has shown that the European Court of Human Rights (ECtHR) uses an objective and proportionate approach to determine the evaluative features in its judgments. The Court skilfully distinguishes between factual statements and value

judgements by analysing in detail the context, form of the statement and the perception of the audience. This approach helps to establish the limits of protection of rights and strike a balance between freedom of expression and protection of the interests of individuals. This strategy allows the court to determine when a particular statement is in the nature of an opinion or is actually a verifiable fact. Such a division helps to reduce the risk of undue restrictions on freedom of expression and avoid excessive interference with the rights of individuals. The analysis of the context and the perception of the audience emphasizes that the determination of the evaluative features must be reasonable and objective, in particular, taking into account the diversity of public perceptions and interpretations. This approach of the ECtHR reflects the court's efforts to maintain a balance between freedom of expression and protection of the interests of individuals and society. This demonstrates that the ECtHR is an understanding and responsible body that makes every effort to ensure that human rights are preserved and that their interpretation is in line with modern realities.

The author identifies the importance of the impact of the ECtHR judgments on the development of legal standards in Europe. The Court establishes standards and interpretations of the Convention that affect the national justice systems of its member states. It promotes consistency and unity of interpretation of human rights, ensuring stability and fairness in court decisions. The ECtHR judgments and the issue of defining evaluative features are relevant and complex.

The study points to the need for further analysis and development of this topic to ensure a clear, fair and consistent interpretation of human rights, as well as to address new challenges that arise, in particular in the digital environment. This will contribute to the development of legal standards and ensure effective human rights protection in Europe.

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#### ■ Conflict of Interest

None.

#### ■ References

- [1] Altwicker, T. (2018). Transnationalizing rights: International human rights law in cross-border contexts. *Legal Scientific Electronic Journal*, 29(2), 581-606. doi: 10.1093/ejil/chy004.
- [2] Antoniazzi, C.T. (2019). *Promoting the execution of judgments of the European Court of Human Rights: The (potential) role of national human rights institutions*. (Doctoral thesis, University of Trento, Trento, Italy).
- [3] Badida, A.Y., & Lemak, V.V. (2017). *Positive obligations of the state in the context of the practice of the European Court of Human Rights*. *Public Law: Scientific and Practical Legal Journal*, 2(26), 245-253.
- [4] Bilius, M., Navickiene, Z., & Velicka, V. (2021). Hate Crimes: Evaluation of Lithuanian courts' decisions in the light of the practice of the European Court of Human Rights. *Baltic Journal of Law and Politics*, 14(1), 22-47. doi: 10.2478/bjlp-2021-0002.
- [5] Borzovic, P. (2022). *How are metaphors rendered in legal translation? A corpus-based study of the European Court of Human Rights judgments*. *The Journal of Specialized Translation*, 38, 277-297.
- [6] Denysova, A.V., Blaga, A.B., Makovii, V.P., & Kaliuzhna, Ye.S. (2022). The right to a fair trial: The ECtHR case-law and its implementation in the Ukrainian judiciary. *Law and Bond*, 2(40), 109-127. doi: 10.36128/priw.vi40.385.
- [7] Dmitrieva, M.M. (2020). Legal certainty: Concept and content. *Bulletin of Zaporizhzhya National University. Series: Legal Sciences*, 3, 15-22. doi: 10.26661/2616-9444-2020-3-02.
- [8] Dudar, S.K. (2019). *Law quality criteria: The problem of doctrinal definition in the aspect of legal integration of Ukraine and the EU*. *Journal of the Kyiv University of Law*, 1, 23-26.
- [9] Fuley, T.I. (2015). *Application of the practice of the European Court of Human Rights in the administration of justice: A scientific and methodological guide for judges*. Kyiv: VAITE.
- [10] Garasimiv, O.Yu. (2017). *The shortcomings of the Ukrainian legislation on detention and the status of their elimination were revealed by the European Court of Human Rights*. (Doctoral dissertation, Lviv National University named after Ivan Franko, Lviv, Ukraine).
- [11] Grigorenko, A.O. (2019). Peculiarities and procedure of adoption of a pilot decision by the European Court of Human Rights. *Legal Bulletin*, 4(53), 158-163. doi: 10.18372/2307-9061.53.14306.
- [12] Gromovenko, K.P. (2016). *The right to higher education in the practice of the ECHR*. *Scientific Bulletin of Public and Private Law*, 2(3), 291-296.
- [13] Horobets, N.S., & Leleka, S.S. (2023). Mandatory application of the practice of the European Court of Human Rights as a source of law by Ukrainian courts. *Kyiv Law Journal*, 1, 378-374. doi: 10.32782/klj/2023.1.58.
- [14] Jafarov, H.R., Tsekhan, D., Lutsyk, V., & Baranenko, D. (2022). Judicial precedent and practice of the ECHR in criminal law. *Amazonia Investiga*, 11(52), 195-203. doi: 10.34069/AI/2022.52.04.21.

- [15] Karaman, I.V., & Kozina, V.V. (2015). *The European Court of Human Rights, the European Convention on Human Rights and individual applications: A first introduction*. Kyiv: VAITE.
- [16] Karavatsyka, S.B. (2019a). [Interpretive activity of the European Court of Human Rights in cases of violation of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 in the field of political rights](#). *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 54, 219-223.
- [17] Karavatsyka, S.B. (2019b). [Interpretive practice of the European Court regarding international treaties on human rights: Features, principles and methods](#). *Actual Problems of Domestic Jurisprudence*, 2, 214-219.
- [18] Koruts, U.Z. (2017). [Separate issues of implementation of decisions of the European Court of Human Rights](#). *Actual Problems of Jurisprudence*, 1, 49-53.
- [19] Kosovych, V., & Pashuk, T. (2022). [Evaluative concepts of the European Convention on Human Rights: Current issues of application as exemplified by article 6](#). *Criticism of the Law*, 14(1), 43-57.
- [20] Kravchuk, M. (2018). The influence of the European Court of Human Rights on the protection of the rights, freedoms and interests of individuals and legal entities in the administrative proceedings of Ukraine. *Actual Problems of Jurisprudence*, 3(15), 18-22. [doi: 10.35774/app2018.03.018](#).
- [21] Manukyan, V.I. (2019). *Strasbourg law. European Court of Human Rights. Law, practice, commentary*. Kharkiv: Pravo.
- [22] Pankratova, V.O., & Lubenets, S.A. (2019). The right to education in the practice of the European Court of Human Rights. *Private and Public Law*, 2, 128-132. [doi: 10.32845/2663-5666.2019.2.24](#).
- [23] Pidoprigora, O.A., Kharitonov, E.O. (2022). *Roman law*. Kyiv: Yurinkom Inter.
- [24] Sever, T. (2018). Procedural safeguards under the European convention on human rights in public (administrative) law matters. *DANUBE: Law, Economics and Social Issues Review*, 9(2), 97-116. [doi: 10.2478/danb-2018-0007](#).
- [25] Slobodianyk, T.M. (2023). Application of the practice of the European Court of Human Rights in civil proceedings. *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 77(1), 159-163. [doi: 10.24144/2307-3322.2023.77.1.25](#).
- [26] Slosser, J.L. (2019). Components of legal concepts: Quality of law, evaluative judgement, and metaphorical framing of article 8 ECHR. *European Law Journal*, 25(6), 593-607. [doi: 10.1111/eulj.12347](#).
- [27] Sydorenko, O.O. (2015). The impact of decisions of the European Court of Human Rights on the legal system of Ukraine. *Problems of Legality*, 130, 27-34. [doi: 10.21564/2414-990x.130.53729](#).
- [28] Tarasenko O.Y., Mordas, D.P., & Babanly, R.S. (2023). *Review of decisions of the European Court of Human Rights (February 2023). Decision for the period from February 1, 2023 to 28.02.2023*. Kyiv: Supreme Court of Ukraine.
- [29] Tsyukalo, V.I. (2014). [Certain aspects of the activity of the European Court of Human Rights regarding the formation of the European system of human rights protection](#). *A word from the National School of Judges of Ukraine*, 1, 14-20.
- [30] Vogiatzis, N. (2022). Interpreting the right to interpretation under Article 6 (3) (e) ECHR: A cautious evolution in the jurisprudence of the European Court of Human Rights? *Human Rights Law Review*, 22(1), 1-25. [doi: 10.1093/hrlr/ngab027](#).
- [31] Voorhoof, D., van Loon, A., & Vier, C. (2016). *Freedom of expression, the media and journalists – case-law of the European Court of Human Rights – new updated edition*. Strasbourg: European Audiovisual Observatory.
- [32] Yurovska, G. (2021). [The practice of the European Court of Human Rights in the decisions of the body of constitutional jurisdiction](#). *Bulletin of the Constitutional Court of Ukraine*, 5, 110-130.
- [33] Zadorozhna, S.M. (2019). [Guaranteed compliance with the general principles of international law](#). *Legal Scientific Electronic Journal*, 6, 368-372.
- [34] Zavhorodniy, V.A. (2020). [The impact of the practice of the European Court of Human Rights on legal activity in Ukraine: Theoretical, methodological and applied aspects](#). Dnipro: Dnipropetrovsk state University of Internal Affairs Affairs.
- [35] Zavhorodniy, V.V. (2016). [The influence of the practice of the European Court of Human Rights on the legislation of Ukraine](#). *National Law Journal: Theory and Practice*, 6(1), 8-12.

## Рішення Європейського суду з прав людини та питання визначення змісту оцінних ознак

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■ **Анотація.** Вирішення спірних питань, пов'язаних зі змістом оцінних ознак, у контексті рішень Європейського суду з прав людини має важливе значення для розвитку юридичної науки та практики, адже посилення інтеграції в межах Європи вимагає від національних урядів і судових систем посиленої уваги до практики наднаціональних органів. Мета цього дослідження – здійснити аналіз рішень Європейського суду з прав людини, спрямований на визначення змісту оцінних ознак у контексті прав людини. Для цього використано методи аналізу юридичної літератури, порівняльного аналізу судової практики різних країн, синтезу, порівняння, моделювання, а також логічний та системний підходи до аналізу судових рішень. У статті з'ясовано, що оцінні ознаки є важливим інструментом для визначення порушень прав людини й потребують об'єктивного та пропорційного підходу. Увагу зосереджено на ролі Європейського суду з прав людини в забезпеченні балансу між свободою висловлювання та захистом прав осіб. Визначено необхідність адаптації понять до цифрових середовищ і врахування нових викликів. Проаналізовано процес визначення оцінних ознак, засвідчено його значущість для встановлення обсягу захисту прав людини. Виявлено різні підходи Європейського суду до визначення змісту оцінних ознак у рішеннях з питань прав людини. Акцентовано на тлумаченні таких понять, як «адекватність», «надмірність» і «необхідність» у контексті обмежень прав людини. Встановлено зміни в підходах суду до цих понять з плином часу та зміною соціального й політичного контексту. Дослідження має важливе значення для поглибленого розуміння тлумачення прав людини Європейським судом з прав людини, а також для формування єдиної методології тлумачення оцінних ознак у рішеннях судів різних юрисдикцій

■ **Ключові слова:** судові рішення; міжнародне право; національне право; юридичні стандарти; захист прав

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## Formation of the institute of personal data protection and experience of its implementation in the countries of the EU

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■ **Abstract.** The development of digital technologies in the modern world led to an increase in interference in the private life of a person and the number of human rights violations related to private life. Ukrainian legislation on personal data protection does not meet the latest trends and standards of the European Union (EU) in this area and needs to be updated. The article is intended to analyse the development of the institute of personal data protection in the world to identify ways to adapt the national legislation of Ukraine to the current personal data protection standards of the EU. To carry out the research, the following scientific methods were used: inductive, deductive, dialectical, analysis and synthesis, comparative legal, historical legal. According to the results of the research, the personal data protection institute has gone through a significant path of development from individual notions and concepts to a structured set of standards and tools legally established at the EU level. A characteristic feature of this development is the adoption of new legal acts on personal data protection, as well as increasingly strict and comprehensive regulation of issues related to personal data processing. Ukrainian personal data protection legislation, although historically improved in line with European standards, as of 2023 is based on the outdated Directive 95/46/EC, which has already been rejected by the EU. Compared to the legal systems of neighbouring countries such as Poland, Bulgaria and Romania, Ukrainian personal data protection legislation is not only inferior, but also significantly lags behind in terms of detail, definition of key terms and principles. The results of the research can be used in law-making work, in particular, when drafting a new bill of the basic data protection law and for further research on ways to improve Ukrainian laws and laws of other candidates for membership in the European Union on personal data protection

■ **Keywords:** human rights; privacy; personal and family life; personal data processing; General Data Protection Regulation

### ■ Introduction

During the 20<sup>th</sup> and 21<sup>st</sup> centuries, information technologies, digital and electronic communication tools are rapidly developing in the world. Activities involving operations with personal data are performed every day. The development of digital technologies, collection of personal data by programs and websites on an ongoing basis create new challenges to privacy. As the relations in the field of personal data become

more and more complicated, the scope of personal data processing is constantly expanding. The number of security breaches, including personal data breaches, is on the rise and keeps increasing as technologies continue to develop. One such example is a cyberattack using Petya.A virus on a number of public and private institutions and organizations of Ukraine, carried out on July 27, 2017 (Bezugliy, 2018). Another,

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more recent example is a leak of personal data from over 533 million Facebook accounts in April 2021 that led to the imposition of a fine of 265 million EUR on Meta (Roth, 2022). These circumstances create additional risks for human rights and require the governments to take action to implement new legal measures to secure privacy and protect personal data.

Problems of the development of the personal data protection institute were studied by a number of scientists. O.V. Hron & A.K. Pogorelenko (2018) identified certain problems in the personal data protection area and outlined main directions to enhance Ukrainian legislation on personal data protection. The need to enhance personal data protection is particularly relevant because of the advancement of digital and telecommunication systems, which makes it necessary to regulate the accessibility of personal data by establishing specific, meaningful requirements in the legislation (Nazimko *et al.*, 2022).

The study of the process of formation of privacy and its place among other basic human rights is necessary to highlight the process of formation of the institute of personal data protection. The place of the right to privacy in the system of human rights generations is studied by R.B. Saglam *et al.* (2022) and S. Bulavina & T. Davydova (2018), who attribute this right to the third generation of global human rights. T. Popovych & A. Shavarin (2019) view the right of the individual to protect his personal data as a right of the fourth generation of human rights. T. Popovych (2021) in the context of this generation considers theoretical and legal issues of personal data protection on the Internet.

When studying the establishment and development of the personal data protection institute, it is important to refer to the General Data Protection Regulation (hereinafter – the Regulation)<sup>1</sup>, which is currently the main legal act of the EU regulating personal data processing. S.R. Asiryan & K.A. Aleksanyan (2021) examines the impact of the Regulation on national personal data laws in other countries, emphasizing that the Regulation has become a kind of standard, the norms of which are implemented by countries into national legislation.

Scientists pay a lot of attention to the application and impact of the Regulation on personal data protection. Authors analyse how the Regulation influences internal policies and processes of companies related to personal data processing and highlight key areas where such influence takes place, including the need to update existing practices, the appointment

of officials responsible for personal data processing, increased attention to the selection of counterparties and the need to put obligations regarding personal data protection on such counterparties (Hoofnagle *et al.*, 2019; Novoitenko & Malynovskyi, 2020). Considerable attention is also paid to compliance with the technical and organizational requirements of the Regulation (Tamburri, 2019).

The purpose of the study was to identify key stages of formation of the institute of personal data protection and analyse peculiarities of its implementation in the EU countries in order to highlight possible ways to enhance Ukrainian legislation in the personal data protection area.

## ■ Materials and Methods

To reach the tasks of the study, a number of methods, including general methods of science and special methods of legal science, were used. Inductive and deductive methods were used for a comprehensive analysis of the evolution of the personal data protection institute. Individual cases that stipulated the formation of the notion “privacy”, were analysed using the inductive method. In this regard, the events that caused this process and case law were viewed. The deductive method helped to formulate general conclusions regarding specific stages of formation and development of the personal data protection institute, to distinguish general trends of such development. Dialectical method helped to comprehend the nature and dynamics of changes occurring in the privacy and personal data protection area, and social processes that stipulated such changes. With the help of methods of analysis and synthesis, separate components of the personal data protection institute were considered both individually and collectively, problematic aspects of the development of this institute were identified. The historical legal method played a key role in the research. This method was applied to investigate the chronology of development of the personal data protection institute in the world and consistently identify the main stages of the development of Ukrainian and European personal data protection laws. Comparative legal method helped to compare the norms regulating personal data protection in the EU and Ukraine and formulate conclusions regarding the current state of conformity of provisions in Ukrainian laws with similar provisions of the EU legislation in this area.

The basis of the article is a study of EU legislation regarding privacy and personal data protection. In this

<sup>1</sup> Regulation of the European Parliament and of the Council No. 2016/679 “On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)”. (2016, April). Retrieved from <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

regard, most important European legal instruments have been analysed, such as Convention No. 108<sup>1</sup>, Directive 95/46/EC<sup>2</sup> and the Regulation<sup>3</sup> which replaced Directive 95/46/EC and applies from 2018. The article also contains analysis of Ukrainian data protection laws from the standpoint of their correspondence with relevant legal acts of the EU. In particular, attention is paid to the review of the Law of Ukraine “On Protection of Personal Data”<sup>4</sup>, which is a basic Ukrainian law in the personal data protection area.

## ■ Results and Discussion

The institute of personal data protection began its formation at the end of the 19<sup>th</sup> century with the emergence of the concept of privacy. American lawyers S. Warren & L. Brandeis (1890) described privacy as “the right to be left alone”. The above-mentioned interpretation of privacy appeared as a result of technological development in the USA at the end of the 19<sup>th</sup> century, in particular, the spread of the press and photographs. These media invaded personal life through the publication of unverified information. In this regard, S. Warren & L. Brandeis (1890) noted that new technologies invaded man’s privacy and inflicted pain and suffering greater than bodily injury.

The category of right to privacy was recognized by the courts and subsequently widely used in the judicial practice of the USA. In 1905, in the decision in the case “Pavesich vs. New England Life Ins. Co.”<sup>5</sup> the court satisfied the claim of a man who was depicted in an advertising advertisement without his consent. When making the decision, the court noted that a person is entitled to choose the way, time, and place he would like to be submitted to the attention of the public and such submission requires a person’s consent. In 1965, US Supreme Court Justice Douglas in the case of *Griswold vs. Connecticut*<sup>6</sup> carved out the “right to privacy” from the First Five Amendments to the US Constitution.

In his opinion, these amendments protect various zones of privacy. The judge also noted that the right to privacy emerged before the Bill of Rights.

Despite the importance of introducing the idea of privacy, there is criticism of the definition of privacy given by S. Warren & L. Brandeis (1890) among scientists. Critics believe that the definition of privacy as the right to be left alone is too vague and does not clarify the essence of privacy. Furthermore, the right to be left alone does not account for other significant concepts, for example freedom of speech (Solove, 2002). Thus, the concept of privacy was formed and used in judicial practice at the end of the 19<sup>th</sup> – the beginning of the 20<sup>th</sup> century, that is, before the peak of development of information technologies.

The introduction of the idea of privacy had a major influence on the establishment and evolution of the system of human rights and freedoms. In the theory of state and law, it is customary to divide human rights into four generations depending on their nature (Popovych & Shavarin, 2019). The first generation of human rights occurred as a result of the Age of revolutions and includes rights of political and civil nature. These rights were enshrined in the constitutional acts of the 17<sup>th</sup>-18<sup>th</sup> centuries. In science, such rights have been called “negative”, as they are designed to ensure the freedom of a citizen from external interference by the state (Kozyubra, 2015).

Economic and social development of society, broad support in society for the ideas of social justice and solidarity led to the emergence and normative consolidation of human rights of the second generation (Kozyubra, 2015). This generation includes economic, social and cultural rights, such as the right to rest, the right to work, the right to medical and social security, the right to education. These rights were legally enshrined in the Universal Declaration of Human Rights<sup>7</sup> and the International Covenant on Economic, Social and Cultural Rights of 1966<sup>8</sup> and are named as “positive” in science.

<sup>1</sup> Convention of the Council of Europe No. 108 “On the Protection of Individuals with Regard to Automated Processing of Personal Data”. (1981, January). Retrieved from <https://rm.coe.int/1680078b37>.

<sup>2</sup> Directive of the European Parliament and of the Council No. 95/46/EC “On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data”. (1995, October). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046>.

<sup>3</sup> Regulation of the European Parliament and of the Council No. 2016/679 “On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)”. (2016, April). Retrieved from <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

<sup>4</sup> Law of Ukraine No. 2297-VI “On Protection of Personal Data”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

<sup>5</sup> Justice of the Supreme Court of Georgia No. 50 SE 68,122 Ga. 190 “Pavesich v. New England Life Ins. Co.” (1905, March). Retrieved from <https://case-law.vlex.com/vid/pavesich-v-new-england-888103034>.

<sup>6</sup> Appeal From the Supreme Court of Errors of Connecticut No. 381 U.S. 479 “Griswold v. Connecticut”. (1965, June). Retrieved from <https://supreme.justia.com/cases/federal/us/381/479/>.

<sup>7</sup> Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>8</sup> International Covenant on Economic, Social and Cultural Rights. (1966, December). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

The third human rights generation emerged following the Second World War as a result of the need to maintain peace, protect the environment and development of the liberation movements for independence. The rights of the third generation are “collective” rights, that is, they do not concern a specific person, but an entire community – a separate nation or the whole of humanity. The emergence of these rights is caused by problems of a global nature, therefore third generation rights include rights concerning peace, self-determination of nations, natural resources, safe environment and sustainable development.

The fourth generation of human rights emerged at the end of the 20<sup>th</sup> and during the 21<sup>st</sup> century due to the development of biology, psychology, medicine, digital technologies and informatization (Table 1). This category of rights is debatable, it includes rights of different content, including the right to peace and nuclear safety, informational and environmental rights, the right to sex change, organ transplantation, cloning, artificial reproduction, abortion, euthanasia, etc. In the context of privacy and personal data protection, the ability to safeguard privacy and personal data online is a fundamental entitlement.

**Table 1.** Periodization of the development of the institution of personal data protection as a part of the genesis of human rights

Generation of human rights	Dating	Legislative consolidation	Rights	Privacy and personal data protection institution
I	17 <sup>th</sup> -18 <sup>th</sup> century	Habeas Corpus Act (1679) <sup>1</sup> , Bill of Rights (1688) <sup>2</sup>	Civil and political rights (personal freedom, equality before law, freedom of speech, right to vote etc.)	Has not formed yet.
II	during 20 <sup>th</sup> century	Universal Declaration of Human Rights (1948) <sup>3</sup> , International Covenant on Economic, Social and Cultural Rights (1966) <sup>4</sup>	Economic, social and cultural rights (right to rest, right to work, right to education etc.)	Right to privacy begins to form (Art. 12 of the Universal Declaration of Human Rights <sup>5</sup> ).
III	end of the 20 <sup>th</sup> century (following the Second World War)	Stockholm Declaration (1972), <sup>6</sup> Rio Declaration (1992) <sup>7</sup>	Collective rights (right to peace, self-determination of nations, safe environment etc.)	With the development of communications, the right to privacy as a right of collective nature begins to transform into data protection institute.
IV	end of the 20 <sup>th</sup> – during 21 <sup>st</sup> century	Charter of Fundamental Rights of the EU (2000) <sup>8</sup>	Nuclear safety, informational and digital rights, cloning, abortion, euthanasia etc.	Personal data protection institute has been established and continues to evolve with the development of digital technologies (Art. 8 of the Charter of Fundamental Rights of the EU <sup>9</sup> ).

**Source:** developed by the author

Due to the collective nature of privacy, it seems justified to attribute the right to privacy to third generation (Bulavina & Davydova, 2018). This right also has other features of the third generation of human rights: interdependence with other rights, extraterritoriality, belonging to different generations

of humanity (Ivankiv, 2016). At the same time, there are different views in the literature regarding the place of the right to privacy in the system of generations of human rights. There is an opinion that the right to privacy belongs to the first generation (Sofiyuk, 2018).

<sup>1</sup> Habeas Corpus Act. (1679, May). Retrieved from <https://www.legislation.gov.uk/aep/Cha2/31/2/data.pdf>.

<sup>2</sup> Bill of Rights. (1688, December). Retrieved from <https://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction>.

<sup>3</sup> Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights. (1966, December). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>5</sup> Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>6</sup> Declaration of the United Nations Conference on the Human Environment. (1972, June). Retrieved from <https://www.un.org/en/conferences/environment/stockholm1972>.

<sup>7</sup> Rio Declaration on Environment and Development. (1992, June). Retrieved from [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf).

<sup>8</sup> Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>9</sup> Ibidm, 2000.

Following the Second World War, in 1948, the Universal Declaration of Human Rights was adopted (hereinafter – the Declaration)<sup>1</sup>, which enshrines the basic inalienable human rights. Among other rights, the Declaration recognizes the right to privacy (Article 12) and grants its protection by law. Similar provisions regarding privacy are established by the European Convention on Human Rights<sup>2</sup>. According to the European Convention on Human Rights, the intervention of public authorities into privacy is possible only in cases provided by the law, on reasonable grounds such as public interest, security, and safety<sup>3</sup>. Protection from interference into privacy is also declared in the International Covenant on Civil and Political Rights<sup>4</sup>.

Over time, the concept of privacy has been replaced by the concept of personal data protection, which is considered as informational sovereignty of a person. The right of a person to control the procedure and method of personal data processing activities, to provide or withdraw consent to such processing is recognized. Further development of the institute of personal data protection is connected with enactment of a number of legislative acts at the level of the EU and individual countries. In 1981, the Council of Europe adopted Convention No. 108 for the Protection of Individuals with regard to Automated Processing of Personal Data (hereinafter – the Convention)<sup>5</sup>. The purpose of the Convention is to secure the right to privacy of individuals in connection with processing of personal data by automated means. The Convention provides individuals with a number of rights regarding their personal data, in particular to prove that the automated file with their personal data exists, obtain information about the purposes of its existence and obtain details of the

data controller; to verify the fact of personal data storage and receive such data in an understandable form; to demand correction or deletion of the data and use legal means if the request is not satisfied<sup>6</sup>. The Convention is actually the first document adopted at the EU level that exclusively regulates personal data protection matters. In 2001, an Additional Protocol was adopted (Protocol)<sup>7</sup> was adopted. The Protocol sets an obligation on signatory states not to transfer personal data to states that do not ensure the necessary protection of personal data. Ukraine ratified the Convention and the Protocol in 2010<sup>8</sup>.

In 1995, Directive 95/46/EC was adopted<sup>9</sup>. This document laid the foundations for personal data protection in the EU for subsequent years. Directive 95/46/EC defined key concepts related to the processing of personal data, established its principles, determined the subjects of personal data processing relations, their rights, and duties. In particular, the Directive expressly defined when personal data can be lawfully processed. The Directive also established special categories of data, which include data regarding a person's race and origin, political views and beliefs, membership in trade unions, health, and sex life. Processing of such data is generally prohibited by the Directive.

The Declaration of the Charter of Fundamental Rights of the EU in 2000<sup>10</sup> (hereinafter – Charter) was the next important stage in the development of the personal data protection institute. The Charter was enacted with as the Lisbon Treaty<sup>11</sup> entered force in 2009. The Charter enshrines a person's right to respect for privacy (Article 7), as well as the right to the protection of personal data, which includes the right to access and rectify such data (Article 8)<sup>12</sup>. Since the Charter is mandatory for EU member

<sup>1</sup> Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>2</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from <https://www.echr.coe.int/european-convention-on-human-rights>.

<sup>3</sup> Ibidem, 1950.

<sup>4</sup> International Covenant on Civil and Political Rights. (1966, December). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>5</sup> Convention of the Council of Europe No. 108 “On the Protection of Individuals with Regard to Automated Processing of Personal Data”. (1981, January). Retrieved from <https://rm.coe.int/1680078b37>.

<sup>6</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. (1981, October). Retrieved from <https://rm.coe.int/1680078b37>.

<sup>7</sup> Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data Regarding Supervisory Authorities and Transborder Data Flows. (2001, November). Retrieved from <https://rm.coe.int/1680080626>.

<sup>8</sup> Law of Ukraine No. 2438-VI “On Ratification of Convention for the Protection of Individuals with Regard to Automated Processing of Personal Data and Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data Regarding Supervisory Authorities and Transborder Data Flows”. (2010, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/2438-17?lang=uk#Text>.

<sup>9</sup> Directive of the European Parliament and of the Council No. 95/46/EC “On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data”. (1995, October). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046>.

<sup>10</sup> Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>11</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Signed at Lisbon. (2007, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12007L%2FTXT>.

<sup>12</sup> Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

states, their state bodies and institutions, its entry into force created additional guarantees and means to protect personal data. After being included in the Charter, the right to the protection of personal data finally acquired the features of a fundamental right, which include belonging to a person from the moment of birth, inalienability, inalienability, universality, and interdependence (the fundamental right can be exercised only in connection with other fundamental rights) (Custers & Malgieri, 2022).

In 2008, Directive 95/46/EC was supplemented by the Council Framework Decision No. 2008/977/JHA<sup>1</sup>. The aim of the decision is to protect the privacy rights of natural persons by regulating cooperation of police and judicial bodies within data processing activities. In order to strengthen cooperation on personal data protection within the EU in the field of activities of courts and law enforcement agencies, the Council Decision 2008/615/JHA<sup>2</sup> (Prüm Decision) and Council Framework Decision (EU) 2009/315/JHA<sup>3</sup> were adopted. The Prüm decision aims to strengthen cross-border cooperation through improvement of communication and data flow between police and judicial bodies. The decision regulates the interaction of EU member states in such areas as the automated transfer of DNA profiles, dactyloscopic information and national data on vehicle registration; transfer of data regarding significant cross-border events; transfer of data to prevent terrorism; various conditions and measures to strengthen cross-border police cooperation. Council Framework Decision (EC) 2009/315/JHA establishes ways for member states to transfer information about convicted citizens of other member states, defines the obligations of a member state to store information about its convicted citizen and the methods used in responses to requests for criminal record information; introduces regulatory frameworks for computerized conviction information exchange systems between member states.

The evolution of the personal data protection institute in the EU led to the adoption of the General Data Protection Regulation (Regulation (EU) 2016/679)<sup>4</sup> on April 26, 2016. The Regulation became a qualitatively new legislative act regulating personal data protection and repealed Directive 95/46/

EU. An important feature of the Regulation is its extraterritorial effect. The provisions of the Regulation apply to the processing of personal data of data subjects located in the EU, even if such data is processed by an entity located outside the EU that supplies services or goods to data subjects in the EU or monitors the behaviour of the latter within the EU. The Regulation establishes the principles of processing personal data, in particular, such as fairness, lawfulness, and transparency of processing; data minimization; accuracy; limitation of personal data storage; integrity and confidentiality; accountability of data controller. The Regulation establishes fairly strict requirements for the subjects involved in personal data processing. However, these requirements are not always detailed enough. Article 24 of the Regulation requires the data controller to apply measures of organizational and technical nature to ensure data processing in accordance with the Regulation<sup>5</sup>.

Such technical and organizational measures are not expressly mentioned in the Regulation, there are only general guidelines as to what these measures can be. For example, such a measure as pseudonymization is mentioned in Article 25 of the Regulation<sup>6</sup>. Thus, a significant administrative and financial burden is imposed on companies and organizations, caused by the need to enforce suitable technical and organizational safeguards. The regulation also obliges to review and, if necessary, update such measures, as well as appoint an official responsible for the protection of personal data. It is important that to establish a greater level of personal data protection, the Regulation singles out in a separate category “sensitive” personal data. Such data include person’s race and origin, political views and beliefs, membership in trade unions, health and sex life, genetic and biometric data. The processing of such data is generally prohibited by the Regulation, except for certain exceptions established in paragraph 2 of Article 9 of the Regulation<sup>7</sup>. In case of non-compliance with the requirements of the Regulation, the entities may face fines that vary depending on the severity of the violation and can reach up to 20 000 000 EUR or 4% of the company’s total global revenue for the previous financial year, whichever is higher.

<sup>1</sup> Council Framework Decision No. 2008/977/JHA “On the Protection of Personal Data Processed in the Framework of Police and Judicial Cooperation in Criminal Matters. (2008, November). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0977>.

<sup>2</sup> Council Decision No. 2008/615/JHA “On the Stepping up of Cross-border Cooperation, Particularly in Combating Terrorism and Cross-border Crime”. (2008, June). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008D0615>.

<sup>3</sup> Council Framework Decision No. 2009/315/JHA “On the Organisation and Content of the Exchange of Information Extracted from the Criminal Record Between Member States”. (2009, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009F0315>.

<sup>4</sup> Regulation of the European Parliament and of the Council No. 2016/679 “On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)”. (2016, April). Retrieved from <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

<sup>5</sup> Ibidem, 2016.

<sup>6</sup> Ibidem, 2016.

<sup>7</sup> Ibidem, 2016.

After Ukraine became independent, the institute of personal data protection gradually began to form in Ukraine. Article 32 of the Constitution of Ukraine<sup>1</sup> declares the right of everyone to non-interference in his private life and prohibits usage of a person's confidential information without his consent<sup>2</sup>. Separate norms regarding personal data and the basic principles of their processing were later established in the Law of Ukraine "On Information". In particular, Article 2 of the law enshrines such a principle of information relations as security of person's private life<sup>3</sup>. Protection of personal data processed in the systems was regulated by the Law of Ukraine "On Protection of Information in Information and Communication Systems"<sup>4</sup>. The Law of Ukraine "On Access to Public Information" established a special legal regime for personal data contained in public information<sup>5</sup>.

The main law regulating the personal data institute in Ukraine is the Law of Ukraine "On Protection of Personal Data", which was adopted in 2010<sup>6</sup>. This law was developed on the basis of the provisions of Directive 95/46/EC<sup>7</sup>. The law defines main concepts regarding personal data, such as personal data, processing of personal data, personal data subject, owner, manager, and recipient. The Law of Ukraine "On the Protection of Personal Data" is a fundamental act in the area of personal data protection in Ukraine, since only this law regulates relations related to personal data processing so thoroughly and comprehensively, establishes and defines the subject of these relations, rights, and obligations of personal data subjects, general requirements for processing personal data and measures to ensure personal data protection. It is to be noted that there is no definition of the concept of privacy in Ukrainian legislation, this concept is used only in relation to property relations (private property) in Art. 41 of the Constitution of Ukraine<sup>8</sup>. In general, this corresponds with the state of the EU legislation, where privacy also does not have a clear legal definition (Bryzhko & Pylypchuk, 2021).

Ukrainian researchers have analysed the provisions of the Law of Ukraine "On Protection of Personal Data", highlighting its drawbacks and inconsistencies.

O.V. Hron & A.K. Pogorelenko (2018) point out that the Regulation enhanced several rights in relation to personal data, such as the right of the individual to be informed about data processing, which is exercised through providing consent; the right to demand deletion of the data and the right to prohibit data processing. The mentioned rights of data subject are not detailed enough in the Law of Ukraine "On Protection of Personal Data", which stipulates the need to revise the respective provisions of the law. In this regard, it is not clear from the provisions of the law how personal data can be transferred to competent bodies without individual's consent and there is a need to elaborate the definition of personal data subject's consent so that it becomes unambiguous and more specific in terms of informing the individual on operations with his data.

Another important point raised by researchers is the necessity to create a competent data protection authority with specific functions, such as control over compliance with data protection laws, improvement of Ukrainian legislation in the area and interaction with the EU data protection authorities (Pylypchuk & Bryzhko, 2017). Agreeing with this point, it is to be noted that currently the functions of such body are performed by the Ukrainian Parliament Commissioner for Human Rights, hereinafter – the Commissioner. Functions regarding data protection are not fully consistent with the nature of the constitutional and legal status of the Commissioner, whose constitutional function is parliamentary control over the observance of constitutional rights. It is illustrative that according to the Commissioner's 2022 annual report, only 7% of appeals to the Commissioner concern issues related to personal data (Report on the Observance and Protection..., 2022). Because of its complexity, data protection is an area that requires the attention of a specially designated body. Appointing the data protection authority is required under the Regulation and is a standard practice in the EU countries which began to form before the Regulation was adopted. For example, the German data protection act<sup>9</sup> passed in the land of Hesse in 1970 already envisaged the

<sup>1</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>2</sup> Ibidem, 1996.

<sup>3</sup> Law of Ukraine No. 2657-XII "On Information". (1992, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text>.

<sup>4</sup> Law of Ukraine No. 80/94-BP "On Protection of Information in Information and Communication Systems". (1994, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/80/94-%D0%B2%D1%80#Text>.

<sup>5</sup> Law of Ukraine No. 2939-VI. "On Access to Public Information". (2011, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2939-17#Text>.

<sup>6</sup> Law of Ukraine No. 2297-VI "On Protection of Personal Data". (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

<sup>7</sup> Directive of the European Parliament and of the Council No. 95/46/EC "On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data". (1995, October). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046>.

<sup>8</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>9</sup> Law of the Hessen No. GVBI II 300-10 "Data Protection Act". (1970, October). Retrieved from <https://starweb.hessen.de/cache/GVBL/1970/00041.pdf>.

post of Data Protection Commissioner, who was independent of other bodies and had the power to oversee activities related to personal data. In addition to introducing an independent data protection body, it is suggested that this body is granted sufficient power to prevent data protection violations and impose fines.

As noted, the Law of Ukraine “On Personal Data Protection”<sup>1</sup> is based on Directive 95/46/EC<sup>2</sup>, which was cancelled and replaced by the Regulation. In view of this, it cannot be considered fully compliant with current EU legislation. This concerns the conceptual and categorical apparatus, mechanisms for ensuring personal data protection, requirements for subjects to ensure personal data protection, responsibility for data breaches, establishment of specific types of sensitive personal data and legal regime for their protection, etc. This situation is not favourable for Ukraine at the state level, because according to Article 15 of the EU-Ukraine Association Agreement, Ukraine agreed to cooperate with the EU in order to meet the international and European data protection standards<sup>3</sup>. The inconsistency of domestic legislation may create difficulties on Ukraine’s road to accession to the EU. Also, the inconsistency of national personal data protection legislation creates risks for Ukrainian companies focused on exporting goods and services to the EU. Since the Regulation has an extraterritorial effect, if personal data of data subjects from the EU is processed by Ukrainian companies, such companies risk being held liable by European data protection supervisory authorities for breaches of the Regulation.

Ukraine could use the examples of the countries with similar legal systems that have entered the EU in the 21<sup>st</sup> century to bring national data protection legislation in line with the European standards. Such countries already have the necessary experience in implementation of the Regulation to their national legislation. For example, Poland has updated its data

protection law in 2018 and introduced the President of the Office of Personal Data Protection as a new data protection authority. Bulgaria took a similar approach by updating its Personal Data Protection Act, while Romania adopted a separate implementing law<sup>4</sup>, which in essence repeats the provisions of the Regulation. Ukrainian lawmakers should take into account this experience when choosing the best way to integrate the provisions of the Regulation into Ukrainian law and develop an effective data protection model in harmony with the best standards and practices of the EU.

In this regard, it appears that Ukraine could use a complex approach similar to the one used by Poland. In particular, Poland has not only replaced its main data protection law, but also made extensive changes to its national legislation to cover different areas of the economy from a data protection standpoint. The 2019 GDPR Implementation Act<sup>5</sup> introduced changes to more than 160 acts concerning various areas, including labour, consumer protection and electronic communications. For example, the Polish Labour Code<sup>6</sup> was amended to establish specific cases when the employer can require personal data from a potential employee and the categories and scope of such personal data. The code provides the candidate for employment with a right to refuse to provide personal data to the employer or withdraw consent to personal data processing. Ukrainian legislation needs a similar complex update, as it contains provisions regarding data protection in various laws apart from the Law of Ukraine “On Personal Data Protection”<sup>7</sup>, for example, the Labour Code of Ukraine<sup>8</sup>, the Law of Ukraine “On Access to Public Information”<sup>9</sup> and others. Therefore, all Ukrainian legal acts need to be amended systematically to correspond with the provisions of the Regulation.

Bulgaria is another interesting example in terms of implementing the Regulation. This country also up-

<sup>1</sup> Law of Ukraine No. 2297-VI “On Protection of Personal Data”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

<sup>2</sup> Directive of the European Parliament and of the Council No. 95/46/EC “On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data”. (1995, October). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046>.

<sup>3</sup> Association Agreement between the European Union and Ukraine. (June, 2014). Retrieved from <https://www.kmu.gov.ua/en/yevropejska-integraciya/ugoda-pro-asociacyu>.

<sup>4</sup> Law of Romania No. 190/2018 “On Measures for the Application of Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)”. (July, 2018). Retrieved from <https://platform.dataguidance.com/legal-research/law-no-1902018-implementing-general-data-protection-regulation-regulation-eu-2016679>.

<sup>5</sup> Act of the Sejm of the Republic of Poland No. 730 “On Amending Certain Acts in Connection with Ensuring the Application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement Such Data and Repealing Directive 95/46/EC (General Data Protection Regulation)”. (2019, February). Retrieved from <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190000730>.

<sup>6</sup> Labor Code of the Republic of Poland. (1974, June). Retrieved from <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>.

<sup>7</sup> Law of Ukraine No. 2297-VI “On Protection of Personal Data”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

<sup>8</sup> Labor Code of Ukraine No. 322-VIII. (1971, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

<sup>9</sup> Law of Ukraine No. 2939-VI “On Access to Public Information”. (2011, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2939-17#Text>.

dated its main data protection law in 2019<sup>1</sup>. Bulgarian lawmakers have introduced a stricter regulation of certain personal data aspects, in particular relating to copying identity documents such as identification cards and driving licences, prohibiting copying such documents without specific legal grounds. Another peculiarity of the Bulgarian approach to data protection is the introduction of the second supervisory authority in addition to the authority that existed before implementation of the Regulation. Consequently, Bulgaria has two data protection authorities: the Commission for Personal Data Protection (CPDP), which has general jurisdiction over data protection matters and the Inspectorate of the Supreme Judicial Council, which has special jurisdiction over data processing in the judicial system when such processing is performed to carry out justice. The Bulgarian experience may be useful for Ukraine in the context of harmonizing its legislation with the Regulation, in particular, the idea of a separate supervisory data protection body for the judicial system deserves attention.

An illustration of the opposite approach is Romania, which adopted law No. 190/2018<sup>2</sup> implementing the Regulation. The mentioned law contains a concise description of data protection requirements and mostly refers to the provisions of the Regulation. At the same time, Romanian data protection authorities are among the most active in the EU in imposing fines on the companies. Romania was ranked third among the EU by the number of imposed fines related to personal data processing for mas of 2022 (Legal and Communication Department, 2022). Such an approach does not appear to be optimal for Ukraine as it does not provide a sufficient level of legal certainty, which may cause unfair behaviour of the subjects that process personal data or supervise such activities.

Legal studies pay attention to the evolution of privacy in the global system of human rights, examining its nature and place in the system of human rights generations. T.O. Sofiyuk (2018) views privacy as a part of a more general category of informational rights, which include the right to correspondence, individuality, secrecy about health, freedom of information and informational sovereignty. The author delineates the notion of the right to privacy should not be viewed as a static concept, but should rather be applied as a dynamic concept that ensures the possibilities and mechanisms to protect rights. Considering the technological advancement and increasing risks to personal data, such opinion deserves attention and should be reflected in the

Ukrainian legislation. S. Bulavina & T. Davydova (2018) view privacy as the right of the third generation which has fundamental nature and underline that it is closely connected with other rights, such as dignity and freedom of speech. An important conclusion drawn by the authors is that privacy right belongs to the third generation because of its collective nature, however, it began to establish before the rights of the third generation were enshrined in legal acts. T. Popovych & A. Shavarin (2019) express their own opinion on the rights to personal data, attributing them to the fourth generation along with other related virtual rights, such as confidentiality on the internet. B. Custers & G. Malgieri (2022) view data protection right through the prism of fundamental rights, pointing out that as a fundamental right, this right cannot be alienated or transferred from a person. These studies are of significant value for the reason that they help to track the process of evolution of the categories of privacy and data protection, find out their place in the system of human rights and establish their connection with other related rights.

Scientists investigate the impact of the Regulation on the internal processes and policies of the companies in the context of technical requirements, pointing out that the Regulation requires to implement privacy by design systems, which, in turn, need to be balanced from the view of achieving balance between data protection and functionality (Tikkinen-Piri *et al.*, 2018; Tamburri, 2019). Ch.J. Hoofnagle *et al.* (2019) state that the Regulation requires companies to approach data protection similarly to antitrust and anti-corruption laws and pay significant attention to developing technical and legal practices and procedures in compliance with the Regulation. Similar studies that investigate the nature of the Regulation and its practical implementation are essential to identify the best approaches to ensuring data protection (Kovaliv *et al.*, 2020). N. Mentukh & O. Shevchuk (2023) note that design of the updated information protection model should consider the establishment of a robust state policy for safeguarding information within electronic registries, aligning with the legal standards of the European Union. This includes the establishment of the Office of the Information Protection Commissioner and the incorporation of specialists in the field of personal data protection within enterprises, consistent with EU regulations. The author of this study agrees that it is of utmost importance to study best practices and ways to implement organizational and technical require-

<sup>1</sup> Law of the Bulgaria "Personal Data Protection Act". (2002, January). Retrieved from <https://www.cdpd.bg/en/index.php?p=element&aid=1194>.

<sup>2</sup> Law of Romania No. 190/2018 "On Measures for the Application of Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)". (July, 2018). Retrieved from <https://platform.dataguidance.com/legal-research/law-no-1902018-implementing-general-data-protection-regulation-regulation-eu-2016679>.

ments under the Regulation, and this issue certainly requires further research.

In their publications, Ukrainian researchers have analysed the process of formation of Ukrainian national legislation on personal data protection and its transformation to meet the European legal standards. V.M. Bryzhko & V.G. Pylypchuk (2021) provide a review of the stages of development of the Ukrainian data protection system, pointing out on the areas that require improvement, such as legal and organizational mechanisms, responsibility for violations and enforcement of liability for violations in data protection area. These recommendations are valuable because Ukrainian laws on personal data protection, in particular the Law of Ukraine “On Protection of Personal Data”<sup>1</sup>, have still not been adapted to the EU standards in terms of main concepts, categories, principles, and mechanisms for protecting the rights of data subjects. Concerning the Law of Ukraine “On Protection of Personal Data”<sup>2</sup>, there is an opinion that this law should be cancelled and replaced by the bill “On personal data flow and processing”<sup>3</sup> (Rizak, 2015). The author of this article does not support this opinion because the established approach at the level of the EU legislation puts an emphasis on protection of personal data. Such conclusion can be made by analysis of key European legal acts, such as Directive 95/46/EC<sup>4</sup>, Convention No. 108<sup>5</sup> and the Regulation<sup>6</sup>. The full names of all these legal acts begin with the word “protection”, accentuating that it is crucial to implement and maintain security measures to protect personal data. Ukraine’s intent to join the EU stipulates the need for further research in this area, which could be based on the ideas proposed by the above authors, as well as analysis of current European legislation and practices regarding data protection.

## ■ Conclusions

The article examines the global experience of formation and development of personal data protection institute. The foundations of this institute were laid at the end of the 19<sup>th</sup> century with the introduction

of the idea of privacy. During the following years, especially in the second half of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> century, the right to privacy and protection of personal data developed along with basic human rights, gained international recognition and were consolidated at the level of EU legislation. In the view of digitalization, the need to implement efficient means to protect personal data only increases, which determines the need to improve legal regulation.

The key legislative act regulating personal data protection in the EU currently is the Regulation. Ukrainian personal data protection legislation has historically tried to follow European standards, however, as of today, it is grounded on the outdated Directive 95/46/EC, which is no longer valid in the EU. Experience in implementation of the Regulation by countries with similar legal systems that recently entered the EU, such as Poland, Bulgaria, and Romania, could be used by Ukrainian lawmakers to choose the best model to implement the changes into national legislation. Compared to the legislation of these countries, Ukrainian national laws on personal data protection lack sufficient level of detail, definitions of key terms, concepts, and principles that are present in the European legislation. Another issue is the absence in Ukraine of a separate data protection authority with specific jurisdiction. The establishment of at least one data protection body is a common practice in the EU and is explicitly required under the Regulation.

Therefore, the legislation of Ukraine needs to be improved to ensure compliance with the current EU legislation. Mechanisms and possible ways of integrating relevant European norms and practices regarding personal data protection into Ukrainian legislation require further research.

## ■ Acknowledgements

None.

## ■ Conflict of Interest

None.

<sup>1</sup> Law of Ukraine No. 2297-VI “On Protection of Personal Data”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

<sup>2</sup> Ibidem, 2010.

<sup>3</sup> Draft Law of Ukraine No. 8153 “On Personal Data Protection”. (2022, November). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/40707>.

<sup>4</sup> Directive of the European Parliament and of the Council No. 95/46/EC “On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data”. (1995, October). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046>.

<sup>5</sup> Convention of the Council of Europe No. 108 “On the Protection of Individuals with Regard to Automated Processing of Personal Data”. (1981, January). Retrieved from <https://rm.coe.int/1680078b37>.

<sup>6</sup> Regulation of the European Parliament and of the Council No. 2016/679 “On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)”. (2016, April). Retrieved from <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

## ■ References

- [1] Asiryanyan, S.R., & Aleksanyan, K.A. (2021). GDPR as a standard for personal data protection in the European Union. *Law and Society*, 6, 298-302. doi: [10.32842/2078-3736/2021.6.43](https://doi.org/10.32842/2078-3736/2021.6.43).
- [2] Bezugliy, D.S. (2018). Information security of Ukraine: An overview of recent trends. *Physical and Mathematical Education*, 2(16), 13-17. doi: [10.31110/2413-1571-2018-016-2-002](https://doi.org/10.31110/2413-1571-2018-016-2-002).
- [3] Bryzhko, V.M., & Pylypchuk, V.G. (2021). Security of personal data: Legal standards of the European Union and contemporary applied problems. *Information and Law*, 1(36), 17-28. doi: [10.37750/2616-6798.2021.1\(36\).238174](https://doi.org/10.37750/2616-6798.2021.1(36).238174).
- [4] Bulavina, S., & Davydova, T. (2018). [The right to privacy in the system of generations of human rights](#). *Historical and Legal Journal*, 1(13), 10-14.
- [5] Custers, B., & Malgieri, G. (2022). Priceless data: Why the EU fundamental right to data protection is at odds with trade in personal data. *Computer Law & Security Review*, 45, article number 105683. doi: [10.1016/j.clsr.2022.105683](https://doi.org/10.1016/j.clsr.2022.105683).
- [6] Hoofnagle, Ch.J., van der Sloot, B., & Borgesius, F.Z. (2019). The European Union general data protection regulation: What it is and what it means. *Information & Communications Technology Law*, 28(1), 65-98. doi: [10.1080/13600834.2019.1573501](https://doi.org/10.1080/13600834.2019.1573501).
- [7] Hron, O.V., & Pogorelenko, A.K. (2018). [Problems of personal data protection in the context of modern communication](#). *Scientific Bulletin of the Uzhhorod National University. Series: International Economic Relations and World Economy*, 19(1), 102-108.
- [8] Ivankiv, I.B. (2016). [Distinctive features of third generation human rights](#). *Scientific Notes of National University of Kyiv-Mohyla Academy. Legal Sciences*, 181, 54-57.
- [9] Kovaliv, M., Yaremko, V., & Holovach, T. (2020). Protection of personal data as a component of information security. *Social & Legal Studios*, 1(7), 47-52. doi: [10.32518/2617-4162-2020-1-47-52](https://doi.org/10.32518/2617-4162-2020-1-47-52).
- [10] Kozyubra, M.I. (2015). [Law and man: Lines of interrelationships and development trends](#). *Scientific Notes of National University of Kyiv-Mohyla Academy. Legal Sciences*, 168, 3-9.
- [11] Legal and Communication Department. (2022). *European Fines Top*. Retrieved from [https://www.dataprotection.ro/index.jsp?page=Comunicat\\_Presa\\_10\\_01\\_2022&lang=en](https://www.dataprotection.ro/index.jsp?page=Comunicat_Presa_10_01_2022&lang=en).
- [12] Mentukh, N., & Shevchuk, O. (2023). [Protection of information in electronic registers: Comparative and legal aspect](#). *Law, Policy and Security*, 1(1), 4-17.
- [13] Nazimko, E.S., Malakhovska, I.B., & Ponomaryova, T.I. (2022). Legal regulation of personal data protection in electronic communication networks. *Legal Novels*, 18, 169-175. doi: [10.32847/ln.2022.18.25](https://doi.org/10.32847/ln.2022.18.25).
- [14] Novoitenko, I.V., & Malynovskiy, V.V. (2020). Protection of personal data as a business trend. *Intellect XXI*, 3, 65-68. doi: [10.32782/2415-8801/2020-3.13](https://doi.org/10.32782/2415-8801/2020-3.13).
- [15] Popovych, T. (2021). The right of a person to protect personal data on the Internet: Theoretical and legal aspects. *Analytical and Comparative Jurisprudence*, 2, 51-54. doi: [10.24144/2788-6018.2021.02.9](https://doi.org/10.24144/2788-6018.2021.02.9).
- [16] Popovych, T., & Shavarin, A. (2019). Essential fulfilment of the fourth generation of human rights. *Entrepreneurship, Economy and Law*, 12, 266-271. doi: [10.32849/2663-5313/2019.12.49](https://doi.org/10.32849/2663-5313/2019.12.49).
- [17] Pylypchuk, V.G., & Bryzhko, V.M. (2017). Reform and development of the personal data protection system in Ukraine. *Information and Law*, 3(22), 5-21. doi: [10.37750/2616-6798.2017.3\(22\).273029](https://doi.org/10.37750/2616-6798.2017.3(22).273029).
- [18] Report on the observance and protection of human and civil rights and freedoms in Ukraine in 2022. (2023). Retrieved from <https://ombudsman.gov.ua/report-2022/en/>.
- [19] Rizak, M.V. (2015). [The creation of a real legal mechanism for the protection of personal data as a necessary element of guaranteeing the inviolability of a person's private life in the conditions of the formation of an information society in Ukraine](#). *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 2(35), 190-193.
- [20] Roth, E. (2022). *Meta fined \$276 million over Facebook data leak involving more than 533 million users*. Retrieved from <https://www.theverge.com/2022/11/28/23481786/meta-fine-facebook-data-leak-ireland-dpc-gdpr>.
- [21] Saglam, R.M., Nurse, J.R.C., & Hodges, D. (2022). Personal information: Perceptions, types and evolution. *Journal of Information Security and Applications*, 66, article number 103163. doi: [10.1016/j.jisa.2022.103163](https://doi.org/10.1016/j.jisa.2022.103163).
- [22] Sofiyuk, T.O. (2018). [The right to protection of personal data in the system of generations of human rights](#). *Dictum Factum*, 2, 13-17.
- [23] Solove, D.J. (2002). [Conceptualizing privacy](#). *California Law Review*, 90, 1087-1156.
- [24] Tamburri, D.A. (2019). Design principles for the General Data Protection Regulation (GDPR): A formal concept analysis and its evaluation. *Information Systems*, 91, article number 101469. doi: [10.1016/j.is.2019.101469](https://doi.org/10.1016/j.is.2019.101469).

- [25] Tikkinen-Piri, C., Rohunen, A., & Markkula, J. (2018). EU General Data Protection Regulation: Changes and implications for personal data collecting companies. *Computer Law & Security Review*, 34(1), 134-153. doi: 10.1016/j.clsr.2017.05.015.
- [26] Warren, S.D., & Brandeis, L.D. (1890). [The right to privacy](#). *Harvard Law Review*, 4(5), 193-220.

## Становлення інституту захисту персональних даних і досвід його впровадження в країнах ЄС

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■ **Анотація.** Розвиток у сучасному світі цифрових технологій призвів до розширення втручання в приватне життя людини та збільшення кількості випадків порушень прав людини, що стосуються приватного життя. Законодавство України не відповідає сучасним тенденціям і стандартам Європейського Союзу в цій сфері та потребує оновлення. Метою статті є дослідження розвитку інституту захисту персональних даних у світі для виявлення шляхів адаптації національного законодавства до сучасних стандартів захисту персональних даних на рівні ЄС. Для проведення дослідження використано такі наукові методи: індуктивний, дедуктивний, діалектичний, аналізу й синтезу, порівняльно-правовий, історико-правовий. З'ясовано, що інститут захисту персональних даних пройшов тривалий шлях розвитку від окремих понять і концепцій до структурованої сукупності стандартів й інструментів, законодавчо закріплених на рівні ЄС. Відмітними особливостями такого розвитку є прийняття нових нормативно-правових актів, а також дедалі жорсткіше та комплексне регулювання питань, пов'язаних з обробкою та використанням персональних даних. У цьому контексті постає необхідність удосконалення та адаптації національного законодавства до стандартів ЄС. Українське законодавство про захист персональних даних, попри те, що історично вдосконалювалося відповідно до європейських стандартів, станом на 2023 рік ґрунтується на застарілій Директиві 95/46/ЄС, що вже не діє в ЄС. Порівняно з правовими системами сусідніх країн – Польщі, Болгарії та Румунії, українське законодавство про захист персональних даних не лише поступається, а й істотно відстає за рівнем деталізації, визначення ключових термінів і принципів. Результати дослідження може бути використано під час законотворчої роботи, зокрема під час розроблення нового проєкту базового закону у сфері захисту персональних даних і для подальшого дослідження шляхів удосконалення законодавства України й інших кандидатів на членство в Європейському Союзі у сфері захисту персональних даних

■ **Ключові слова:** права людини; приватність; особисте життя; сімейне життя; обробка персональних даних; Загальний регламент про захист даних

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