

МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 30, № 3
2025

Київ
2025

ISSN 2410-3594
E-ISSN 2786-7382
Doi: 10.63341/naia-herald/3.2025

Засновник:

Національна академія внутрішніх справ

Рік заснування: 1996

Виходить чотири рази на рік.

*Рекомендовано до друку та поширення
через мережу Інтернет Вченою радою
Національної академії внутрішніх справ
(протокол № 21 від 29 вересня 2025 р.)*

Ідентифікатор медіа в Реєстрі суб'єктів у сфері медіа R30-02450

Рішення Національної ради України
з питань телебачення і радіомовлення
від 11 січня 2024 року № 26

Збірник входить до переліку фахових видань України

Категорія «Б». Галузь наук – юридичні, спеціальність – 081 «Право»
(наказ Міністерства освіти і науки України від 15 жовтня 2019 р. № 1301)

**Збірник представлено в міжнародних наукометричних базах даних,
репозитаріях та пошукових системах: ERIH PLUS, SOLO, OUCI,**

НБУ ім. В.І. Вернадського, UCSB Library, Google Scholar, Worldcat, Dimensions, Litmaps,
Фахові видання України, Електронний репозитарій НАВС, Cambridge University Library,
University of Oslo Library, University of Hull Library, European University Institute,
Leipzig University Library

Науковий вісник Національної академії внутрішніх справ : наук. журн. / [редкол.:
О. Барабаш (голов. ред.) та ін.]. – Київ : Нац. акад. внутр. справ, 2025. – Т. 30, № 3. – 113 с.

Адреса редакції:

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
Тел.: +38 (044) 520-08-47
E-mail: info@lawscience.com.ua
<https://lawscience.com.ua/uk>

MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
NATIONAL ACADEMY OF INTERNAL AFFAIRS

SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 30, No. 3
2025

Kyiv
2025

ISSN 2410-3594
E-ISSN 2786-7382
DOI: 10.63341/naia-herald/3.2025

Founder:

National Academy of Internal Affairs

Year of foundation: 1996

Published four times per year.

*Recommended for printing and distribution
via the Internet by the Academic Council
of National Academy of Internal Affairs
(Minutes No. 21 of September 29, 2025)*

Media identifier in the Register of Media Entities R30-02450

Decision of the National Council of Ukraine
on Television and Radio Broadcasting
of 11 January 2024 No. 26

The collection is included in the list of professional publications of Ukraine

Category "B". Branch of sciences – legal, specialty – 081 "Law"
(order of the Ministry of Education and Science of Ukraine of October 15, 2019, No. 1301)

**The collection is presented international scientometric databases, repositories
and scientific systems:**

ERIH PLUS, SOLO, OUCI, VNLU, UCSB Library,
Google Scholar, Worldcat, Dimensions, Litmaps, Professional publications of Ukraine,
Electronic repository NAIA, Cambridge University Library, University of Oslo Library,
University of Hull Library, European University Institute, Leipzig University Library

Scientific Journal of the National Academy of Internal Affairs / Ed. by O. Barabash
(Editor-in-Chief) et al. Kyiv: National Academy of Internal Affairs, 2025. Vol. 30, No. 3. 113 p.

Editors office address:

National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
Tel.: +38 (044) 520-08-47
E-mail: info@lawscience.com.ua
<https://lawscience.com.ua/en>

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ
Том 30, № 3

Редакційна колегія

Головний редактор	Ольга Барабаш – доктор юридичних наук, професор, Львівський державний університет внутрішніх справ, Україна
Заступник головного редактора	Сергій Чернявський – доктор юридичних наук, професор, Національна академія внутрішніх справ, Україна

Національні члени редколегії

Віктор Шевчук	доктор юридичних наук, професор, Національний юридичний університет імені Ярослава Мудрого, Україна
Вікторія Бабаніна	доктор юридичних наук, професор, Національна академія внутрішніх справ, Україна
Андрій Вознюк	доктор юридичних наук, професор, Національна академія внутрішніх справ, Україна
Юлія Черноус	доктор юридичних наук, професор, Національна академія внутрішніх справ, Україна
Світлана Ясечко	кандидат юридичних наук, доцент, Харківський національний університет внутрішніх справ, Україна
Сергій Абламський	кандидат юридичних наук, доцент, Харківський національний університет внутрішніх справ, Україна
Олександр Юнін	доктор юридичних наук, професор, Дніпровський державний університет внутрішніх справ, Україна
Діана Сергєєва	доктор юридичних наук, старший науковий співробітник, Київський національний університет імені Тараса Шевченка, Україна
Іван Охріменко	доктор юридичних наук, професор, Національна академія внутрішніх справ, Україна

Міжнародні члени редколегії

Єрмек Бурібаєв	доктор юридичних наук, професор, Жетісуський університет імені І. Жансугурова, Республіка Казахстан
Ян Відацкі	доктор габілітований у галузі права, Краківська академія імені Анджея Фрича Моджевського, Республіка Польща
Лукаш Грущинський	доктор габілітований у галузі права, Університет Козьмінського, Республіка Польща
Андреас Зіммерманн	доктор юридичних наук, професор, Потсдамський університет, Федеративна Республіка Німеччина
Пьотр Стець	доктор габілітований у галузі права, професор, Опольський університет, Республіка Польща
Жанна Хамзіна	доктор юридичних наук, професор, Казахський національний педагогічний університет імені Абая, Республіка Казахстан
Стефан Хобе	доктор габілітований у галузі права, професор, Кельнський університет, Федеративна Республіка Німеччина
Адам Вальдемар Чарнота	доктор філософії в галузі права, професор, Ризька вища школа права, Латвійська Республіка

SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 30, No. 3

Editorial Board

Editor-in-Chief

Olha Barabash – Doctor of Law, Professor, Lviv State University of Internal Affairs, Ukraine

Deputy Editor-in-Chief

Serhii Cherniavskiy – Doctor of Law, Professor, National Academy of Internal Affairs, Ukraine

National Members of the Editorial Board

Viktor Shevchuk

Doctor of Law, Professor, Yaroslav Mudryi National Law University, Ukraine

Viktorii Babanina

Doctor of Law, Professor, National Academy of Internal Affairs, Ukraine

Andrii Vozniuk

Doctor of Law, Professor, National Academy of Internal Affairs, Ukraine

Yuliia Chornous

Doctor of Law, Professor, National Academy of Internal Affairs, Ukraine

Svitlana Iasechko

PhD in Law, Associate Professor, Kharkiv National University of Internal Affairs, Ukraine

Serhii Ablamskiy

PhD in Law, Associate Professor, Kharkiv National University of Internal Affairs, Ukraine

Oleksandr Yunin

Doctor of Law, Professor, Dnipro State University of Internal Affairs, Ukraine

Diana Serhieieva

Doctor of Law, Senior Research Fellow, Taras Shevchenko National University of Kyiv, Ukraine

Ivan Okhrimenko

Doctor of Law, Professor, National Academy of Internal Affairs, Ukraine

International Members of the Editorial Board

Yermek Buribayev

Doctor of Law, Professor, Zhetysu University named after Ilyas Zhansugurov, Republic of Kazakhstan

Jan Widacki

Doctor of Habilitation in the Field of Law, Professor, Andrzej Frych Modzewski Krakow Academy, Republic of Poland

Łukasz Gruszczyński

Doctor of Habilitation in the Field of Law, Kozminski University, Republic of Poland

Andreas Zimmermann

Doctor of Law, Professor, University of Potsdam, Federal Republic of Germany

Piotr Stec

Doctor of Habilitation in the Field of Law, Professor, University of Opole, Republic of Poland

Zhanna Khamzina

Doctor of Law, Professor, Abai Kazakh National Pedagogical University, Republic of Kazakhstan

Stefan Hobe

Doctor of Habilitation in the Field of Law, Professor, University of Cologne, Federal Republic of Germany

Adam Waldemar

Doctor of Philosophy in Law, Professor, Riga Graduate School of Law, Republic of Latvia

Czarnota

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ
Том 30, № 3

ЗМІСТ

Т. Гудіма

Роль людини в алгоритмічному веденні війни:
правові засади та проблемні точки регулювання..... 9

М. Галич

Порівняльний аналіз сучасних підходів соціально-психологічної підтримки
учасників бойових дій та їхніх родин 23

Л. Мостепанюк, О. Матюшенко, Н. Симоненко

Довкілля як об'єкт кримінально-правової охорони:
проблеми визначення в національному й міжнародному законодавстві 33

Н. Полішко, О. Веренкіотова, А. Задорожна

Визнання особи недієздатною та призначення опікуна:
стандарти процедурної справедливості в рішенні ЄСПЛ..... 43

В. Крижна, О. Брисковська

Шляхи запобігання незаконному обігу вогнепальної зброї, бойових припасів
і вибухових речовин під час воєнного стану в Україні та небезпеки їх легалізації..... 60

Н. Куліцька

Проблема легітимності правоохоронної діяльності
в умовах дефіциту законодавчого регламентування конфіденційного співробітництва 74

Н. Рубаненко, А. Мировська

Особливості криміналістичної класифікації воєнних злочинів..... 87

І. Руденко, О. Хорольська, М. Турчіна

Вплив судових прецедентів у сфері витоку даних на підприємницьку діяльність:
актуальні кейси..... 98

SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 30, No. 3

CONTENTS

T. Hudima

Human element in algorithmic warfare:
Legal foundations and fault lines 9

M. Halych

Comparative analysis of contemporary approaches to social
and psychological support for combatants and their families 23

L. Mostepaniuk, O. Matiushenko, N. Symonenko

The environment as an object of criminal law protection:
Problems of definition in national and international legislation 33

N. Polishko, O. Verenkiotova, A. Zadorozhna

Declaring a person incapacitated and appointing a guardian:
Standards of procedural fairness in the ECHR judgement 43

V. Kryzhna, O. Bryskovska

Ways to prevent the illicit trafficking of firearms, ammunition,
and explosives during martial law in Ukraine and the dangers of their legalisation 60

N. Kulitska

The problem of legitimacy in law enforcement activities
under conditions of insufficient legislative regulation of confidential cooperation 74

N. Rubanenko, A. Myrovska

Features of the forensic classification of war crimes 87

I. Rudenko, O. Khorolska, M. Turchina

The impact of judicial precedents in data breach cases on entrepreneurial activity:
Current case studies 98

Human element in algorithmic warfare: Legal foundations and fault lines

Tetiana Hudima*

Doctor of Law, Senior Researcher
State Organisation “V. Mamutov Institute of Economic
and Legal Research of the National Academy of Sciences of Ukraine”
01032, 60 Taras Shevchenko Blvd., Kyiv, Ukraine
<https://orcid.org/0000-0003-1509-5180>

■ **Abstract.** The rapid advancement of artificial intelligence technologies is reshaping the landscape of modern warfare, giving rise to autonomous weapons systems capable of operating with minimal or no human intervention. The study provided a comprehensive legal and policy analysis of the challenges posed by AWS to international humanitarian law, international human rights law, and global security. Based on doctrinal sources, state practice, and armed conflicts, including in Libya, Ukraine, and the Middle East, the study examined key issues such as distinction, proportionality, accountability, and the erosion of human control. The study assessed current international efforts, including discussions within the framework of the UN Convention on Certain Conventional Weapons, and outlines the growing normative consensus around the principle of meaningful human control. The study argued for a multi-layered regulatory approach, combining a legally binding international treaty with national legislative reforms, mandatory legal reviews, and transparency measures such as international registries and independent monitoring bodies. The study also proposed the development of testing standards for AWS and calls for a temporary moratorium on the use of fully autonomous lethal systems until appropriate legal safeguards are in place. In the context of growing concerns regarding responsibility attribution and real-time legal compliance, the study introduced the concept of “embedded legality” as a forward-looking governance paradigm. This approach reframed compliance not merely as ex post legal review, but as a process of embedding international humanitarian law directly into the design architecture of AWS. The codification of legal principles such as distinction and proportionality into algorithmic decision-making was proposed as both a technical and normative safeguard. The article argued that this paradigm offered a viable pathway to operationalise IHL in increasingly autonomous systems and should be institutionalised through binding domestic and international standards. The study concluded that the law must correlate to technology: legal norms are essential to ensure that AI-enhanced military capabilities are governed by principles of humanity, accountability, and the rule of law. In an era of increasingly automated warfare, legal and ethical governance must remain paramount

■ **Keywords:** autonomous weapons systems; artificial intelligence; meaningful human control; military accountability; legal regulation; national security; embedded legality

■ Introduction

The swift development of artificial intelligence (AI) technologies is profoundly transforming modern armed conflicts, introducing new forms of warfare that go beyond the scope of traditional international humanitarian law. One of the most alarming

aspects of this transformation is the deployment of autonomous weapons systems (AWS) capable of making decisions to use lethal force without direct human involvement. The first verified instances of combat deployment of such systems have already

■ Suggested Citation:

Hudima, T. (2025). Human element in algorithmic warfare: Legal foundations and fault lines. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 9-22. doi: 10.63341/naia-herald/3.2025.09.

■ *Corresponding author

■ Received: 18.06.2025; Revised: 02.09.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

underscored the scale of potential risks. In 2020, the Turkish-manufactured Kargu-2 drone (Nasu, 2021), was reportedly used in Libya in fully autonomous mode, engaging human targets without real-time operator control – effectively marking the first documented case in which a machine independently decided to apply lethal force. The full-scale war in Ukraine (2022-2025) further illustrates this trend, as drones and robotic platforms with autonomous capabilities (Geneva Academy, n.d.), have been increasingly integrated into the military arsenals of modern states.

At the same time, the legal dimension of this phenomenon remains underdeveloped and fragmented. The absence of clear international legal norms concerning the design, testing, and deployment of lethal autonomous weapons systems (LAWS) generates a range of challenges – from ensuring compliance with the principle of distinction to the problem of accountability in cases where algorithmic error leads to the unlawful targeting of civilians. As M. Wareham (2021), Director of the AI Division at Human Rights Watch, has emphasised, autonomous weapons represent “one of the most urgent threats to humanity today”. A similar view was expressed by United Nations Secretary-General António Guterres, who has described such systems as “politically unacceptable and morally repugnant”, calling for their total ban (Gunawan *et al.*, 2022). The adoption of the UN General Assembly Resolution on LAWS on 2 December 2024¹, supported by 166 states (American Society of International Law, 2023), confirms a growing international consensus on the need to develop new legal mechanisms for regulating this domain. In the context of ongoing armed conflicts, particularly in Ukraine and the Gaza Strip, the urgency of addressing this issue becomes even more apparent.

While the deployment of autonomous systems in armed conflicts is prioritised, there is a growing trend toward their use within domestic settings, particularly in law enforcement. This development expands the spectrum of legal risks, implicating not only the norms of international humanitarian law but also fundamental human rights, including the right to life and access to justice. Accordingly, the legal analysis of AI-enabled autonomous weapons is not only timely but critically necessary for safeguarding the fundamental principles of international humanitarian law and international human rights law, ensuring accountability, and preventing emerging threats to both international and domestic security. E.H. Christie *et al.* (2024), I.V. Sancar (2024) and K.E. Vuyk (2024) explored issues such as explainability, traceability, bias, and the operational unreliability of autonomous systems. These studies advocate

hybrid approaches, including experimental deployment phases with guaranteed meaningful human control. These challenges acquire heightened significance in the context of global technological competition.

The study aimed to conduct a comprehensive analysis of the legal regulation of artificial intelligence based autonomous weapons and to develop practical recommendations for its improvement. Achieving this objective will contribute to the formulation of balanced legal responses that reconcile technological innovation in the defence sector with compliance with international law and human rights standards.

■ Literature Review

Over the 2010-2020, the issue of “AWS” was addressed by scholars, international lawyers, military experts, and human rights advocates. Early studies and reports identified both legal and ethical challenges posed by such technologies. Among earliest studies, the United Nations Special Rapporteur on extrajudicial executions, C. Heyns (2013), warned that autonomous drones could violate the right to life and human dignity, calling for a global moratorium on their development and deployment. In the report “Losing humanity”, Human Rights Watch (2012) was among the first to raise the concern of a potential “accountability gap”, whereby no individual could be held legally responsible for the actions of an autonomous system. The concept was further developed by T. Chengeta (2016) in an analysis of how existing regimes of legal responsibility under international law does not relate the technological realities of autonomous weapons. Conversely, a range of military analysts and legal scholars argued that emerging technologies can be accommodated within the current legal framework. For instance, M. Schmitt (2013) concluded that AWS are not per se unlawful, and that autonomy, in and of itself, does not constitute a violation of the prohibitions on means and methods of warfare. M. Schmitt (2013) argued that if a weapon is properly designed and lawfully employed, its autonomous nature does not preclude compliance with the core principles of international humanitarian law (IHL). This position has been supported by other experts, highlighting the potential of artificial intelligence to one day reduce human error on the battlefield. At the same time, a substantial body of legal scholarship has drawn attention to the current limitations of AI technology. E. Winter (2022) examined the capacity of AWS to comply with IHL principles and concluded that, at present, such systems are unable to reliably meet the requirements of distinction, proportionality, and precaution – primarily due

¹ Resolution of the United Nations General Assembly No. 79/62 “Lethal Autonomous Weapons Systems”. (2024, December). Retrieved from <https://documents.un.org/doc/undoc/gen/n24/391/35/pdf/n2439135.pdf>.

to insufficiently advanced AI and the lack of contextual awareness. In other words, current “intelligent” combat systems are not yet capable of independently making targeting decisions without a high risk of violating the laws of armed conflict.

Substantial number of studies address the intersection of human rights and ethics. Numerous scholars (Sparrow, 2007; Sharkey, 2008; Asaro, 2012) have argued that delegating the power to kill to machines undermines human dignity, as life-and-death decisions are made in the absence of human moral judgment. This concern also underpins the advocacy efforts of the Campaign to Stop Killer Robots, a coalition coordinated by Human Rights Watch. Its representative, M. Wareham, (2021), has repeatedly emphasised the global threat posed by such technologies and voiced disappointment over the continued reluctance of leading states to take meaningful action to address the issue (Human Rights Watch, 2012).

The discourse surrounding “meaningful human control” is also based on human rights-oriented literature. Experts proposed the concept as an ethical baseline – asserting that weapons should not be permitted to make the decision to kill without human involvement (Article 36, 2013; Docherty, 2014). This idea was later taken up by the International Committee of the Red Cross (ICRC) (2016) and several states, which have advocated for its inclusion in international negotiations (United Nations, 2019). A related strand of scholarship has examined diplomatic efforts and legal initiatives in this area. E. Rosert & F. Sauer (2020) and F. Sauer (2020) analysed the trajectory of negotiations under the Convention on Certain Conventional Weapons (CCW)¹ and the role of humanitarian organisations. The studies note that the process has been slow due to deep divisions among states, and despite numerous meetings of the CCW Group of Governmental Experts, consensus on a binding legal instrument has not yet been reached. At the same time, following the study by A. Wilner & C. Babb (2021), delays may prove dangerous, as technological advancements exceed the scope of territorial and regulatory boundaries and risk undermining existing legal norms. The most current research mentioned in the previous section (Christie *et al.*, 2024; Sancar, 2024; Vuyk, 2024) broadens the discussion and proposes hybrid implementation models with mandatory human control at every stage. Following D. Garcia (2024), without the development of mechanisms for “common good governance”, the accelerating AI arms race may weaken strategic stability and

erode international legal frameworks.

Thus, the literature review reveals two polar positions – ranging from calls for an outright ban on LAWS based on ethical concerns to arguments asserting that existing law is sufficient. At the same time, there is a shared recognition of the need for concrete legal measures to prevent uncontrolled risks. The present study builds on these contributions, seeking to synthesise them and offer balanced legal responses.

■ Materials and Method

This study employed a combination of general scientific and specialised legal research methods. The primary method was formal legal analysis, prioritising international humanitarian law and human rights law^{2,3} provisions relevant to autonomous weapons, as well as documents, drafts, and recommendations issued by international organisations. A comparative legal method was also applied to examine the approaches of different states (particularly those of the United States, China, and various European countries) to the regulation of AI-enabled weapons. This included analysis of national doctrines and policy instruments, such as the U.S. Department of Defense Directive No. 3000.09⁴ on autonomy in weapons systems.

The case study method was used to examine real-world incidents involving the use of autonomous weapons (e.g. in Libya, Ukraine, and the Middle East) to assess their legal implications. Information about these incidents was obtained from open sources (The Associated Press, 2020; CSIS, 2020; Clarke, 2024; United Nations, 2024). The selected body of international and national sources was central in shaping the conceptual and legal structure of this study. The official reports of the Group of Governmental Experts on LAWS (United Nations, 2019; United Nations, 2021; United Nations, 2022) were used to trace the evolution of the international discourse on the human role in the use of autonomous weapon systems, particularly in relation to the requirement of “meaningful human control”. These documents provided foundational insights into the legal risks posed by removing human judgment from lethal decision-making processes and was used as a reference point for assessing normative fragmentation across states. The 2020 working paper (United Nations, 2020) was used to identify the early framing of legal and ethical dilemmas, offering a structured basis for analysing the gaps in current international humanitarian law with regard to algorithmic systems. National-level contributions enriched the study by providing

¹ Convention on Certain Conventional Weapons. (2001, December). Retrieved from <https://treaties.unoda.org/t/ccw>.

² Additional Protocol to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1977, June). Retrieved from https://zakon.rada.gov.ua/laws/show/995_199#Text.

³ Convention on Certain Conventional Weapons. (2001, December). Retrieved from <https://treaties.unoda.org/t/ccw..>

⁴ U.S. Department of Defense Directive No. 3000.09 “Autonomy in Weapon Systems”. (2012, November). Retrieved from <https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodd/300009p.pdf>.

comparative perspectives. France's official position (France's national position..., 2023) was used to demonstrate a restrictive interpretation of autonomy in weapons systems, while the Netherlands' letter to Parliament (Netherlands Government, 2022) illustrated a more permissive regulatory model that still emphasises human oversight.

All sources were used in a multi-layered analysis of the legal foundations underpinning algorithmic warfare, exposing the risks associated with the erosion of human agency in lethal operations. The findings were interpreted using a normative-analytical approach, whereby each observed fact or argument was evaluated against applicable international legal norms. This interdisciplinary methodology, situated at the intersection of international law, security, and technology, can be used in the development of well-founded conclusions and policy recommendations.

■ Results

The emergence of autonomous weapons confronts states with a fundamental dilemma: how to integrate artificial intelligence into military operations in a way that enhances security, while simultaneously ensuring respect for human rights. From the standpoint of international law, the right to life is both fundamental and inalienable. Even in times of armed conflict, states remain bound by the obligation to respect human life. No considerations of military necessity can justify arbitrary killings of civilians or captured combatants (Geneva Academy, n.d.). An autonomous system operating without human control could, in theory, conduct an unauthorised killing in violation of the right to life and human dignity. For instance, the deployment of robots by police or intelligence agencies to eliminate suspects without judicial oversight would amount to an extrajudicial execution, which is expressly prohibited under international human rights law. Former UN Special Rapporteur on extrajudicial executions, Agnès Callamard, warned that the use of AWS in law enforcement could result in violations of the right to bodily integrity and human dignity (Geneva Academy, n.d.). The use of autonomous systems for targeted killings (for example, within the framework of counterterrorism operations) carries the risk of widespread rights violations, particularly affecting vulnerable populations. Historically, the human element in the application of force has served as a safeguard of deliberation and accountability. In contrast, removing human involvement from strike decisions may lead to unpredictable and disproportionate outcomes. A crucial issue concerns accountability: in the event of an error by an autonomous system, such as a strike on civilians, a fundamental legal question of responsibility is relevant. The

absence of identifiable perpetrator undermines the principle of accountability, which is foundational to international law (Geneva Academy, n.d.). A victim of an arbitrary killing done by a robot must have the right to an investigation and to justice; otherwise, the very concept of human rights is fundamentally undermined.

Conversely, states justify the development of AWS by invoking national security interests. Proponents of such technologies argue that these systems can save the lives of military personnel by replacing them in high-risk missions and by increasing the overall effectiveness of defensive operations. Autonomous drones do not experience fatigue, react faster than humans, and can operate in environments with high levels of radiation or chemical contamination – conditions in which human operators would not survive. For example, automated air defence systems such as Israel's Iron Dome and the U.S. Navy's Phalanx Close-In Weapon System (CIWS) can intercept incoming rockets or mortar shells within fractions of a second, a response that would be impossible under human control (Perrin, 2025). Such systems can enhance the protection of both civilians and military personnel by responding more effectively to sudden attacks. Moreover, autonomous platforms may reduce casualties among troops by conducting reconnaissance or strike missions without exposing soldiers to direct physical risk. From the perspective of state interests, a further strategic argument is often invoked: if a potential adversary is developing "killer robots", then inequality in this field may result in asymmetric vulnerability. This dynamic creates a security dilemma: states fear falling behind in military technological advancement and therefore accelerate domestic AI weapons programmes. Experts warn that autonomous systems are increasingly perceived by governments as "revolutionary" tools for achieving military superiority, a perception that is already fuelling an arms race.

As of May 2025, reports suggest that both Russia and Ukraine have likely employed autonomous weapons on the battlefield, while active development is underway in China, Israel, South Korea, and the United States (Hoppenbrouwers, 2024; Clarke, 2024; O'Grady *et al.*, 2025). Thus, the national security-oriented approach tends to favour minimal regulation, as states prioritise the technology without forfeiting strategic advantages. This stands in contrast to humanitarian calls for an outright ban on such systems. As a result, a normative conflict emerges: the primacy of human rights versus the primacy of national security. Resolution of this tension requires the development of legal norms that, on the one hand, impose limits to protect individuals from uncontrolled risks, and on the other, provide frameworks for the legitimate use of AI in defence contexts.

International legal mechanisms for risk prevention. There is currently no global treaty specifically regulating AWS. However, such systems fall within the scope of general norms of IHL and international human rights law (IHRL) (Perrin, 2025). All states recognise that there must be no legal vacuum: the UN Charter, the Geneva Conventions, the rules on state responsibility, and other applicable instruments of international law are fully applicable to AWS. In the context of armed conflict, the fundamental principles of IHL are central. States are obliged to ensure that any weapon they deploy complies with the principles of distinction, proportionality, and precaution. This obligation is reaffirmed in Article 36 of Additional Protocol I¹, which requires a legal review of any new weapon, means, or method of warfare to determine whether its use would be prohibited under existing international law. If the use of a weapon in certain circumstances would be inconsistent with legal norms, the state must refrain from employing it in that manner. This requirement is particularly relevant in the context of AWS, which must undergo legal review prior to deployment. For instance, both the United States and NATO have established procedures whereby military legal advisers assess the compliance of proposed systems with IHL obligations (Schmitt, 2013). If a system is deemed uncontrollable or unpredictable, its use in combat must be considered unlawful. Such pre-emptive legal scrutiny would prevent the deployment of systems that are inherently incapable of complying with the law. During the actual use of AWS, commanders remain bound by the same core principles: they must select targets and means of attack in a manner that avoids civilian casualties and ensures proportionality. In practical terms, this requires that human operators retain sufficient control and situational awareness, even when employing an autonomous system (Perrin, 2025). For example, if a robot is tasked with patrolling a designated area and automatically engaging targets, the commander must restrict that area to zones where only combatants are present to prevent any interaction between the system and civilians. Furthermore, the commander is obliged to retain the ability to intervene or deactivate the system in the event of malfunction or unlawful conduct (United Nations, 2024). These requirements function as “safeguard” mechanisms under international humanitarian law, intended to mitigate the risks associated with autonomous operations.

Notably, most states acknowledge that while existing IHL is applicable to AWS, it may require

further clarification. Since 2014, discussions have been ongoing within the framework of the Convention on CCW regarding the possible development of new norms specific to LAWS. The CCW Group of Governmental Experts has produced eleven guiding principles. Among these are the enduring human responsibility for decisions on the use of force; the requirement that AWS must comply with international legal norms; and the necessity of “context-appropriate” human control over such systems (Perrin, 2025). However, these principles are not legally binding. Negotiations on a specific treaty have so far yielded no concrete results, as states remain divided. Some, such as Austria, Mexico, and the Holy See, have called for a preventive ban on autonomous weapons, while others, including the United States, Russia, and Israel, oppose such prohibitions and advocate instead for non-binding guidelines. Due to the CCW’s consensus rule, the process has effectively stalled (Perrin, 2025). In this context, in December 2024, the United Nations General Assembly took an unprecedented step by adopting a resolution that effectively renewed the debate at the highest political level. The Resolution² received near-unanimous support (with only three states voting against) and proposed a “two-tiered approach”: to prohibit the most dangerous types of LAWS while subjecting others to strict regulation under international law. It also recommended that states begin developing elements of a legally binding instrument in preparation for the 2026 CCW Review Conference (Perrin, 2025). In May 2025, negotiations on the regulation of autonomous weapons were held at the United Nations, yet reaching consensus among key states such as the United States, Russia, and China remains a significant challenge (Le Poidevin, 2025). Nonetheless, these developments reflect growing political momentum toward the creation of a new treaty or protocol. Future international legal mechanisms may evolve along the following trends: (a) establishment, at the treaty level, of minimum requirements for human control across all systems; (b) prohibition of fully autonomous weapons that select and engage human targets without human intervention; and (c) codification of the principle of state responsibility for the consequences of AWS deployment.

Outside the context of armed conflict, IHRL is critical. As noted earlier, any use of lethal force by the state in peacetime is governed by human rights law, both international and domestic. Accordingly,

¹ Additional Protocol to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1977, June). Retrieved from https://zakon.rada.gov.ua/laws/show/995_199#Text.

² Resolution of the United Nations General Assembly No. 79/62 “Lethal Autonomous Weapons Systems”. (2024, December). Retrieved from <https://documents.un.org/doc/undoc/gen/n24/391/35/pdf/n2439135.pdf>.

the integration of autonomous systems into law enforcement activities would require legislative adjustments to ensure compliance with these standards. Several international bodies have already addressed the issue in advance. In 2017, the UN Human Rights Council adopted a resolution emphasised that autonomous systems must comply with IHRL and that states must retain control over their use. Similarly, in the 2022 report *A New Agenda for Peace*, the UN Secretary-General noted that the uncontrolled spread of military technologies, including AI, poses a threat to human rights (United Nations Secretary-General, 2023). A normative approach is thus taking shape in which core human rights principles, such as the right to life and human dignity, must be integrated into the legal frameworks governing AWS. This could be reflected in a future treaty, for example, through a preambular recognition that decisions over life and death must remain subject to human judgement, in accordance with the imperatives of human dignity.

The issue of responsibility and legal accountability warrants separate consideration. If an autonomous system causes an unlawful death, victims are entitled to justice. In the context of armed conflict, such an incident may constitute a war crime – either as an intentional or negligent killing of protected persons. However, the issue of accountability for the murder by the machine remains relevant. The traditional mechanism is command responsibility. A commander may be held liable for the actions of subordinates if the violations were known and no preventive actions or punishment were undertaken. In the case of AWS, however, the role of the “subordinate” is performed by a machine, raising novel challenges for the doctrine of command responsibility. Many scholars argue that commanders and operators must nonetheless bear full responsibility for the consequences of deploying autonomous systems (Gunawan *et al.*, 2022). In effect, the decision to deploy an AWS is itself an act attributable to the commander; thus, if the system commits a war crime, responsibility lies with the commander or, more broadly, with the state. The challenge, however, lies in the evidentiary difficulties of attributing individual fault, particularly when the system’s behaviour was unpredictable due to algorithmic complexity. One proposed solution is the explicit inclusion in a future treaty of a rule assigning full responsibility for the use of AWS to the state and its authorised agents. This would mean that, irrespective of the degree of autonomy involved, the human commander (or operator) is considered the legal subject who “directed” the weapon, and may be held accountable in the same way as for the actions of human subordinates. Such a provision would help

close a potential accountability gap. Several states have already affirmed in their national positions that “a human must always remain responsible for the actions of a weapon”. International law thus appears to be moving toward the affirmation that autonomous weapons do not entail automatic impunity.

National legal mechanisms. At the national level, no domestic legal systems have yet adopted specific legislation that explicitly prohibits or authorises the use of lethal AWS, largely due to the classified nature of defence programmes and the novelty of the issue. Nevertheless, several states have developed policies and doctrines that indirectly regulate the integration of artificial intelligence into weapons systems. A notable example is the United States, where the Department of Defense issued Directive No. 3000.09¹ as early as 2012, with a revised version adopted in 2023. This directive stipulates that the development and use of autonomous and semi-autonomous systems must preserve an “appropriate level of human judgment” over each decision to apply force (Garamone, 2023). In effect, U.S. policy requires that a human operator remain within the decision-making loop for all critical decisions involving the use of force. Moreover, any new AWS in the United States must undergo rigorous testing and high-level approval. The directive mandates that proposed systems be reviewed by a senior-level oversight body before deployment or operational integration (Garamone, 2023). The goal is to ensure that the system operates reliably and in compliance with legal standards. Similarly, the United Kingdom’s Ministry of Defence has declared that all domestic weapon systems will operate under “responsible human control” (House of Lords UK, 2024). In the official position issued in 2018, France also emphasised that it does not intend to deploy fully autonomous systems without human involvement (France’s national position..., 2024). Germany (Autonomous Weapons, 2025) and the Netherlands (Netherlands Government, 2022) have endorsed international declarations affirming the necessity of “meaningful human control”. Thus, a range of democratic states are already *de facto* limiting the autonomy of weapons systems through political commitments and military policy instruments. It is worth noting that some states (such as Russia and China) have made few public statements on this issue, yet are actively developing relevant technologies. In such cases, international law serves as the primary safeguard, as domestic legal lacunae may result in external consequences (Boulainin & Verbruggen, 2017). National mechanisms may also include export controls: for instance, several countries, including the United States

¹ U.S. DOD Directive No. 3000.09 “Autonomy in Weapon Systems”. (2012, November). Retrieved from <https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodd/300009p.pdf>.

(Shibolet. Law Firm, 2025) and EU member states (European Commission, 2024), have updated their military control lists to enhance oversight of drone exports and AI-related components that could be used in lethal systems. These measures aim to prevent autonomous technologies from falling into the hands of malign actors or terrorist groups.

In summary, national regulation remains fragmented. Leading democratic states have incorporated requirements for human control and weapons review procedures into their military doctrines, while others have taken advantage of the absence of prohibitions to pursue more experimental approaches. In the future, it is expected that states will incorporate international treaty norms (once adopted, or even in anticipation of them) into domestic legislation. This may include, for example, the criminalisation of the development of fully autonomous “killer robots” or the introduction of licensing regimes for military AI research and development. Such steps would help establish a coherent legal space in which the rules of engagement are defined and universally comprehended.

Practical case studies of autonomous weapons use. To further analyse legal implications, it is necessary to examine several documented instances in which autonomous or semi-autonomous weapons systems have been employed by various states. As previously noted, in March 2020, during the civil conflict in Libya, forces of the Government of National Accord, supported by Turkey, deployed STM Kargu-2 loitering munitions against fighters of the Libyan National Army, led by General Haftar. According to a UN Panel of Experts report, these drones were programmed to engage targets without requiring a data connection to a human operator, “effectively operating in a true “fire, forget, and find” mode” (Nasu, 2021). This indicates that the drones independently identified and engaged targets, making autonomous decisions to strike. Although no confirmed casualty figures were reported, the very occurrence of an autonomous combat attack sparked significant international concern. From a legal standpoint, the incident raised several issues. Firstly, compliance with IHL must be considered. Could the Kargu-2 system distinguish between combatants and persons hors de combat? Was the principle of proportionality observed – i.e., was excessive harm avoided? If the drone had killed an unarmed individual or a civilian, such action would have constituted a violation of IHL, raising the question of who bears responsibility – the operator (if one was not in control at the time of the strike), or the commander who authorised the use of the system in autonomous mode. Secondly, the question of accountability arises. The UN report (United Nations Security Council, 2021) was unable to confirm whether any fatalities were caused directly by the drone’s actions. Had it been established

that a war crime had been committed by the autonomous system, legal accountability could only extend to the individuals who authorised its deployment or were involved in its development. This case has reinforced calls for banning “human-out-of-the-loop” systems, as it demonstrates that such technologies have already reached the battlefield, while effective accountability mechanisms remain underdeveloped. In response to the incident, during UN meetings held in 2021-2022, several states cited the Libya case as evidence of the urgent need for legally binding rules to prohibit similar uses of autonomous systems in the absence of direct human control.

Israel has long been a supplier of autonomous loitering drones. A well-known example is the IAI Harpy, developed in the 1990s as a fully autonomous anti-radiation munition. The Harpy is programmed to patrol a designated area, autonomously detect enemy radar signals, and dive toward the source to destroy it (Perrin, 2025). This is a classic “fire-and-forget” system: the operator launches the drone into a designated area, after which it operates independently, without further commands. Such systems (including the Harpy and its upgraded version, the Harop) have been exported to several countries, including India, South Korea, and Turkey, and were reportedly used by Azerbaijan during the 2020 Nagorno-Karabakh conflict (CSIS, 2020). The legal assessment of such systems is twofold. On the one hand, the Harpy is designed to strike strictly military objectives (specifically, radar installations) which are, by their nature, legitimate targets under international humanitarian law. Its algorithms are configured to detect specific enemy air defence signals, reducing the probability of striking a civilian object relatively low. This differentiates it from a general-purpose “killer robot” that autonomously seeks human targets. On the other hand, the Harpy’s autonomy means that no human verifies the target prior to attack. If an adversary turns off their radar and another transmitter operating on the same frequency is present in the area, the drone may mistakenly strike a non-combatant object. In theory, this could include a civilian radar beacon or other non-military equipment. In such cases, compliance with the principle of distinction may be questioned. Therefore, even highly specialised autonomous systems carry a risk of error. One possible regulatory safeguard would be to require states to deploy such drones only in areas where civilian presence can be reliably excluded and only against actively functioning military targets. Notably, the Harpy has been in service for many years, and no serious incidents have been reported, suggesting that user states likely implement certain precautionary measures. Nevertheless, the fact that more than ten countries currently possess a fully autonomous offensive drone (Hammes, 2023), highlights a broader point:

the era of autonomous weapons has already arrived, and international law must keep pace by establishing clear rules governing their use.

Many armed forces around the world deploy stationary or ship-based weapon systems that automatically engage enemy targets. Examples include the U.S. Phalanx CIWS, which is installed on naval vessels and military bases for intercepting missiles, and Israel's Iron Dome, designed to counter artillery shells and rockets. These systems operate with a high degree of autonomy due to the speed at which incoming threats must be neutralised – manual control would be insufficient. The legal framework¹ governing their use typically operates as follows: an operator activates the automatic mode when an incoming munition is detected, and the system then independently decides when to fire. Notably, the targets in these scenarios are not humans but incoming munitions or rockets – objects that are not protected under IHL. This distinction is significant: such systems do not make decisions over human life or death, but rather intercept hostile projectiles. IHL does not prohibit the use of automation against inanimate military objects. Nonetheless, incidents have occurred. During the 2003 Gulf War, the automated Patriot PAC-2 system mistakenly shot down a British fighter jet, misidentifying it as an enemy missile. Subsequent investigations revealed a failure in the “friend-or-foe” recognition system (Piller, 2003). This incident demonstrated that even defensive AWS requires human oversight – at minimum, the capacity for emergency shutdown or intervention. Since then, operational protocols have been improved. For instance, current Patriot system crews are bound by strict rules regarding target identification, and in cases of uncertainty, human confirmation is required before engagement. From a legal perspective, such incidents are generally classified as accidents or tragic mistakes, since there was no intent to violate IHL. Nonetheless, it is evident that full autonomy, even in narrowly defined operational roles, can cause dangerous consequences. To prevent such outcomes in the future, legal instruments could include a requirement for a so-called “kill switch” – a human-operated mechanism to immediately deactivate the automated mode (United Nations, 2024), if the system behaves unpredictably.

Current armed conflicts reveal a growing trend in the deployment of autonomous and semi-autonomous systems. In the Russian war against Ukraine, both sides extensively employ unmanned aerial vehicles (UAVs) for reconnaissance and strikes. Some of these UAVs are equipped with artificial intelligence components. For example, the Russian Lancet-3

loitering munition reportedly possesses autonomous targeting capabilities: it can detect targets based on pre-programmed parameters and automatically guide toward them without requiring further human input (Perrin, 2025). Although it is likely that the final strike decision is still made by a human operator (at least according to publicly available Russian sources), this reflects a broader trajectory: an increasing number of functions are being delegated to algorithms. On the Ukrainian side, the military has reportedly been experimenting with systems that use computer vision to guide drones toward enemy equipment. In addition, both sides have reportedly employed robotic platforms for fire support, such as remotely operated turrets that, in theory, could also operate autonomously. While none of these cases resulted in known violations of international humanitarian law, they contribute to a growing legal grey area: it is becoming increasingly difficult to determine where “smart automation” ends and “lethal autonomy” begins. Contemporary conflicts indicate that the widespread use of even semi-autonomous systems is transforming the nature of warfare. Adversaries may begin to act more rapidly, and the pace of reciprocal strikes may accelerate to a level where human decision-making cannot keep up – posing serious challenges for escalation control. As noted in an analysis by the Geneva Academy, if decision-makers rely too heavily on fast-reacting autonomous systems, they may lose the ability to manage crises and control escalation when events unfold on the tactical level at speeds that outpace human intervention” (Geneva Academy, n.d.). This is not only a humanitarian concern but also a strictly military one: warfare itself may spiral beyond the control of the parties involved. The ongoing war in Ukraine has further demonstrated how rapidly technologies can proliferate – cheap drones and open-source software for autonomous navigation are now accessible not only to states, but also to non-state armed groups. The legal implication is evident: there is an urgent need to develop binding international rules, or future conflicts risk becoming testing grounds for unregulated autonomous systems.

Although autonomous weapons are most often discussed in military contexts, their potential deployment in domestic settings cannot be overlooked. In 2016, police in Dallas (USA) used a remotely operated robot to neutralise an armed suspect – effectively killing the perpetrator by detonating an explosive device attached to the robot (Solon, 2016). The device was remotely operated, and thus legal responsibility was on the human operator. However, in 2022, the authorities in San Francisco took the discussion

¹ Additional Protocol to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1977, June). Retrieved from https://zakon.rada.gov.ua/laws/show/995_199#Text.

further by considering whether to authorise the police to deploy robotic systems with lethal capabilities in certain emergency situations (The Associated Press, 2022). Initially, the proposal received approval from the city council, sparking widespread public outcry and leading to its withdrawal. Nonetheless, the precedent is significant: it marked the first attempt to legalise the use of robots with potential autonomous lethal capabilities in a civilian law enforcement context. The legal implications are clear – such actions fall under constitutional protections and statutory regulations concerning the use of force by police. In many jurisdictions, the law explicitly requires officers to issue a warning, attempt non-lethal measures, and assess the necessity of force before resorting to lethal means. A robot cannot autonomously fulfil these procedural safeguards. As a result, the integration of AI into law enforcement will require legal reform – at minimum, provisions must state that any decision to apply lethal force must rest with a human officer, and that the robot serves only as an instrument. Otherwise, there is a risk of violating the right to due process and the presumption of innocence, as machines would effectively be executing punishment without trial. This case underscores that the regulation of autonomous weapons must extend beyond the battlefield to address their potential deployment in domestic security contexts. While public backlash has constrained such initiatives, advancing technologies are likely to increase the temptation to use AI-driven systems for counterterrorism or public order enforcement.

The case studies examined above demonstrate that autonomous weapons are no longer theoretical – they are a present reality requiring urgent legal reflection. Each case reveals vulnerabilities in existing law: whether in distinguishing lawful targets, ensuring accountability, or adapting norms to the rapid tempo of modern combat. This analysis lays the groundwork for a set of recommendations aimed to mitigate the risks identified herein.

■ Discussion

The study results indicated that the existing regulatory vacuum in the field of LAWS could not be filled solely by a prohibitionist ethical approach or by mechanically applying the existing norms of IHL. While the academic literature has traditionally been divided between these two positions (Sharkey, 2008; Asaro, 2012; Schmitt, 2013), both empirical evidence and normative analysis revealed deeper structural inconsistencies within the current legal architecture. In particular, the assumption that existing IHL norms are sufficient to regulate LAWS lost credibility in the

face of their real-world deployment, which exposed critical gaps in accountability and legal clarity (Winter, 2022; Nnamdi *et al.*, 2023; Clarke, 2024).

The notion that the core IHL principles of distinction, proportionality, and harm prevention can be technically encoded remains conceptually fragile. The principle of distinction, enshrined in Articles 48 and 51 of Additional Protocol I to the Geneva Conventions¹, requires human ethical judgement and contextual awareness that cannot be replicated by algorithmic means alone (Rosert & Sauer, 2020; Nnamdi *et al.*, 2023). As a result, contemporary LAWS were not capable of making legally informed decisions under conditions of normative ambiguity or complex combat environments. At the same time, the debate on permissible levels of autonomy is shaped not only by legal regimes but also by actors beyond intergovernmental institutions. As I. Bode (2024) demonstrated, narratives emerging from diplomats, arms manufacturers, and journalists significantly shape perceptions of autonomy, which in turn influence the legitimacy of regulatory strategies. This form of “normative constructivism” contributes to the fragmentation of the international legal order, as illustrated by Q. Qerimi’s (2024) typology of state positions on LAWS. The classification outlines six regulatory strategies (ranging from total prohibition to conditional acceptance) and underscores the absence of a unified international consensus. Another layer of divergence lies in public perception: research by K. Arai & M. Matsumoto (2024) shows that support for LAWS varies depending on context, such as national defence or levels of civilian harm. This finding highlights the need to account for ethical context when designing regulatory frameworks.

The deployment of the Kargu-2 drone in Libya, as documented in the report of the UN Security Council Panel of Experts (United Nations Security Council, 2021), brought renewed urgency to the issue of legal accountability in the context of increasing autonomy in combat systems. Despite the potential compliance with the principle of military necessity, the absence of clear evidence regarding human control over the decision-making process raised serious concerns about adherence to the standard of “meaningful human control” (International Committee of the Red Cross, 2021). This regulatory gap illustrated that the pace of technological advancement significantly outstripped the capacity of legal frameworks to respond to emerging challenges.

The international discourse on the legal governance of AWS remained fragmented. While some states, such as Austria and Mexico, supported the adoption of a legally binding treaty, others (including

¹ Additional Protocol to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1977, June). Retrieved from https://zakon.rada.gov.ua/laws/show/995_199#Text.

the United States and Israel) employed a more cautious stance (United Nations Secretary-General, 2023; Qerimi, 2024). The persistent deadlock within the framework of the Convention on CCW highlighted the limitations of consensus-based diplomacy in the face of deep geopolitical divides. The juxtaposition between states such as the US, China, Israel, and Russia, opposing strict regulation, and others such as Austria, Mexico, or the Holy See, advocating for a total ban, prevented the formation of a unified regulatory framework (Qerimi, 2024).

In this context, national approaches gained increasing prominence. The US Department of Defense Directive No. 3000.09¹, France's official position advocating an "appropriate level of human control," and the recommendations of the House of Lords UK (2024) illustrated the emergence of internal regulatory models that could serve as a foundation for a future global regime. This evolution from consensus-based to polycentric norm-making reflected a potential pathway towards the gradual codification of new international standards.

As T.F.A. Watts & I. Bode (2024) argued, perceptions of autonomous systems are shaped by cultural narratives, notably the recurring metaphor of the "Terminator" as a hyper-precise guardian-machine executing human intent. Such imaginaries served to legitimise political strategies of underregulation. Real-world examples of AWS implementation in law enforcement (such as the Dallas police incident (Solon, 2016) or debates in San Francisco (Associated Press, 2022)) pushed the issue outside the battlefield and into the realm of domestic security. This expansion necessitated the integration of IHRL, especially the right to life and guarantees of due process.

At the core of the regulatory discourse remained the concept of meaningful human control; however, no universally accepted definition or operational mechanism has yet emerged. B. Perrin (2025) proposes a multi-layered accountability model encompassing Article 36 of Additional Protocol I² legal reviews, transparency requirements, and criminal liability for negligent delegation of lethal decision-making functions. In this context, the model introduced by T. Zurek *et al.* (2023) provided a particularly illustrative conceptual framework. It presented a hybrid architecture for an autonomous combat system designed to comply with IHL. The proposed framework integrated five key legal tests (including proportionality, harm minimisation, and the duty to take precautionary measures (Article 57) within a formalised logical structure that could be

used for potential software-based implementation. The tension between direct human control and partially automated evaluation of the legality of combat decisions was emphasised. By combining a knowledge-driven architecture with normative constraints, this model constituted a valuable conceptual contribution to the discourse on the legal accountability of autonomous systems.

The cumulative evidence presented in this study suggests that legal accountability for autonomous weapons cannot be sustained by traditional doctrines alone. Instead, an emerging solution lies in the concept of embedded legality: the technical integration of international legal norms, such as proportionality, distinction, and precaution, into the very architecture of autonomous systems. This approach transcends reactive legal enforcement and instead redefines legality as a design imperative. By embedding legal safeguards into system behaviour, and by ensuring that these norms are encoded as operational constraints, states can move toward a proactive model of legal compliance. This reconceptualisation may guide future regulatory instruments, offering a constructive path between the extremes of prohibition and deregulation. In conclusion, contemporary debate on LAWS cannot be reduced to the binary of prohibition versus permission. Instead, it must be grounded in the construction of a multi-layered regulatory framework capable of addressing the ethical, legal, and security challenges posed by the evolution of autonomous military technologies.

■ Conclusions

The study examined the legal and ethical implications of deploying AWS, emphasising whether existing frameworks under IHL and IHRL remain adequate to ensure accountability, legality, and civilian protection. The research confirmed that key IHL principles, such as distinction, proportionality, and precaution, are difficult to implement algorithmically, while traditional doctrines of command responsibility and weapons review lack the capacity to govern systems operating without real-time human oversight. Drawing on case studies from Ukraine, Libya, Israel, and the United States, the analysis revealed a growing legal vacuum concerning the attribution of responsibility in machine-led targeting. The ongoing war in Ukraine, where AI-enabled systems have been deployed with unclear command chains and limited post-hoc attribution, underscores the urgency of enforceable safeguards and exposes the limitations of existing legal architectures.

¹ U.S. DOD Directive No. 3000.09 "Autonomy in Weapon Systems". (2012, November). Retrieved from <https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodd/300009p.pdf>.

² Additional Protocol to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1977, June). Retrieved from https://zakon.rada.gov.ua/laws/show/995_199#Text.

In response, the study proposes a shift in conceptual framing: the governance of AWS should not be confined to a binary choice between prohibition and permission, but reconceptualised as the construction of a multi-layered normative architecture. A central claim is that legal responsibility must be re-anchored from the human operator to the technical design of the system itself. Rather than treating the law as an external constraint-imposed *ex post*, this study argued that legal norms must be embedded into the algorithmic architecture *ex ante* – transforming IHL principles into functional design parameters. The proposed concept of “embedded legality” exceeds the scope of external normative oversight and entails the incorporation of legal norms directly into the technical design of autonomous weapon systems. It involves the codification of proportionality thresholds, precautionary criteria, and standards of human control as operational parameters embedded within the system’s real-time decision-making logic. To operationalise this concept, national and international regulatory frameworks must require the integration of such legal constraints as a condition for the development, deployment, and export of AWS. This entails embedding IHL-based thresholds not only in technical specifications, but also in national legislation, certification protocols, and weapons review mechanisms.

The Russian war against Ukraine provides an empirical testbed for this reconceptualisation, demonstrating the risks semi-autonomous systems without institutionalised review mechanisms or binding standards of responsibility attribution. To address these challenges, the study proposes a tripartite national governance model: (1) a legally binding

glossary to clarify key terms such as “autonomy”, “meaningful human control” and others; (2) institutionalisation of a national weapons review mechanism in line with Article 36 of Additional Protocol I to the Geneva Conventions; and (3) targeted export controls for AI-enabled military systems that align security interests with humanitarian norms.

The findings suggest that effective AWS governance must integrate legal, ethical, and technical dimensions. Countries undergoing military digitalisation (such as Ukraine) bear both the responsibility and the opportunity to lead in designing legal frameworks that internalise humanitarian principles not only in institutional oversight, but also in system architecture. Future research should prioritise the doctrinal adaptation of command responsibility to autonomous decision-making systems, the development of enforceable legal glossaries, and cross-jurisdictional benchmarking of AWS governance models to ensure future compliance, legitimacy, and accountability.

■ Acknowledgements

This scientific work has been prepared within the framework of the research activities of the State Organisation “V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine”.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

■ References

- [1] Arai, K., & Matsumoto, M. (2024). Public perceptions of autonomous lethal weapons systems. *AI and Ethics*, 4, 451-462. doi: [10.1016/j.clsr.2023.105854](https://doi.org/10.1016/j.clsr.2023.105854).
- [2] Article 36. (2013). *Killer robots: UK government policy on fully autonomous weapons*. Retrieved from https://article36.org/wp-content/uploads/2013/04/Policy_Paper1.pdf.
- [3] Asaro, P. (2012). On banning autonomous weapon systems: Human rights, automation, and the dehumanization of lethal decision-making. *International Review of the Red Cross*, 94(886), 687-709. doi: [10.1017/S1816383112000768](https://doi.org/10.1017/S1816383112000768).
- [4] Autonomous Weapons. (2025). *The political landscape: How nations are responding to autonomous weapons in war*. Retrieved from <https://autonomousweapons.org/global-perspectives-on-regulation/>.
- [5] Bode, I. (2024). Emergent normativity: Communities of practice, technology, and lethal autonomous weapon systems. *Global Studies Quarterly*, 4(1), article number ksad073. doi: [10.1093/isagsq/ksad073](https://doi.org/10.1093/isagsq/ksad073).
- [6] Boulanin, V., & Verbruggen, M. (2017). *Mapping the development of autonomy in weapon systems*. Solna: SIPRI.
- [7] Chengeta, T. (2016). Accountability gap: Autonomous weapon systems and modes of responsibility in international law. *Denver Journal of International Law and Policy*, 45(1). doi: [10.2139/ssrn.2755211](https://doi.org/10.2139/ssrn.2755211).
- [8] Christie, E.H., Ertan, A., Adomaitis, L., & Klaus, M. (2024). Regulating lethal autonomous weapon systems: Exploring the challenges of explainability and traceability. *AI and Ethics*, 4, 229-245. doi: [10.1007/s43681-023-00261-0](https://doi.org/10.1007/s43681-023-00261-0).
- [9] Clarke, K. (2024). *Ukraine and the troubling future of A.I. warfare*. Retrieved from <https://www.americamagazine.org/politics-society/2024/07/18/ukraine-lethal-autonomous-weapons-systems-pope-francis-un-international>.

- [10] CSIS. (2020). *The air and missile war in Nagorno-Karabakh: Lessons for the future of strike and defense*. Retrieved from <https://surl.li/qbtkvd>.
- [11] Docherty, B. (2014). *The human rights implications of “killer robots”*. Retrieved from <https://www.jurist.org/commentary/2014/06/bonnie-docherty-autonomous-weapons/>.
- [12] European Commission. (2024). *Exporting dual-use items*. Retrieved from https://policy.trade.ec.europa.eu/help-exporters-and-importers/exporting-dual-use-items_en.
- [13] France’s national position submitted to the United Nations General Assembly on the Resolution No. 78/241 “Lethal Autonomous Weapons Systems”. (2023). Retrieved from <https://docs-library.unoda.org/General Assembly First Committee -Seventy-Ninth session %282024%29/78-241-France-EN.pdf>.
- [14] Garamone, J. (2023). *DoD updates autonomy in weapons system directive*. Retrieved from <https://www.defense.gov/News/News-Stories/Article/Article/3278065/dod-updates-autonomy-in-weapons-system-directive>.
- [15] Garcia, D. (2024). *The AI military race: Common good governance in the age of artificial intelligence*. Oxford: Oxford University Press.
- [16] Geneva Academy. (n.d.). *Sending up a flare: Autonomous weapons systems proliferation risks to human rights and international security*. Retrieved from <https://surl.li/yozxlc>.
- [17] Gunawan, Y., Aulawi, M.H., Anggriawan, R., & Putro, T.A. (2022). Command responsibility of autonomous weapons under international humanitarian law. *Cogent Social Sciences*, 8(1), article number 2139906. doi: 10.1080/23311886.2022.2139906.
- [18] Hammes, T.X. (2023). *Autonomous weapons are the moral choice*. Retrieved from <https://www.atlanticcouncil.org/blogs/new-atlanticist/autonomous-weapons-are-the-moral-choice>.
- [19] Heyns, C. (2013). *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*. Retrieved from <https://digitallibrary.un.org/record/749635>.
- [20] Hoppenbrouwers, A. (2024). *The Global South and autonomous weapons controls*. Retrieved from <https://www.armscontrol.org/act/2024-11/features/global-south-and-autonomous-weapons-controls>.
- [21] House of Lords UK. (2024). *Proceed with caution: Artificial intelligence in weapon systems. Report of Session 2023-24*. London: Authority of the House of Lords.
- [22] Human Rights Watch. (2012). *Losing humanity: The case against killer robots*. Retrieved from <https://www.hrw.org/report/2012/11/19/losing-humanity/case-against-killer-robots>.
- [23] International Committee of the Red Cross. (2016). *Autonomous weapon systems: Implications of increasing autonomy in the critical functions of weapons*. Retrieved from <https://www.icrc.org/en/publication/4283-autonomous-weapons-systems>.
- [24] International Committee of the Red Cross. (2021). *Autonomous weapons: The ICRC recommends adopting new rules*. Retrieved from <https://www.icrc.org/en/document/autonomous-weapons-icrc-recommends-new-rules>.
- [25] Le Poidevin, O. (2025). *Nations meet at UN for “killer robot” talks as regulation lags*. Retrieved from <https://www.reuters.com/sustainability/society-equity/nations-meet-un-killer-robot-talks-regulation-lags-2025-05-12>.
- [26] Nasu, H. (2021). *The Kargu-2 autonomous attack drone: Legal & ethical dimensions*. Retrieved from <https://lieber.westpoint.edu/kargu-2-autonomous-attack-drone-legal-ethical>.
- [27] Netherlands Government. (2022). *Letter to Parliament about autonomous weapon systems*. Retrieved from <https://www.government.nl/documents/publications/2022/10/10/letter-to-parliament-autonomous-weapon-systems>.
- [28] Nnamdi, N., Eniola, B.O., & Abegunde, B. (2023). Examining Lethal Autonomous Weapons through the lens of international humanitarian law. *Scholars International Journal of Law, Crime and Justice*, 6(6), 329-338. doi: 10.36348/sijlcj.2023.v06i06.001.
- [29] O’Grady, S., Khudov, K., & Korolchuk, S. (2025). *Ukraine scrambles to overcome Russia’s edge in fiber-optic drones*. Retrieved from <https://www.washingtonpost.com/world/2025/05/23/ukraine-russia-drones-fiber-optic-jamming/>.
- [30] Perrin, B. (2025). *Lethal autonomous weapons systems & international law: Growing momentum towards a new international treaty*. *ASIL Insights*, 29(1).
- [31] Piller, C. (2003). *Vaunted Patriot missile has a “friendly fire” failing*. Retrieved from <https://www.latimes.com/archives/la-xpm-2003-apr-21-war-patriot21-story.html>.
- [32] Qerimi, Q. (2024). Controlling lethal autonomous weapons systems: A typology of the position of states. *Computer Law & Security Review*, 59, article number 105854. doi: 10.1016/j.clsr.2023.105854.

- [33] Rosert, E., & Sauer, F. (2020). How (not) to stop the killer robots: A comparative analysis of humanitarian disarmament campaign strategies. *Contemporary Security Policy*, 42(1), 4-29. doi: [10.1080/13523260.2020.1771508](https://doi.org/10.1080/13523260.2020.1771508).
- [34] Sancar, I.V. (2024). How can we design autonomous weapon systems? *AI and Ethics*, 5(2), 967-975. doi: [10.1007/s43681-024-00428-3](https://doi.org/10.1007/s43681-024-00428-3).
- [35] Sauer, F. (2020). Stepping back from the brink: Why multilateral regulation of autonomy in weapons systems is difficult, yet imperative and feasible. *International Review of the Red Cross*, 102(913), 235-259. doi: [10.1017/S1816383120000466](https://doi.org/10.1017/S1816383120000466).
- [36] Schmitt, M.N. (2013). [Autonomous weapon systems and international humanitarian law: A reply to the critics](https://doi.org/10.1017/S1816383120000466). *Harvard National Security Journal*, 4.
- [37] Sharkey, N. (2008). The ethical frontiers of robotics. *Science*, 322(5909), 1800-1801. doi: [10.1126/science.1164582](https://doi.org/10.1126/science.1164582).
- [38] Shibolet. Law Firm. (2025). *Developments in global trade controls: January – March 2025*. Retrieved from <https://www.shibolet.com/en/developments-in-global-trade-controls-january-march-2025/>.
- [39] Solon, O. (2016). *Use of police robot to kill Dallas shooting suspect believed to be first in US history*. Retrieved from <https://www.theguardian.com/technology/2016/jul/08/police-bomb-robot-explosive-killed-suspect-dallas>.
- [40] Sparrow, R. (2007). Killer robots. *Journal of Applied Philosophy*, 24(1), 62-77. doi: [10.1111/j.1468-5930.2007.00346.x](https://doi.org/10.1111/j.1468-5930.2007.00346.x).
- [41] The Associated Press. (2022). *San Francisco supervisors bar police robots from using deadly force for now*. Retrieved from <https://www.npr.org/2022/12/06/1141129944/san-francisco-deadly-robots-police>.
- [42] United Nations Secretary-General. (2023). *Our Common Agenda Policy Brief #9: A New Agenda for Peace*. Retrieved from <https://peacemaker.un.org/sites/default/files/document/files/2024/08/our-common-agenda-policy-brief-new-agenda-peace-en.pdf>.
- [43] United Nations Security Council. (2021). *Final report of the Panel of Experts on Libya established pursuant to Security Council Resolution 1973 (2011) addressed to the President of the Security Council*. Retrieved from <https://docs.un.org/en/S/2021/229>.
- [44] United Nations. (2019). [Report of the 2019 session of the Group of Governmental Experts on Lethal Autonomous Weapons Systems](https://www.un.org/development/desa/pd/datastore/indicators/SDG16). Geneva: UNODA.
- [45] United Nations. (2020). [Working paper: Towards a framework on LAWS](https://www.un.org/development/desa/pd/datastore/indicators/SDG16). Geneva: UNODA.
- [46] United Nations. (2021). [Report of the 2021 session of the Group of Governmental Experts on LAWS](https://www.un.org/development/desa/pd/datastore/indicators/SDG16). Geneva: UNODA.
- [47] United Nations. (2022). [Final report of the 2022 session of the GGE on LAWS](https://www.un.org/development/desa/pd/datastore/indicators/SDG16). Geneva: UNODA.
- [48] United Nations. (2024). *Lethal autonomous weapons systems: Report of the Secretary-General*. Retrieved from <https://documents.un.org/doc/undoc/gen/n24/154/32/pdf/n2415432.pdf>.
- [49] Vuyk, K.E. (2024). [Why outlaw LAWS?: An argument for a probationary period for lethal autonomous weapons systems under meaningful human control](https://www.un.org/development/desa/pd/datastore/indicators/SDG16). *University of Cincinnati Intellectual Property and Computer Law Journal*, 9(1), article number 1.
- [50] Wareham, M. (2021). *Ringling the alarm on killer robots*. Retrieved from <https://www.hrw.org/news/2019/11/20/ringing-alarm-killer-robots>.
- [51] Watts, T.F.A., & Bode, I. (2024). Machine guardians: The Terminator, AI narratives and US regulatory discourse on lethal autonomous weapons systems. *International Studies*, 59(1). doi: [10.1177/00108367231198155](https://doi.org/10.1177/00108367231198155).
- [52] Wilner, A., & Babb, C. (2021). New technologies and deterrence: Artificial intelligence and adversarial behaviour. In F. Osinga & T. Sweijts (Eds.), *NL ARMS Netherlands annual review of military studies 2020* (pp. 401-417). Hague: T.M.C. Asser Press. doi: [10.1007/978-94-6265-419-8_21](https://doi.org/10.1007/978-94-6265-419-8_21).
- [53] Winter, E. (2022). The compatibility of autonomous weapons with the principles of international humanitarian law. *Journal of Conflict and Security Law*, 27(1). doi: [10.1093/jcsl/krac001](https://doi.org/10.1093/jcsl/krac001).
- [54] Zurek, T., Kwik, J., & van Engers, T. (2023). Model of a military autonomous device following International Humanitarian Law. *Ethics and Information Technology*, 25, article number 15. doi: [10.1007/s10676-023-09682-1](https://doi.org/10.1007/s10676-023-09682-1).

Роль людини в алгоритмічному веденні війни: правові засади та проблемні точки регулювання

Тетяна Гудіма

Доктор юридичних наук, старший дослідник
Державна установа «Інститут економіко-правових досліджень
імені В.К. Макутова НАН України»
01032, б-р Тараса Шевченка, 60, м. Київ, Україна
<https://orcid.org/0000-0003-1509-5180>

■ **Анотація.** Стрімкий розвиток технологій штучного інтелекту радикально змінює характер сучасної війни, спричиняючи появу автономних систем озброєння, здатних діяти з мінімальним втручанням людини або повністю без такого втручання. У цій статті здійснено комплексний правовий і політико-правовий аналіз викликів, які такі системи становлять для міжнародного гуманітарного права, міжнародного права прав людини та глобальної безпеки. На основі доктринальних джерел, практики держав і подій у збройних конфліктах (зокрема в Лівії, Україні та на Близькому Сході) досліджено такі ключові питання – принципи розрізнення та пропорційності, проблему відповідальності та загрозу втрати людського контролю. У роботі обґрунтовано необхідність багаторівневого регулювання: від прийняття юридично зобов'язального міжнародного договору до реформування національного законодавства, впровадження обов'язкових юридичних експертиз, створення міжнародних реєстрів і незалежного моніторингу. Запропоновано також тимчасовий мораторій на використання повністю автономної летальної зброї до ухвалення належних правових гарантій і розроблення стандартів тестування. У висновку підкреслено: право не повинно відставати від технологій. Чітке правове регулювання є критично важливим, щоб гарантувати, що воєнні інновації слугують людству, а не загрожують йому. У контексті занепокоєнь щодо відповідальності та забезпечення дотримання права в режимі реального часу в дослідженні було запропоновано концепцію «вбудованої юридичності» як перспективну нормативну парадигму регулювання автономних систем озброєння. Такий підхід переосмислює забезпечення дотримання правових норм не як виключно постфактумний юридичний контроль, а як процес інтеграції міжнародного гуманітарного права безпосередньо в архітектуру проектування автономних систем озброєння. Кодифікацію правових принципів, зокрема розмежування та пропорційності в алгоритмічну логіку ухвалення рішень окреслено як технічний і нормативний запобіжний захід. У статті констатовано, що зазначений підхід є дієвим шляхом до практичного впровадження норм міжнародного гуманітарного права в умовах зростання автономності систем і має бути інституціоналізований через обов'язкові національні та міжнародні стандарти. В умовах зростання автоматизації війни верховенство права та гуманність мають бути вищими за алгоритми

■ **Ключові слова:** автономні системи озброєння; штучний інтелект; суттєвий людський контроль; військова відповідальність; правове регулювання; національна безпека; вбудована юридичність

UDC 159.9

DOI: 10.63341/naia-herald/3.2025.23

Comparative analysis of contemporary approaches to social and psychological support for combatants and their families

Maryna Halych*

Doctor of Philosophy in Psychology, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-3690-4402>

■ **Abstract.** In the context of full-scale war in Ukraine, the issue of psychosocial support for combatants and their families is becoming particularly relevant. High levels of stress, the risk of developing maladjustment, and problems of resocialisation and adaptation after participating in combat operations necessitate the creation of systematic psychological support programmes. The study was based on a systematic analysis of the literature and a review of the results of previous studies. The methodology was selected in accordance with the outlined objectives and the specifics of the object and subject of the study: comparative analysis, content analysis of scientific publications, and a systematic approach. The methodological tools were selected based on the outlined goal and the specifics of the object and subject of the study: comparative analysis methods, content analysis of scientific publications, and a systematic approach to summarising the social and psychological practices used in different countries. Three main groups of approaches to psychosocial support were compared: psychological (individual and group therapy, work with maladjustment and post-traumatic stress disorder), social (resocialisation, family support, educational and professional programmes), and integrative (multidisciplinary models and case management). Accordingly, the significance of psychological, social, and integrative components in the system of social and psychological support has been established. The study proved that the Ukrainian experience is unique, and the system of social and psychological support is in the process of improvement due to the active phase of repelling military aggression, while the practices of the United States, Israel and Canada have established mechanisms of state and public support due to the absence of a direct threat. The results obtained can form the basis for optimising psychological and social rehabilitation programmes for veterans, as well as for developing integrative support models that address the needs of both combatants and their families

■ **Keywords:** veterans; psychosocial support; rehabilitation; adaptation; social work; mental health

■ Introduction

Military conflicts, in particular the full-scale war in Ukraine, have become a significant challenge not only for the national security system, but also for mental health care and social security. Combatants experience excessive psycho-emotional stress, witness and directly participate in traumatic events, which significantly increases the risk of developing maladaptive conditions, depression and anxiety disorders. Many combatants experience some degree of

change in their psycho-emotional state depending on the duration and intensity of their combat experience. This indicator tends to increase in conditions of prolonged armed conflict. A substantial aspect is the resocialisation and integration of veterans into civilian life, which is accompanied by difficulties in the areas of employment, family relationships and interpersonal interaction, which can hinder post-traumatic personal growth (Nazar, 2024).

■ Suggested Citation:

Halych, M. (2025). Comparative analysis of contemporary approaches to social and psychological support for combatants and their families. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 23-32. doi: 10.63341/naia-herald/3.2025.23.

■ *Corresponding author

■ Received: 28.06.2025 ; Revised: 01.09.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

L. Dzhigun *et al.* (2021) proved that returning from war is often accompanied by feelings of alienation, reduced social activity, and a lack of trust in social institutions. This indicates the need for a comprehensive approach that combines psychological assistance with social support measures. Ukrainian researchers are actively studying various aspects of the problem. For example, O. Stoliaryk & T. Semigina (2023) emphasise that psychosocial support for veterans should be provided not only at the level of individual assistance, but also in the context of family support, as the family is often a key resource for adaptation. In their work, T. Gordeeva & A. Lazareva (2023) analyse the forms and methods of social work with combatants and prove that multidisciplinary practices are the most promising. Research by N.V. Pozmogova *et al.* (2024) shows that one of the key challenges in Ukraine remains monitoring the effectiveness of programmes. The lack of an adequate evaluation system complicates the development of long-term support strategies. This significantly distinguishes the Ukrainian experience from the international one, where monitoring and performance evaluation are integral elements of state policy in the field of working with veterans.

D. Bürgin *et al.* (2022) emphasised the role of targeted psychological work with trauma, which requires specialised methods and long-term therapy. The specifics of long-term social support for male and female veterans with complex traumatic histories were highlighted by A.A.J. Scoglio *et al.* (2022). The determinants of traumatic incidents, their common manifestations, disturbances in normal psychological and biological functioning, and negative health effects are highlighted by M. Tahan *et al.* (2021). The results of the study indicate an associative link between social support and psychological trauma through a methodological review. International practices demonstrate a wide range of models of socio-psychological support. In the United States, the Department of Veterans Affairs combines medical, educational, and social services for veterans and their families. In Israel, there are rehabilitation programmes that integrate psychological assistance with social and professional support, ensuring the adaptation of military personnel after combat operations. The Canadian experience is distinguished by the active role of non-governmental organisations cooperating with state institutions to ensure effective case management. M. Halych (2025) emphasises the importance of studying and adapting these practices in the national context.

There is a need to systematise approaches to social and psychological support for veterans, analyse Ukrainian and international experience, and identify integrative models capable of ensuring effective assistance to both military personnel and their families.

Therefore, social and psychological support for veterans and their families is one of the promising tasks of modern science and practice.

The study aimed to conduct a comparative analysis of contemporary approaches to social and psychological support for combatants and their families, as well as to systematise scientific and theoretical developments and practical models applied in national and international practice. Following the goal, the research tasks were outlined, which determined the sequence of its stages: to clarify the conceptual and categorical apparatus used in the field of psychosocial support for military personnel and their families; to analyse modern theoretical and applied research in the field of psychological rehabilitation and social integration of veterans; to identify the fundamental principles of organising social and psychological support; to determine the possibilities for using integrative models of assistance, considering the Ukrainian context and international experience.

■ Literature Review

The issue of socio-psychological support was addressed by many studies of both Ukrainian and foreign researchers. O. Stoliaryk & T. Semigina (2023) emphasised the importance of psychosocial support for veterans in the adaptation process, considered the specifics of the veteran community as a category of social work clients, and revealed methods of providing social support based on an approach focused on the strengths of clients. O.V. Bezsmertna (2024) explored the characteristics of post-traumatic growth in combatants through the lens of vitality and resilience. T.S. Vaida & O.S. Herashchenko (2024) proposed methods for practical psychologists working with psychotraumatic experiences, while M. Halych (2020) analysed the international experience of psychosocial work with military personnel and the possibilities for its adaptation in Ukraine. Practical recommendations for the differential diagnosis, treatment and rehabilitation of individuals suffering from mental disorders associated with the influence of stressors typical of wartime were analysed by O.S. Chaban *et al.* (2023). The consequences of combat mental trauma during military conflicts, the impact of traumatic events, and post-traumatic stress disorder associated with combat operations were highlighted by O. Blinov (2015), while V. Antonova & N. Pidbutska (2024) emphasised the importance of achieving psychological harmony between the individual and their social environment. General aspects of psychological assistance and rehabilitation of participants in armed conflicts and specialists in high-risk professions were discussed by S.Y. Lebedieva *et al.* (2023). The specifics of rehabilitation work with combatants, which will facilitate the comfortable reintegration of participants in the transition

system into civilian life and their social security, were highlighted by O. Gulbs & A. Kobets (2021) and V. Aleschenko (2025). It is necessary to analyse current approaches to improve psychological and social rehabilitation programmes for veterans, as well as to develop integrative support models that incorporate the needs of combatants and their families.

■ Materials and Methods

The methodological basis of the study was formed by modern concepts of psychological rehabilitation, social support and post-traumatic adaptation, which consider personality recovery in the context of a systemic approach. The theoretical framework was defined at the intersection of the concept of social support by O. Stoliaryk & T. Semigina (2023), the theory of psychological resilience by O.V. Bezsmertna (2024) and the model of the biopsychosocial approach by V. Antonova & N. Pidbutska (2024). Within these concepts, socio-psychological support was considered as a multi-level process that integrates psychological, social, medical, and legal mechanisms to facilitate the adaptation of veterans and their family members.

Research into the regulatory framework was used to assess the legal basis for the implementation of state policy in the field of psychological assistance to veterans, in particular, the analysis of the Law of Ukraine “On the Status of War Veterans, Guarantees of their Social Protection”¹, “On Social and Legal Protection of Military Personnel and their Family Members”² and “On the System of Mental Health Care in Ukraine”³. The empirical basis of the study was the results of the analysis of reports by international organisations (WHO, 2023).

To achieve this goal, a systematic and comparative approach was used in combination with a dogmatic analysis of regulatory and legal documents and a structural and functional analysis of socio-psychological support. The comparison made it possible to compare the Ukrainian experience with the practices of other countries, such as the United States, Canada, and Israel. This identified differences in the levels of institutional organisation of assistance, programme structure, approaches to monitoring effectiveness,

and the involvement of family resources in the rehabilitation process. The systematisation method was used to organise the information obtained and identify the main groups of approaches (psychological, social, integrative). This formed a generalised model of social and psychological support that considers the multidisciplinary nature of the process. The application of a structural-functional approach addressed social and psychological support as a holistic system, the elements of which (individual psychotherapy, social measures, institutional interaction) perform complementary functions. This approach determined the place of each component in the overall structure of assistance to veterans.

■ Results and Discussion

An analysis of contemporary literature devoted to the issue of socio-psychological support for combatants and their families has identified three main groups of approaches: psychological, social and integrative. Each of these groups has specific conceptual foundations, implementation methods and specific results. First, it is necessary to consider the legal regulation of issues related to the provision of psychological, social and psychosocial assistance to veterans and combatants and their families, which in Ukraine is determined by several laws and subordinate regulatory acts.

Firstly, it is worth noting Law of Ukraine No. 3551-XII⁴, which establishes the legal status of veterans, guarantees them social protection and defines their right to receive psychological assistance, including through state programmes and specialised institutions. Moreover, Law of Ukraine No. 2011-XII⁵ is also relevant, as it establishes a set of social guarantees, including the provision of free psychological assistance to persons who are being discharged or have been discharged from service, as well as to family members of deceased or fallen military personnel.

The Law of Ukraine No. 4223-IX⁶, adopted in 2023, which will come into force in 2025-2026, addresses mental health issues. It defines the legal and organisational basis for the functioning of the mental health care system, including psychosocial support for war veterans and their families. Among the subordinate acts, Resolution of the Cabinet of

¹ Law of Ukraine No. 3551-XII “On the Status of War Veterans, Guarantees of their Social Protection”. (1993, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/3551-12#Text>.

² Law of Ukraine No. 2011-XII “On Social and Legal Protection of Military Personnel and their Family Members”. (1991, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2011-12#Text>.

³ Law of Ukraine No. 4223-IX “On the System of Mental Health Care in Ukraine”. (2025, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/4223-20#Text>.

⁴ Law of Ukraine No. 3551-XII “On the Status of War Veterans, Guarantees of their Social Protection”. (1993, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/3551-12#Text>.

⁵ Law of Ukraine No. 2011-XII “On Social and Legal Protection of Military Personnel and their Family Members”. (1991, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2011-12#Text>.

⁶ Law of Ukraine No. 4223-IX “On the System of Mental Health Care in Ukraine”. (2025, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/4223-20#Text>.

Ministers of Ukraine No. 1338¹ is of key importance. This document defines the procedure, conditions and categories of persons who are provided with free psychological assistance, as well as establishes a list of institutions and specialists authorised to provide such services. Another relevant element is Order of the Ministry of Health of Ukraine No. 2118². The document details the list of services, diagnostic methods and therapeutic approaches that can be used in the rehabilitation of veterans.

Ukraine has been dealing with Russian aggression since 2014. Since then, a range of studies were conducted on the psychological, physical, and socio-economic needs of Ukrainian veterans and their families. In particular, veterans and their family members may face various problems as a result of military service and new experiences. In a guide for veterans and their families, the following groups of problems faced by veterans and their families are highlighted: physical and mental health problems; employment and financial difficulties; relationship problems; housing problems and homelessness; social isolation (Lashko, 2023).

A significant proportion of veterans face physical and mental health problems. Returning from service, they often have serious physical injuries. Along with this, mental health disorders are common, including post-traumatic stress disorder, depression and anxiety. Family members of veterans may also experience secondary traumatic stress as they deal with the consequences of their loved ones' military experiences. The quality of interpersonal relationships has a significant impact. Military experience and the mental and physical consequences of service often cause tension in family life (Halych, 2020). This is reflected in an increase in the number of divorces. In addition, unstable living conditions have a negative impact on the psychological climate of the family and make it difficult to create a comfortable environment for children. After returning to civilian life, combatants often feel alienated from society.

Most Ukrainian people have a lack of awareness about mental health, healthy lifestyle, constructive conflict resolution, meeting personal needs, and supporting others. A lack of awareness of the processes that occur in a person after returning from war and ignorance of how to respond to these changes are characteristic not only of veterans and their families, but also of service providers and local government officials. This situation leads to prejudice against veter-

ans in communities and makes it difficult to create an atmosphere of goodwill, mutual care and psychological support both within families and at the community level. Low public awareness significantly affects the demand for psychosocial services, determining their content and the quality of satisfaction. An additional barrier is the prevalence of stigma and prejudiced attitudes towards mental health, as well as fears related to confidentiality issues when seeking help. All this hinders the development of an effective system of psychosocial support for veterans and their families in communities (Klymchuk & Tsarenko, 2021).

Providing psychological assistance is one of the key factors ensuring the successful adaptation of military personnel to peaceful living conditions after the end of hostilities. Its main task is not only to overcome the individual psychological trauma caused by war, but also to restore and strengthen the individual's relationship with their natural, social and cultural environment. This integrated approach not only eliminates the consequences of physical and mental trauma but also increases the individual's resilience to possible repeated crises. The social aspect of support is also essential, as it involves the creation of favourable conditions for the resocialisation and adaptation of veterans to the new realities of civilian life. One of the most effective mechanisms for achieving this goal is the operation of specialised rehabilitation centres. Such institutions provide comprehensive assistance, including psychological, medical and social services, and help veterans to re-establish their social roles, build interpersonal relationships and solve a wide range of problems related to their integration into peaceful life (Stasiuk & Fedorenko, 2025).

Psychological assistance to military personnel and veterans primarily aims to overcome the individual psychological trauma caused by war, including post-traumatic stress disorder, depression, anxiety, and adjustment disorders. Cognitive-behavioural therapy, desensitisation, and eye movement desensitisation and reprocessing (EMDR) are most commonly used in individual psychotherapy. According to international studies, it is the cognitive-behavioural approach that demonstrates the highest effectiveness in treating PTSD among veterans in the United States and the United Kingdom (Halych, 2020). The effectiveness of the cognitive-behavioural approach in treating post-traumatic stress disorder has been confirmed by numerous empirical studies and meta-analyses. In particular, according to the American

¹ Resolution of the Cabinet of Ministers of Ukraine No. 1338 "Some Issues of Providing Free Psychological Assistance to Persons Discharged or Discharged from Military Service, War Veterans, Persons Who Have Made Special Merits to the Fatherland, Family Members of Such Persons and Family Members of Deceased War veterans and Family Members of Deceased Defenders of Ukraine in Accordance with the Law of Ukraine "On the Status of War Veterans". (2022, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/1338-2022-n#Text>.

² Order of the Ministry of Health of Ukraine No. 2118 "On the Organisation of Providing Psychosocial Assistance to the Population". (2023, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0126-24#Text>.

Psychiatric Association (PTSD Treatments, 2025) and the World Health Organisation (2023), cognitive-behavioural therapy is one of the first-line treatments for post-traumatic stress disorder. It provides a sustained reduction in the frequency of flashbacks, nightmares, and hyperarousal, and also contributes to improved emotional stability, social functioning, and overall quality of life. Group programmes help reduce feelings of isolation and promote the formation of new social connections, as confirmed by the practice of Ukrainian volunteer psychological assistance centres O. Stoliaryk & T. Semigina (2023). Early intervention aimed to prevent acute psychotraumatic reactions in soldiers who have just returned from the front is also particularly relevant.

Social support for veterans covers a wider range of measures aimed to restore social functioning, integration into civilian life and improving the quality of life of their families. A significant proportion of military personnel face employment and alienation problems in civilian life after their return. Therefore, resocialisation programmes include career guidance, educational courses and involvement in community initiatives. M. Halych (2025) demonstrated that effective assistance to veterans is impossible without addressing the needs of their family members. In many cases, it is the family that becomes the main resource for adaptation, but at the same time, it experiences high psychological and social stress. There are a number of state programmes in Ukraine, but it will take some time to assess their effectiveness.

In international practice, social approaches are implemented through state agencies in cooperation with non-governmental organisations. For example, the United States has a Veterans Affairs system that combines medical, educational, and social services. The U.S. Department of Veterans Affairs implements the Veterans Rehabilitation Program¹, whose main areas of focus are: medical rehabilitation (treatment of injuries, amputations, prosthetics), psychological support (PTSD therapy, depression, group and individual counselling), employment and professional adaptation programmes, as well as individual initiatives such as the Wounded Warrior Project, which assists wounded veterans, and Vet Centres, which are places for informal support for veterans. Another feature of the American model is the systematic monitoring and evaluation of programme effectiveness. This provides timely improvement of existing practices, implementation of new methods, and adaptation of programmes to the needs of veterans and their families. Thus, the American system of psychosocial support is characterised by its comprehensiveness and institutional diversity, and its effectiveness is

largely ensured by the inclusion of a family component (Tahan *et al.*, 2021; Halych, 2025).

In Israel, the Beit Halochem rehabilitation centre provides professional psychological and psychiatric assistance in the form of cognitive behavioural therapy, social adaptation through joint activities and training courses, and physical rehabilitation through sport (Paralympic programmes). A distinctive feature of the programme is its focus on family support and extensive sports and cultural programmes. It provides a space for processing combat experiences, using both individual and group work formats, emphasising adaptation to civilian life, including family support components, and is often combined with other areas of assistance (social, medical, professional). A substantial component of the Israeli model is the creation of a safe environment for collective work with traumatic experiences. Programmes such as Peace of Mind are designed to process through the effects of combat experience in groups while involving their families in the process of psychosocial support. The integration of family counselling and educational sessions fosters a shared perception of the specifics of post-traumatic experiences, reducing isolation and conflict within the family. Alongside group therapy, national initiatives aimed to prevent and treat post-traumatic disorders are substantial. Programmes such as Shields of Resilience combine psychotherapeutic interventions with social support, creating conditions for stabilising the emotional state of not only military personnel but also their immediate relatives. This helps reduce secondary trauma in family members, who often bear the brunt of their loved ones' war experiences (Halych, 2025).

A group of American scientists, E.A. Prosek *et al.* (2021), developed "Exemplary Practices for Military Populations" (EPMP) with civilian psychologists and identified the necessary competencies. The EPMP structure consists of seven main components: military culture, identity development, system characteristics, assessment of existing problems, treatment, ethics, and protection (Kokun *et al.*, 2023). The Canadian psychosocial support programme is designed for veterans who have served in the Canadian Armed Forces or the Royal Canadian Mounted Police, including veterans who need support. Family members and caregivers of veterans, relatives living with veterans, or those who provide care, also have access to physical, mental, and social health support programmes. The programme highlights information for military personnel who are about to complete their service and need an action plan for transitioning to civilian life, education, and employment. A separate section provides information for individuals with

¹ Instruction of the Department of Defense of USA No. 6490.05 "Maintenance of Psychological Health in Military Operations". (2011, November). Retrieved from <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649005p.pdf>.

somatic health problems (compensation, treatment or support services, etc.). It also provides a list of specialists and organisations working with veterans, including social workers, psychologists, clinicians and non-governmental organisations. The Canadian psychosocial support programme for veterans is a comprehensive government system implemented through Veterans Affairs Canada and aimed to provide veterans and their families with a wide range of services, including psychological, social, medical and professional assistance. Its main goal is to create conditions for full resocialisation, adaptation to civilian life and the preservation of mental health for those who have participated in military operations. The support programme is complemented by a system of rehabilitation measures that combine medical, psychosocial and professional components. It involves the development of individual rehabilitation plans that include both physical and mental health recovery, as well as professional reorientation, training and employment assistance. Thus, the support has not only a therapeutic but also a socio-economic dimension, aimed to ensure the stability and well-being of the veteran and family. The Canadian psychosocial support programme is based on an integrated model that combines medical, psychological and social resources into a single system. Its distinctive feature is its focus on comprehensive assistance, covering both the veteran and their family, as well as the active involvement of community initiatives and volunteer networks. This approach ensures long-term effectiveness, reduces the stigma associated with mental disorders, and contributes to improving the quality of life of veterans after completing military service (Veterans Affairs Canada, 2025).

Despite differences in structure and approach, all three systems combine medical, psychological and social components into a single care package. The American model is notable for its scale and systematic approach, the Israeli model for the depth of its psychotherapeutic work and family focus, and the Canadian model for its social inclusiveness and cross-sectoral interaction. The synthesis of these elements could form the basis for an effective model of psychosocial support for combatants and their families.

The psychological and social components form an integrative approach to supporting combatants and their families, which includes the involvement of a multidisciplinary team, the use of case management, and cross-sector partnerships. Each component will be analysed below. Multidisciplinary teams include psychologists, social workers, doctors, and lawyers, developing an individual assistance plan for combatants. Case management involves appointing a specialist to coordinate all types of assistance for a specific veteran and their family. As noted by O. Stoliaryk & T. Semigina (2023), elements of case management are already being implemented in Ukraine as part of some projects of international organisations. Cross-sectoral partnerships involve the integration of state, public and international resources, which is considered key to a sustainable support system, as confirmed by the experience of Canada and Israel.

An analysis of the Ukrainian regulatory framework related to the provision of psychological, social and psychosocial assistance to combatants and their families, and the identification of international experience, made it possible to compare the types of approaches used in their implementation, the main aspects of which are shown in Table 1.

Table 1. Comparison of Ukrainian and international experience in providing social and psychological support to combatants and their families

Approach	Ukraine	USA/Canada/Israel
Psychological	local initiatives, volunteer programmes	government programmes, large-scale mental health centres
Social	benefits, educational programmes, volunteer initiatives	integrated systems (Veterans Affairs, Ministry of Defence), focus on employment and education
Integrative	individual pilot projects supported by international organisations	established multidisciplinary teams, developed a case management system

Source: compiled by the author

The results show that Ukraine still prioritise psychological and social measures, while integrative models are only beginning to be implemented. When working with families of combatants, two main aspects are usually highlighted: cooperation with them as one of the most significant factors in the psychological rehabilitation and psychological support of

combatants returning from war, and the provision of direct psychological support to family members of military personnel.

The results of the study demonstrated that successful socio-psychological rehabilitation of veterans has positive correlations with factors of family well-being, and changes in family relationships can

be substantial in the process of providing psychological assistance to veterans. The family as a system contains the following elements: basic elements (men and women, adults and children); purpose (raising the younger generation and further development of all its members); order of functioning of the system elements (rules by which the family lives, type of communication between its members, characteristics of their self-esteem); system energy (food, water, air, activity and life positions of family members in combination with each other); interaction with the outside world (change in the family's attitude to life) (Hrynzovskyi *et al.*, 2022).

Notably, a significant proportion of veterans who need social and psychological support are often unable to access it. This leads to isolation from family and friends. Analysing this phenomenon, it is possible to conclude that veterans create a kind of barrier around themselves to maintain control over their own intimate experiences related to relevant people and events (McCarroll *et al.*, 2007). After transferring negative events and experiences of war to peaceful conditions, veterans continue to control the depth of their own experiences and relationships, fearing to feel the emotional pain associated with stressful situations again (Newby *et al.*, 2005).

Conclusions regarding the need for a comprehensive approach to supporting veterans are consistent with the findings of O. Stoliaryk & T. Semigina (2023), emphasising that only a combination of psychological assistance and social integration can ensure sustainable results. The work of a psychologist with trauma must be complemented by social support for the family. The study by O. Stoliaryk & T. Semigina (2023) confirms the results of the analysis, as it focuses on the problems of resocialisation of military personnel, which remain the least addressed in Ukraine. In this regard, the experience of the United States, where special programmes for professional adaptation and retraining are in place, may be particularly useful.

In contrast to American models, the Ukrainian support system is in a stage of active development and involves coordination between state and public institutions. Analysis shows that existing programmes are difficult to evaluate, which complicates their improvement. In the US and Canada, on the contrary, monitoring results are an integral part of government policy in the field of veteran support. Another difference is the role of the family. In international models, the family is viewed as a key source of support.

Self-care for mental health and the well-being of loved ones requires learning self-help and self-support skills. This primarily involves the ability to be attentive to personal inner states, listen to bodily signals and emotions, and trust existing self-regulation mechanisms developed throughout life. A substantial

element is the practice of self-acceptance and the development of the ability to adequately assess and accept personal feelings without judgment. A further awareness of personal emotions creates the conditions for effective management of them. In situations of increased anxiety, panic or emotional tension, it is advisable to use special techniques and exercises to regulate your psycho-emotional state. In most cases, each person already has some individual experience of coping with stress; therefore, it is necessary to refer to those strategies that have previously helped to restore inner balance.

An equally significant factor in maintaining psychological well-being is one's social environment. Support from family, friends, colleagues, peers, and associates is essential in strengthening one's inner resources. The presence of an empathetic and attentive circle of communication contributes to a sense of security and acceptance. At the same time, it should be emphasised that the absence of such an environment is a completely natural phenomenon, and in such cases it is worth seeking help from professional psychologists, social workers, counsellors or volunteers who provide psychosocial support.

Psychological support and mutual support groups have also proven to be effective. In particular, peer-to-peer programmes, which assist veterans to other veterans and their families, have become widespread. Such groups not only provide emotional relief but also create a space of trust where participants can share their experiences with people who have had similar experiences. At the same time, the psychologist provides emotional support and creates an atmosphere of acceptance, caring and empathy. This contributes to the individual feeling validation, value and entitlement to personal experiences (Lashko *et al.*, 2023).

At the same time, social and psychological support for combatants and their families in Ukraine must be based on the specific nature of the Russian-Ukrainian war, considering the unique experience of Ukrainians. A critical condition for improving the effectiveness of the system is reducing the stigma surrounding mental health, raising public awareness, and creating clear pathways to assistance and accessible services for veterans and their families. Families deserve special attention as a key resource for recovery: expanding the range of family and parental support, programmes for children, and training modules on stress management and constructive communication skills. The results obtained formulated several substantial conclusions regarding the further development of theory and practice: a combination of psychological and social approaches should form the basis of future support programmes; it is necessary to create a single state centre to coordinate the activities of various institutions and organisations; family participation in support programmes is key to the successful

adaptation of veterans. Drawing on the experience of countries with a long history of supporting the military will accelerate the development of the Ukrainian system, but when integrating this experience, it is essential to consider the uniqueness of the Ukrainian experience. In addition, some Ukrainian programmes are still in the implementation stage, so there are no long-term results on their effectiveness.

A summary of the results of comparing international experience in providing social and psychological support to combatants and their families identified several key areas.

- Firstly, individual psychological counselling for family members is a substantial component. Such counselling helps to reduce anxiety levels, learn emotional self-regulation, restore a sense of security and develop internal resources to support combatants.

- Secondly, family and group therapy are efficient. It can be used to address all family members simultaneously, reducing tension in relationships, establishing new patterns of interaction, and preserving family unity. Through group work, families can receive support from other families experiencing similar difficulties.

- Thirdly, social support is becoming increasingly significant. This includes educational and upbringing programmes for children of military personnel, financial assistance for families of those killed in action, and the organisation of leisure and rehabilitation activities. A substantial component of social support is also the development of communities and volunteer initiatives that unite families of veterans and create an environment of mutual assistance.

- Fourthly, an essential element is the development of stress management skills among family members. This may include special training courses aimed to develop effective communication skills, constructive conflict resolution, emotional stability and the ability to adapt to new circumstances.

- Fifth, legal and informational assistance is a substantial component. Families of combatants need access to information about social benefits, legal protection mechanisms, educational and medical programmes. The creation of specialised counselling centres and resource platforms greatly facilitates the process of obtaining such assistance.

Social and psychological support for families of combatants is a multidimensional process that combines psychological interventions, social services, educational and legal mechanisms. A comprehensive approach not only ensures the stability and well-being of the family but also increases the effectiveness of the rehabilitation and adaptation of combatants. The development of a family support system is an essential condition for the successful integration of combatants into peaceful life and the preservation of social stability in society.

■ Conclusions

The study established that social and psychological support for combatants and their families should be structured as a comprehensive, multi-level system in which psychological interventions are inextricably linked to social programmes, legal mechanisms and institutional coordination. The need for such a system is due not only to the growing number of veterans, but also to the long-term consequences of participation in combat operations, such as post-traumatic stress disorder, social isolation and loss of adaptive skills. In the context of prolonged armed conflict, it is the integrated approach of combining individual and group psychotherapy, family-oriented practices, and targeted social assistance to families that provides the most sustainable results in the recovery and return of combatants to active civilian life.

In the process of analysing international experience, the study demonstrated that countries with long-standing experience of military conflicts (the United States, Israel, and Canada) already have well-established systems of comprehensive support for veterans. These include not only psychological assistance, but also a developed infrastructure of social services, mechanisms for professional reintegration, legislative guarantees and state funding. In Ukraine, however, such programmes are still in the process of being developed, and one of the main distinguishing factors remains the fact that Ukrainian society is in a state of full-scale invasion, which significantly complicates the stable implementation of systemic measures.

Therefore, the development of an effective national model of socio-psychological support should be based on the integration of evidence-based psychological approaches, systemic social measures, institutional coordination, and a family-oriented approach. Such a model can ensure not only the individual recovery of veterans, but also the resilience of communities and society as a whole. Promising areas for further research include large-scale empirical evaluations of the effectiveness of Ukrainian support programmes, the development and testing of integrative models that include a family component, analysis of gender aspects, and the study of the role of community initiatives and volunteer movements in building a comprehensive support system.

■ Acknowledgements

None.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

■ References

- [1] Aleschenko, V. (2025). Medical and psychological rehabilitation of combatants and adaptation of its model to martial law conditions. *Visnyk Taras Shevchenko National University of Kyiv. Military-Special Sciences*, 2(62), 12-18. doi: [10.17721/1728-2217.2025.62.12-18](https://doi.org/10.17721/1728-2217.2025.62.12-18).
- [2] Antonova, V., & Pidbutska, N. (2024). Psychology of combat mental trauma. *Theory and Practice of Social Systems Management*, 1, 3-13. doi: [10.20998/2078-7782.2024.1.01](https://doi.org/10.20998/2078-7782.2024.1.01).
- [3] Bezsmertna, O.V. (2024). Psychological peculiarities of post-traumatic growth of participants in combat actions. *Habitus*, 59, 123-127. doi: [10.32782/2663-5208.2024.59.20](https://doi.org/10.32782/2663-5208.2024.59.20).
- [4] Blinov, O. (2015). [Theoretical concepts and practical achievements of psychological rehabilitation of wounded combatants](#). *Scientific Bulletin of Chernivtsi University: Collection of Scientific Works*, 739, 7-17.
- [5] Bürgin, D., et al. (2022). Impact of war and forced displacement on children's mental health – multilevel, needs-oriented, and trauma-informed approaches. *European Child & Adolescent Psychiatry*, 31, 845-853. doi: [10.1007/s00787-022-01974-z](https://doi.org/10.1007/s00787-022-01974-z).
- [6] Chaban, O.S., Khaustova, O.O., & Omelyanovich, V.Yu. (2023). *Mental disorders of wartime*. Kyiv: Medknyga.
- [7] Dzhigun, L., Beregova, N., & Glavatska, N. (2021). Peculiarities and current state of psychological rehabilitation of military personnel after service in combat conditions. *Psychology Travelogs*, 2, 57-73. doi: [10.31891/pt-2021-2-6](https://doi.org/10.31891/pt-2021-2-6).
- [8] Gordeeva, T., & Lazareva, A. (2023). Social work in the community with recently demobilized combatants. *Grani*, 26(3), 69-73. doi: [10.15421/172350](https://doi.org/10.15421/172350).
- [9] Gulbs, O., & Kobets, A. (2021). Social-psychological rehabilitation of participants of combat. *Psychological Journal*, 7, 100-106. doi: [10.31499/2617-2100.7.2021.237166](https://doi.org/10.31499/2617-2100.7.2021.237166).
- [10] Halych, M.Yu. (2020). [Features of the dynamics of emotional states of police officers participating in the Joint Forces Operation during the rehabilitation period](#). (PhD dissertation, National Academy of Internal Affairs, Kyiv, Ukraine).
- [11] Halych, M. (2025). Conceptual principles of psychological rehabilitation of combat participants. *Legal Psychology*, 36(1), 43-51. doi: [10.33270/03253601.5](https://doi.org/10.33270/03253601.5).
- [12] Hrynzovskyi, A.M., Bielai, S.V., Kernickyi, A.M., Pasichnik, V.I., Vasishev, V.S., & Minko, A.V. (2022). Medical, social and psychological aspects of assisting the families of the military personnel of Ukraine who performed combat tasks in extreme conditions. *Wiadomości Lekarskie*, 75(1), 310-317. doi: [10.36740/wlek202201228](https://doi.org/10.36740/wlek202201228).
- [13] Instruction of the Department of Defense of USA No. 6490.05 “Maintenance of Psychological Health in Military Operations”. (2011). Retrieved from <https://surl.li/durxsn>.
- [14] Klymchuk, V., & Tsarenko, L. (2021). [Organisation of psychosocial assistance to war veterans and their family members. Recommendations for local authorities](#). Kyiv: BAITE.
- [15] Kokun, O., Pishko, I., Lozinska, N., Oliynyk, V., Khoruzhy, S., Larionov, S., & Syritsa, M. (2023). [Peculiarities of providing psychological assistance to military personnel, veterans and members of their families by civilian psychologists](#). Kyiv: 7BC.
- [16] Lashko, O.V., Varenya, T.V., Timofiev, V.G., Koshova, I.V., Petrushko, Y.M., Orlovska, N.M., Tsygankova, G.Y., Ternopolska, I.D., & Didenko, O.V. (2023). [Guide for veterans and their family members within the system of providing psychological, medical-psychological, and psychiatric assistance. A compilation of developments and adapted materials from the experience of the hotline for crisis support of the ukrainian veterans foundation](#). Kyiv: Ukrainian Veterans Foundation.
- [17] Lebedieva, S.Y., Ovsianikova, Y.O., & Pokhilko, D.S. (2023). The psychological support and rehabilitation of specialized personnel in risky and dangerous professions: A global experience. *Habitus*, 45, 139-145. doi: [10.32782/2663-5208.2023.45.23](https://doi.org/10.32782/2663-5208.2023.45.23).
- [18] McCarroll, J., Newby, J., & Dooley-Bernard, M. (2007). [Responding to domestic violence in the US army: The family advocacy program](#). In K. Kendall-Tackett & S. Giacomoni (Eds.), *Intimate partner violence* (pp. 5-23). Kingston, NJ: Civic Research Institute.
- [19] Nazar, Yu. (2024). Conceptual approaches to understanding the phenomenon of post-traumatic growth of personality. *Psychology and Personality*, 14(1), 58-98. doi: [10.33989/2226-4078.2024.1.298772](https://doi.org/10.33989/2226-4078.2024.1.298772).
- [20] Newby, J.H., McCarroll, J.E., Ursano, R.J., Fan, Z., Shigemura, J., & Tucker-Harris, Y. (2005). Positive and negative consequences of a military deployment. *Military Medicine*, 170(10), 815-819. doi: [10.7205/MILMED.170.10.815](https://doi.org/10.7205/MILMED.170.10.815).
- [21] Pozmogova, N.V., Bogdanovska, N.V., & Kalyonova, I.V. (2024). Effectiveness of a comprehensive program of psychophysiological rehabilitation in military personnel – combatants. *Visnyk of Zaporizhzhya National University Physical Education and Sports*, 1, 162-168. doi: [10.26661/2663-5925-2024-1-22](https://doi.org/10.26661/2663-5925-2024-1-22).

- [22] Prosek, E.A., Burgin, E.E., Atkins, K.M., & Wehrman, J.D. (2021). *Exemplary practices for military populations*. Retrieved from <https://surl.li/ujafgt>.
- [23] PTSD Treatments. (2025). Retrieved from <https://www.apa.org/ptsd-guideline/treatments?utm>.
- [24] Scoglio, A.A.J., Molnar, B.E., Lincoln, A.K., Griffith, J., Park, C.L., & Kraus, S.W. (2022). Social support over time for men and women veterans with and without complex trauma histories. *Psychological Services*, 20(3), 516-524. doi: 10.1037/ser0000627.
- [25] Stasiuk, V.V., & Fedorenko, Y.A. (2025). Psychological rehabilitation of veterans of the armed forces of Ukraine who took part in the armed conflict. *Habitus*, 70, 227-232. doi: 10.32782/2663-5208.2025.70.41.
- [26] Stoliaryk, O., & Semigina, T. (2023). Returning from war: Psychosocial support for veterans and their family members. *Social Work and Education*, 10(1), 63-77. doi: 10.25128/2520-6230.23.1.6.
- [27] Tahan, M., Taheri, H., & Saleem, T. (2021). Review of psychological trauma: Theory, practice, policy and research. *Rivista di Psichiatria*, 56(2), 64-73. doi: 10.1708/3594.35764.
- [28] Vaida, T.S., & Gerashchenko, O.S. (2024). [Socialisation of military personnel \(law enforcement officers\) with PTSD after participation in combat operations \(performance of service and combat tasks\)](#). In *Novels of civil procedural legislation: Civil jurisdiction, procedural terms* (pp. 35-41). Odesa: National University of Ukraine "Olyra".
- [29] Veterans Affairs Canada. (2025). *Employers seeking to hire veterans*. Retrieved from <https://surl.li/pcpnoo>.
- [30] World Health Organization (WHO). (2023). *Conditions related to stress module – evidence profiles STR1 and STR2: Psychological interventions for adults with PTSD (STR1) and for children and adolescents with PTSD (STR2)*. Retrieved from <https://surl.li/cc/ichqvj>.

Порівняльний аналіз сучасних підходів соціально-психологічної підтримки учасників бойових дій та їхніх родин

Марина Галич

Доктор філософії в галузі психології, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-3690-4402>

■ **Анотація.** В умовах повномасштабної війни в Україні питання психосоціальної підтримки учасників бойових дій та їхніх родин набуває особливої значущості. Високий рівень стресових навантажень, ризик розвитку дезадаптаційних станів, проблеми ресоціалізації та адаптації після участі в бойових діях зумовлюють потребу у створенні системних програм психологічної допомоги. Метою статті був аналіз сучасних підходів соціально-психологічної підтримки учасників бойових дій та їх родин, узагальнення наукових напрацювань, виокремлення ключових напрямів удосконалення системи допомоги учасникам бойових дій та їх родинам. Методологічний інструментарій обрано відповідно до окресленої мети, специфіки об'єкта й предмета дослідження: методи порівняльного аналізу, контент-аналіз наукових публікацій, системний підхід до узагальнення соціально-психологічних практик, використаних у різних країнах. Зіставлено три основні групи підходів до психосоціальної підтримки: психологічні (індивідуальна та групова терапія, робота з дезадаптаційними станами та посттравматичним розладом), соціальні (ресоціалізація, підтримка родин, освітньо-професійні програми), інтегративні (мультидисциплінарні моделі та кейс-менеджмент). Обґрунтовано важливість урахування психологічної, соціальної та інтегративної складових у системі соціально-психологічної підтримки. Доведено, що український досвід є унікальним, а система соціально-психологічної підтримки знаходиться на етапі вдосконалення в контексті активної фази протистояння збройній агресії, натомість практики Сполучених Штатів Америки, Ізраїлю та Канади мають сталі механізми державної та громадської підтримки через виключеність компонента прямої загрози. Отримані результати можуть стати основою під час використання для оптимізації програм психологічної та соціальної реабілітації ветеранів, а також для формування інтегративних моделей підтримки, що враховують як потреби учасників бойових дій, так і членів їхніх родин

■ **Ключові слова:** ветерани; психосоціальна підтримка; реабілітація; адаптація; соціальна робота; психічне здоров'я

UDC 343.37:502/504

DOI: 10.63341/naia-herald/3.2025.33

The environment as an object of criminal law protection: Problems of definition in national and international legislation

Liudmyla Mostepaniuk

PhD in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0003-2894-0654>

Olena Matiushenko*

PhD in Public Administration, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0003-1507-2085>

Nataliia Symonenko

PhD in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0003-1048-278X>

■ **Abstract.** The relevance of this work lies in the need for society and the state to recognise the reality of the threat to the environment, which is reflected in the areas of state environmental policy, the main principles of which are to ensure environmental safety in Ukraine, to improve its level in the exclusion zone, to ensure environmental balance and to ensure accountability for violations of environmental legislation. The aim of the article was to conduct a systematic analysis of environmental protection issues in light of the provisions of national and international criminal law doctrine, to identify its inconsistencies and contradictions, to provide scientifically sound recommendations, and to develop proposals for improving its application and eliminating the identified contradictions. The methodological basis of the study was a system of general and special methods, which includes systemic-structural, logical-dogmatic, formal-legal, and terminological methods. The shortcomings of criminal law protection of the environment have been identified and ways to overcome them have been proposed, namely: mechanisms for environmental protection at the national and international levels have been identified, problematic issues and inconsistencies that may arise at the legislative level during the formulation or improvement of the relevant criminal law prohibition have been outlined, norms that could lead to legal conflicts have been identified, and the need to strengthen the imperative nature of legislative norms in order to ensure guarantees of the right to a safe environment has been proven. The expediency of strengthening the link between the right to a safe environment and other human rights guaranteed by the Constitution of Ukraine was analysed. Conclusions were formulated in the field of improving legislation on liability for criminal offences against the environment, focusing on the need to take into account the implementation of guarantees of the right to a safe environment as an element not only of environmental but also of national security of the state, and specific directions for improving the current criminal legislation of Ukraine are proposed. Taking into account the provisions of international acts aimed at strengthening the effectiveness of criminal law protection of the environment, the expediency of

■ **Suggested Citation:**

Mostepaniuk, L., Matiushenko, O., & Symonenko, N. (2025). The environment as an object of criminal law protection: Problems of definition in national and international legislation. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 33-42. doi: 10.63341/naia-herald/3.2025.33.

■ *Corresponding author

■ Received: 20.04.2025; Revised: 07.09.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

using the principle of clarity in the formulation of legal terminology in legislative practice has been proven. The practical value of the work lies in the fact that the results of scientific research will contribute to the complete and correct qualification of the analysed acts by practitioners and compliance with the principle of justice in the implementation of criminal liability

■ **Keywords:** criminal offence; criminal liability; international legal act; martial law; natural environment; mineral resources; subsoil

■ Introduction

In the modern world, environmental problems such as climate change, the formation of ozone holes, deforestation, water pollution, and the damage or destruction of the natural environment are causing increasing concern, becoming especially acute during armed conflicts. As of 2025, the situation regarding environmental security in Ukraine remains difficult due to active military actions by the Russian Federation, which pose a direct threat to the natural environment. Despite the entry into force of the Law of Ukraine No. 2697-VIII “On the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030”¹, the state of legislative protection of the environment continues to be characterised by the absence of a coordinated state policy. A component element of the implementation of policy in the sphere of environmental protection, as defined in Law No. 2697-VIII, is the criminal law impact on environmental criminal offences, the essence of which includes activities aimed at intensifying criminal law means of countering crime and their practical application. Given the declared direction of state policy in the form of strengthening law enforcement activities in the field of environmental protection, the relevance of defining the environment as an object of criminal law protection in national and international legislation becomes evident. One of the central elements of criminal law protection defined in Part 1 of Article 1 of the current Criminal Code of Ukraine² (hereinafter – CC) is the environment. Accordingly, the provisions of the CC serve as an indisputable component of the mechanism for countering violations of environmental legislation (Berdnik, 2019).

Ukrainian academics have made a significant contribution to the development and improvement of criminal law protection of the environment. I.V. Berdnik (2019) investigated the theoretical and applied principles of criminal law protection of water resources. Author’s work resulted in a system for the integrated criminal law protection of Ukraine’s water resources, based on studying their properties as an integral element of the environment. O.O. Dudorov & R.O. Movchan (2020) have for many years researched the specifics of environmental criminal

offences, defining the main provisions of their criminal law characteristics. They have also carried out a comprehensive critical review of criminal law norms concerning liability for violations of rules for the protection or use of the subsoil and illegal mineral extraction, developing well-founded recommendations for improving the provisions of the CC of Ukraine. V.K. Matviychuk & V.P. Olynyk (2022), in a monograph, studied the features of criminal law protection of the sea from pollution and littering as a component of modern social and legal problems. T.S. Sadova (2023) was the first in Ukraine to provide and substantiate a number of original conceptual ideas in a scientific study of modern problems of criminal law qualification of international war crimes against the environment under international criminal law.

Yu.A. Turlova (2023) examined theoretical and practical issues of environmental crime. Author investigated the phenomenon of environmental crime, its trends, and development prospects, outlining the components of a conceptual model for a system to combat environmental crime and identifying the most important elements of a strategy for its prevention. Based on official statistics from the Prosecutor General’s Office and the State Judicial Administration of Ukraine, the researcher analysed the group aspect of environmental crime. This allowed for the establishment of specific characteristics of this category of criminals and the determination of indicators of group criminal activity within organised groups. O.V. Bazov (2023) studied the genesis of environmental protection in the process of law enforcement by international criminal justice bodies, defining the role and significance of international legal acts in developing the legal framework for the activities of international criminal courts in combating environmental criminal offences. S.I. Marco (2024) focused on the appropriateness of improving the system for combating environmental crime, adapting the CC of Ukraine to the requirements of the European Union, and achieving compliance with its requirements and goals.

J. Schillinger *et al.* (2020) are among the international researchers who have studied the scientific discourse on the impact of armed conflicts on the

¹ Law of Ukraine No. 2697-VIII “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030”. (2019, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2697-19#Text>.

² Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

natural environment. The researchers highlight two main problems in the field of scientific knowledge about water resources and their management in conflict situations. Firstly, the available information on the impact of conflicts remains limited. However, the increase in the number of scientific publications over the past decade indicates that this gap is gradually narrowing due to the efforts of the scientific community. Secondly, there is insufficient integration of knowledge across different thematic studies, regional contexts, and types of conflict.

Despite the significant scientific and practical value of the work of these researchers, many questions regarding the understanding of the environment in national and international legislation, especially under martial law, have remained debatable, insufficiently explored, or completely unresearched. In light of this, the aim of this Article was to outline the problems in defining the term “environment” by conducting a study of national and international criminal law doctrine on the protection of the natural environment, ensuring environmental safety, and implementing the principle of inevitability of punishment for committing criminal offences against the environment.

■ Materials and Methods

To conduct the scientific study “the environment” as an object of criminal law protection from the perspective of national and international legal regulation, a methodology was chosen that includes the necessary tools for a critical analysis of the provisions of the Criminal Code of Ukraine¹ with an emphasis on internationally recognised standards for ensuring environmental safety. The following methods were used in the research: terminological, systemic-structural, dogmatic, comparative legal, and formal-logical. The concept of “the environment” was investigated using the terminological and formal-logical methods. The systemic-structural method facilitated a comprehensive theoretical analysis of international legal acts and Ukrainian legislative norms for their consistent systematisation and the identification of legislative innovations. It also helped in determining the connections between the analysed norms and the provisions of current criminal legislation and in studying the internal structure of the system of CC norms related to criminal liability for environmental criminal offences. The dogmatic method was used to analyse the objective and subjective characteristics of

environmental criminal offences and to clarify specific criminal law terms. Through the application of this method, it was found that when formulating and justifying proposals, it is necessary to consider not only the modern realities of law enforcement but also the latest trends in positive law-making activities. The comparative legal method was used to compare Ukraine’s criminal legislation regarding liability for environmental criminal offences with international legislation in this area.

The theoretical basis of the research was the conclusions of researchers and lawyers from Ukraine and other countries. During the preparation of this study, provisions of a number of national legislative acts were examined, including criminal law norms that provide for liability for environmental criminal offences in the provisions of the CC of Ukraine, the Laws of Ukraine “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030”², and “On Amendments to the Criminal, Criminal Procedure Codes of Ukraine and Other Legislative Acts of Ukraine Regarding the Improvement of Types of Criminal Punishments”³.

■ Results and Discussion

The legally defined duty of the state to ensure environmental safety and maintain ecological balance in Ukraine, as well as to preserve and reproduce the gene pool of the people (Article 16 of the Constitution of Ukraine), underscores the relevance of studying countermeasures against these offences, including environmentally punishable criminal acts⁴. When identifying the system of global challenges, it is clear that the issues of environmental offences and liability for their commission are highly complex (Vorobei *et al.*, 2022).

The situation that has developed in Ukraine due to Russia’s full-scale military invasion in February 2022 has a direct impact on the norms of international law concerning the protection of the natural environment during armed conflicts. Even before the start of the Russian-Ukrainian war, the state of the environment in Ukraine was close to critical. According to data published in legal acts, in 2019, two-thirds of Ukraine’s population lived in areas where the air quality did not meet established hygiene standards; due to toxic, microbiological, and biogenic pollution, the ecological state of the country’s river basins, coastal, and territorial waters of the Black and Azov Seas was constantly deteriorating; a significant Part of Ukraine’s territory (about 57%) suffered from water

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

² Law of Ukraine No. 2697-VIII “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030”. (2019, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2697-19#Text>.

³ Law of Ukraine No. 3342-IX “On Amendments to the Criminal Code, Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Improvement of Types of Criminal Punishments”. (2023, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/3342-20#n160>.

⁴ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

and wind erosion; approximately 20% of Ukraine's land was polluted; more than 150,000 hectares of land were damaged by mining or other activities; due to the lack of effective state control, the mass formation of illegal dumps and landfills became possible, as well as the recording of numerous violations of laws during the handling of hazardous waste¹. Since the publication of this data, the situation has only worsened due to active military operations. Every day of the full-scale war causes irreparable damage to the environment – water resources and air are polluted, ecosystems are declining, land degradation is observed, and a significant amount of spent ammunition and its fragments remain in the territories where combat operations are or were taking place (Vronska, 2023). Due to active combat, the Ukrainian environment is suffering immense damage, the consequences of which will be felt for decades. Burnt forests, plantations and shrubs, water bodies and soil contaminated or poisoned with heavy metals, and an countless number of destroyed animals and plants are only a Part of the Russian aggression from which the environment of Ukraine is suffering (Turyk, 2023).

According to S. Pakhomi (2024), armed conflicts lead to significant damage and degradation of the natural environment, and the negative environmental consequences, which are in some cases irreversible, continue even after the conflict ends. International researchers note that modern wars have an increasingly negative impact on ecosystems, which is associated with the increased destructive potential of modern weapons that cause more serious damage to the natural environment (Schillinger *et al.*, 2020). Through the media, an open letter from several dozen scientists from around the world was published, appealing to the UN International Law Commission with recommendations to recognise environmental damage in combat zones as a war crime (Daft, 2019). In addition, scientists proposed to prepare and adopt a fifth Geneva Convention, which would contain a list of measures, grounds, and conditions for holding governments accountable for environmental damage caused by their armed forces. Subsequently, in 1992, attempts were made to develop a fifth Geneva Convention on the Protection of the Natural Environment During Armed Conflict (Plant, 1992), however, this idea was not implemented. Scientists called on

the governments of states to define clear guarantees of biodiversity and use the commission's recommendations to protect the environment during military actions (Sadova, 2022).

Principle 21 of the Stockholm Declaration² on the human environment absolutely prohibits causing damage to the natural environment. The advisory opinion of the UN International Court of Justice regarding the legality of the threat or use of nuclear weapons³ prohibits intentional infliction of severe damage to the natural environment on the territory of another state and indirectly attests to the customary nature of the application of environmental law during armed conflicts. Important principles aimed at the international legal protection of the environment were enshrined in the Rio Declaration on Environment and Development⁴, which focuses on an anthropocentric understanding of sustainable development. The activities of the International Committee of the Red Cross, which developed the Guiding Principles for the Protection of the Natural Environment in Armed Conflict (1994), play a significant role in protecting the natural environment. The Rome Statute of 1998⁵ is a vital international agreement that reflected the importance of environmental protection during armed conflicts.

However, as Yu. Dmitriev (2024) points out, the key international legal obligations of states in the field of environmental protection during armed conflicts are provided for by only a few environmental treaties, which are discussed in more detail below. At the same time, they are not without flaws. S. Pakhomi (2024) notes the following as the main shortcomings of international law norms that regulate the protection of the environment during armed conflicts: 1) a lack of clarity in the criteria for establishing unacceptable environmental damage; 2) a lack of legal clarity regarding the protection of structural elements of the environment as civilian objects; 3) the hypothetical nature of implementing the principle of proportionality when environmental damage is established only as additional losses.

In general, the content of the norms of Additional Protocol I to the Geneva Conventions of 1949⁶ implies a threshold of unacceptable environmental damage. However, despite the legal warning, these provisions require improvement, as the legal protection

¹ Law of Ukraine No. 2697-VIII "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030". (2019, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2697-19#Text>.

² United Nations Conference on the Human Environment. (1972, June). Retrieved from <https://www.un.org/en/conferences/environment/stockholm1972>.

³ Advisory Opinion of the International Court of Justice "Legality of the Threat or Use of Nuclear Weapons". (1996, July). Retrieved from https://ijl.org/wp-content/uploads/2016/08/Legality-of-the-Threat-or-Use-of-Nuclear-Weapons-1996.pdf?utm_source.

⁴ Report of the United Nations Conference 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.

⁵ Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁶ Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_199#Text.

of civilian objects does not provide a sufficient level of protection for the elements of the natural environment during armed conflicts. Despite the significance of the provisions of Additional Protocol I, their application during military operations is limited, which necessitates the development and adoption of a new international agreement.

The Draft Principles on Protection of the Environment in Relation to Armed Conflicts¹ developed by the UN International Law Commission at its 73rd session in 2022, declared the following principles of environmental protection:

1) Principle 19: General environmental obligations of an Occupying Power – An occupying state is obligated to take appropriate measures to prevent damage to the natural environment of occupied territories;

2) Principle 20: Sustainable use of natural resources – An occupying state is obligated to take appropriate measures to: a) dispose of the natural resources of occupied territories in the interests of the population; b) ensure their proper use; c) prevent harmful effects on the environment that could harm the health of the population;

3) Principle 26: Remnants of war – Upon completion of an armed conflict, the parties are obligated to neutralise toxic or dangerous remnants of war that threaten to cause harm to the natural environment.

According to A. Radchenko (2020), the main directions of international legal regulation of environmental protection are: 1) establishing general requirements for the implementation of the principle of states' sustainable development, including their environmental component; 2) focusing on compliance with special requirements of international legal acts regarding the sustainable and continuous development of populated areas; 3) implementing legal provisions for the protection of the natural environment.

With the start of the Russian-Ukrainian war, proposals for environmental protection during military operations have taken on new meaning. The legislative changes to the norms of the Criminal Code of Ukraine (CC)² regarding liability for committing environmental criminal offences, adopted under martial law, seem insufficiently substantiated. They violate the systemic nature of the Code and may provoke excessive expansion of its scope. It is necessary to agree with the position of A. Vynnyk & I. Gazdai-ka-Vasylyshyn (2023) that these ways of improving criminal legislation appear questionable and require the use of more effective methods of legal regulation. In the process of formulating the norms of the CC

of Ukraine, it is advisable to apply a comprehensive approach that takes into account the institutions of the Special and General Parts of the CC of Ukraine.

Scientific literature emphasises the need to improve the current system of combating environmental criminal offences and to accelerate the adaptation of the CC of Ukraine³ to the requirements of the European Union to achieve compliance with its goals and regulations (Marco, 2024), since Ukraine's European course necessitates the implementation of EU *acquis* into national legislation (Pasyeka et al., 2024). Academics are critical of the content and essence of criminal law norms that provide for liability for environmental criminal offences. For example, there are discussions about the uncertainty of the minimum value of illegally extracted minerals of national importance, which is necessary to initiate criminal proceedings; the impossibility of differentiating liability for the illegal extraction of minerals of national importance depending on the value of the extracted minerals; the existing imbalance between the limits and severity of penalties for committing these acts; and the inadmissibility of constructing the sanction of Part 3 of Article 240 of the CC of Ukraine as an unalterable penalty, which violates such a principle of criminal liability as the principle of economy of criminal repression (Movchan et al., 2022). However, one of the key problems with environmental criminal offences is the actual lack of punishment for the illegal extraction of minerals of national importance (Makarenko et al., 2021), which requires an urgent solution, since the role of minerals of national importance is invaluable - deposits of minerals, which are Part of the geological environment of the state, are recognised as a special applied resource of exceptional economic value (Mostepaniuk & Pavlovska, 2020). It is necessary to remember the need to restore the environment damaged by illegal acts, since that element of the natural environment that was harmed by a committed criminal offence will remain damaged even if the guilty persons are held accountable. Therefore, criminal law sanctions in the field of environmental protection should be not only punitive but also restorative, that is, they should provide for real measures aimed at restoring the damaged ecosystem. As L.M. Babailova (2025) suggests, in cases of tree damage, the money paid by the guilty person in the form of fines should be directed specifically to the restoration of the damaged plantations and their planting at the location where the criminal offence was committed.

¹ Draft Principles on Protection of the Environment in Relation to Armed Conflicts. (2022, May). Retrieved from https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf.

² Law of Ukraine No. 3342-IX "On Amendments to the Criminal Code, Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Improvement of Types of Criminal Punishments". (2023, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/3342-20#n160>.

³ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

In Ukraine, the problem is not just imperfect criminal law regulations concerning environmental offences. The relevant state bodies also have significant shortcomings in their regulatory functions. These issues include a lack of cohesion in the state's environmental policy, which extends to regional policies; an absence of coordination and mutual regulation among state bodies responsible for environmental monitoring; and an insufficient level of systematic tax incentives for introducing effective environmental protection mechanisms and ensuring compliance with environmental norms and rules. Criminal law measures to combat environmental crime, which include both finding appropriate criminal law means of countering crime and their practical application through law enforcement, are structural components of the state's environmental protection policy.

It is well known that criminal offences involving attacks on the environment often have blanket norms¹ (for example, articles 236, 237, and 238 are blanket norms). This situation hinders their full legal enforcement (Berdnik, 2019) and requires additional study of the relevant secondary legal acts for the proper application of the norms of the current Criminal Code of Ukraine.

The objects of environmental safety (which include the natural environment as the material basis of state and social development²) are the constitutional rights and freedoms of a person and a citizen³. The environmental rights of citizens should be considered the set of opportunities and means, enshrined in laws and guaranteed by legal norms, that enable people to satisfy their needs in the field of environmental protection, the use of natural resources, and the provision of environmental safety. These rights include a person's rights to a safe environment – clean surroundings, fresh air, uncontaminated land, high-quality water, and food and household items that are safe for health.

Despite the existence of these constitutional and legislative imperatives, it must be acknowledged that the situation in the field of environmental protection in Ukraine is critical. This situation, along with the gradual and deeper understanding by state authorities and the Ukrainian population of the accelerating scale of a potential environmental catastrophe and the awareness of the social danger of environmental offences, is provoking a gradual activation of relevant scientific discussions, changing the understanding of the generic object of environmental criminal offences

(Mytrophanov, 2022). For instance, one element of the modern interpretation of the generic object of environmental offences is its definition as social relations concerning the preservation of the life support system of society and humans (Turlova, 2023) or as relations intended to ensure the criminal law protection of the environment and its structural elements, the rational use of its resources, and environmental safety in general as a specific state of the environment that meets legally defined criteria, standards, limits, and norms (Mytrophanov, 2022). Therefore, a person's right to an environment safe for life and health, as a structural element of citizens' constitutional rights, should be the basis for defining the generic, specific, and direct objects of encroachment against the environment when constructing environmental criminal offences.

National legislation implicitly defines the concept of "the environment". For example, Article 1 of the Law of Ukraine No. 2059-VIII⁴ states that "impact on the environment" is any consequence of a planned activity on the environment, the safety of human life and health, flora, fauna, biodiversity, soil, air, water, climate, landscape, natural territories and objects, historical monuments and other material objects, or on a combination of these factors, including consequences for cultural heritage objects or socio-economic conditions that result from a change in these factors.

The environment was considered to be the set of surrounding conditions and resources with which specific organisms interact. This understanding extends to the external surroundings, including biotic and abiotic factors that have a direct impact on the survival and development of organisms or populations. In contrast, the "surrounding environment" is the place where living organisms carry out the process of life or the place that a living being occupies for a certain period, including all physicochemical and biological components of the ecosystem. T. Sadova (2023) speaks of the concept of "the environment" as a synonym for "surrounding environment," which, however, is not identical and includes not only the natural environment but also the artificially modified environment. Therefore, it is correct to say that the environment is the surrounding environment relative to a person or group of people who are in it (Explanatory dictionary of the Ukrainian language, 2018). The structural elements of the environment are the physical (which includes the surrounding conditions and elements with which living organisms interact),

¹ Resolution of the Supreme Court of Ukraine No. 17 "On Judicial Practice in Cases of Crimes and Other Offenses Against the Environment". (2004, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0017700-04#top>.

² Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2023, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

³ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вп#Text>.

⁴ Law of Ukraine No. 2059-VIII "On Environmental Impact Assessment". (2017, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2059-19#Text>.

chemical, and biological environments. The environment consists of several components: 1) the aquatic environment – marine (oceans and seas) and freshwater (lakes and rivers); 2) the terrestrial space – land; 3) the atmosphere – air; 4) outer space (Environment Definition, n.d.).

Thus, the environment in a broad sense is a combination of natural and anthropogenic environments, which include elements of biological, chemical, and physical components and are divided into aquatic, terrestrial, and atmospheric environments. In contrast, a subordinate term to the above should be considered the “natural environment,” which includes all living organisms and inanimate objects on Earth, which, in turn, distinguishes it from artificial objects that are created not by nature but by humans, despite their inclusion in the surrounding environment (Environment Definition, n.d.). In addition, the terms “ecosystem” and “surroundings” have a similar meaning to the term “environment,” but, at the same time, they have distinguishing features: the term “ecosystem” should be understood as the interaction between a living organism and its surroundings. That is why the “surrounding environment” should be considered a broader concept, and the terms “ecosystem” and “surroundings” should be considered narrower. Thus, the surrounding environment includes biotic and abiotic factors that play an important role in the survival, evolution, and development of the organisms that inhabit it (Environment Definition, n.d.). Based on the above, it should be considered that the environment consists of biological (all living organisms) and physical (the inanimate Part – the atmosphere, hydrosphere, and lithosphere) components.

When talking about the environment in the context of *erga omnes* obligations, it should be borne in mind that all its key components in the form of the atmosphere, outer space, marine environment, biodiversity, tropical rainforests, climate system, etc., are characterised by a combination of economic and legal features (Nigreieva, 2021). For example, the atmosphere can be considered a global public good; the open sea and outer space are classified as global commons; tropical rainforests are located within the territories of a number of countries, so the obligations of states to preserve them are conditioned by the existence of constitutional supremacy and sovereign rights over these territories of specific states. Therefore, the protection of the surrounding environment requires the implementation of effective ways and means of ensuring them, including *erga omnes* obligations. But the inclusion of environmental obligations in them requires the identification of the constituent elements of this complex object of legal regulation, the formulation of their legal essence, and the distinction between the obligations of states

regarding objects that are located within territories characterised by a different international legal regime (Nigreieva, 2021).

Thus, the main shortcomings of national and international legal norms that regulate the protection of the environment during armed conflicts are: 1) the lack of clear criteria for establishing unacceptable environmental damage; 2) the legal ambiguity regarding the protection of elements of the environment as civilian objects; and 3) the hypothetical nature of the proportionality principle when environmental damage is considered only as additional losses (Pakhomi, 2024). The existence of these gaps increases the potential for the development of a system of legal norms, giving rise to fundamental scientific discussions. One option for solving a number of shortcomings in the norms of international humanitarian law could be the enhanced application of the provisions of international environmental law. Its norms and mechanisms would help clarify and expand the basic principles of international humanitarian law to hold those responsible for causing environmental damage during armed conflicts accountable. Therefore, attention should be paid to the possibility of expanding the subject of regulation of current humanitarian legal principles, as well as the need to supplement law enforcement practice with the provisions of multilateral environmental agreements.

International practice has seen isolated cases of prosecution for international criminal environmental offences. These include the case of Austrian General Lothar Rendulic, which was heard by the Nuremberg Military Tribunal in 1945. The tribunal acquitted the accused for implementing a “scorched earth” tactic in Norway, based on the principle of military necessity (Orellana, 2005). Another example is the bombing of Yugoslavia by NATO forces, where the tribunal also ruled that the Alliance’s actions were based on the principle of military necessity (Weinstein, 2005).

The obligations of states regarding liability for violating the requirements of international legal acts on the protection of the natural environment are the basis for ensuring the proper “greening” of international law (Grushko, 2023). According to O. Bazov (2023), the international legal obligations of participating states regarding environmental protection are provided for in both ordinary environmental treaties and special treaties, the prerequisite for whose implementation is an active armed conflict. The existence of an armed conflict is not considered a condition for the automatic termination of environmental treaties that the participating states of the armed conflict joined in peacetime. That is why the legal regulation of environmental protection issues during armed conflicts should be considered an important basis for forming a progressive system to reduce the negative impact on the natural environment.

■ Conclusions

Thus, the results of the study confirm that the goal has been achieved by identifying the problematic issues in the interpretation of the concept of “the environment”. All of the above suggests that studying the problems of the environment as an object of criminal law protection in a national and international context has allowed for the identification of a number of inconsistencies in the understanding and interpretation of this phenomenon. It has been proven that only the full integration of international economic and political efforts can prevent a global environmental catastrophe.

Summarising the results, it is possible to note the formulation of substantiated provisions for improving the legal regulation of the application of the norms of the CC of Ukraine, which provide for liability for committing offences against the environment by strengthening the implementation of the provisions of international environmental law. The precepts of this law will help to clarify the basic principles of international humanitarian law to ensure the unimpeded prosecution of individuals when socially dangerous consequences in the form of harm to the natural environment occur during armed conflicts. The use of more effective methods of legal support when formulating the norms of the CC of Ukraine concerns the implementation of comprehensive approaches, taking into account the provisions of the Special and General parts of the CC of Ukraine. It is the rationalisation of current humanitarian legal principles and the improvement of law enforcement practice by supplementing it with the provisions of multilateral environmental agreements that will contribute to achieving this goal. There was a need to strengthen the imperative nature of the legally defined guarantees of the right to a safe environment and to strengthen the normatively enshrined link

between the right to a safe environment and other human rights. Conceptually, the above indicates that legislators are focusing on the priority of the possibilities for implementing guarantees of the right to a safe environment, which should become an integral element not only of environmental but also of Ukraine’s national security. After all, it is obvious that the problems of protecting human environmental rights in Ukraine will remain unresolved for many years after the active phase of hostilities ends.

The results of the study have shown the need to comply with the requirements of international legal acts aimed at ensuring the protection of the environment or its individual structural elements during military operations and in the post-war period, the clarity of recording violations of the requirements of current Ukrainian legislation and international legal acts aimed at ensuring the protection of the environment or its individual structural elements during military operations and in the post-war period in this area, and the careful assessment of the damage caused to the natural environment. Further research in this field is promising from the point of view of studying European experience of criminal liability for environmental offences, taking into account the level and state of pollution of the natural environment, as well as with a view to strengthening work on reforming the provisions of the current CC of Ukraine.

■ Acknowledgements

None.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

■ References

- [1] Babailova, L.M. (2025). Compensation for environmental damage in criminal proceedings: International experience. *Scientific Bulletin of Uzhhorod National University*, 88(3), 123-127. [doi: 10.24144/2307-3322.2025.88.3.18](https://doi.org/10.24144/2307-3322.2025.88.3.18).
- [2] Bazov, O.V. (2023). Legal and institutional principles of environmental protection in the activities of international criminal justice. *Bulletin of the National Academy of Legal Sciences of Ukraine*, 30(2), 88-107. [doi: 10.31359/1993-0909-2023-30-2-88](https://doi.org/10.31359/1993-0909-2023-30-2-88).
- [3] Berdnik, I.V. (2019). *Criminal law protection of water resources: Theoretical and applied principles*. Kyiv: Dakor.
- [4] Daft, S. (2019). *Environmental destruction is a war crime, but it's almost impossible to fall foul of the laws*. Retrieved from <https://theconversation.com/environmental-destruction-is-a-war-crime-but-its-almost-impossible-to-fall-foul-of-the-laws-121180>.
- [5] Dmitriev, Yu.Ye. (2024). International legal protection of the environment from criminal encroachments during armed conflicts. *Scientific Bulletin of Uzhhorod National University. Law Series*, 3(81), 67-71. [doi: 10.24144/2307-3322.2024.81.3.8](https://doi.org/10.24144/2307-3322.2024.81.3.8).
- [6] Dudorov, O.O., & Movchan, R.O. (2020). On the directions of improving the mechanism of criminal-legal environmental protection (for the note of the developers of the new Criminal Code of Ukraine). *Bulletin of the Criminal Law Association of Ukraine*, 1(13), 92-125. [doi: 10.21564/2311-9640.2020.13.204733](https://doi.org/10.21564/2311-9640.2020.13.204733).

- [7] Environment Definition. (n.d.). Retrieved from <https://surl.li/iafbyz>.
- [8] Explanatory dictionary of the Ukrainian language. (2020). Retrieved from <https://surl.li/yonvly>.
- [9] Grushko, M.V. (2023). International legal support for the protection of the natural environment and the issue of liability for causing environmental damage in connection with the armed aggression of the Russian Federation against Ukraine. *Academic Visions*, 22. doi: 10.5281/zenodo.10071974.
- [10] Guiding Principles for the Protection of the Natural Environment in Armed Conflict. (1994). Retrieved from <https://surli.cc/jonihq>.
- [11] Makarenko, O.Yu., Makarenko, N.A., Nazymko, O.V., Gromenko, Yu.O., & Nesterenko, O.Yu. (2021). Problematic issues of criminal prosecution for illegal mining. *Scientific Bulletin of the National Mining University*, 4, 139-144. doi: 10.33271/nvngu/2021-4/139.
- [12] Marco, S.I. (2024). Certain issues of improving criminal law protection of legal relations in the environmental sphere. *Analytical and Comparative Jurisprudence*, 1, 516-521. doi: 10.24144/2788-6018.2024.01.90.
- [13] Matviychuk, V.K., & Olinyk, V.P. (2022). *Theoretical and practical problems of criminal-legal protection of the sea from pollution, littering as a global, social and legal problem of our time*. Kyiv: Lira-K Publishing House.
- [14] Mostepaniuk, L.O., & Pavlovska, A.A. (2020). Analysis of the elements of the crime provided for in Article 240-1 of the Criminal Code of Ukraine. *Bulletin of the Penitentiary Association of Ukraine*, 2, 126-133. doi: 10.34015/2523-4552.2020.2.12.
- [15] Movchan, R.O., Dudorov, O.O., Kamensky, D.V., Vozniuk, A.A., & Babanina, V.V. (2022). Criminal liability for illegal mining: Analysis of legislative amendments. *Scientific Bulletin of the National Mining University*, 5, 116-121. doi: 10.33271/nvngu/2022-5/116.
- [16] Mytrophanov, I.I. (2022). Criminal Offenses Against the Environment under the Draft Criminal Code of Ukraine. *Legal Scientific Electronic Journal*, 12, 375-379. doi: 10.32782/2524-0374/2022-12/88.
- [17] Nigreieva, O.O. (2021). International crimes and erga omnes obligations in the context of international environmental protection. *Rule of Law*, 44, 139-147. doi: 10.18524/2411-2054.2021.44.245087.
- [18] Orellana, M.A. (2005). *Criminal punishment for environmental damage: Individual and state responsibility at a crossroad*. *Georgetown International Environmental Law*, 17(4), 673-696.
- [19] Pakhomi, S.K. (2024). International legal regulation of environmental protection during armed conflict. *Kyiv Law Journal*, 3, 238-242. doi: 10.32782/klj/2024.3.34.
- [20] Pasyeka, O., & Vyshnevskaya, I. (2024). Compliance of criminal legislation of the EU and Ukraine in the field of combating human trafficking with the *acquis communautaire*. *Social & Legal Studies*, 7(4), 248-259. doi: 10.32518/sals4.2024.248.
- [21] Plant, G. (1992). *Environmental protection and the law of war: A "Fifth Geneva" Convention on the Environment in Time of Armed Conflict*. London: Belhaven Press.
- [22] Radchenko, A.M., & Tkachenko, O.M. (2020). International legal support for environmental protection in settlements. *Law. Human. Environment*, 11(4), 53-59. doi: 10.31548/law2020.04.006.
- [23] Sadova, T.S. (2022). Environmental protection during armed conflicts in the perspective of the adoption of the Fifth Geneva Convention. *Scientific Bulletin of Uzhhorod National University. Series Law*, 73(1), 186-190. doi: 10.24144/2307-3322.2022.73.30.
- [24] Sadova, T.S. (2023). *War crimes against the environment under international criminal law*. (Doctoral dissertation, Odesa National University named after I. I. Mechnikov, Odesa, Ukraine).
- [25] Schillinger, J., Özerol, G., Güven-Griemert, Ş., & Heldeweg, M. (2020). Water in war: Understanding the impacts of armed conflict on water resources and their management. *WIREs Water*, 7, article number e1480. doi: 10.1002/wat2.1480.
- [26] Turlova, Yu.A. (2023). Law enforcement practice in combating organised forms of complicity in environmental crimes. *Scientific Bulletin of Uzhhorod National University, Law Series*, 77(2), 191-198. doi: 10.24144/2307-3322.2023.77.2.33.
- [27] Turyk, M. (2023). *Environmental damage as a war crime – can Russia be punished for ecocide?* Retrieved from https://lb.ua/blog/mykola_turyk/558050_ekologichna_shkoda_yak_viyskoviy.html.
- [28] Vorobei, P.A., Matviychuk, V.K., Phelyk, V.I., Khar, I.O., & Matviychuk, O.V. (2022). *Theoretical and practical problems of criminal law protection of water bodies and the sea*. Kyiv State Enterprise "Express-Ob'yava".
- [29] Vronska, H. (2023). *Russia's full-scale invasion harms the environment not only of Ukraine, but also of all of Europe*. Retrieved from <https://supreme.court.gov.ua/supreme/pres-centr/news/1418573>.
- [30] Vynnyk, A., & Gazdaika-Vasylyshyn, I. (2023). Strengthening criminal liability for committing property and certain other offenses under martial law in Ukraine. *Social and Legal Studies*, 6(2), 9-16. doi: 10.32518/sals2.2023.09.

- [31] Weinstein, T. (2005). [Prosecuting attacks that destroy the environment: Environmental crimes or humanitarian atrocities?](#) *Georgetown International Environmental Law*, 11(4), 697-722.

Довкілля як об'єкт кримінально-правової охорони: проблеми визначення в національному й міжнародному законодавстві

Людмила Мостепанюк

Кандидат юридичних наук, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0003-2894-0654>

Олена Матюшенко

Кандидат наук з державного управління, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0003-1507-2085>

Наталія Симоненко

Кандидат юридичних наук, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0003-1048-278X>

■ **Анотація.** Актуальність роботи полягає в необхідності усвідомлення суспільством і державою реальності загрози довкіллю, що знаходить вияв у напрямках державної екологічної політики, основними принципами якої визначено гарантування екологічної безпеки в Україні, підвищення її рівня в зоні відчуження, забезпечення екологічної рівноваги й невідворотності відповідальності за порушення природоохоронного законодавства. Метою статті став системний аналіз проблематики охорони довкілля з огляду на положення національної та міжнародної кримінально-правової доктрини, виявлення її неузгодженостей та суперечностей, надання науково обґрунтованих рекомендацій, розроблення пропозицій щодо вдосконалення його застосування та усунення виявлених суперечностей. Методологічну основу дослідження склала система загальних і спеціальних методів, яка охоплює системно-структурний, логіко-догматичний, формально-юридичний, термінологічний методи. Виявлено недоліки кримінально-правової охорони довкілля та запропоновано шляхи їх подолання, а саме: означено механізми захисту довкілля в національному й міжнародному вимірах, окреслено проблемні питання та неузгодженості, що можуть виникати на законодавчому рівні під час формулювання чи вдосконалення відповідної кримінально-правової заборони, визначено норми, які здатні призвести до правових колізій, доведено необхідність посилення імперативного характеру законодавчих норм з метою забезпечення гарантій права на безпечне довкілля. Проаналізовано доцільність активізації зв'язку права на безпечне довкілля з іншими гарантованими Конституцією України правами людини. Сформульовано висновки у сфері вдосконалення законодавства щодо відповідальності за кримінальні правопорушення проти довкілля, зосереджено увагу на необхідності врахування реалізації гарантій права на безпечне довкілля як елементу не тільки екологічної, а й національної безпеки держави, запропоновано конкретні напрями вдосконалення чинного кримінального законодавства України, з огляду на положення міжнародних актів, спрямованих на посилення ефективності кримінально-правової охорони довкілля, доведено доцільність використання принципу чіткості формулювання юридичної термінології в законодавчій практиці. Практична цінність роботи полягає в тому, що результати наукового пошуку сприятимуть повній і правильній кваліфікації практичними працівниками аналізованих діянь, дотриманню принципу справедливості в межах реалізації кримінальної відповідальності

■ **Ключові слова:** кримінальне правопорушення; кримінальна відповідальність; міжнародно-правовий акт; воєнний стан; навколишнє природне середовище; корисні копалини; надра

UDC 342.9:347.63

DOI: 10.63341/naia-herald/3.2025.43

Declaring a person incapacitated and appointing a guardian: Standards of procedural fairness in the ECHR judgement

Nataliia Polishko*

Doctor of Philosophy in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-3898-3896>

Olha Verenkiotova

PhD in Law
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0001-9809-0777>

Anastasiia Zadorozhna

PhD in Law
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-8681-1386>

■ **Abstract.** The study aimed to identify and systematise the main standards of procedural fairness developed in the case law of the European Court of Human Rights concerning the procedures for limitation of legal capacity and guardianship, with a subsequent analysis of the peculiarities of their implementation in the national legal systems of European States. The study was conducted using a comprehensive methodological approach that combined a systematic method for analysing the interrelationships between the elements of procedural justice, a comparative legal method for comparing the approaches of different European legal systems, a case law analysis method for systematising key decisions, and a structural and functional analysis for studying the functioning of guardianship models. As a result of the systematisation of case law, five fundamental standards of procedural fairness were identified: the obligation to ensure personal participation or proper representation of a person in court proceedings, the application of an individual approach to the assessment of legal capacity and ensuring the proportionality of restriction measures, guaranteeing periodic review of decisions on the restriction of legal capacity, taking into account the will and preferences of the person in decision-making, and ensuring independent legal assistance. A comparative analysis of the implementation of the standards in the three countries under study revealed significant differences: the progressive Betreuung system in Germany with support without deprivation of rights, the decision-making support system in Finland without transfer of rights and the limited compliance of Ukrainian legislation with European requirements due to the lack of mandatory personal participation of a person in court hearings and mechanisms for periodic review of decisions. The practical significance of the study is determined by the creation of a methodological framework for assessing the effectiveness of national legal systems and developing practical recommendations for legislative reforms in the field of guardianship and incapacity. The findings of the study can be used by judicial authorities, legislators and human rights organisations to improve

■ **Suggested Citation:**

Polishko, N., Verenkiotova, O., & Zadorozhna, A. (2025). Declaring a person incapacitated and appointing a guardian: Standards of procedural fairness in the ECHR judgement. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 43-59. doi: 10.63341/naia-herald/3.2025.43.

■ *Corresponding author

■ Received: 28.05.2025; Revised: 27.08.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

procedural safeguards and transition from traditional models of full guardianship to modern decision-making support mechanisms that respect the principles of human dignity and autonomy of persons with disabilities

■ **Keywords:** legal personality; legal capacity; human rights protection; international standards; case law; disability

■ Introduction

Procedures for declaring a person incapacitated and appointing a guardian are central elements of legal systems designed to ensure the protection of persons with disabilities while respecting the principles of legal autonomy. In the context of the evolution of international human rights law, under the influence of the UN Convention on the Rights of Persons with Disabilities (CRPD¹) and the case law of the European Court of Human Rights (ECtHR), national legal systems need to adapt traditional mechanisms to modern standards of procedural fairness. The growing number of cases involving violations of the rights of persons with psychosocial and intellectual disabilities in the legal incapacity procedures demonstrates the need for a systematic analysis of the relevant legal standards. The issue of harmonisation of national procedures with European standards is of relevance, given the development of the doctrine of decision support as an alternative to traditional models of substitute decision-making. At the same time, the ECHR case law forms new guidelines for national courts to ensure procedural guarantees in capacity cases, which requires a thorough legal analysis to understand current trends in this area of law.

Scientific research on the procedural aspects of recognising incapacity and appointing guardianship has been developed within the framework of an interdisciplinary approach, covering the legal, medical and social aspects of this issue. Research in this area has focused on analysing the functioning of specialised tribunals, the theoretical basis for assessing capacity and the practical aspects of ensuring procedural fairness. The procedural aspects of mental health tribunals were the subject of a detailed study by S. Boyle & T. Walsh (2020), which analysed the balance between efficiency and procedural fairness. The study identified shortcomings in informing clients about procedures, the quality of evidence, and mechanisms for challenging medical opinions. F. Jager *et al.* (2024) extended this analysis by comparing the views of lawyers and health professionals on the functioning of mental health tribunals. The study found differences between the professional groups: lawyers criticised the tribunals' bias in favour of medical opinion, while health professionals

expressed concerns about the adversarial nature of the procedures and their impact on patients.

Ukrainian scholars have made an important contribution to the study of legal aspects of legal capacity and procedural guarantees. I.M. Popovych (2020) conducted a detailed analysis of forensic examination as a source of evidence in special proceedings, particularly in cases of declaring an individual incapacitated. The study found that an expert's opinion is significant in the process of proof in special proceedings, especially when special knowledge is required. The study emphasised the need for judicial control over the legality of the appointment and conduct of an expert examination, as well as a comprehensive assessment of the expert's opinion for compliance with the requirements of procedural design. I.A. Borovska (2020) studied the problematic issues of considering cases on declaring an individual incapacitated in the context of reforming the civil procedural legislation of Ukraine. The study revealed formal conflicts between certain provisions of the current civil procedural legislation regarding the establishment of the validity period of a decision to declare an individual incapacitated. The study substantiated the need to ensure the personal participation of the person in question in the court proceedings as a means of ensuring access to justice following European standards.

The theoretical foundations of capacity assessment have been studied through the prism of different conceptual approaches in legal science. M. Scholten (2025) systematised three main approaches to the assessment of legal capacity: status, function and performance, analysing their advantages and limitations in the context of the CRPD. The study considered the concept of decision support as a key element of the modern approach to ensuring the rights of persons with disabilities. A.R. Keene *et al.* (2023) critically analysed the challenges to the legitimacy of the concept of capacity put forward by the Committee on the Rights of Persons with Disabilities and argued for the preservation of a functional approach to assessing capacity with adequate decision support. The fundamental issues of legal capacity in the context of international human rights law were analysed by J. Craigie *et al.* (2019), who

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

examined different interpretations of Article 12 of the CRPD¹ and their implications for national legal systems. The authors found that the differences in approaches stem from different understandings of the consequences of limited legal capacity, priorities of values and decision-support capabilities. The study emphasised the interconnection between resource provision, legal recognition and the actual freedoms of persons with disabilities.

The general principles of procedural justice in the European context and their practical implementation have been studied by scholars from the standpoint of comparative jurisprudence. B. Cerekja & O. Mucollari (2024) analysed the mechanisms for ensuring that trials comply with the standards of Article 6 of the European Convention on Human Rights (ECHR)². The study revealed different approaches of European countries to balancing the efficiency and fairness of judicial procedures, identifying systemic problems in the implementation of international standards at the national level. The study determined that the judicial systems of France and Poland favoured expedited review of cases, which could harm the rights of the accused, while Germany, Italy and Albania emphasised comprehensive review of cases, which guaranteed fairness but led to delays in procedures.

Modern approaches to assessing the fairness of procedures and the consideration of the human factor in decision-making systems were reviewed by C. Starke *et al.* (2022) in the context of algorithmic decision-making. Although the study highlighted technological aspects, it provided methodological insights into the perception of procedural fairness and the importance of an interdisciplinary approach to fairness assessment, which is relevant to the analysis of traditional court procedures in capacity cases. The study emphasised the need to incorporate contextual factors and diverse stakeholder perspectives when designing and implementing fair decision-making procedures. Existing studies do not fully cover the practical mechanisms for implementing ECHR standards in national procedures for recognising incapacity and do not contain a systematic analysis of the effectiveness of different models of procedural guarantees in ensuring the rights of persons with psychosocial and intellectual disabilities. The interaction between European standards of procedural justice and national legal traditions in the field of guardianship also requires further research.

The study aimed to determine the standards of procedural fairness established by the case law of the European Court of Human Rights in cases of declaring a person incapacitated and appointing a guardian. The objectives of the study were:

- to systematise the key judgments of the European Court of Human Rights in cases of recognition of incapacity to identify the basic principles of procedural justice;
- to conduct a comparative legal analysis of Ukrainian legislation on the procedures for recognising incapacity with the standards established by the case law of the European Court of Human Rights;
- to study the experience of European countries in reforming guardianship systems and develop recommendations for improving Ukrainian legislation in line with European standards of procedural fairness.

■ Materials and Methods

The conceptual framework of the study was based on the theoretical foundations of procedural justice in international human rights law, in particular the doctrinal provisions of Article 6 of the European Convention on Human Rights³ on the right to a fair trial, the principles of Article 12 of the UN Convention on the Rights of Persons with Disabilities⁴ on equal recognition before the law, as well as conceptual approaches to the evolution of the understanding of disability from a medical to a social model. The theoretical basis of the study was also the doctrinal principles of the relationship between the state duty to protect vulnerable persons and guarantee their right to autonomy and self-determination, which were formed under the influence of international legal standards and paradigmatic changes in approaches to the legal personality of persons with disabilities⁵. Of particular importance for the theoretical basis of the study was General Comment No. 1 of the UN Committee on the Rights of Persons with Disabilities, which was analysed to study current international approaches to the legal personality of persons with disabilities and their impact on procedural justice in cases of incapacity.

The methodological basis of the study was an integrated approach which combines general scientific and special legal methods of scientific knowledge. The systemic method was used to analyse the interrelationships between various elements of procedural justice and their impact on ensuring the rights of persons with disabilities, which was used to address

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

² European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

³ *Ibidem*, 1950.

⁴ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

⁵ General Comment of Committee on the Rights of Persons with Disabilities No. 1 “Article 12: Equal Recognition Before the Law”. (2014, May). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf>.

procedural guarantees as an integral system of inter-related components and to identify five fundamental standards of procedural justice. The comparative legal method was used to compare the approaches of different European legal systems to the regulation of the procedures for recognising incapacity when analysing the legislation of Ukraine, Germany and Finland on the implementation of the standards of the European Court of Human Rights. The selection of these countries was due to the need to present different models of legal regulation: Ukraine as an example of a post-Soviet legal system in the process of adapting to European standards, Germany as a representative of the continental European tradition with a progressive Betreuung system, and Finland as an example of the Scandinavian model with an emphasis on supportive mechanisms. The method of case law analysis was used to systematise the key judgments of the European Court of Human Rights in cases of recognition of incapacity to stand trial with a view to highlighting the basic principles of procedural justice. The structural-functional analysis was used to study the functioning of various models of guardianship and decision-making support mechanisms in European legal systems. The formal legal method was used to analyse legal acts and determine their compliance with international standards of procedural fairness when studying the provisions of the Civil and Civil Procedure Codes of Ukraine.

The research was based on the judgments of the European Court of Human Rights in the cases of *Stanev v. Bulgaria*¹, *D.D. v. Lithuania*², *Alajos Kis v. Hungary*³, *Ivanovic v. Croatia*⁴, *M.S. v. Ukraine*⁵ and *Miranda Magro v. Portugal*⁶. The selection of these cases was due to their fundamental importance for the formation of the European doctrine of procedural justice, chronological coverage of the development of case law over two decades and presentation of various aspects of violations of procedural guarantees. International legal instruments included the Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of

Biology and Medicine⁷. The national legislation was represented by the Civil Code of Ukraine⁸, the Civil Procedure Code of Ukraine⁹, as well as relevant regulations of Germany on the Betreuung system and Finland on the regulation of guardianship. The study also relied on analytical materials by Inclusion Europe on the implementation of alternative decision support mechanisms (Inclusion Europe, 2022), and documents of the Ministry of Health of Ukraine on reforming the mental health system (Ministry of Health of Ukraine, 2018). The specificity of the source base was a combination of court decisions of international and national courts, international legal acts, national legislation and analytical materials, which provided a comprehensive approach to the study of procedural justice in cases of incapacity at different levels of legal regulation.

■ Results

Conceptual foundations of procedural justice in cases of incapacity. Procedural fairness in cases of declaring a person incapacitated and appointing a guardian is one of the most complex and conceptually significant aspects of contemporary international human rights law. This legal category embodies the fundamental tension between the need to protect persons who may require additional support in decision-making and the imperative to preserve their autonomy, right to self-determination and equality before the law. The conceptual framework of procedural justice in this area was formed during the 1990s and 2020s under the influence of international legal standards, the evolution of the understanding of disability as a social construct, and paradigmatic changes in doctrinal approaches to the legal personality of persons with disabilities.

The conceptual basis for procedural fairness in cases of incapacity is Article 6 of the European Convention on Human Rights¹⁰, which establishes the fundamental right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the

¹ Judgement of the European Court of Human Rights in Case No. 36760/06 “Stanev v. Bulgaria”. (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

² Judgement of the European Court of Human Rights in Case No. 13469/06 “D.D. v. Lithuania”. (2012, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-109091>.

³ Judgement of the European Court of Human Rights in Case No. 38832/06 “Alajos Kiss v. Hungary”. (2010, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-98800>.

⁴ Judgement of the European Court of Human Rights in Case No. 13006/13 “Ivanović v. Croatia”. (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-146393>.

⁵ Judgement of the European Court of Human Rights in Case No. 2091/13 “M.S. v. Ukraine”. (2017, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-175140>.

⁶ Judgement of the European Court of Human Rights in Case No. 30138/21 “Miranda Magro v. Portugal”. (2024, January). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-229894%22%5D%7D>.

⁷ Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine. (1997, April). Retrieved from <https://rm.coe.int/168007cf98>.

⁸ Civil Code of Ukraine. (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁹ Civil Procedural Code of Ukraine No. 1618-IV. (2004, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

¹⁰ European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

determination of civil rights and obligations. This principle is of particular legal significance in the context of legal incapacity cases, as court decisions in such cases may radically limit or completely deprive a person of legal personality and the ability to make legally significant decisions in all areas of life. The European Court of Human Rights has repeatedly emphasised in its established case law that the right to a fair trial is so central to a democratic society that there can be no justification for a restrictive interpretation of Article 6 § 1 of the Convention, especially given that this right is “unconditional” (Goss, 2023). A key characteristic of procedural fairness in incapacity cases is the requirement to ensure effective participation of the person in the judicial process, which is emphasised in international doctrine by the provision that access to the courts loses its meaning if the person cannot understand or participate in the court procedures (Vogiatzis, 2022). The requirements for procedural fairness cover a wide range of procedural guarantees, including the right to qualified legal assistance, the right to be heard in person or through a representative, the right to an independent medical examination, the right to appeal a court decision to a higher court, and the right to periodic review of a decision on the restriction of legal capacity.

The evolution of approaches to the recognition of incapacity demonstrates a fundamental paradigm shift from the medical to the social model of disability, which has had a fundamental impact on the rethinking of procedural justice in this area. The medical model of disability, which dominated from the nineteenth century to the last decades of the twentieth century, viewed disability as a defect within the individual, a deviation from normal traits and characteristics that required medical intervention or “correction” (University of California..., 2024). This model was based on two main assumptions that had a dangerous impact on human rights: first, that persons with disabilities need care and social welfare, and second, that impairment can preclude legal capacity (Degener, 2016). Instead, the social model of disability, which developed in the 1970s under the influence of the disability rights movement and criticism of the medical model, argues that disability is caused by the way society is organised, rather than by individual impairments (Disability Nottinghamshire, 2020). This approach has fundamentally changed the understanding of procedural justice, shifting the focus from the medical “fixing” of a person to the structural adaptation of judicial

procedures, legal norms and social institutions to their needs and capacities.

The UN Convention on the Rights of Persons with Disabilities¹, adopted by the UN General Assembly on 13 December 2006 and opened for signature on 30 March 2007, established a new legal paradigm for understanding legal personality and procedural justice in international law. Article 12 of the Convention establishes the revolutionary principle that States Parties reaffirm that persons with disabilities have the right to recognition as persons before the law everywhere and that persons with disabilities enjoy legal personality on an equal basis with others in all aspects of life. It is of fundamental importance that all measures relating to the exercise of legal personality should include appropriate and effective safeguards to prevent abuse following international human rights law and that such safeguards should ensure that measures relating to the exercise of legal personality respect the rights, will and preferences of the person, are free from conflict of interest and undue influence, are proportionate and tailored to the circumstances of the person, are applied for the shortest possible time and are

The UN Committee on the Rights of Persons with Disabilities in its General Comment No. 1 on Article 12², adopted on 11 April 2014, formulated a revolutionary approach to legal personality that fundamentally redefines traditional legal constructs. The Committee argues that Article 12 introduces a new paradigm of “universal legal personality” that cannot be restricted based on disability or mental incapacity (Series & Nilsson, 2018). In its commentary, the Committee stated that the right to equal recognition before the law applies “everywhere”, which means that there are no circumstances in which a person may be deprived of the right to recognition as a person before the law or in which this right may be restricted (United Nations in Ukraine, 2024). The Committee also emphasised that the right to equal recognition before the law implies that legal personality is a universal attribute inherent in all persons by their human nature and should be upheld for persons with disabilities on an equal basis with others (Centre for Global..., 2014). This approach requires a fundamental overhaul of traditional legal incapacity procedures and a shift from substitute decision-making to decision-support mechanisms. In its General Comment No. 1, the Committee proposes replacing the “best interests” standard with a “best interpretation” guarantee to ensure that the rights of persons with disabilities to legal personality are

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

² General Comment of Committee on the Rights of Persons with Disabilities No. 1 “Article 12: Equal Recognition Before the Law”. (2014, May). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf>.

respected and protected from abuse on an equal basis with those of others (Center for Global..., 2014).

An additional international legal instrument that has an impact on the understanding of procedural fairness in incapacity cases is the Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine (Oviedo Convention¹), signed on 4 April 1997 in Oviedo, Spain. This Convention is the only international legally binding instrument for the protection of human rights in the biomedical field. Article 5 of the Oviedo Convention establishes the general rule that interventions in the field of health care may only be carried out after the person concerned has given free and informed consent, and the person must receive appropriate information in advance about the purpose and nature of the intervention, as well as its consequences and risks. The Convention also contains special rules for persons who are unable to give free and informed consent, which directly relates to issues of procedural fairness in incapacity cases.

A comparative analysis of the approaches to procedural fairness in different European legal systems reveals significant differences in the understanding and practical application of these principles, reflecting the diversity of legal traditions on the continent. Modern national legal systems are generally based on one of the main legal traditions: civil law or common law, with each legal system shaped by its unique history and including individual variations (University of Michigan Law Library, 2024). In the Anglo-Saxon legal tradition, procedural justice develops mainly through judicial precedents, which contribute to flexible adaptation to individual case circumstances and the evolutionary development of legal standards. In common law systems, judicial decisions take precedence over other types of law, including legislation, with judges creating law with each new decision (University of Michigan..., 2024). The continental European legal tradition is characterised by a more systematic and codified approach to the regulation of incapacity procedures. In civil law systems, the primary source of law is a written code, and the written constitution is based on specific codes that establish fundamental rights and obligations (University of Michigan..., 2024). The most important are the French Civil Code of 1804² and the German Civil Code of 1900³, each of which was the result of long and careful study by appointed commissions, but they are based on different traditions and theories (Swift, 2021).

The balance between the protection of vulnerable persons and preserving autonomy is a central conceptual dilemma of procedural justice in incapacity cases that requires a delicate legal balancing act. On the one hand, states have a positive obligation to protect persons who may not have the full capacity to protect themselves from abuse, exploitation or harm. On the other hand, the CRPD serves as a major catalyst for the global disability rights movement, enabling a shift from viewing persons with disabilities as objects of charity, medical treatment and social protection to viewing them as full and equal members of society with human rights. This legal tension requires the development of balanced procedural safeguards that provide the necessary protection without sacrificing the fundamental right to self-determination and autonomy. The development of the concept of procedural fairness in incapacity cases also reflects the general evolution of international human rights law from formal to substantive and transformative equality. Transformative equality aims to change structures and systems through a variety of positive measures (Degener, 2016), which means that procedural justice cannot be limited to the formal provision of the right to participate in court proceedings, but must include active measures to ensure that a person has a real opportunity to comprehend procedures, effectively defend their rights and have access to the necessary support to exercise their legal personality.

Case law of the European Court of Human Rights in cases of recognition of incapacity. The case law of the European Court of Human Rights in cases of declaring a person incapacitated and appointing a guardian constitutes a systematic body of judgments that define mandatory standards of procedural fairness in the states parties to the Convention for the Protection of Human Rights and Fundamental Freedoms. In 2004-2024, the Court developed the doctrinal framework for the relationship between the state duty to protect vulnerable persons and the guarantee of the right to autonomy, self-determination and effective participation in judicial proceedings. Its judgments have established specific procedural requirements for national legal systems and created legal standards for the legal personality of persons with disabilities that have transformed traditional approaches to guardianship and incapacity regulation.

The European Court of Human Rights has identified three categories of violations of the Convention.

¹ Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine. (1997, April). Retrieved from <https://rm.coe.int/168007cf98>.

² Civil Code of France. (1804, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/1804-03-25.

³ Civil Code of Germany. (1900, January). Retrieved from <https://www.gesetze-im-internet.de/bgb/>.

Firstly, a violation of Article 6 § 1 of the Convention¹ on the right to a fair trial due to non-compliance with procedural guarantees, with the Court emphasising that the discretionary powers of national authorities regarding procedural rules for persons with mental disorders cannot violate the essence of the right to a fair trial. Secondly, a violation of Article 8 of the Convention as a result of disproportionate interference with the right to respect for private life through the complete deprivation of legal capacity, which did not comply with the principle of proportionality between the measures applied and the legitimate aim of the state (Mental Disability Advocacy Centre, 2008). Thirdly, a violation of Article 5 of the Convention on the Right to Liberty and Security of the Person due to unlawful forced hospitalisation without sufficient justification for the need to detain the person (Human Rights Law Centre, 2017).

The case of *Stanev v. Bulgaria*² (2012), considered by the Grand Chamber of the European Court of Human Rights, extended the concept of deprivation of liberty to include cases of placement of persons with psychosocial disabilities in social and medical institutions. Rusi Kosev Stanev, who was diagnosed with schizophrenia in 1975, was partially deprived of legal capacity in November 2000 on the application of stepmother and half-sister without knowledge and was then placed in 2002 in an isolated institution approximately 400 kilometres from hometown. The Grand Chamber's judgment set new legal standards for the institutionalisation of persons with disabilities. The Court found that Stanev's placement in a social and medical institution without consent for almost a decade, with the institution controlling documents and finances and requiring the director's permission to leave, constituted a deprivation of liberty that was not following national law and was unlawful under Article 5(1) of the Convention (Human Rights Law Centre, 2024). Additionally, the Court found a violation of Article 5(4) of the Convention due to the lack of access to judicial review of the detention and a violation of Article 3 of the Convention due to inhuman or degrading conditions of detention (Human Rights Law Centre, 2024). The case of *D.D. v. Lithuania*³ (2012) added to the

European jurisprudence with legal positions on procedural guarantees in cases of incapacity and involuntary institutionalisation, in particular, the right of access to court. D.D., a Lithuanian citizen suffering from schizophrenia, was legally declared incapacitated in 2000 at the request of foster father after simplified court procedures in which the citizen was not able to participate, and in 2004 was placed in a social and medical institution without consent. The European Court of Human Rights stated that D.D.'s forced placement constituted a deprivation of liberty due to the administration's full control over the person's treatment, care, accommodation and freedom of movement, while Lithuanian law did not provide for judicial review of such institutionalisation, and a person without legal capacity was deprived of the right to appeal to the court (Human Rights Monitoring Institute, 2012).

The European Court of Human Rights has developed additional standards on individual approach, proportionality of measures and consideration of the person's will in the procedures of recognition of incapacity. In the case of *Alajos Kisz v. Hungary*⁴, the Court established the principle of limited necessity, according to which guardianship orders should be as broad in scope and time as necessary to protect the interests of the person. In *Ivanović v. Croatia*⁵, the Court emphasised the requirement of strict scrutiny in cases of measures that adversely affect the individual autonomy of a person. Concerning the right to periodic review, in *M.S. v. Ukraine*⁶, the Grand Chamber found that the significance of decisions on incapacity requires that restrictions on the right of access to courts be limited and proportionate to a legitimate aim. The Court attaches particular importance to the consideration of the person's will and preferences, noting in *Stanev v. Bulgaria*⁷ that the lack of legal capacity does not mean that the person cannot understand the situation and emphasises the importance of considering the person's clearly expressed wishes to leave the institution or to regain legal capacity. Summarising the reviewed case law can be used to systematise the main standards of procedural fairness established by the European Court of Human Rights, which are presented in Table 1.

¹ European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

² Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

³ Judgement of the European Court of Human Rights in Case No. 13469/06 "D.D. v. Lithuania". (2012, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-109091>.

⁴ Judgement of the European Court of Human Rights in Case No. 38832/06 "Alajos Kiss v. Hungary". (2010, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-98800>.

⁵ Judgement of the European Court of Human Rights in Case No. 13006/13 "Ivinović v. Croatia". (2014, September). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-146393>.

⁶ Judgement of the European Court of Human Rights in Case No. 2091/13 "M.S. v. Ukraine". (2017, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-175140>.

⁷ Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

Table 1. Main standards procedural justice in cases of incapacity: the ECHR practice

No.	Standard of procedural fairness	Justification in the ECHR case law	Key cases
1	Individual approach and proportionality of measures	Prohibition of automatic deprivation of legal capacity based on a medical diagnosis alone	Alajos Kiss v. Hungary ¹
2	Periodic review of decisions	The court must guarantee the right to regular review of restrictions	M.S. v. Ukraine ²
3	Consideration of the person's will and preferences	The court must incorporate the wishes of the person, even if legally incapacitated	Stanev v. Bulgaria ³
4	Access to legal aid	A person has the right to a representative or defence counsel in cases of legal capacity	D.D. v. Lithuania ⁴

Source: created by the author

The system of procedural fairness standards presented in Table 1 reflects the comprehensive approach of the European Court of Human Rights to the protection of persons with disabilities, where each standard plays a specific role within a single doctrinal concept. The relationship between procedural guarantees and substantive legal principles, which ensures the continuity of protection from the moment of initiation of the procedure to the stage of enforcement of court decisions, was emphasised. A key feature of this model is the emphasis on an individual approach and constant review of restrictive measures, which helps preserve the autonomy of the individual to the maximum extent possible and prevents unjustified interference with the rights. An important element is also the inclusion of requirements to incorporate the person's will and ensure legal assistance in the general system of guarantees, which emphasises the focus on a supportive model of guardianship instead of the traditional paternalistic approach. The proposed systematisation demonstrates how different procedural elements can effectively complement each other, creating a holistic architecture of legal protection for vulnerable persons.

The Court's current case law continues to develop these standards in the direction of strengthening procedural safeguards and individual approaches. The case of *Miranda Magro v. Portugal*⁵ confirmed the principle of the link between Articles 3 and 5 of the Convention on the conditions of detention of persons with mental disorders, establishing that treatment conditions are relevant to assessing the lawfulness of detention of a person with a mental disorder. At the same time, national courts apply

European standards in cross-border proceedings, as demonstrated by the case of *Aberdeenshire County Council v. S.F.*⁶, where the English court refused to recognise a Scottish guardianship order because of a violation of the person's right to be heard, which was contrary to Article 5(1)(e) of the Convention.

The systematisation of case law identified five fundamental standards of procedural fairness established by the European Court of Human Rights. Firstly, it is mandatory to ensure personal participation or proper representation of a person in court proceedings relating to legal capacity, while the absence of a person at a hearing without objective obstacles and proper representation constitutes a violation of the right to a fair trial. Secondly, applying an individual approach to the assessment of legal capacity and ensuring the proportionality of restrictive measures, which excludes the automatic application of standard solutions solely based on a medical diagnosis. Thirdly, guarantees periodic review of decisions on the restriction of legal capacity and ensures the right of a person to appeal against such decisions, including the possibility of independent appeal to the court. Fourthly, incorporating the person's will and preferences when making decisions on limiting legal capacity and placement in institutions, even if there are certain limitations in the ability to make decisions. Fifth, ensuring independent legal assistance and preventing obstruction of access to legal representation. These standards form a comprehensive system of procedural safeguards aimed at protecting the rights and interests of persons with disabilities while preserving their autonomy and self-determination to the

¹ Judgement of the European Court of Human Rights in Case No. 38832/06 "Alajos Kiss v. Hungary". (2010, May). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-98800>.

² Judgement of the European Court of Human Rights in Case No. 2091/13 "M.S. v. Ukraine". (2017, July). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-175140>.

³ Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

⁴ Judgement of the European Court of Human Rights in Case No. 13469/06 "D.D. v. Lithuania". (2012, February). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-109091>.

⁵ Judgment of the European Court of Human Rights in Case No. 30138/21 "Miranda Magro v. Portugal". (2024, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-230821>.

⁶ Judgement of the Court of Protection in Case "Aberdeenshire Council v. SF & Ors (No. 2)". (2024, March). Retrieved from <https://courtprotectionhub.uk/cases/aberdeenshire-council-v-sf-ors-no-2-2024-ewcop-10>.

maximum extent possible. The practical significance of the standards formulated by the European Court of Human Rights is determined by the degree of their implementation in the national legal systems

of the States Parties to the Convention. A comparative analysis of the implementation of these standards in the legislation of Ukraine, Germany and Finland is presented in Table 2.

Table 2. Comparative characteristics of the implementation of ECHR standards in the legislation of Ukraine and selected European countries

ECHR standard	Ukraine	Germany	Finland
Personal participation of a person in court	Not mandatory (the Civil Code ¹ and the Code of Civil Procedure ² do not guarantee the presence of a person)	Participation of the person or a representative within the Betreuung is provided for	Participation of the individual is a priority; the law provides for support mechanisms
Periodic review	Not necessarily fixed, initiated only by the guardian or guardianship authority	Provided for by law every 7 years or upon application	5-year maximum set; automatic review
Consideration of the person's will	Formally not mandatory	Mandatory consideration of the person's wishes	Enshrined in law; interests and desires are considered
Provision of legal aid	Depends on the initiative of the guardian or guardianship authority	A lawyer is guaranteed for every decision	Automatic state legal aid
Form of guardianship (support/restrictions)	Complete deprivation of legal capacity with limited alternatives	Betreuung model support without deprivation of rights	Decision support system without transfer of rights

Source: compiled by the author based on Y. Melamed *et al.* (2007), K. Karjalainen (2022), K. Näkki *et al.* (2024)

The comparative characteristics presented in Table 2 demonstrate different models of implementation of European standards of procedural fairness, reflecting the specifics of national legal traditions and the level of integration of international obligations into domestic legislation. The analysis reveals a graduation from minimal compliance with conventional requirements to progressive approaches that exceed the basic standards of the European Court of Human Rights. The differentiation between the formal enshrining of procedural guarantees and their practical implementation is particularly revealing, highlighting the importance of not only regulatory frameworks but also the institutional capacity of legal systems to ensure effective protection of the rights of persons with disabilities. The variety of approaches to organising periodic reviews and considering the will of the person reflects different concepts of the balance between protecting vulnerable persons and preserving their autonomy. The systematisation also demonstrates the evolution from the traditional model of full guardianship to modern forms of supported decision-making, which correlates with current international standards on the rights of persons with disabilities and the requirements of the UN Convention on the Rights of Persons with Disabilities³.

Implementation of European standards of procedural fairness in national legislation. The implementation of European standards of procedural

fairness in cases of declaring a person incapacitated and appointing a guardian into national legislation is a complex multidimensional process that requires comprehensive reform of legal, institutional and procedural mechanisms. The practice of European countries demonstrates a variety of approaches to this problem, from gradual modifications of existing guardianship systems to a radical transition to decision-support models. At the same time, the numerous challenges faced by national legal systems in trying to bring the norms in line with the standards set by the European Court of Human Rights and the UN Convention on the Rights of Persons with Disabilities demonstrate the need for a balanced approach that incorporates both international obligations and the specifics of national legal traditions and socio-economic conditions.

The state of implementation of European standards of procedural fairness in Ukrainian legislation is characterised by certain positive developments but retains significant gaps that do not fully meet the requirements established by the case law of the European Court of Human Rights. The Civil Code of Ukraine⁴ in Articles 36-42 establish procedures for restricting civil capacity and declaring a person incapacitated, with Article 36 providing that a court may restrict the civil capacity of an individual in case of abuse of alcohol, drugs, toxic substances, gambling, etc. and thus endangers personal financial situation

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

² Code of Civil Procedure of Ukraine. (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

³ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

⁴ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

or of a family, as well as other legally obliged persons. The procedure for restricting a person's civil capacity is established by the Civil Procedure Code of Ukraine¹, and a person's civil capacity is restricted from the moment a court decision to that effect enters into force. In addition, Article 39 of the Civil Code of Ukraine provides that an individual may be declared incapacitated by a court if, as a result of a chronic, persistent mental disorder, a person is unable to understand the significance of actions and/or to control them. At the same time, Article 42 establishes the possibility of restoring the civil capacity of a person who has been declared incapacitated at the request of a guardian or guardianship authority, if it is established that, as a result of recovery or significant improvement of mental state, the incapacitated regained the ability to understand the significance of personal actions and to control them.

The Civil Procedure Code of Ukraine² contains detailed procedural rules on the participation of persons with limited legal capacity in court proceedings, in particular, Article 43 provides that if a party or third party declared legally incapacitated or with limited civil capacity has no legal representative, the court, upon the proposal of the guardianship and trusteeship authority, shall appoint a guardian or trustee and involve them in the case as legal representatives. An important provision is Article 39, which establishes that the rights, freedoms and interests of minors under the age of fourteen, as well as incapacitated persons, are protected in court by their parents, adoptive parents, guardians or other persons specified in the law. However, an analysis of these provisions in the light of the standards established by the case law of the European Court of Human Rights reveals several problematic aspects. Firstly, the Ukrainian legislator does not provide for mandatory personal participation of a person in court proceedings to restrict legal capacity. Secondly, there are no clear guarantees of periodic review of decisions on the restriction of legal capacity, which does not meet the standards set out in *Stanev v. Bulgaria*³. Thirdly, the legislation does not contain sufficient procedural guarantees for considering the will and preferences of the person when making decisions on the restriction of legal capacity.

At the same time, Ukraine has taken some steps towards reforming its mental health care system, which is directly related to procedural fairness in incapacity cases. On 10 June 2018, Ukraine adopted the Law of Ukraine No. 2205-VIII "On Amendments to Certain Legislative Acts of Ukraine on the Provision

of Mental Health Care"⁴, which aims to bring the mental health care system in line with international standards (Ministry of Health of Ukraine, 2018). The Ministry of Health of Ukraine has developed several strategic steps to improve the quality of mental health care and services, including the introduction of comprehensive and evidence-based treatment options, prevention measures, early detection, timely referral to a psychiatrist, and training for medical and multidisciplinary teams (Ministry of Health of Ukraine, 2018). On 27 December 2017, Ukraine adopted a concept for the development of mental health care for the period up to 2030, which envisages a transition from an institutional to a community model of mental health services (The Lancet Psychiatry, 2020). However, according to experts of the World Psychiatric Association, the second phase of the healthcare reform was not properly prepared and implemented, which led to a 50.25% reduction in funding for psychiatric hospitals between April and December 2020 compared to the same period in 2019.

The positive experience of European states in reforming guardianship and incapacity systems demonstrates various models of implementation of international standards that can serve as a guide for Ukraine and other states in the process of legislative reforms. Germany carried out a significant reform of its guardianship system in 1990, replacing the traditional institutions of guardianship and custody with a single legal institution of "care and assistance" (*Betreuung*), which provides a flexible combination of support and intervention. This system does not involve depriving the person of their legal status or any other legal rights, and the carer can be a family member, an agent of an approved carers' association or an agent of a public authority responsible for coordinating care (Melamed *et al.*, 2007). Austria has also implemented a progressive adult protection system that emphasises the principle of subsidiarity and the use of the least restrictive means to resolve an individual's affairs. The Austrian Federal Ministry for Constitutional Affairs has developed new adult protection legislation that aims to balance the right to personal autonomy and protection (Karjalainen, 2022). Sweden, Denmark and Finland have also adopted similar legislation to Finland's to protect individuals who are unable to manage their affairs due to ill health or similar reasons, with the principle of subsidiarity and the principle of using the least restrictive means to manage an individual's affairs being emphasised in government proposals (Näkki *et al.*, 2024).

¹ Code of Civil Procedure of Ukraine. (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

² *Ibidem*, 2003.

³ Judgement of the European Court of Human Rights in Case No. 36760/06 "Stanev v. Bulgaria". (2012, January). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-108690>.

⁴ Law of Ukraine No. 2205-VIII "On Amendments to Certain Legislative Acts of Ukraine on the Provision of Mental Health Care". (2017, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/2205-19#Text>.

The challenges of implementing European standards in national legal systems are related to a variety of factors that require a comprehensive approach to address them. First, economic and financial challenges pose a significant barrier, as people often do not have the right to open a bank account and, in some cases, to manage personal finance (Inclusion Europe, 2022). Second, legal frameworks in many countries still include guardianship as part of national law, as these countries have not implemented the transition from guardianship to decision-making assistance as envisaged by the UN Convention on the Rights of Persons with Disabilities. Thirdly, there are serious problems with understanding and awareness, including a lack of knowledge among professionals, policymakers and families about the difference between support persons and carers, and a better understanding of their respective roles. Inclusion Europe has identified several areas where progress needs to be made to support the implementation of modern legal capacity laws: more financial and human resources to develop effective and accessible community-based decision support services, better support networks for people with intellectual disabilities, and better involvement of self-advocates and organisations of people with intellectual disabilities in policy and decision-making.

Alternative decision-making arrangements as a replacement for traditional guardianship represent an innovative approach that is increasingly recognised in European legal systems and international practice. Supported decision-making means that there is no transfer of rights, only support is provided, and the person remains in control of the life, while full guardianship regimes cease to exist and persons with disabilities enjoy all their rights). Key elements of a decision-making support system include safeguards in measures relating to the exercise of legal capacity and an understanding of how the denial of legal capacity affects the lives of people with intellectual disabilities (Inclusion Europe, 2022). Different opinions exist among legal and disability experts on how far-reaching the requirement to replace intrusive measures with less drastic measures is, as illustrated by the debate on the content of Article 12(3)¹ among stakeholders and public authorities (Karjalainen, 2024). Disability rights advocates have strongly argued that Article 12 should be interpreted to completely prevent traditional guardianship regimes and especially measures that result in any deprivation of legal capacity, while legal experts and state actors have taken a different position, noting that it would be virtually impossible for all those covered by the Convention to benefit from a system in which only decision support is possible (Karjalainen, 2024).

The prospects for reforming Ukrainian legislation in incapacity and guardianship should be based on a comprehensive approach that considers both international standards and national peculiarities of the legal system and socio-economic conditions. Firstly, it is necessary to amend the Civil and Civil Procedure Codes of Ukraine to ensure mandatory personal participation of a person in court proceedings to restrict legal capacity or to ensure proper representation in cases where personal participation is impossible for objective reasons. These changes should include clear procedural guarantees for notifying a person of a court hearing, providing an opportunity to be heard and ensuring qualified legal assistance. Secondly, it is necessary to introduce mechanisms for mandatory periodic review of decisions on the restriction of legal capacity with the definition of specific terms for such review and the right of a person to initiate the procedure for restoring legal capacity. Thirdly, it is advisable to develop and implement alternative mechanisms of decision-making support that would avoid complete deprivation of legal capacity in cases where a person needs only partial support in certain areas of life. Fourth, there is a need to train specialised legal and medical personnel who have up-to-date knowledge of the rights of persons with disabilities and procedural guarantees in cases of incapacity.

At the same time, an important aspect of the reform is to align changes in incapacity with the broader reform of the mental health system that began in Ukraine in 2017-2018. According to the Ministry of Health of Ukraine, the mental health system in Ukraine inherited the Soviet model, which was characterised by a highly concentrated psychiatric system with very limited community mental health services, as well as a strong stigma attached to mental illness (Bandura & Raynai, 2023). Before the full-scale war, approximately 30% of Ukrainians suffered from mental health disorders in their lifetime, and in 2019, the prevalence of depressive disorders in Ukraine was higher than the average for the European Union – 5.2% vs. 4.6%, respectively (Seleznova *et al.*, 2023). The reform of the mental health system envisages a shift from inpatient mental health care to outpatient services and psychosocial support, with outpatient services accounting for only 11% of total mental health funding, while psychiatric institutions receive the remaining 89% (Bandura & Raynai, 2023). This reform could create favourable conditions for the introduction of less restrictive alternatives to full deprivation of legal capacity and the development of community-based support services for people with mental disorders.

Thus, the implementation of European standards of procedural fairness in cases of declaring a person

¹ European Convention on Human Rights. (1950, September). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

incapacitated and appointing a guardian in national legislation requires a comprehensive approach that combines legislative changes, institutional reforms and changing public awareness of the rights of persons with disabilities. The positive experience of European countries demonstrates that it is possible to successfully transition from traditional guardianship models to more flexible decision-making support systems, but this process requires significant resources, political will and a long time. For Ukraine, it is particularly important to align reforms in incapacity with broader health and justice system reforms, as well as to account for the specific challenges posed by martial law and its consequences for the mental health of the population. The successful implementation of European standards can not only ensure better protection of the rights of persons with disabilities but also contribute to the overall improvement of the quality of justice and strengthening of the rule of law in the country.

■ Discussion

The results of the study demonstrate the complex dynamics of the development of procedural fairness standards in cases of declaring a person incapacitated and appointing a guardian in the European legal space. The systematisation of the five fundamental standards established by the case law of the European Court of Human Rights reflects a fundamental paradigm shift from the traditional paternalistic approach to the modern concept of supported decision-making. These results are of particular importance in the context of the global transformation of the understanding of the legal personality of persons with disabilities and require careful analysis in the light of modern scientific research. The identified evolution from a medical to a social model of disability is confirmed by G.D. Martino (2019), who emphasises that the development of medical, social and economic sciences has dramatically changed the relationship between society and persons with disabilities, transforming them from objects of social protection to active participants in public life. This approach is consistent with the findings regarding the need to consider the will and preferences of the individual when making decisions about limiting legal capacity. G.D. Martino (2019) particularly emphasises that self-determination is a fundamental principle, and that “substitution” in personal choices should be considered as an exceptional measure and an *extrema ratio*. This conclusion confirms the standard established in the study regarding the consideration of the person’s will as an indispensable element of procedural justice.

The analysis of legal mechanisms for decision-making support finds theoretical justification in the work of J. Bodio (2021), who examines the legal status of guardians in Polish law and distinguishes two different models of guardianship. The study

demonstrated that a guardian for a partially incapacitated person has the status of a legal representative with powers of representation and property management, while a guardian for a person with a disability without full incapacity provides mainly actual assistance. This differentiation confirms the principle of proportionality of measures and individual approach to each case established in the study, which is in line with the standards of the European Court of Human Rights. At the same time, the results of the study on the importance of periodic review of decisions are empirically confirmed by A. Dombrowska *et al.* (2022), who analyse the legal aspects of incapacity in patients with dementia in Ukraine. The study emphasised that more than a decade after the entry into force of the Convention on the Rights of Persons with Disabilities, the problem of promoting and protecting the rights of this socially vulnerable group remains relevant. The conclusions on the need to introduce decision support systems for persons with disabilities are fully consistent with the standard of periodic review established in the study and confirm the importance of developing alternative mechanisms to the complete deprivation of legal capacity.

The identified problems with the implementation of European standards in national legal systems were confirmed by O. Kaluzhna & M. Shevchuk (2022) in an analysis of the unconditional grounds for recusal of judges in criminal proceedings in Ukraine following the standards of the European Court of Human Rights. The study emphasised that the correct resolution of applications for judicial recusal is important for further criminal proceedings, as a miscarriage of justice may lead to a violation of a person’s right to a “legitimate tribunal” or the right to defence. The conclusions on the need to harmonise national legislation with the standards of the European Court confirm the problems of adapting international standards to national legal systems identified in the study. The analysis of the role of judicial independence in ensuring procedural fairness finds theoretical justification in the work of M. Leloup (2021), who explores the need for the European Court of Human Rights to recognise the subjective right of national judges to independence. The author argues that the absence of such a right in the Court’s case law forces national judges to formulate their complaints in terms of other substantive rights of the Convention, often through rather complex arguments. This conclusion confirms the importance of judicial independence and impartiality as a fundamental element of procedural justice in incapacity cases, as established in the study.

The problem of using capacity criteria for interventions without the consent of persons with mental disorders is thoroughly analysed by J. Stavert (2025), who examines the Scottish experience of revising mental health legislation. The study emphasised that

the use of decision-making capacity as a determining factor for intervention has been criticised from a human rights perspective, especially since the adoption of the Convention on the Rights of Persons with Disabilities¹. The conclusions on the need to develop an autonomous decision-making test as an alternative to traditional criteria of capacity confirm the trends identified in the study towards less discriminatory and more supportive intervention mechanisms. The complexities of applying the provisions of the CRPD in the case law of the European Court of Human Rights are analysed in detail in J. Fiala-Butora (2024), who examines how the European Court has applied the Convention in the field of mental health legislation. The study noted that, despite its initial openness to the application of the Convention, the Court has subsequently distanced itself from the positions of the UN Committee on the Rights of Persons with Disabilities on involuntary hospitalisation and treatment. These findings explain the difficulty of harmonising different international standards identified in the study and confirm the need for further development of consensus between different international institutions.

The analysis of the political rights of persons with disabilities, in particular the right to vote, is explored in detail by S. Jovičić (2021), who examines the conflicting interpretations between the systems of the CRPD and the European Convention on Human Rights. The study emphasised that the UN Committee on the Rights of Persons with Disabilities has clearly stated that a person's decision-making capacity cannot justify any exclusion of persons with disabilities from the exercise of their political rights. These findings confirm the principle established in the study that no automatic deprivation of rights should be based solely on a medical diagnosis. The importance of cross-border protection of adults in the context of globalisation is explored in S. Shakargy (2023), who analyses the challenges faced by existing protection systems in the context of the increasing mobility of persons with disabilities. The study emphasised that national legislation is slow to respond to these challenges, and existing solutions are often insufficient. The conclusions on the need to accede to the 2000 Hague Convention on the Protection of Adults confirm the need for harmonisation of national approaches to procedural justice in incapacity cases, as identified in the study.

An empirical study of the factors influencing the appointment of guardianship for people with dementia is presented by K. Näkki *et al.* (2024), who conducted interviews with healthcare professionals and legal experts in Finland. The study determined

significant differences between professional groups in determining the need for guardianship, including that some doctors may not be aware of the legal requirements for guardianship or may not incorporate them in the assessments. These findings confirm the problem of insufficient awareness of professional participants in the procedures and the need for special training. The practical aspects of reforming the Italian legal guardianship system are analysed by R. Ciliberti (2024), who examines the decisions of the European Court of Human Rights on the abuse of the legal guardianship institution in Italy. The study emphasised that legal guardianship, like the entire Italian judicial system, suffers from a chronic lack of human and material resources, despite the concrete efforts of numerous guardianship judges and appointed support administrators. Its recommendations to abolish incapacitation and prohibition as more restrictive forms of guardianship confirm the areas of reform identified in the study for national systems.

The results obtained demonstrate that European standards of procedural fairness in incapacity cases are in a state of dynamic evolution, reflecting the general trends in the development of international human rights law. The identified gradation from minimal compliance with the conventional requirements to progressive approaches that exceed the basic standards is confirmed by the studies of various authors and indicates the need for further harmonisation of national approaches. At the same time, implementation challenges related to economic factors, lack of professional awareness and institutional constraints remain relevant for most European countries. An important conclusion is the confirmation that the transition from traditional models of full guardianship to modern decision-making support systems requires not only legislative changes but also a fundamental rethinking of the role of the state in relations with persons with disabilities. The analysis of studies by various authors shows that successful implementation of European standards requires a comprehensive approach that combines legal reforms with training of professional staff, development of public support services and change of public consciousness.

■ Conclusions

The study aimed to establish and analyse the standards of procedural fairness in cases of declaring a person incapable and appointing a guardian, as formulated in the case law of the European Court of Human Rights, and to study the peculiarities of their implementation in the national legal systems of European countries. This goal was fully achieved through the application of a comprehensive methodological

¹ UN Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

approach that combined theoretical analysis of the conceptual framework with empirical study of case law and comparative research of national legal systems.

The study provided a comprehensive analysis of the conceptual foundations of procedural justice in cases of incapacity, including the evolution from a medical to a social model of disability and the impact of the UN Convention on the Rights of Persons with Disabilities on the rethinking of traditional legal constructs. It was systematised the key judgments of the European Court of Human Rights in *Stanev v. Bulgaria, D.D. v. Lithuania* and other cases, which identified five fundamental standards of procedural justice: personal participation or proper representation, individual approach and proportionality of measures, periodic review of decisions, consideration of the person's will and preferences, and ensuring access to legal aid.

A comparative analysis of national legal systems has revealed three fundamentally different models of implementation of European standards. Germany represents the most developed model through the *Betreuung* system, which provides individual support to individuals without depriving them of legal capacity and establishes automatic review of decisions every seven years. Finland demonstrates the Scandinavian model with an emphasis on decision support systems and a five-year maximum period of restrictions. Ukraine is characterised by limited compliance with European standards due to the preservation of the traditional post-Soviet model of full deprivation of legal capacity and the absence of mechanisms for periodic review of decisions. These differences are due to historical legal traditions, the level of European integration and the political will to reform.

The impact of these differences is manifested in radically different levels of protection of the rights of persons with disabilities. In Germany and Finland,

people with psychosocial and intellectual disabilities retain maximum autonomy, while in Ukraine, a paternalistic approach with minimal procedural guarantees prevails. The study determined that the main challenges to the implementation of European standards are economic constraints on the creation of support services, insufficient training of professional staff and institutional failure to ensure effective oversight of compliance with standards.

For Ukraine, the priority areas of reform are to introduce comprehensive amendments to the Civil and Civil Procedure Codes to ensure mandatory personal participation in court proceedings, introduce mechanisms for periodic review of decisions and develop alternative forms of decision-making support instead of complete deprivation of legal capacity. These legislative changes should be accompanied by the training of specialised personnel and the creation of a system of public support services as part of the mental health care reform. Promising areas for further research include analysing the impact of emergency circumstances on the realisation of the rights of persons with disabilities, studying the long-term effectiveness of alternative support mechanisms, and developing methodological recommendations for adapting international standards to the specifics of transitional legal systems.

■ Acknowledgements

None.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

■ References

- [1] Bandura, R., & Raynai, P. (2023). *Investing in mental health will be critical for Ukraine's economic future*. Retrieved from <https://csis.org/analysis/investing-mental-health-will-be-critical-ukraines-economic-future>.
- [2] Bodio, J. (2021). [Guardian appointed for a disabled person and guardian appointed for a partially incapacitated person](#). *Studia Iuridica Lublinensia*, 30(4), 49-75.
- [3] Borovska, I.A. (2020). On the issue of consideration of cases on recognition of an individual as incapacitated in the context of reforming the civil procedural legislation of Ukraine. *Bulletin of Zaporizhzhia National University. Legal Sciences*, 2, 38-44. [doi: 10.26661/2616-9444-2020-2-05](https://doi.org/10.26661/2616-9444-2020-2-05).
- [4] Boyle, S., & Walsh, T. (2020). Procedural fairness in mental health review tribunals: The views of patient advocates. *Psychiatry, Psychology, and Law*, 28(2), 163-184. [doi: 10.1080/13218719.2020.1767715](https://doi.org/10.1080/13218719.2020.1767715).
- [5] Cerekja, B., & Mucollari, O. (2024). Right to a fair trial under Article 6 of the ECHR: The balance between efficiency and fairness in European criminal law. *Social & Legal Studies*, 7(4), 146-156. [doi: 10.32518/sals4.2024.146](https://doi.org/10.32518/sals4.2024.146).
- [6] Ciliberti, R. (2024). [The ethical and legal protection of the vulnerable individual: Current status and prospects for the application of the guardianship institution in Italy](#). *Medicina Historica*, 8(1), article number e2024006.
- [7] Craigie, J., Bach, M., Gurbai, S., Kanter, A., Kim, S.Y.H., Lewis, O., & Morgan, G. (2019). Legal capacity, mental capacity and supported decision-making: Report from a panel event. *International Journal of Law and Psychiatry*, 62, 160-168. [doi: 10.1016/j.ijlp.2018.09.006](https://doi.org/10.1016/j.ijlp.2018.09.006).

- [8] Degener, T. (2016). Disability in a human rights context. *Laws*, 5(3), article number 35. doi: [10.3390/laws5030035](https://doi.org/10.3390/laws5030035).
- [9] Disability Nottinghamshire. (2020). *Social model vs medical model of disability*. Retrieved from <https://www.disabilitynottinghamshire.org.uk/index.php/about/social-model-vs-medical-model-of-disability/>.
- [10] Dombrovska, A., Marchenko, V., & Kilimnik, I. (2022). The right to make a decision: Human rights of patients with mental disabilities. *Public Administration and Law Review*, 3(11), 81-88. doi: [10.36690/2674-5216-2022-3-81](https://doi.org/10.36690/2674-5216-2022-3-81).
- [11] Fiala-Butora, J. (2024). The influence of the convention on the rights of persons with disabilities on the European court of human rights in the area of mental health law: Divergence and unexplored potential. *International Journal of Law and Psychiatry*, 94, article number 101965. doi: [10.1016/j.ijlp.2024.101965](https://doi.org/10.1016/j.ijlp.2024.101965).
- [12] Goss, R. (2023). The disappearing “minimum rights” of Article 6 ECHR: The unfortunate legacy of Ibrahim and Beuze. *Human Rights Law Review*, 23(4), article number ngad024. doi: [10.1093/hrlr/ngad024](https://doi.org/10.1093/hrlr/ngad024).
- [13] Human Rights Law Centre. (2024). *Incapacity, inhuman or degrading treatment, and the right of mentally ill persons to access the courts*. Retrieved from <https://www.hrlc.org.au/case-summaries/incapacity-inhuman-or-degrading-treatment-and-the-right-of-mentally-ill-persons-to-access-the-courts/>.
- [14] Inclusion Europe. (2022). *Legal capacity*. Retrieved from <http://www.inclusion-europe.eu/legal-capacity/>.
- [15] Jager, F., Boyle, S., & Peron, A. (2024). Professional values and mental health tribunals: How healthcare professionals’ and lawyers’ views are shaped by values, and how this might impede reform. *Issues in Mental Health Nursing*, 45(7), 695-705. doi: [10.1080/01612840.2024.2346601](https://doi.org/10.1080/01612840.2024.2346601).
- [16] Jovičić, S. (2021). ECHR v. UNCRPD: Ending restrictions on voting rights of persons with disabilities. *ERA Forum*, 22(3), 699-715. doi: [10.1007/s12027-021-00692-4](https://doi.org/10.1007/s12027-021-00692-4).
- [17] Kaluzhna, O., & Shevchuk, M. (2022). Unconditional grounds for challenges to judges in criminal proceedings of Ukraine and ECtHR standards. *Access to Justice in Eastern Europe*, 2(14), 46-82. doi: [10.33327/AJEE-18-5.1-a000110](https://doi.org/10.33327/AJEE-18-5.1-a000110).
- [18] Karjalainen, K. (2022). Strengthening the right to personal autonomy and protection of vulnerable adults: From human rights to domestic and european legislation on voluntary measures. In K. Karjalainen, I. Tornberg & A. Pursiainen (Eds.), *International actors and the formation of laws* (pp. 75-94). Cham: Springer. doi: [10.1007/978-3-030-98351-2_4](https://doi.org/10.1007/978-3-030-98351-2_4).
- [19] Keene, A.R., Kane, N.B., Kim, S.Y.H., & Owen, G.S. (2023). Mental capacity – why look for a paradigm shift? *Medical Law Review*, 31(3), 340-357. doi: [10.1093/medlaw/fwac052](https://doi.org/10.1093/medlaw/fwac052).
- [20] Leloup, M. (2021). Who safeguards the guardians? A subjective right of judges to their independence under Article 6(1) ECHR. *European Constitutional Law Review*, 17(3), 432-461. doi: [10.1017/S1574019621000328](https://doi.org/10.1017/S1574019621000328).
- [21] Martino, G.D. (2019). Protection of incapacitated persons: Evolution of law and fundamental rights. *International Constitutional Law Journal*, 7(2), 365-389. doi: [10.22364/iscflul.7.2.29](https://doi.org/10.22364/iscflul.7.2.29).
- [22] Melamed, Y., Doron, I., & Shniff, D. (2007). Guardianship of people with mental disorders. *Social Science & Medicine*, 65(6), 1118-1123. doi: [10.1016/j.socscimed.2007.04.040](https://doi.org/10.1016/j.socscimed.2007.04.040).
- [23] Mental Disability Advocacy Center. (2008). *Europe’s highest human rights court holds that Russia violated rights of man with mental health disabilities*. Retrieved from <https://surl.it/urxuux>.
- [24] Ministry of Health of Ukraine. (2018). *Mental health system transformation in Ukraine: improving mental health services and bringing mental health care in line with international standards*. Retrieved from <https://moz.gov.ua/en/mental-health-system-transformation-in-ukraine-improving-mental-health-services-and-bringing-mental-health-care-in-line-with-international-standards>.
- [25] Näkki, K., Maki-Petäjä-Leinonen, A., Ervasti, K., & Solje, E. (2024). Evaluating the need for legal guardianship in people with dementia: Gaining insight into professionals’ assessment criteria. *International Journal of Law, Policy and the Family*, 38(1), article number ebae005. doi: [10.1093/lawfam/ebae005](https://doi.org/10.1093/lawfam/ebae005).
- [26] Popovych, I.M. (2020). Forensic examination as a source of evidence in individual proceedings. *Scientific Bulletin of the Dnipro State University of Internal Affairs*, 3, 200-207. doi: [10.31733/2078-3566-2020-3-200-207](https://doi.org/10.31733/2078-3566-2020-3-200-207).
- [27] Scholten, M. (2025). Mental capacity and supported decision-making. In *Ethics in psychiatry* (pp. 27-51). Cham: Springer. doi: [10.1007/978-94-024-2274-0_3](https://doi.org/10.1007/978-94-024-2274-0_3).
- [28] Seleznova, V., Pinchuk, I., Feldman, I., Virchenko, V., Wang, B., & Skokauskas, N. (2023). The battle for mental well-being in Ukraine: Mental health crisis and economic aspects of mental health services in wartime. *International Journal of Mental Health Systems*, 17, article number 28 28. doi: [10.1186/s13033-023-00598-3](https://doi.org/10.1186/s13033-023-00598-3).

- [29] Series, L., & Nilsson, A. (2018). [Article 12 CRPD: Equal recognition before the law](#). In I. Bantekas, M.A. Stein & D. Anastasiou (Eds.), *The UN Convention on the rights of persons with disabilities: A commentary* (pp. 293-325). Oxford: Oxford University Press.
- [30] Shakargy, S. (2023). Capacitating personal capacity: Cross-border regulation of guardianship alternatives for adults. *Journal of Private International Law*, 19(3), 450-480. [doi: 10.1080/17441048.2023.2294618](#).
- [31] Starke, C., Baleis, J., Celler, B., & Marcinkowski, F. (2022). Fairness perceptions of algorithmic decision-making: A systematic review of the empirical literature. *Big Data & Society*, 9(2). [doi: 10.1177/20539517221115189](#).
- [32] Stavert, J. (2025). Capacity and incapacity: An appropriate border for non-consensual interventions? *International Journal of Law and Psychiatry*, 98, article number 102042. [doi: 10.1016/j.ijlp.2024.102042](#).
- [33] Swift, H. (2021). *Comparative law research*. Retrieved from https://www.nyulawglobal.org/globalex/comparative_law1.html.
- [34] The Lancet Psychiatry. (2020). *Ukrainian mental health services and World Psychiatric Association Expert Committee recommendations*. Retrieved from [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(20\)30344-8/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(20)30344-8/fulltext).
- [35] United Nations Enable. (2024). *Article 12 – Equal recognition before the law*. Retrieved from <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html>.
- [36] United Nations in Ukraine. (2024). *General comment No. 1 (Article 12: Equal recognition before the law)*. Retrieved from <https://ukraine.un.org/en/133050-general-comment-no-1-article-12-equal-recognition-law>.
- [37] University of California San Francisco. (2024). *Medical and social models of disability*. Retrieved from <https://odpc.ucsf.edu/clinical/patient-centered-care/medical-and-social-models-of-disability>.
- [38] University of Michigan Law Library. (2024). *Legal systems – foreign, comparative, and international law*. Retrieved from <https://libguides.law.umich.edu/c.php?g=815412&p=5891391>.
- [39] 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), article number ngab027. [doi: 10.1093/hrlr/ngab027](#).

Визнання особи недієздатною та призначення опікуна: стандарти процедурної справедливості в рішенні ЄСПЛ

Наталія Полішко

Доктор філософії в галузі права, доцент
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-3898-3896>

Ольга Веренкіотова

Кандидат юридичних наук
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0001-9809-0777>

Анастасія Задорожна

Кандидат юридичних наук
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-8681-1386>

■ **Анотація.** Метою дослідження були встановлення та систематизація основних стандартів процедурної справедливості, розроблені в практиці Європейського суду з прав людини стосовно процедур обмеження дієздатності й опікунства, з подальшим аналізом особливостей їх упровадження в національні правові системи європейських держав. Дослідження здійснено із застосуванням комплексного методологічного підходу, який поєднав системний метод для аналізу взаємозв'язків між елементами процедурної справедливості, порівняльно-правовий метод для зіставлення підходів різних європейських правових систем, метод аналізу судової практики для систематизації ключових рішень і структурно-функціональний аналіз для дослідження функціонування моделей опікунства. За результатами систематизації судової практики виокремлено п'ять фундаментальних стандартів процедурної справедливості: обов'язковість забезпечення особистої участі або належного представництва особи в судових процедурах, застосування індивідуального підходу до оцінювання дієздатності та забезпечення пропорційності заходів обмеження, гарантування періодичного перегляду рішень про обмеження дієздатності, урахування волі та преференцій особи під час прийняття рішень, забезпечення незалежної правової допомоги. Порівняльний аналіз імплементації стандартів у трьох досліджуваних країнах виявив істотні відмінності: прогресивну систему *Betreuung* в Німеччині з підтримкою без позбавлення прав, систему підтримки в прийнятті рішень у Фінляндії без передачі прав й обмежену відповідність українського законодавства європейським вимогам через відсутність обов'язкової особистої участі особи в судових засіданнях і механізмів періодичного перегляду рішень. Практична значущість дослідження полягає у створенні методологічної основи для оцінювання ефективності національних правових систем і розробленні практичних рекомендацій для законодавчих реформ у сфері опікунства й недієздатності. Результати дослідження можуть використовувати судові органи, законодавці та правозахисні організації для вдосконалення процедурних гарантій та переходу від традиційних моделей повного опікунства до сучасних механізмів підтримки в прийнятті рішень, що відповідає принципам поваги до людської гідності й автономії осіб з інвалідністю

■ **Ключові слова:** правосуб'єктність; дієздатність; захист прав людини; міжнародні стандарти; судова практика; інвалідність

UDC 343.95:343.341

DOI: 10.63341/naia-herald/3.2025.60

Ways to prevent the illicit trafficking of firearms, ammunition, and explosives during martial law in Ukraine and the dangers of their legalisation

Valentyna Kryzhna*

PhD in Law, Senior Research Fellow
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-0402-4224>

Oksana Bryskovska

PhD in Law, Senior Research Fellow
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0001-6902-9969>

■ **Abstract.** The relevance of the article lies in the fact that in the conditions of the full-scale war of the Russian Federation against Ukraine, the need to strengthen control over arms trafficking, ensure law and order, and the safety of citizens is becoming more acute. The illegal trade in weapons leads to an increased risk to public safety and creates the conditions for a rise in violent crimes. The aim of the article was to establish optimal ways to prevent the illicit trafficking of firearms, explosives, and ammunition during martial law and, based on international experience, to investigate the feasibility of their legalisation. To achieve this goal, a number of methods were applied: comparative, structural, and systemic. A study of international experience showed that in countries where arms control is lax or arms trafficking is legalised, there is an increase in the number of criminal offences involving weapons. In contrast, in countries where strict arms control has been introduced, a lower level of gun crime is registered. It has been established that the decriminalisation of the storage and manufacture of weapons would increase their circulation among the population, could lead to the illegal use of weapons in both domestic and interpersonal conflicts, and would increase the risk to public safety. Thus, replacing criminal liability for the storage and manufacture of weapons with administrative liability does not sufficiently consider the consequences for the law enforcement system and would reduce the effectiveness of the fight against criminal offences. Firm and strict control over the circulation of firearms reduces the risks of violent crimes involving the use of weapons. The practical significance of the study lies in identifying effective approaches to the legislative regulation of firearms, ammunition, and explosives for further implementation into the legislation of Ukraine, as well as possible ways and means of preventing the illicit trafficking of firearms, ammunition, and explosives during martial law in Ukraine

■ **Keywords:** weapons legalisation; civilian population; criminal offences; public order; public danger

■ Introduction

Preventing the illicit trafficking of firearms, ammunition, and explosives during martial law is critically important for preventing criminal offences and

ensuring state security. The problem of the illegal and rapid spread of weapons affects every country, but it is especially pressing for Ukraine during

■ Suggested Citation:

Kryzhna, V., & Bryskovska, O. (2025). Ways to prevent the illicit trafficking of firearms, ammunition, and explosives during martial law in Ukraine and the dangers of their legalisation. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 60-73. doi: 10.63341/naia-herald/3.2025.60.

■ *Corresponding author

■ Received: 13.04.2025; Revised: 04.09.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

martial law. In particular, organised criminal activity in the arms and ammunition trade poses a threat to most countries worldwide, including Ukraine (Hideg, 2024). Among the socially dangerous phenomena that threaten the development of the state and significantly restrict human rights and freedoms, a large number are offences committed with the use of firearms. Ensuring the safety of citizens, protecting their lives, health, and personal integrity is one of the main directions of Ukraine's social policy.

From 2023 to 2024, during their service at checkpoints, military personnel and police officers documented more than 1,000 cases of illegal weapons being transported through these checkpoints, resulting in the seizure of over 400 firearms, more than 50 grenade launchers, and a large number of different-calibre ammunition (Milenin & Natochii, 2024). It is appropriate to agree with the Deputy Head of the National Police of Ukraine, Andriy Nebytov, who stated in an interview that weapons, especially firearms, should be on the front lines protecting people, not causing injury to civilians in the rear or becoming instruments of crime. Every day, the police prevent the serious consequences of illegal and improper handling of weapons (Hirak, 2024). Thus, the development of ways to prevent the illicit (illegal) trafficking of firearms, explosives, and ammunition during martial law is particularly important for the work of law enforcement agencies and for the most stable functioning of society possible.

Specifically, O. Jafarova & T. Dunaev (2023) pointed out the main causes of illicit firearms trafficking in Ukraine. Among these causes, they named: the full-scale invasion by the Russian Federation, which led to the uncontrolled removal of firearms and ammunition from the combat zone, and the fact that a significant part of the state border is not controlled by Ukraine. At the same time, B. Greenberg *et al.* (2024) found that more restrictive and limiting firearms laws significantly reduce civilian mortality from firearms. They believe that these findings serve as evidence of the need to implement such legislation to reduce firearm injuries and deaths. The researchers remind that the growing number of violent incidents involving firearms worldwide is causing increasing concern in various spheres of society. M. Werbick *et al.* (2021) also noted that populations worldwide are facing a growing burden of firearm violence, which contributes to an increase in mortality and disability. They emphasised that at the time of their research, firearm deaths accounted for over 250,000 deaths annually worldwide. As of 2021, 857 million firearms were in the hands of civilians.

It should be noted that N. Symonenko & A. Khomenko (2024) also pointed out that in most countries with strict control over the circulation of firearms and ammunition, lower levels of gun crime are

recorded. In contrast, the legalisation or relaxation of controls has repeatedly proven to be ineffective in fighting crime and has even contributed to its growth. The authors noted that the bill proposing to decriminalise the illegal storage and manufacture of firearms does not contain scientifically sound data or empirical studies that could confirm that such decriminalisation would lead to a reduction in crime or an improvement in citizens' self-defence conditions.

It was also important to mention the study by J. Kappelman & R.C. Fording (2021), in which, based on a series of negative binomial regression analyses, the authors confirmed that strict, restrictive firearms laws are associated with a reduction in youth suicides involving firearms, especially among males. However, the researchers emphasised that for this to be the case, such laws must be genuinely strict and have age restrictions. Despite the significant increase in youth suicide rates in the 2010s, their results showed that state laws restricting youth access to firearms continue to represent a potentially effective strategy for reducing suicides.

In turn, M.E. Wallace *et al.* (2021) highlighted that in the United States, homicide is the leading cause of death among pregnant women and women up to one year postpartum. The majority of these homicides are committed by the woman's intimate partner using a firearm. The researchers found that laws prohibiting firearm possession or requiring the relinquishment of firearms by individuals convicted of domestic violence offences lead to a significant reduction in homicides of pregnant and postpartum women.

The aim of the article was to review policies for preventing the illicit trafficking of firearms, explosives, and ammunition, to draw reasoned assumptions about possible ways to prevent the illicit trafficking of firearms, explosives, and ammunition during martial law, and to explore the issue of legalising the possession and manufacture of firearms among civilians.

■ Materials and Methods

To achieve a goal, the following special scientific research methods were used: comparison method, extrapolation method, system analysis method, and hypothetical-deductive method. Using the comparative method, a comparison was made of the positive and negative experiences of legalising weapons in various countries around the world (the United States of America, Israel, Switzerland, Germany, and other European countries) to prevent the illegal circulation of firearms during martial law. Using the method of systematic analysis, the impact of weapon legalisation on crime rates in different countries around the world was analysed, as well as the approaches to regulating the use and possession of firearms in these countries. Using the extrapolation method, future

ways of preventing the illegal circulation of firearms, explosives and ammunition during martial law were modelled when developing recommendations for preventive measures to reduce such cases.

The regulatory basis for the work was provided by: the Constitution of Ukraine¹, Law of Ukraine “On the National Police”², Regulations on the National Police of 2015³, Strategy on Fighting Organised Crime in Ukraine⁴, the Criminal Code of Ukraine⁵, Law of Ukraine “On Amending Article 263 of the Criminal Code of Ukraine Regarding the Abolition of Liability in Cases of Voluntary Surrender of Weapons, Ammunition, Explosives or Devices”⁶, Instructions on the Procedure for the Manufacture, Acquisition, Storage, Accounting, Transportation and Use of Firearms, Pneumatic Weapons, Cold Weapons and Bladed Weapons⁷, Constitution of the United States⁸, Directive of the European Parliament and of the Council No. 2021/555, Federal Act on Weapons, Weapon Accessories and Ammunition⁹, Law of the Federal Republic of Germany “On Weapons”¹⁰, Law of Israel No. 5779 “On Arms”¹¹.

■ Results

It should be emphasised that the conduct of military operations on the territory of Ukraine has an impact on the proliferation of firearms, explosives, and

ammunition in the country. This is an important aspect for law enforcement investigations and a pressing issue for society in various areas. According to the Deputy Minister of Internal Affairs, Bohdan Drapachyi, Ukrainian citizens may possess approximately 2 to 5 million undeclared firearms (Department of Communications of the Ministry of Internal Affairs of Ukraine, 2024).

According to statistical information recorded by the Prosecutor General’s Office (Table 1), the number of criminal offences committed with the use of firearms in 2024 increased by 115.5% compared to 2020. It should be noted, however, that the number of criminal offences committed with smooth-bore firearms over the same period did not increase but decreased: in 2024, there were 3.5% fewer such crimes committed compared to 2022. The sharp increase in the number of offences committed with firearms occurred specifically in 2022, with the start of the full-scale military aggression: it increased by 578.3% compared to 2021. Accordingly, it can be assumed that the main reason for the increase in this type of crime was the full-scale military aggression of the Russian Federation. In February 2022, a relatively large number of small arms were distributed to the civilian population to support territorial defence units (Gergely, 2024).

Table 1. Comparison of the number of criminal offences committed with firearms, 2020-2024

Number of criminal offences / per year		2020	2021	2022	2023	2024
Committed with firearms		386	281	1,906	1,867	832
Of which	Committed with smooth-bore firearms	57	48	82	89	55
	Intentional homicides	57	36	247	909	295
	Intentional grievous bodily harm	4	1	18	14	14
	Robbery	27	17	32	23	11
Proceedings under Art. 263 of the Criminal Code of Ukraine		5,116	4,067	4,735	5,582	5,898

Source: developed by the authors based on data from the General Prosecutor Office (n.d.)

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вп#Text>.

² Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

³ Resolution of the Cabinet of Ministers of Ukraine No. 877 “Regulations on the National Police”. (2015, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/877-2015-%D0%BF#Text>.

⁴ Order of the Cabinet of Ministers of Ukraine No. 850-p “On the Approval of the Plan of Measures for Implementation of the Strategy on Fighting Organised Crime”. (2022, September) Retrieved from <https://zakon.rada.gov.ua/laws/show/850-2022-%D1%80#Text>.

⁵ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁶ Law of Ukraine No. 2150-IX “On Amending Article 263 of the Criminal Code of Ukraine Regarding the Abolition of Liability in Cases of Voluntary Surrender of Weapons, Ammunition, Explosives or Devices”. (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2150-20#Text>.

⁷ Order of the Ministry of the Internal Affairs of Ukraine No. 622 “Instructions on the Procedure for the Manufacture, Purchase, Storage, Accounting, Transportation and use of Firearms, Pneumatic, Cold and Cold-Action Weapons, Domestically Produced Devices for Firing Cartridges Equipped with Rubber or Similar in their Properties Non-Lethal Projectiles, and Cartridges for them, as Well as Ammunition for Weapons, Main Parts of Weapons and Explosive Devices”. (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0637-98#Text>.

⁸ Constitution of the United States. (1787, September). Retrieved from <https://constitution.congress.gov/constitution/amendment-2/#:~:text=A%20well%20regulated%20Militia%2C%20being,Arms%2C%20shall%20not%20be%20infringed.>

⁹ Federal Act of the Federal Republic of Germany “On Weapons, Weapon Accessories and Ammunition (Weapons Act, WG)”. (1997, June). Retrieved from https://www.fedlex.admin.ch/eli/cc/1998/2535_2535_2535/.

¹⁰ Law of the Federal Republic of Germany “On Weapons”. (2002, October). Retrieved from https://www.gesetze-im-internet.de/waffg_2002/BJNR397010002.html.

¹¹ Law of Israel No. 5779 “On Arms”. (1949, August). Retrieved from https://www.nevo.co.il/law_html/law00/72225.htm.

It is also worth noting the study by G. Hideg (2024), which concludes that the level of civilian ownership of firearms in Ukraine has remained stable since the beginning of 2022. However, it should be noted that the study was based on a survey. Accordingly, it is only relevant to those weapons that respondents were willing to report. Moreover, according to the same study, the level of victimisation from crimes

involving firearms increased in 2023 compared to 2022. Thus, in 2023, 11% of all victims reported that they had encountered firearms during criminal incidents that had occurred to them in the 12 months prior to the survey. In 2022, this figure was 6%. Since the start of the full-scale invasion, there has been a steady increase in the number of proceedings under Article 263 of the Criminal Code of Ukraine¹ (Fig. 1).

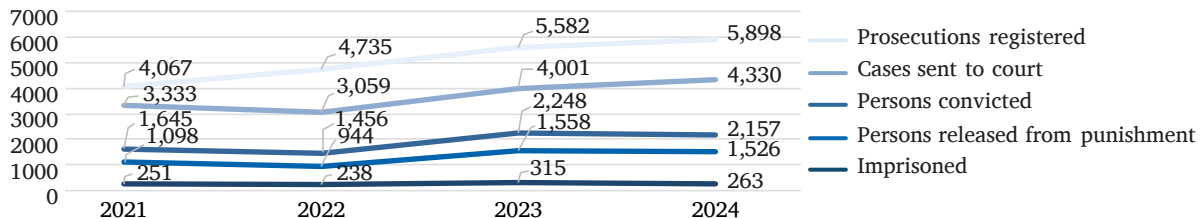


Figure 1. Data on proceedings under Art. 263 of the Criminal Code of Ukraine “Illegal handling of weapons, ammunition or explosives”

Source: CrimeDataLab (n.d.)

Deputy Minister of Internal Affairs, Bohdan Drapiaty, stated that it’s difficult to provide precise statistics on the illicit trafficking of firearms in Ukraine due to the ongoing “hot phase” of Russia’s full-scale war against Ukraine and the significant length of the front line (over 1,000 km). The amount of weaponry in Ukraine is also increasing due to active military assistance (Leshchenko, 2023). Bohdan Drapiaty stressed that the trend of illicit firearms trafficking in Ukraine is on the rise compared to 2019. He also reported that in 2019, approximately 100 automatic weapons were seized, whereas in 2023, that number was 1,567 (Department of Communications of the Ministry of Internal Affairs of Ukraine, 2024).

Therefore, although the increase in the number of firearms illegally held by civilians in Ukraine cannot yet be confirmed by statistics due to the difficulty of obtaining them during the hot phase of the armed conflict, the factors mentioned above (the rise in gun-related crimes and the increase in seized firearms) indicate that an increase in such weapons among the civilian population has occurred. This assumption is based on the strong correlation found by M. Siegel *et al.* (2013) between the rate of homicides committed with firearms and the level of gun ownership – for every percentage point increase in gun ownership, the rate of firearm-related homicides rose by 0.9%. Recent studies also confirm a similar relationship (Crokidakis, 2022).

The dynamic increase in gun-related crimes is a problem for Ukraine in itself. To address this issue, the legislature proposed adopting the Law of Ukraine No. 2150-IX². This law amended the wording of Part 3 of Article 263 of the Criminal Code of Ukraine³, which states that a person who voluntarily surrenders firearms, explosives or explosive devices, and ammunition to the authorities will not be subject to criminal liability for acts described in Parts 1 or 2 of that article. According to the Research Service of the Verkhovna Rada of Ukraine, this law was adopted with the aim of: “preventing crimes and offences such as the illegal acquisition, purchase, transfer, or sale of firearms, explosives or explosive devices, and ammunition during martial law or a state of emergency; taking measures to ensure that firearms, explosives or explosive devices, and ammunition are used only within the legal framework, including for tasks related to the protection of Ukraine’s territorial integrity and sovereignty; and establishing law and order in Ukraine...”⁴. According to N. Symonenko & A. Khomenko (2024), the changes to the criminal legislation were an attempt by the legislator to increase control over the circulation of firearms and to raise accountability for offences in this area.

According to data from the Centre of Security Studies CENSS (2021), in 2019, citizens voluntarily surrendered 5,444 firearms. In 2020, 423 such weapons were surrendered. However, the total

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

² Law of Ukraine No. 2150-IX “On Amending Article 263 of the Criminal Code of Ukraine Regarding the Abolition of Liability in Cases of Voluntary Surrender of Weapons, Ammunition, Explosives or Devices”. (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2150-20#Text>.

³ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁴ Draft Law of Ukraine No. 10041 “On Amendments to Article 263 of the Criminal Code of Ukraine on Strengthening Liability for the Illegal Acquisition, Transfer or Sale of Firearms, Ammunition, Explosives or Explosive Devices in Conditions of War or a State of Emergency”. (2023, September). Retrieved from <https://research.rada.gov.ua/uploads/documents/32649.pdf>.

number of people across Ukraine who have surrendered weapons is not public. Thus, given that individuals who illegally possessed firearms began to surrender them - and these were not isolated cases – it can be argued that giving citizens the opportunity to voluntarily surrender weapons without penalty has yielded a certain level of positive results. However, taking into account that the total number of people in Ukraine who have surrendered weapons has not yet been published, it is difficult to fully assess these results. Moreover, it must be considered that Russia's military aggression is also a factor that may influence the willingness of individuals who possess firearms to surrender them, given the increase in gun-related crimes during the war. Therefore, the full outcome of this initiative can only be assessed by conducting a study after the end of hostilities and comparing it with the results achieved during Russia's ongoing armed aggression against Ukraine. For now, while this armed aggression continues, it is necessary to develop additional measures to reduce the illicit trafficking of firearms, explosives, and ammunition.

Among such attempts to reduce the illicit trafficking of firearms, ammunition, and explosives during martial law in Ukraine, lawmakers proposed adopting Draft Law of Ukraine No. 11073¹, which suggests decriminalising the illegal storage and manufacture of weapons. They argued that the mere storage of a weapon does not directly harm anyone, and therefore only its use to cause harm should be criminalised. In the explanatory note, lawmakers also stated that the storage of firearms should be decriminalised to protect civilians from Russian Federation soldiers.

However, it is necessary to consider that the main dangerous weapons of the Russian Federation's forces are not ordinary firearms but tanks, missile systems, mortars, and other weapons of mass destruction, against which ordinary firearms, especially in the hands of a civilian, cannot be effective. Moreover, civilians generally do not have proper military training or even training on the correct handling of firearms. Armed civilians become easy targets for trained and prepared enemy military personnel. Situations where such individuals attempt to engage in combat with the enemy to defend their homes without proper tactics, coordination, and planning are very dangerous (Center of Security Studies CENSS, 2021).

The risk of accidental injury or death to their own civilians and military personnel is also increased during the chaotic conditions of combat. Thus, a civilian carrying a firearm will also become a potential target for the adversary.

It must be emphasised that the purpose of legislation is not only to punish a criminal for a committed crime but also to prevent future crimes by applying paternalistic restrictions. That is, if the possession of a certain substance or object poses a real potential threat to society, then prohibiting its storage, within the framework of paternalism, will be a way to protect society from that threat. In this case, not only is the infliction of harm punished, but also the dangerous increase in the probability of such harm occurring.

Comparing the security situation related to civilian firearms ownership in other countries with that of Ukraine will allow for a more complete consideration of the potential outcomes of legalising firearms, as well as drawing certain conclusions about ways to prevent the illicit trafficking of firearms, ammunition, and explosives during martial law in Ukraine. Take the United States (hereinafter – USA), for example. The Second Amendment to the Constitution of the United States² provides for the right of its citizens to keep and bear arms; more detailed rules concerning firearms depend on the specific state. According to a list of mass shootings that occurred in the USA in 2024, i.e., incidents where four or more people were injured or died as a result of gun violence, 711 people died and 2,375 were injured in 586 shootings (List of mass shootings..., 2024).

In Ukraine, according to the Instructions of the Ministry of Internal Affairs of Ukraine from 1998³ (hereinafter – the Instructions), police authorities do not have the right to issue permits to citizens for the purchase, storage, and carrying of firearms, ammunition, pneumatic or cold steel weapons, devices, and cartridges, or to re-register them, in the following cases:

- the person has medical contraindications for performing the specified functional duties and for owning a weapon;
- there is information about the person's systematic (twice or more) violation of public order;
- the person has failed to remedy previously identified violations of the requirements for storing, transporting, and using previously acquired weapons

¹ Draft Law of Ukraine No. 11073 “On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine to Ensure the Unity of Norms in the Implementation of the Right to Self-Defense and Decriminalization of Weapons Production”. (2024, March). Retrieved from <https://itd.rada.gov.ua/billInfo/Bills/Card/43810>.

² Constitution of the United States. (1787, September). Retrieved from <https://constitution.congress.gov/constitution/amendment-2/#:~:text=A%20well%20regulated%20Militia%2C%20being,Arms%2C%20shall%20not%20be%20infringed.>

³ Order of the Ministry of the Internal Affairs of Ukraine No. 622 “Instructions on the Procedure for the Manufacture, Purchase, Storage, Accounting, Transportation and use of Firearms, Pneumatic, Cold and Cold-Action Weapons, Domestically Produced Devices for Firing Cartridges Equipped with Rubber or Similar in their Properties Non-Lethal Projectiles, and Cartridges for them, as Well as Ammunition for Weapons, Main Parts of Weapons and Explosive Devices”. (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0637-98#Text>.

or devices; abuses alcoholic beverages; uses narcotics without a doctor's prescription or other intoxicating substances; or commits domestic violence, as documented;

- there is a reasoned order from a state enforcement officer establishing a temporary restriction on the debtor's right to use smooth-bore hunting firearms, pneumatic and blank-firing weapons, and domestically produced devices for firing rubber or similar non-lethal projectiles;

- other cases, as specified in the Instructions (Paragraph 5.1 of Chapter 5, Section I), where police authorities do not have the right to issue permits for the purchase, storage, and carrying of firearms, ammunition, pneumatic or cold steel weapons, devices, and cartridges, or to re-register them.

These restrictions serve as a preventive measure that reduces the likelihood of firearms (a source of heightened danger) falling into the hands of a person who might use them to harm the life and health of others. Thanks to these measures, even during martial law, when there are hypothetically between 2 and 5 million unregistered firearms in the country, cases of mass shootings in public places are isolated incidents in Ukraine. To better outline the difference in the security situation related to civilian firearms ownership between the USA and Ukraine, we should compare the number of mass school shootings in these countries. In 2024, there were 331 mass school shootings in the United States, where firearms are legal for civilians. In contrast, there were 0 mass school shootings in Ukraine, where firearms are not legal for the civilian population. However, it is important to consider that the USA is a much larger country in terms of both territory (9,826,675 km²) and population (340.1 million people in 2024, according to the U.S. Census Bureau) compared to Ukraine (603,628 km²).

Therefore, it is useful to compare the number of mass school shootings in the state of Texas (696,200 km²) in 2024, which had a population of approximately 31.29 million people, with the number of such shootings in Ukraine during the same period. According to statistical data from the K-12 School Shooting Database (Marks *et al.*, 2024), there were 23 school shootings in Texas in 2024. No data for any school shootings in Ukraine for 2024 could be found in available sources.

The findings of P.M. Reeping *et al.* (2019) are also relevant here. They discovered that a 10% increase in gun ownership in a state was associated with a 35.1% increase in the rate of mass shootings. For their study, the researchers used an annual rating from 0 (fully restrictive) to 100 (fully permissive) for the gun laws of all 50 states, taken from a reference

guide for gun owners travelling between states from 1998 to 2015. They found that a 10-unit increase in the permissiveness of a state's gun law was also associated with an 11.5% higher rate of mass shootings. This suggests that states with less strict gun ownership laws had a higher number of mass shootings.

Although an analysis by M. Daraklis *et al.* (2024) did not find a correlation between the level of gun ownership and the number of shootings, the study did show a significant link between the level of gun ownership and the lethality of mass shootings – a 12.5% increase in gun ownership was associated with a 34% increase in the death rate from mass shootings. This highlights another danger of the proliferation of firearms: their higher lethality compared to other types of weapons. The authors of the study suggest that legally restricting gun ownership (and thus reducing gun availability) could save lives when mass shootings occur.

David Riedman, the founder of the K-12 School Shooting Database and an adjunct professor, predicted in an interview that in January 2025, there could be around 30 school shootings, most likely resulting from escalated fights. The number of school shootings in the USA in 2024 slightly decreased compared to the previous year, but the 330 school shootings registered last year are still the second-highest figure since 1966. School shootings continue to trouble school leaders because each incident involves a unique set of factors leading to the shooting. However, according to David Riedman, the 2024 shootings shared some common features: according to the database, 43% of school shooters from 1966 to 2024 attended the school where the incident occurred; four out of five premeditated school attacks in 2024 were committed by current students; most shootings occurred in high schools, with slightly fewer in primary schools; school shootings most often happened during school dismissal, sports events, and morning lessons; and most on-campus shootings resulted from fights that escalated into armed violence. This has been the trend in recent years. The author notes that the number of school shootings in 2024 was only 19 below the historical high of 349 incidents recorded in 2023. In fact, according to the database, the highest number of school shootings in the last six decades occurred between 2021 and 2024. This is despite intensified efforts to reinforce schools with cameras and weapon detection systems, as well as increased resources for the emotional and mental well-being of students (Arundel, 2024).

European Union legislation places significant restrictions on firearm use, even at a basic level. According to points 33-34 of Directive 2021/555¹, civilian use and possession of firearms capable of automatic

¹ Directive of the European Parliament and of the Council No. 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from <https://eur-lex.europa.eu/eli/dir/2021/555/oj/eng>.

and semi-automatic firing is prohibited. The Directive also mandates information exchange between member states, the marking and registration of firearms, and the requirement for member states to maintain systems for registering and storing data on firearms and their owners. Furthermore, under Article 6 of the Directive, an EU member state may only permit firearm possession to individuals aged 18 or older. For those under 18, a parent's permission is required, and they must not pose a danger to themselves or others (i.e., they are not mentally ill, have not committed violent crimes, etc.). The Directive specifies that firearms must be stored safely and should not be easily accessible or loaded. Firearm permits must be periodically reviewed, with a maximum interval of five years. It also states that member states must tighten controls on arms possession at the Union's external borders. Additionally, EU member states have the right to adopt stricter restrictions on the possession and use of firearms within their own legislation.

As an example of a European country where firearms were previously legalised, Switzerland is worth mentioning. It recently adopted a new weapons law amending the Federal Act on Weapons¹ to align its gun laws with EU standards, particularly the Directive. In a referendum, the Swiss public approved the new law with a 67% majority, reinforcing gun ownership conditions as an anti-terrorism measure (Switzerland passes new gun law, 2019). According to Part 3, Article 9b of the Weapons Act², a weapons acquisition permit is valid for six months, with a possible extension of up to three months. Under Article 8, any person wishing to acquire a weapon or a key weapon component needs a permit. An individual applying for a permit for a firearm not intended for sport, hunting, or collecting must provide a reason for the purchase. A permit is not issued to individuals who: are under 18; are incapacitated or require a legal representative; are considered a danger to themselves or others; or have been convicted of an act indicating violent behaviour, posing a risk to public safety, or for repeat offences or misdemeanours. Furthermore, Article 26 of the Act states that firearms, essential firearm components, ammunition, and ammunition components must be stored securely and protected from access by unauthorised individuals.

One reason for the change in gun law, besides preventing terrorism, was that the victims of firearm homicides in Switzerland were predominantly the most vulnerable members of society: women and children (Stegmüller & Turuban, 2024). Statistics

from 2009-2022 show that firearms were the most common method of killing women, used in 30.3% of 350 homicides of women compared to 28.5% of 316 homicides of men. Over 80% of incidents in Switzerland where a perpetrator kills their partner and children before committing suicide are carried out with a firearm (Federal Statistical Office, 2022).

At the same time, in Germany, according to paragraph 2 of the Law "On Weapons"³, the use of firearms or ammunition is permitted only to persons who have reached the age of 18, a permit is required to use firearms, and the use of automatic firearms is prohibited. According to paragraph 4 of the Law, a permit to use firearms may be obtained by a person who has reached the age of 18, has the necessary reliability and personal suitability, has the relevant skills and knowledge of firearms as required by law, has been able to demonstrate a real need to use firearms, and has provided proof of personal liability insurance for EUR 1 million (in case of bodily injury and property damage). The competent authority must regularly, but at least every three years, check the reliability and personal suitability of firearms licence holders. In other words, the possession and use of firearms in Germany is quite heavily regulated by law. Accordingly, mass shootings in Germany, as in Ukraine, are a rare occurrence. For example, in 2024, there were only three mass shootings in Germany. In one of them, a man shot four members of his family and then himself (Three dead in Albstadt..., 2024). In the second, a man shot his wife and then wounded three people in a hairdressing salon (After shooting in NRW city..., 2024). And in the third, a soldier killed four people and wounded two (Scheeßel in Lower Saxony: Bundeswehr soldier shoots four people, 2024).

K. Krüsselmann *et al.* (2021) conducted a study on the relationship between firearm use and violent crime in Europe, without comparing European countries with non-European countries. The researchers noted that the results of several studies differed. Some studies showed a clear decrease in the number of violent crimes after restrictions on the availability and ownership of firearms. Other studies indicated that the number of violent crimes after restrictions on the availability of firearms decreased specifically in relation to women who were victims of such crimes. In other words, as the number of firearms decreased, so did the number of female victims. Thus, all studies showed that restricting access to firearms has a positive effect on security dynamics: either overall or in relation to women, depending on the country.

¹ Federal Act of the Federal Republic of Germany "On Weapons, Weapons Accessories and Ammunition (Weapons Act, WG)". (1997, June). Retrieved from. https://www.fedlex.admin.ch/eli/cc/1998/2535_2535_2535/.

² Federal Act of the Federal Republic of Germany "On Weapons, Weapons Accessories and Ammunition (Weapons Act, WG)". (1997, June). Retrieved from. https://www.fedlex.admin.ch/eli/cc/1998/2535_2535_2535/.

³ Law of the Federal Republic of Germany "On Weapons". (2002, October). Retrieved from https://www.gesetze-im-internet.de/waffg_2002/BJNR397010002.html.

In turn, S. Hurka & C. Knill (2018) conducted a large-scale scientific study on the relationship between stronger legislative regulation of firearm ownership and the number of violent crimes and suicides in 16 Western European countries. In this study, they also did not take into account the situation with firearms and violent crimes in the United States, considering it too extreme. As a result of this study, the researchers concluded that increased legislative regulation of firearm ownership and use was always correlated with a decrease in violent crime and suicide rates: immediately in some countries and gradually in others. Nevertheless, the trend towards a decrease in violent crime and suicide in such conditions has always been present.

At the same time, it should be noted that G. Liu & D. Wiebe (2019) conducted a scientific study on the relationship between the increase or decrease in the number of firearms purchased in the United States and the number of mass shootings during the same period. They claimed that the results of this study were ambiguous. During a certain period, an increase in the number of firearms purchased in the United States correlated with an increase in the number of mass shootings in the states, while during another period, a decrease in the number of firearms purchased in the United States correlated with an increase in the number of mass shootings. It should be emphasised that the researchers took into account the number of firearms purchased in the United States, not the number of weapons owned by individuals during a given period. Furthermore, the level of legislative restrictions on gun ownership was also not taken into account in the calculations in this study. Given the ambiguity of the study, it is worth noting the methodological caveats of G. Kleck (2015), who pointed to the need for multifactorial correlation analysis when studying such data. It can be assumed that other factors, not just the number of firearms purchased in the United States, influenced the number of mass shootings during that period.

If look another country that is not a member of the European Union for comparison, Israel's Firearms Act¹ also provides for fairly strict rules on the possession of firearms. According to this law, no person may possess a firearm unless they have a licence. In order to obtain such a licence, a person must undergo appropriate training in the use of the type of firearm they wish to purchase and practise handling the type of firearm they wish to purchase at a shooting range. Applicants for a firearms licence must have lived in

Israel for at least three consecutive years, undergo a background check (criminal history, health history and mental health history), and state their reasons for possessing a firearm (e.g. self-defence, hunting or sport). Such licence applicants must demonstrate that they have a secure safe in their city of residence where they will store their firearms. Those who have firearms licences must renew them and take a shooting course every three years. Mass shootings in Israel committed by Israeli civilians are rare. In particular, in 2024, only one Israeli citizen committed a mass shooting, killing three members of his family and then committing suicide (Staff, 2024).

At the same time, A.I. Vecino-Ortiz & D.N. Guzman-Tordecilla (2020) emphasised in their research study that firearm injuries are becoming an increasingly pressing issue in Latin America. They expressed concern that Colombia ranks fifth in the world in terms of the number of gun-related deaths, after Brazil, the United States, India and Mexico. Based on the results of the study, the researchers concluded that permanent restrictions on the carrying of firearms have reduced the number of deaths related to the use of firearms. Taking these studies into account, it is important to note that restrictions on the possession, use and carrying of firearms do indeed help to reduce the number of human casualties resulting from the use of such weapons.

Thus, considering the examples of the countries mentioned above, as well as studies conducted by various scientists on the relationship between the severity of firearms legislation the number of firearms in the civilian population with the number of mass shootings, violent crimes and the number of female victims of firearms, it can be concluded that fewer weapons in the hands of the civilian population, as well as stricter laws on firearms, contribute to improving the security situation in the country. Stricter gun laws lead to a decrease in deaths from mass shootings, a decrease in the number of mass shootings, a decrease in the number of female victims, and/or a decrease in the number of violent crimes involving firearms. Thus, it can be argued that the legalisation of firearms does not lead to an improvement in the security situation in the country.

That is why it would be advisable to incorporate the provisions of the Instruction², approved by Order No. 622 of the Ministry of Internal Affairs of Ukraine in 1998, into a separate "Law on Weapons", strengthening them. This would bring Ukrainian legislation into line with European Union legislation. Such

¹ Law of Israel No. 5779 "On Arms". (1949, August). Retrieved from https://www.nevo.co.il/law_html/law00/72225.htm.

² Order of the Ministry of the Internal Affairs of Ukraine No. 622 "Instructions on the Procedure for the Manufacture, Purchase, Storage, Accounting, Transportation and use of Firearms, Pneumatic, Cold and Cold-Action Weapons, Domestically Produced Devices for Firing Cartridges Equipped with Rubber or Similar in their Properties Non-Lethal Projectiles, and Cartridges for them, as Well as Ammunition for Weapons, Main Parts of Weapons and Explosive Devices". (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0637-98#Text>.

strengthening would also streamline the provisions on weapons in Ukraine, making them more accessible and understandable to ordinary citizens without special legal education.

No European country has recent experience in improving the security situation in the country in terms of the use and possession of firearms in conditions of full-scale war and occupation of territory, or in preventing the illegal circulation of firearms, ammunition and explosives during martial law. V. Chernysh & V. Voronina (2022) pointed out in their research study that an effective way to prevent the illegal circulation of firearms, explosives and ammunition during martial law is to engage international partners and international organisations in cooperation, as the exchange of information between states should increase the effectiveness of the fight against such threats and prevent the international deterioration of the crime situation. However, as of 2025, the situation has changed, as Ukraine has become the only country in modern Europe that is involved in active military combat operations on its own territory, which has been attacked by a nuclear power. As a result, measures that have proven effective in other countries may not be sufficient on their own to improve the situation regarding illegal arms trafficking in Ukraine.

A relevant opinion on this matter was expressed by Zh.V. Udovenko & V.O. Halytskyi (2024), who emphasised that general approaches to solving this problem should be based on the principles of responsibility, transparency, and cooperation between government structures, law enforcement agencies, research institutions, and the public. Only a comprehensive approach can effectively prevent crimes involving the illegal trafficking of firearms, explosives and ammunition, which can help maintain stability and security in society. In turn, B.S. Shvets *et al.* (2024) point out in their Article that in order to prevent the illegal trafficking of firearms, explosives and ammunition during martial law, as well as to prevent criminal offences, it is advisable to take measures such as: improving the effectiveness of control and supervision by law enforcement agencies, promoting a culture of safety among the population and improving mechanisms for international cooperation to combat these crimes more effectively.

One way to reduce the number of crimes involving firearms and reduce the illegal circulation of firearms, explosives and ammunition would be to raise public awareness of the dangers of storing firearms, explosives and ammunition. K.R. Hendel *et al.* (2024)

point out in their research on raising awareness that knowledge about problems and potential dangers can motivate people to change their lifestyle and give up something they are used to (e.g., storing firearms). In fact, awareness is usually one of the first steps towards changing established behaviour. However, it should be noted that awareness and knowledge alone do not necessarily initiate or sustain stable changes in behaviour. Social and psychological studies have shown that even clear intentions or knowledge often do not translate into real action (Conner & Norman, 2022).

Thus, educational measures alone are not enough to successfully change behaviour patterns. In particular, the scientific study Facilitating organisational change (2022) states that the process of helping to change an individual's behaviour must include informational, behavioural and emotional components. Achievements should be recognised and emphasised, and progress should be monitored (in the context of voluntarily surrendered firearms, this could take the form of regular publication of the number of weapons surrendered over a certain period throughout Ukraine, using linguistic forms of encouragement). However, the authors also emphasise that in order to achieve real results, the objectives of a campaign to change certain behaviours (e.g. illegal possession of firearms) must be developed separately for different population groups, demonstrating that these objectives are consistent with the personal values and worldviews of the individuals whose behaviour needs to be changed. For example: young and old people, conservative individuals and those who are more liberal, people with active and passive life positions. It should also be noted that individuals may be motivated by examples of those who are similar to themselves. Thus, given the effectiveness of strict regulation of firearm ownership, based on the above study of changing behaviour patterns, it can be hypothetically assumed that comprehensive measures to enshrine in law the provisions provided for in the Instructions¹, conducting specialised educational activities for different population groups, as well as activities aimed specifically at changing behaviour patterns, will lead to an improvement in the situation with the illegal circulation of firearms, ammunition and explosives during martial law in Ukraine.

■ Discussion

The issue of developing ways to prevent the illegal circulation of firearms, explosives and ammunition during martial law, as well as the danger of their

¹ Order of the Ministry of the Internal Affairs of Ukraine No. 622 "Instructions on the Procedure for the Manufacture, Purchase, Storage, Accounting, Transportation and use of Firearms, Pneumatic, Cold and Cold-Action Weapons, Domestically Produced Devices for Firing Cartridges Equipped with Rubber or Similar in their Properties Non-Lethal Projectiles, and Cartridges for them, as Well as Ammunition for Weapons, Main Parts of Weapons and Explosive Devices". (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0637-98#Text>.

legalisation, is a sensitive and widespread topic throughout the world. For Ukraine, it has become particularly urgent due to martial law and the Russian Federation's brutal military aggression, which has led to an increase in the number of unregistered weapons in the hands of the civilian population. Ukrainian scientists, like scientists in other countries, have studied the problem of illegal trafficking in firearms, explosives and ammunition and have taken different approaches to solving it. For example, M. Verkhoutova & O. Krasovsky (2024) believe that in order to prevent the illegal circulation of firearms, it is necessary to adopt a special law that would legalise firearms and, allegedly, increase the level of public responsibility and reduce the number of unregistered weapons. In their opinion, the crime rate would decrease significantly if citizens had "the right to legally purchase, store, carry and use firearms for self-defence and protection of private property". However, it should be noted that there are no scientific studies that conclusively confirm that public responsibility increases when firearms are legalised. Instead, according to a study by D. Hemenway *et al.* (2001), higher levels of firearm ownership are associated with significantly lower levels of mutual trust and civic engagement. Moreover, countries where access to firearms is easy and legal, according to the studies cited above, have higher rates of firearm-related deaths, an increase in violent crime, suicide rates, and other problems associated with a culture of free firearm ownership.

In turn, D. Sanakoev (2023) outlined the advantages and disadvantages of legalising firearms in his research article. There were only three advantages and six disadvantages. Moreover, the advantages listed were questionable and gave rise to counter-arguments. For example, the reduction in criminal offences against property has a flip side: the availability of firearms to the civilian population and "the possibility for virtually anyone who wants to do so to purchase such weapons and carry them concealed"¹, which, according to the studies cited in this article, leads to a natural increase in the number of crimes involving the use of weapons, as well as suicides.

O. Bogdanets *et al.* (2021) support the legalisation of firearms in Ukraine in their scientific work. The researchers believe that such a law will have a positive impact on improving the crime situation in Ukraine. They note that when people know that they may encounter dangerous resistance from others, they will be more polite, cautious, and responsible. However, the statements made by O. Bogdanets *et al.* (2021) are only the authors' assumptions and are

not supported by any research. At the same time, the studies cited above in this article confirm that the legalisation of firearms and an increase in the number of firearms in the country leads to a deterioration in the security situation in the state (increase in violent crimes, increase in the number of mass shootings, increase in the number of victims of such shootings, increase in the number of victims of firearms among women and children).

D. Priputen (2020) proposed improving Ukrainian legislation by strengthening state control over the circulation of civilian weapons. It should be added that such control would indeed provide an additional means of improving safety related to firearms and ammunition in Ukraine, as the studies cited in this article show that control over the storage of firearms helps to increase the level of security in the state. Nevertheless, the capabilities of law enforcement agencies are already largely focused on investigating war crimes, and such control would only make their work more voluminous.

M. Kulyk & V. Tylchik (2023) express their opinion on supplementing the concept of "circulation of weapons among the civilian population". They believe that such a concept cannot be too abstract, one that does not contain the characteristic features of firearms circulation and does not reveal the very essence of the concept, and therefore developed the term, taking into account its specific characteristics. A clear definition of legislative terms, as well as strict regulation of such circulation, can indeed improve the effectiveness of legislation and the security situation in Ukraine related to firearms. M. Kulyk (2024) believes that the legalisation of weapons among the civilian population is a necessary step, given the rapid advance of Russian troops into Ukrainian territory. An author points out that such legalisation is a harsh military necessity. However, the author does not take into account that, as mentioned earlier in this article, armed, unorganised and untrained civilians with firearms who attempt to participate in military operations worsen the situation for professional soldiers and lead to casualties among both civilians and military personnel. Civilians who wish to defend their homeland have the opportunity to join the Armed Forces of Ukraine and undergo the necessary training.

V. Galunko *et al.* (2024) argue that Ukraine needs to regulate the possession and use of firearms by law in connection with Ukraine's aspirations to join the European Union. Among the positive examples, the authors cite those countries that have fairly liberal legislation on firearms. Nevertheless, it should be noted that Directive No. 2021/555² does not provide

¹ Draft Law of Ukraine No. 5708-1 "On the Right to Self-Defense and Possession of Civilian Firearms". (2021, July). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72481.

² Directive of the European Parliament and of the Council No. 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from <https://eur-lex.europa.eu/eli/dir/2021/555/oj/eng>.

for an overly liberal legislative regime regarding the possession and use of firearms, and countries such as Switzerland are abandoning liberal legislation in order to improve the security situation in the country and to maintain their status as a member of the European Union.

D. Hemenway & E. Nelson (2020) emphasise that the burden of mass shootings falls not only directly on the victims themselves, but can also affect their families, loved ones and communities. They believe that indirect costs include medical care, grief, fear, hopelessness and post-traumatic stress disorder. Researchers believe that the scale of the gun problem in the United States is much greater than just the cost of treatment and the number of deaths. This view is reasonable, given the complex negative impact of mass shootings. At the same time, A. Vegter & A.T. Middlewood (2022) explored in their research the impact of mass shootings on individuals who grew up experiencing a significant number of mass shootings and witnessed the government's lack of response to these killings. The authors examined how such people feel about measures to prevent mass shootings. After analysing the survey, they concluded that these individuals do indeed believe that stricter laws regulating the circulation of firearms could reduce the number of mass shootings. This study demonstrates the perspective of those who grew up during a time when the number of mass shootings increased on the legislative regulation of firearms.

■ Conclusions

The subject of this Article was the ways of preventing the illicit trafficking of firearms, ammunition, and explosives during martial law in Ukraine. It explored the feasibility of legalising firearms based on the experience of other countries and proposed the most optimal ways to prevent the illicit trafficking of firearms, explosives, and ammunition during martial law, taking into account relevant scientific research on the topic. An analysis was conducted of the situation with illicit firearms trafficking under martial law in Ukraine, given that precise official data on the matter is unavailable. The analysis revealed that Ukraine does indeed have a problem with an increase in the number of crimes involving the use of firearms. The available information, among other things, indicates that after the start of the full-scale armed aggression by the Russian Federation, the volume of illegal firearms trafficking in Ukraine increased. An analysis was also conducted of the legislation of the United States, Switzerland, Germany, Israel, and the supranational legislation of the European Union. The results showed that in the countries reviewed where the use of firearms is regulated by strict laws, mass shootings were

isolated incidents. In contrast, in countries where firearms were legalised, mass shootings were more frequent and/or more women and children died as a result of shootings. Information on the link between the strictness of a country's firearms legislation and the number of violent crimes was also analysed. The results suggest that the less strict a country's firearms legislation, the more violent crimes and/or mass shootings occur, and/or the more women die from gunshot wounds, and/or there are more victims of such shootings. The possibilities of influencing population behaviour patterns were also analysed. It was found that to change behaviour, it is necessary not only to inform the public about the need to perform or refrain from certain actions but also to implement other measures: tracking progress, specialising the state's communication with the population according to the type of group, etc.

Summarising the results, it was found that stricter legislative norms, one way or another, lead to an improvement in the security situation in the country that implements them. Conceptually, this article, based on existing scientific research, hypothesises that a comprehensive set of measures (incorporating the provisions of the Instructions approved by Order No. 622 of the Ministry of Internal Affairs of Ukraine in 1998 into law, raising civilian awareness about the dangers of storing firearms, conducting educational events specialised for different population groups, as well as additional campaigns aimed at changing the population's behaviour pattern) could reduce the volume of illicit firearms trafficking in Ukraine. The limitation of this article was that Ukraine has become the first modern European country whose territory has been occupied by a nuclear state, which makes it impossible to find a successful example of ways to prevent illegal arms trafficking under similar circumstances. A promising direction for future scientific research would be the development of specific campaign measures aimed at changing the population's behaviour regarding firearms ownership.

■ Acknowledgements

Gratitude is expressed to the staff of the Research Laboratory on Crime Prevention Issues of the Educational and Scientific Institute of Police Activity of the National Academy of Internal Affairs for providing access to materials from previous scientific studies, as well as for their suggestions and comments regarding the preparation of this work.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

■ References

- [1] After shooting in NRW city: Police arrest suspect – he shot wife and other people. (2024). Retrieved from <https://surl.li/nqjwud>.
- [2] Arundel, K. (2025). *School shootings in 2024 fell just below prior year's record high*. Retrieved from <https://www.k12dive.com/news/school-shootings-2024-near-record-high-2025-predictions/736590/>.
- [3] Bogdanets, O.Y., Khlystun, I.A., & Pryamitsyn, V.Y. (2021). Legalization of civilian weapons: Specifics, legal basis and foreign experience. *Legal Scientific Electronic Journal*, 9, 57-60. doi: 10.32782/2524-0374/2021-9/12.
- [4] Center of Security Studies CENSS. (2021). *Results of the study "Illegal trafficking and use of weapons in Ukraine in 2020"*. Retrieved from <https://censs.org/illcit-arms-2020/>.
- [5] Chernysh, V., & Voronina, V. (2022). The role of baseline in shaping and evaluating state policy on arms trafficking. *Electronic Scientific Publication "Public Administration and National Security"*, 1(54). doi: 10.25313/2617-572x-2025-1-10640.
- [6] Conner, M., & Norman, P. (2022). Understanding the intention-behavior gap: The role of intention strength. *Frontiers in Psychology*, 13, article number 923464. doi: 10.3389/fpsyg.2022.923464.
- [7] CrimeDataLab. (n.d.). *Crime prevention statistics in Ukraine (2013-2024)*. Retrieved from <https://crimedatalab.shinyapps.io/platform/>.
- [8] Crokidakis, N. (2022). Modeling the impact of civilian firearm ownership in the evolution of violent crimes. *Applied Mathematics and Computation*, 429, article number 127256 doi: 10.1016/j.amc.2022.127256.
- [9] Daraklis, M., Pol, M., Johnson, L., Salvatora, C., & Kerns, L. (2024). A statistical analysis of the impact of gun ownership on mass shootings in the USA between 2013 and 2022. *Journal of Urban Health*, 101(3), 571-583. doi: 10.1007/s11524-024-00881-9.
- [10] Department of Communications of the Ministry of Internal Affairs of Ukraine. (2024). *Bohdan Drap'yaty: In 2024, 4,700 criminal proceedings were initiated for illegal handling of weapons, ammunition or explosives*. Retrieved from <https://surl.li/ngdptg>.
- [11] Facilitating organizational change. (2022). *Development and Learning in Organizations: An International Journal*, 36(1), 30-32. doi: 10.1108/dlo-03-2021-0037.
- [12] Federal Statistical Office. (2022). *Police crime statistics 2022*. Retrieved from <https://www.bfs.admin.ch/bfs/fr/home/statistiques/criminalite-droit-penal/police/violence.gnpdetail.2023-0189.html>.
- [13] Galunko, V.V., Borodin, I.L., & Dragan, O.V. (2024). Arms circulation among the civilian population: positive foreign experience. *Law and Public Administration*, 1, 323-328. doi: 10.32782/pdu.2024.1.45.
- [14] General Prosecutor Office. (n.d.). *On registered criminal offences and the results of their pre-trial investigation*. Retrieved from <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.
- [15] Gergely, H. (2024). *Locked but loaded: The dynamics of firearms ownership in Ukraine*. Retrieved from <https://surl.li/kovykw>.
- [16] Greenberg, B., et al. (2024). How firearm legislation impacts firearm mortality internationally: A scoping review. *Health Policy OPEN*, 7, article number 100127. doi: 10.1016/j.hpopen.2024.100127.
- [17] Hemenway, D., & Nelson, E. (2020). The scope of the problem: Gun violence in the USA. *Current Trauma Reports*, 6(1), 29-35. doi: 10.1007/s40719-020-00182-x.
- [18] Hemenway, D., Kennedy, B.P., Kawachi, I., & Putnam, R.D. (2001). Firearm prevalence and social capital. *Annals of Epidemiology*, 11(7), 484-490. doi: 10.1016/s1047-2797(01)00235-6.
- [19] Hendel, K.R., Vaughan, E., Kirschmann, J.M., & Johnston, C.A. (2024). Moving beyond raising awareness: Addressing barriers. *American Journal of Lifestyle Medicine*, 18(6), 740-743. doi: 10.1177/15598276241274114.
- [20] Hideg, G. (2024). *Locked but loaded: Firearms possession dynamics in Ukraine*. Retrieved from <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Situation-Update-2024-Ukraine-EN.pdf>.
- [21] Hirak, G. (2024). *Pitfalls of the gun law: Who will it give the opportunity for self-defense?* Retrieved from <https://ua.korrespondent.net/articles/4656410-pidvodni-kameni-zakonu-pro-zbroui-komu-vin-dast-mozhlyvist-samozakhystu>.
- [22] Hurka, S., & Knill, C. (2018). Does regulation matter? A cross-national analysis of the impact of gun policies on homicide and suicide rates. *Regulation & Governance*, 14(4), 787-803. doi: 10.1111/rego.12235.
- [23] Jafarova, O., & Dunaeva, T. (2023). Preventing the illicit trafficking of firearms in the context of full-scale aggression by the Russian Federation against Ukraine. *Naukovi Perspektivi*, 11(41), 848-857. doi: 10.52058/2708-7530-2023-11(41)-848-857.

- [24] Kappelman, J., & Fording, R.C. (2021). The effect of state gun laws on youth suicide by firearm: 1981-2017. *Suicide and Life-Threatening Behavior*, 51(2), 368-377. doi: [10.1111/sltb.12713](https://doi.org/10.1111/sltb.12713).
- [25] Khomenko, A.O. (2024). International experience in regulating arms circulation: Ways of implementation in Ukraine. *Law Journal of Vasyl Stus Donetsk National University*, 2, 174-182. doi: [10.31558/2786-5835.2024.2.18](https://doi.org/10.31558/2786-5835.2024.2.18).
- [26] Kleck, G. (2015). The impact of gun ownership rates on crime rates: A methodological review of the evidence. *Journal of Criminal Justice*, 43(1), 40-48. doi: [10.1016/j.jcrimjus.2014.12.002](https://doi.org/10.1016/j.jcrimjus.2014.12.002).
- [27] Krüsselmann, K., Aarten, P., & Liem, M. (2021). Firearms and violence in Europe – a systematic review. *PloS One*, 16(4), article number e0248955. doi: [10.1371/journal.pone.0248955](https://doi.org/10.1371/journal.pone.0248955).
- [28] Kulyk, M.S. (2024). Peculiarities of the circulation of firearms among citizens of Ukraine under the legal regime of martial law. *Law and Society*, 2, 461-469. doi: [10.32842/2078-3736/2024.2.65](https://doi.org/10.32842/2078-3736/2024.2.65).
- [29] Kulyk, M.S., & Tylichik, V.V. (2023). The concept and essence of weapons circulation among the civilian population. *Current Problems of Domestic Jurisprudence*, 2, 116-121. doi: [10.32782/39221479](https://doi.org/10.32782/39221479).
- [30] Leshchenko, K. (2023). Current trends in the military-industrial integration of the EU countries and implications for Ukraine. *Foreign Affairs*, 33(4), 8-21. doi: [10.46493/2663-2675.33\(4\).2023.8-21](https://doi.org/10.46493/2663-2675.33(4).2023.8-21).
- [31] List of mass shootings in the United States in 2024. (2025). Retrieved from https://en.wikipedia.org/wiki/List_of_mass_shootings_in_the_United_States_in_2024.
- [32] Liu, G., & Wiebe, D.J. (2019). A time-series analysis of firearm purchasing after mass shooting events in the United States. *JAMA Network Open*, 2(4), article number 191736. doi: [10.1001/jamanetworkopen.2019.1736](https://doi.org/10.1001/jamanetworkopen.2019.1736).
- [33] Marks, N., HATER Lab, Department of Geography, University of Utah. (2024). *Interactive map of school shootings*. Retrieved from <https://k12ssdb.org/interactive-map>.
- [34] Milenin, V., & Natchii, A. (2024). [Some features of firearms circulation](#). In *Conference of the International Center for Scientific Research* (pp. 121-123). Sumy: Ukraine.
- [35] Priputen, D.S. (2020). State control over the circulation of civilian firearms in Ukraine. *Pravo.ua*, 3, 38-43. doi: [10.32782/law.ua.2020.3.7](https://doi.org/10.32782/law.ua.2020.3.7).
- [36] Reeping, P.M., Cerdá, M., Kalesan, B., Wiebe, D.J., Galea, S., & Branas, C.C. (2019). State gun laws, gun ownership, and mass shootings in the US: Cross sectional time series. *BMJ*, 364, article number 1542. doi: [10.1136/bmj.1542](https://doi.org/10.1136/bmj.1542).
- [37] Sanakoev, D. (2023). Regulatory and legal aspects of regulating the circulation of weapons under martial law. *Scientific Bulletin of Dnipro State University of Internal Affairs*, 2, 224-230. doi: [10.31733/2078-3566-2023-6-224-230](https://doi.org/10.31733/2078-3566-2023-6-224-230).
- [38] Scheeßel in Lower Saxony: Bundeswehr soldier shoots four people. (2024). Retrieved from <https://www.faz.net/aktuell/gesellschaft/kriminalitaet/scheessel-in-niedersachsen-bundeswehrsoldat-erschiesst-vier-menschen-19556474.htm>.
- [39] Shvets, B.S., Moskalenko, Ya.S., & Kopylov, E.V. (2024). [Certain issues of preventing the commission of criminal offenses related to the illegal trafficking of firearms, ammunition and explosives](#). *UNIVERSUM*, 7, 88-93.
- [40] Siegel, M., Ross, C.S., & King 3rd, C. (2013). The relationship between gun ownership and firearm homicide rates in the United States, 1981-2010. *American Journal of Public Health*, 103(11), 2098-2105. doi: [10.2105/ajph.2013.301409](https://doi.org/10.2105/ajph.2013.301409).
- [41] Staff, T. (2024). *Death toll rises in Nazareth extended family shooting; motive unknown*. Retrieved from <https://surl.li/xgyrmd>.
- [42] Stegmüller, C., & Turuban, P. (2024). *How Switzerland combines a passion for guns with safety*. Retrieved from <https://www.swissinfo.ch/eng/business/how-switzerland-combines-a-passion-for-guns-with-safety/49115108>.
- [43] Switzerland passes new gun law. (n.d.). Retrieved from <https://telegrafi.com/en/Switzerland-adopts-new-gun-law/>.
- [44] Symonenko, N.O., & Khomenko, A.O. (2024). Development of legal regulation of illegal arms trafficking: Critical analysis of amendments to Article 263 of the Criminal Code of Ukraine and their enforcement practice. *Scientific Bulletin of Kyiv Institute of the National Guard of Ukraine*, 2, 95-103. doi: [10.59226/2786-6920.2.2024.95-103](https://doi.org/10.59226/2786-6920.2.2024.95-103).
- [45] Three dead in Albstadt: 63-year-old shoots family members in Lautlingen. (2024). Retrieved from <https://surl.lu/osxwaw>.
- [46] Udovenko, Zh.V., & Halytskyi, V.O. (2024). International experience in combating the illegal circulation of portable firearms and their ammunition. *European Legal Journal*, 4, 85-91. doi: [10.36919/3041-1149\(print\).4.2024.85-91](https://doi.org/10.36919/3041-1149(print).4.2024.85-91).

- [47] Vecino-Ortiz, A.I., & Guzman-Tordecilla, D.N. (2019). Gun-carrying restrictions and gun-related mortality, Colombia: A difference-in-difference design with fixed effects. *Bulletin of the World Health Organization*, 98(3), 170-176. doi: [10.2471/blt.19.236646](https://doi.org/10.2471/blt.19.236646).
- [48] Vegter, A., & Middlewood, A.T. (2022). The massacre generation: Young people and attitudes about mass shooting prevention. *Social Science Quarterly, Southwestern Social Science Association*, 103(4), 820-832. doi: [10.1111/ssqu.13148](https://doi.org/10.1111/ssqu.13148).
- [49] Verkhoturova, M.A., & Krasovsky, O.P. (2024). Legalisation of short-barreled firearms in Ukraine: Problematic issues. In *Current problems of combating corruption under martial law* (pp. 35-37). doi: [10.36059/978-966-397-358-6-10](https://doi.org/10.36059/978-966-397-358-6-10).
- [50] Wallace, M.E., Vilda, D., Theall, K.P., & Stoecker, C. (2021). Firearm relinquishment laws associated with substantial reduction in homicide of pregnant and postpartum women. *Health Affairs*, 40(10). doi: [10.1377/hlthaff.2021.01129](https://doi.org/10.1377/hlthaff.2021.01129).
- [51] Werbick, M., Bari, I., Paichadze, N., & Hyder, A.A. (2021). Firearm violence: A neglected "Global Health" issue. *Globalization and Health*, 17(1), article number 120. doi: [10.1186/s12992-021-00771-8](https://doi.org/10.1186/s12992-021-00771-8).

Шляхи запобігання незаконному обігу вогнепальної зброї, бойових припасів і вибухових речовин під час воєнного стану в Україні та небезпеки їх легалізації

Валентина Крижна

Кандидат юридичних наук, старший науковий співробітник
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-0402-4224>

Оксана Брисковська

Кандидат юридичних наук, старший науковий співробітник
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0001-6902-9969>

■ **Анотація.** Актуальність статті полягає в тому, що в умовах повномасштабної війни російської федерації проти України загострюються необхідність посилення контролю за обігом зброї, забезпечення правопорядку та безпеки громадян. Незаконний обіг зброї призводить до збільшення ризику суспільної небезпеки, створює умови до зростання кримінальних правопорушень із застосуванням насильства. Метою статті було встановлення оптимальних шляхів запобігання незаконному обігу вогнепальної зброї, вибухових речовин і бойових припасів під час воєнного стану та на основі міжнародного досвіду дослідити доцільність їх легалізації. Для досягнення зазначеної мети застосовано низку методів наукового пізнання: порівняльний, структурний, системний. Вивчення міжнародного досвіду засвідчило, що в країнах, у яких послаблений контроль за обігом зброї або легалізований обіг зброї, вбачається збільшення випадків кримінальних правопорушень з використанням зброї. Натомість у країнах, де запроваджено суворий контроль за обігом зброї, реєструється нижчий рівень злочинності з використанням зброї. Встановлено, що декриміналізація зберігання та виготовлення зброї збільшить її обіг серед населення, може призвести до незаконного використання зброї як у побутових, так і міжособистісних конфліктах, збільшить ризик для громадської безпеки. Тому заміна кримінальної відповідальності за зберігання та виготовлення зброї на адміністративну недостатньо враховує наслідки для правоохоронної системи, знизить ефективність у боротьбі з кримінальними правопорушеннями. Непохитний і жорсткий контроль обігу вогнепальної зброї знижує ризики насильницьких злочинів, пов'язаних із застосуванням зброї. Практичне значення дослідження полягає у визначенні ефективних підходів до законодавчого регулювання вогнепальної зброї, бойових припасів і вибухових речовин для подальшої імплементації в законодавство України, а також можливих шляхів і способів запобігання незаконному обігу вогнепальної зброї, бойових припасів та вибухових речовин під час воєнного стану в Україні

■ **Ключові слова:** легалізація зброї; цивільне населення; кримінальні правопорушення; громадський порядок; суспільна безпека

UDC 343.1

DOI: 10.63341/naia-herald/3.2025.74

The problem of legitimacy in law enforcement activities under conditions of insufficient legislative regulation of confidential cooperation

Natalia Kulitska*

Postgraduate Student

National Academy of Internal Affairs

03035, 1 Solomianska Sq., Kyiv, Ukraine

<https://orcid.org/0009-0004-3295-2070>

■ **Abstract.** For the effective investigation of serious or particularly serious crimes, covert investigative (search) actions are conducted, involving individuals who confidentially cooperate with law enforcement agencies. This study aimed to examine the legal parameters governing the admissibility of the results of covert investigative (search) actions as a particularly sensitive form of evidence collection, with emphasis on balancing operational expediency and procedural legality within criminal proceedings. The methodological basis of the study included a systematic analysis of Ukrainian legislative acts, as well as comparative legal methods, which made it possible to assess the effectiveness of the practical application of legislative provisions. In the context of insufficient legislative regulation of confidential cooperation with law enforcement bodies, it was necessary to analyse potential errors that may lead to the recognition of evidence as inadmissible. Attention was drawn to the possibility of conducting covert investigative (search) actions solely during the investigation of crimes of a certain degree of gravity, and subject to the proper procedure for obtaining the necessary authorisation. The article also highlighted the need for proper formalisation of the involvement of individuals confidentially cooperating with law enforcement authorities in covert investigative (search) actions, and outlines the information that must be specified in the ruling authorising such a decision. Issues concerning the declassification of protocols prepared on the basis of covert investigative (search) actions and the decisions authorising their conduct have been examined, with particular attention given to the absence of a mechanism for declassifying rulings of an investigating judge granting permission for such actions and the problems arising as a result. A mechanism has been proposed for verifying the legality of covert investigative (search) actions in cases where no ruling by an investigating judge exists to authorise such actions, or where such a ruling remains classified. The problematic issues explored in this article, together with the specified conditions for using the evidence obtained, provide a useful tool for the practical work of detectives, investigators, and operational units of law enforcement agencies

■ **Keywords:** admissibility of evidence; documentation of covert investigative (search) actions; involvement of individuals; time limits; law enforcement officers; declassification

■ Introduction

Covert investigative (search) actions (hereinafter CISAs) are a type of investigative (search) action, information about the fact and methods of which is not subject to disclosure, except in cases provided

■ Suggested Citation:

Kulitska, N. (2025). The problem of legitimacy in law enforcement activities under conditions of insufficient legislative regulation of confidential cooperation. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 74-86. doi: 10.63341/naia-herald/3.2025.74.

■ *Corresponding author

■ Received: 28.05.2025; Revised: 23.08.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

for by the Criminal Procedure Code of Ukraine¹. According to the CPC, CISAs are conducted only in cases where information about a criminal offence and the person who committed it cannot be obtained by other means. In the context of corruption-related criminal offences, law enforcement officers at the initial stage of investigation have limited time to obtain authorisation to conduct CISAs, to properly involve an individual (often the complainant) in such actions, and to carry them out competently. The lack of time is caused by offenders' awareness of law enforcement activities and their establishment of strict deadlines for receiving bribes. Owing to time constraints, the insufficient legislative regulation of confidential cooperation, and the need for rapid decision-making, law enforcement officers may make mistakes that could subsequently result in evidence being declared inadmissible or irrelevant. For this reason, this article summarises practical experience, analyses the legislation, and identifies the key conditions that must be observed when preparing, conducting, and using the results of CISAs.

Between 2012 and 2015, after the regulation permitting the conduct of CISAs during pre-trial investigation was introduced, these provisions were not implemented in practice, and only up to 7% of the results of CISAs were used by prosecutors to substantiate charges in court (Serhieieva, 2016). However, by 2020, the situation had changed, and law enforcement officers began to submit applications for the conduct of CISAs much more actively, particularly during investigations of corruption offences. For example, in 2020, investigating judges of the High Anti-Corruption Court considered 1,995 applications for authorisation to conduct CISAs, of which 81% were granted (High Anti-Corruption Court, 2021). According to the findings of J. Matijašević & S. Zarubica (2020), one reason for this may be that modern society increasingly faces serious forms of crime in which offenders employ advanced technological means, thereby compelling law enforcement officers to resort to CISAs in order to obtain evidence of criminal activity, albeit at the expense of the privacy of certain individuals.

CISAs have become an effective tool for collecting evidence in criminal proceedings, and when applied appropriately and in a timely manner, they enable law enforcement officers and prosecutors to record information that could not otherwise be obtained – for example, conversations between suspects, surveillance of their actions, or access to data exchanged electronically. Alongside the conduct of CISAs, the use of undercover agents is also

considered an effective method of gathering evidence. According to J.J. Dragojlović & N. Filipović (2022), this constitutes the most effective tactic for carrying out covert operations. For this reason, this article analyses the proper procedure for involving individuals in confidential cooperation. In addition to the effectiveness of CISAs, it is equally important to maintain a balance between restricting human rights in the course of such actions and the necessity of gathering evidence during pre-trial investigation. As M.M. Pohoretskyi (2023) notes, it is crucial to adhere to standards ensuring a balance between private and public interests and to uphold the principle of proportionality, whereby any interference must remain proportionate to a legitimate aim.

In the academic literature, many studies have examined individual conditions for the use of CISAs, yet relatively few scholars have identified all the conditions under which CISAs may be applied. Among this limited group is H.R. Kret (2021), who observed that if the legal classification of a criminal offence is altered from a serious or particularly serious crime to a less serious one, the results of CISAs may nonetheless be used within the given criminal proceedings. Significant evidentiary gaps present in the process of deciding whether to declassify investigating judges' rulings authorising CISAs were studied by O.V. Heselev (2019), who pointed to the lack of regulation in this area and the resulting consequences. The issue of granting admission and access to state secrets for individuals cooperating with law enforcement agencies on a confidential basis was explored in a doctoral dissertation by Ya. Talyzina (2022). The researcher concluded that the absence of such admission and access to state secrets should not affect the admissibility of the evidence in question.

This study aimed to establish an algorithm of actions and the main requirements of the CPC² that law enforcement officers must follow when conducting CISAs in order to ensure that the evidence obtained is recognised as admissible.

■ Materials and Methods

To achieve the stated aim, the study employed the following principal methods. The method of dogmatic (formal-legal) analysis was applied to examine the current legislation of Ukraine, which made it possible to systematise legal norms and identify their gaps. In addition, the method of comparative jurisprudence was used to analyse the experience of applying the provisions of the Criminal Procedure Code of Ukraine in practice³. The methods of synthesis and induction were also employed to examine the various

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² Ibidem, 2012.

³ Ibidem, 2012.

conditions for the use of the results of covert investigative (search) actions, to generalise them, and to present the findings in this article. Finally, the case study method was applied to assess the effectiveness of the implementation of Ukrainian legislation. For example, the practical observations of O.V. Heselev (2019) were analysed, which pointed to the impossibility of prosecutors influencing decisions on declassifying rulings authorising CISAs. The theoretical framework of the study was based on the criteria of admissibility of evidence identified by A.V. Panov & D.R. Tyshchenko (2024): legality (obtained in a lawful manner and in compliance with all procedural rules), reliability (being accurate and fact-based), relevance (pertaining to the subject of the case), and fairness (not obtained through violations of human rights).

The source base of the study included: the Criminal Procedure Code of Ukraine¹, which sets out the fundamental norms to be observed; internal instructions², which define in greater detail the procedure for conducting CISAs; and court rulings, which reflect established judicial practice and made it possible to analyse errors committed in practice and to formulate, on their basis, the conditions that must be adhered to. For example, a ruling of the Supreme Court³ established the requirement to disclose not only the materials of CISAs but also the decision granting permission for their conduct. These sources were selected because, when forming an operational algorithm, it is necessary to take into account the requirements set by law. The analysis of court proceedings made it possible to consider the “vision” of the court as the final link in the criminal process, and to assess the decisions taken by law enforcement officers.

■ Results and Discussion

The absence of a definition of the term “results of CISAs” in the CPC⁴ has sparked debate among scholars and practitioners regarding its interpretation. Based on an analysis of the provisions of the CPC and the Instruction on the Organisation of Covert Investigative (Search) Actions and the Use of Their Results in Criminal Proceedings⁵, D. Serhieieva (2016) proposes considering the results of CISAs in both broad and narrow senses. In the broad sense, the results of CISAs are any data obtained in the course of their conduct. In the narrow sense, the results of CISAs are materially recorded sources containing such data, as

well as physical objects, including documents, arising in the course of their conduct.

M.V. Bahrii & V.V. Lutsyk (2017), in analysing the concepts of “results of CISAs” and “materials of CISAs”, concluded that these notions are identical. The scholars proposed their own definition of “results of CISAs”, which is persuasive, as it captures the essence of the information obtained during the conduct of CISAs and summarises it concisely. It is therefore recommended for use in further research. According to their definition, the results of CISAs are the information obtained by persons who conducted or were involved in the conduct of CISAs and recorded in a procedurally prescribed form (sources of such information), as well as objects, items, or documents seized during their conduct that may be relevant to establishing the circumstances of the criminal proceedings.

When planning the conduct of CISAs, law enforcement officers seek confidential assistance from individuals with the aim of involving them in such actions. The purpose of such involvement is to enhance the effectiveness of CISAs and to obtain indisputable evidence during their execution. If, in the course of conducting CISAs, the pre-trial investigation body manages to record evidence of the criminal activity of certain persons, the results become significant evidence through which the prosecution may secure a conviction in court. For this reason, it is crucial to adhere to the conditions that ensure the subsequent admissibility of CISA results, namely: compliance with the CPC⁶ requirements for obtaining authorisation to conduct CISAs; the confidential involvement of individuals in their conduct; the prescribed forms and methods of their implementation; and the proper drafting of protocols recording their results.

Procedural conditions for conducting CISAs are the legally established fundamental rules (requirements) that ensure the lawfulness and validity of their conduct, the achievement of their purpose, and the fulfilment of the tasks of criminal proceedings. These procedural conditions determine the legitimacy of such actions and, consequently, the possibility of using their results in criminal proceedings. A breach of the procedural conditions for conducting CISAs renders their results inadmissible as evidence (Bahrii & Lutsyk, 2017).

Several conditions can be identified under which the results of CISAs obtained through confidential

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² Instructions on the Organisation of Covert Investigative (Search) Actions and the Use of their Results in Criminal Proceedings. (2012, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0114900-12#Text>.

³ Resolution of the Supreme Court in the Case No. 671/463/15-к. (2017, March). Retrieved from <https://dl.if.court.gov.ua/sud0906/pres-centr/1/357697/>.

⁴ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁵ Instructions on the Organisation of Covert Investigative (Search) Actions and the Use of their Results in Criminal Proceedings. (2012, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0114900-12#Text>.

⁶ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

cooperation may be used. The first condition is the investigation of a serious or particularly serious criminal offence. According to the provisions of the CPC,¹ CISAs may be conducted exclusively in criminal proceedings concerning serious or particularly serious crimes – that is, offences punishable by imprisonment for a term of five years or more, or by a principal fine exceeding twenty-five thousand tax-free minimum incomes of citizens. This provision indicates that investigators or prosecutors may apply to an investigating judge for authorisation to conduct CISAs, or independently decide to conduct them, solely in relation to serious or particularly serious criminal offences.

In cases where the classification of an offence is requalified from serious or particularly serious to non-serious, evidence obtained through covert investigative (search) actions may be used in proof, provided that at the time authorisation was granted and the actions conducted, the Unified Register of Pre-Trial Investigations contained information on the offence under its initial legal classification as serious or particularly serious. In such circumstances, as noted by the Supreme Court, there is no violation of the requirements of Part 2, Article 246 of the CPC², despite the fact that during the pre-trial investigation the offence was subsequently reclassified as non-serious³.

On this matter, M.V. Bahrii & V.V. Lutsyk (2017) take the opposite view and support those authors who argue that the correct solution would be to disregard the results of CISAs when making decisions in criminal proceedings if, after their conduct, the offence is reclassified from serious or particularly serious to non-serious. However, if at the time of entering the information into the Unified Register of Pre-Trial Investigations there were grounds to believe that a serious or particularly serious offence was being committed, and the initial classification was not deliberately “overstated”, then the results of CISAs conducted before it became apparent that the actions should be reclassified as a less serious criminal offence may be admissible.

The second important condition is the adoption of a CPC-mandated decision authorising the conduct of CISAs. In Ukraine, the life and health of individuals, their honour and dignity, as well as their inviolability and security, are recognised as the highest social values. The Constitution of Ukraine guarantees the inviolability of the home, the secrecy of correspondence, telephone conversations, telegraphic,

and other communications. No one may be subjected to interference in their personal or family life, except in cases provided for by the Constitution⁴. While the Constitution⁵ guarantees these rights, it also establishes exceptional circumstances in which restrictions on human rights are permissible. For example, the Constitution⁶ stipulates that entry into a person's home or other property, or conducting an inspection or search therein, is permitted only by a motivated judicial decision. Exceptions to the guarantee of correspondence secrecy may be established solely by a court in cases provided for by law, for the purpose of preventing a crime or ascertaining the truth during a criminal investigation, if the information cannot be obtained by other means. For this reason, in a constitutional state, it is not prohibited to introduce certain restrictions, provided that they benefit society as a whole (Domin, 2018) and are implemented solely to achieve the objectives defined by the Constitution.

One of the legally sanctioned restrictions on human rights is the conduct of CISAs. To prevent abuse of the authority to carry out such actions, the legislature has established a logical sequence of procedural actions and decision-making algorithms for organising, conducting, and using the results of CISAs, and has prohibited the initiation or execution of any type of CISA without proper authorisation or in circumstances not envisaged by the CPC⁷. Analysing the provisions of the relevant legislation, it is possible to identify three actors who may make decisions regarding the conduct of CISAs: the investigating judge, the investigator, and the prosecutor. However, the vast majority of CISAs provided for in Chapter 21 of the CPC⁸ require the prior authorisation of a judge, meaning they are subject to judicial oversight.

Judicial oversight is recognised in contemporary legal literature as an independent organisational and legal form of exercising judicial authority, a system of measures provided for by criminal procedure law aimed at implementing the constitutional functions of the judiciary. Its purpose is to prevent unlawful or unjustified restrictions on individual rights in criminal proceedings, to restore those rights, or, where necessary, to provide legal remedies. Such oversight serves as a check on potential abuse of power by the state. A distinctive feature of the role of the investigating judge is that, while exercising judicial oversight to ensure the protection of rights, freedoms, and

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² *Ibidem*, 2012.

³ Resolution of the Supreme Court in the Case No. 607/15414/17. (2020, April). Retrieved from <https://zakononline.com.ua/court-decisions/show/88602316>.

⁴ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁵ *Ibidem*, 1996.

⁶ *Ibidem*, 1996.

⁷ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁸ *Ibidem*, 2012.

lawful interests of individuals, the judge does not determine the guilt or innocence of the person subject to criminal liability. Instead, the judge reviews the legality of procedural coercive measures that may infringe the constitutional principle of personal inviolability and prevents unlawful actions or decisions that violate the constitutional rights and freedoms of citizens (Drozdova & Zaritska, 2021).

In cases requiring judicial authorisation for the conduct of CISAs, the investigator, in agreement with the prosecutor, or the prosecutor independently, submits the relevant petition to the investigating judge. If the investigator or prosecutor convinces the judge that, during the conduct of CISAs, evidence may be obtained which, alone or together with other evidence, could be significant for establishing the circumstances of a criminal offence or identifying the persons who committed it, substantiates the impossibility of obtaining information about the offence and its perpetrator by other means, and provides sufficient evidence to suspect the individual in question, the judge, after verifying the seriousness of the criminal offence for which the petition is submitted and examining the details of the person concerned, will issue a reasoned ruling authorising the conduct of the CISA.

In cases where CISAs are required that do not need judicial authorisation (such as surveillance of an object or location; retrieval of information from electronic information systems whose access is not restricted by the owner, holder, or custodian, or does not involve bypassing logical security systems; or the execution of a special task to uncover the criminal activity of an organised group or criminal organisation), the investigator issues the corresponding order and notifies the prosecutor of the commencement of the CISA, or the prosecutor may make this decision independently. If the decision concerns the execution of a special task to uncover the criminal activity of an organised group or criminal organisation, the validity of the decision requires that the investigator's order be approved by the head of the pre-trial investigation authority.

The final type of CISA for which the decision to conduct it is taken exclusively by the prosecutor is crime control, which may be carried out in the following forms: controlled delivery, controlled and operational purchase, special investigative experiment, and crime scene simulation. Due to the specific nature of this type of CISA, it cannot be conducted without the involvement of a person cooperating confidentially with law enforcement or an undercover operative. Given that the prosecutor, when deciding to conduct crime control, must specify the person involved in the CISA, the investigator is required to

prepare a document addressed to the prosecutor justifying the necessity of the CISA in the form of crime control and providing information about the individual whom the investigator considers should participate in the operation. When the decision to conduct a CISA is made by the investigator or prosecutor, it is essential that the official has authority in the relevant criminal proceedings – that is, they must be part of the group of investigators or prosecutors assigned to the case, and their involvement in the investigation must be recorded in the Unified Register of Pre-Trial Investigations.

It is also important to take into account the specific requirements for preparing and obtaining approval for a petition to authorise a CISA in relation to certain categories of individuals, as established in Article 480 of the CPC¹. O.V. Shapoval (2025) presents conflicting perspectives in their study regarding the possibility of conducting CISAs in relation to a lawyer. On one hand, the scholar analyses cases in which the results of CISAs conducted on a lawyer were recognised as evidence of the lawyer's involvement in criminal activity, with the court, during the hearing, establishing that the lawyer had engaged in unlawful conduct under the guise of providing legal assistance. On the other hand, the researcher disagrees with the court's description of these facts and emphasises the necessity of conducting CISAs involving a lawyer only with the participation of a representative from the regional bar council. In some cases, O.V. Shapoval (2025) interprets the provisions of the CPC as prohibiting CISAs against lawyers entirely. It is important to note that the procedure for obtaining authorisation to conduct a CISA in relation to a lawyer involves a special petition process, namely submission by the Prosecutor General, their deputy, or the prosecutor of the Autonomous Republic of Crimea, a region, Kyiv, or Sevastopol, thereby providing additional safeguards for the protection of attorney-client privilege. Furthermore, proposed amendments requiring the involvement of a regional bar council representative in CISAs against a lawyer are not only impractical prior to implementation but could also result in the disclosure of information regarding the conduct of the CISA and are aimed primarily at preventing the effective documentation of lawyers' unlawful actions.

The third important condition is the proper formalisation of the involvement of an individual in confidential cooperation. According to Article 275 of the CPC², an investigator has the right to involve a person who is cooperating confidentially with them in the conduct of CISAs. A similar right is granted to both the investigator and the prosecutor under

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² Ibidem, 2012.

Part 6, Article 246 of the CPC¹, which provides that, by decision of the investigator or prosecutor, other persons may also be involved in conducting CISAs.

The decision to involve a person in confidential cooperation in a particular criminal proceeding is a procedural decision, and therefore, the investigator who makes it must issue a corresponding order. Attention should be paid to the CPC's prohibition on involving certain categories of persons in confidential cooperation, namely lawyers, notaries, medical professionals, clergy, and journalists, where such cooperation would involve the disclosure of professional confidential information. When examining this issue, it is important to note attempts by lawyers and bar councils to manipulate this provision, seeking to prevent lawyers from agreeing to confidential cooperation even where such cooperation would not result in the disclosure of confidential information. For this reason, it is argued that if a lawyer's confidential cooperation with law enforcement does not involve attorney–client privilege and does not use information obtained from a client, law enforcement agencies have the right to involve lawyers in confidential cooperation under Article 275 of the CPC and the Law of Ukraine “On Operative-Investigative Activities”² (Kulitska, 2025).

If there are grounds to change the personal details of an individual being involved in confidential cooperation, the investigator must, prior to issuing the order for their involvement, issue a separate order implementing the security measures provided for under the Law of Ukraine “On Ensuring the Safety of Persons Participating in Criminal Proceedings”. In such cases, the order implementing the security measures, which contains the individual's actual details, must be stored separately from the criminal case materials, while the order for involving the individual, in which the altered personal data are recorded, is attached to the case materials.

The order to involve a person in confidential cooperation must comply with the general requirements for orders as set out in Part 5, Article 110 of the CPC³. Specifically, it must include an introduction, a reasoning section, and a resolute section, containing information on: the place and time the order was issued; the full name and position of the person issuing the order; the circumstances providing grounds for the order; the reasons for issuing the order, their justification, and references to the relevant provisions of the CPC; the content of the procedural decision taken; the place and timeframe for its

execution; the individual responsible for executing the order; and the possibility and procedure for appealing the order.

In addition to the information already mentioned, the order to involve a person in confidential cooperation must also include: the individual's voluntary consent to participate; the full name of the person who has agreed to cooperate; and confirmation that the individual has been warned not to provoke persons under pre-trial investigation into committing a crime. Compliance with the time limits for conducting CISAs constitutes the fourth condition. The provisions of the CPC stipulate that the overall duration of a CISA in a single criminal proceeding, for which authorisation is granted by an investigative judge, must not exceed the maximum pre-trial investigation periods established under Article 219 of the CPC. Where a CISA is conducted to determine the location of a person evading pre-trial investigation authorities, an investigative judge, or a court, and who has been declared wanted, the operation may continue until the individual's location is established. The CPC⁴ further regulates that the duration of an investigative judge's authorisation for a CISA may not exceed two months, while a CISA conducted as part of a special task to uncover the criminal activity of an organised group or criminal organisation may not exceed six months. Provisions also typically allow for the extension of the CISA period if necessary.

When examining the issue of timeframes in the context of complying with the conditions necessary for the admissibility of CISA results, attention should be paid to the requirement that CISAs are conducted only after a decision authorising their execution has been issued and no later than the final day of validity of that decision. In practice, questions of legitimacy may arise if a CISA is conducted on the same day the authorisation is issued. The defence often requests information on the court's automatic allocation of motions, which records the date and time of allocation, and may focus on whether the CISA was initiated before the judge had considered the motion. Law enforcement officers must strictly control the start of a CISA and commence it only after the court hearing on the motion has taken place and authorisation has been granted. Given that the preparation of a written judicial decision authorising a CISA may take considerable time, law enforcement officers are entitled to begin the operation after receiving oral authorisation from the investigative judge during the motion hearing. The subsequent printing of the court order after

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² Law of Ukraine No. 2135-XII “On Operational-Investigative Activities”. (1992, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2135-12#Text>.

³ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁴ *Ibidem*, 2012.

the CISA has been conducted should not constitute grounds for declaring the results of the operation inadmissible as evidence in the case.

Attention should be given to the necessity of observing the principle of “reasonable” timeframes when conducting CISAs. The concept of “reasonable” timeframes is a relatively recent development in Ukrainian criminal procedural law and theory. The legislator’s intention is that participants in criminal proceedings, in each specific case, should not rely solely on the maximum time limits set out in the CPC¹, but instead should base their actions on the time objectively required to perform procedural acts and make procedural decisions (Volobuiev & Smokov, 2025). Therefore, if it becomes apparent that no results are being obtained during a CISA, it is important not to prolong the operation until the authorisation period expires, but to terminate the actions once there are grounds to conclude that the operation is unlikely to yield evidence of criminal activity by the persons concerned.

Compliance with the procedural form for recording CISA results constitutes the fifth condition. Proper documentation of a CISA is an essential prerequisite for the admissibility of its results as evidence. As a general rule, any breach of the procedure for recording the progress and outcomes of a CISA renders the resulting evidence inadmissible (Kaplina, 2024). To ensure that CISA results can be used as evidence in criminal proceedings, they must be formally recorded in material form – namely, a protocol – because the informational content alone, obtained during the operation, cannot be directly used as evidence (Serhieieva, 2017). The CPC² clearly stipulates that the recording of the progress and results of CISAs must comply with the general rules for documenting criminal proceedings as established by the CPC. A protocol is drawn up based on the results of a CISA, to which annexes may be attached if necessary. The CISA protocol is a written document prepared in the manner prescribed by the CPC, in which authorised persons (investigators, operative officers) record and certify the conditions and procedures of the CISA, factual information about the criminal event, the involvement of specific individuals, and other circumstances relevant to the criminal proceedings (Kudinov *et al.*, 2015).

According to Part 3 of Article 104 of the CPC, the protocol consists of: 1) the introductory section, which must include information on the location and time of the procedural action and its title; the person conducting the action (full name, position); all individuals present during the procedural action (full names, dates of birth, places of residence);

confirmation that the participants were informed in advance of the use of technical recording devices, including their specifications and the information carriers employed; and the conditions and procedures for their use. 2) The descriptive section, which must contain details of the sequence of actions; information obtained as a result of the procedural action that is relevant to the criminal case, including any items or documents identified or provided during the action. 3) The concluding section, which must include information about the items and documents seized and the method of their identification; copies of documents prepared, as well as duplicates of information, including computer data, and the method of their identification; the manner in which participants are familiarised with the content of the protocol; and any comments or additions to the written protocol submitted by participants in the procedural action.

Scholars emphasise that CISA protocols have additional specific features. In the introductory section of the protocol, the relevant decision authorising the CISA must also be indicated – this could be a court ruling, or a resolution by the investigator or prosecutor. Protocols may be drawn up periodically, and the recording of results must be conducted in such a way that their accuracy can always be verified by expert examination. Additionally, the confidentiality regime must be maintained during the drafting of protocols and while working with them (Bahrii & Lutsyk, 2017).

It is also important to note that if an individual is involved in the execution of a CISA, the protocol must include information about their participation and their personal details. If security measures have been applied to such individuals, the protocol may record their data in a manner that ensures confidentiality, in accordance with the procedure established by law. Additionally, if a CISA is assigned to operational staff of a particular department – for example, surveillance of a person, object, or location – the protocol must record the involvement of such personnel without specifying the position or personal details of each individual, as this information may be classified.

D. Serhieieva (2016) notes that, in many cases, CISA protocols are drafted by investigators or operational staff who did not personally conduct or participate in the operation, but merely delegated it to the direct executor. The scholar argues that this prevents the use of such a CISA in evidence. However, this view is not fully convincing, as in most instances, CISAs are carried out either by the individuals involved in their execution (such as audio or video surveillance of a person, crime monitoring, or performing a special task to uncover the activities of an organised

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² *Ibidem*, 2012.

group or criminal organisation) or simultaneously by several operational staff members (for example, visual surveillance of a person, object, or location), making it impossible for a single executor to compile the protocol. When an individual is involved in conducting a CISA, they do not have the procedural status of an investigator authorised to draft the protocol and often lack access to state secrets, which is required for protocol preparation. In cases where multiple staff members are involved, each is responsible for a clearly defined task and does not have information on the entire operation, which is necessary for drafting the protocol.

For this reason, it is considered that the protocol based on the results of a CISA should be drafted by the investigator or an operational unit officer who either summarises the results of the CISA (in the case of visual surveillance of a person, object, or location, or performing a special task to uncover the activities of an organised group or criminal organisation) or analyses the information obtained from its execution (such as audio or video monitoring of a person, or monitoring the commission of a crime).

Another possible method of recording procedural actions, as provided by Article 103 of the CPC¹, is the use of an information carrier on which procedural actions are recorded using technical means. The issues related to this method of recording were examined by D. Serhieieva (2017), who noted that, unlike the previous Ukrainian criminal procedural legislation, which mandated the maintenance of a protocol (Article 84 of the 1960 CPC²), the current CPC allows an alternative form of recording procedural actions – using an information carrier with technical means (paragraph 2, part 1, Article 103 of the CPC). Such information carriers, provided they contain the data specified in part 1 of Article 99 of the CPC, are considered documents (paragraph 3, part 2, Article 99 of the CPC). At the same time, Serhieieva points out that the criminal procedural legislation does not specify in which cases this form of recording may be used. Part 2 of Article 104 of the CPC of Ukraine legislatively provides for this possibility only during an interrogation, and only if none of the participants insists that the text of the testimony be included in the protocol. Other instances of using technical recording to document the course and results of a procedural action remain the subject of limited academic discussion.

Given the specific nature of CISAs, this method of recording is not feasible. Unlike a public investigative action, it is impossible to verbally record on tape the information that is mandatory for proper

documentation of a CISA, such as the date and time of the CISA, the location where it was conducted, the legal basis for its conduct, the official carrying out the action, the persons involved, the technical recording devices used, and other required details.

The declassification and disclosure of materials to the defence and the accused constitute the sixth condition. When drafting the protocol based on the results of a CISA, the investigator or operational officer assigns the appropriate security classification, which ensures that information regarding the fact of the CISA and the content of evidence obtained remains confidential. However, once the CISA has been completed and the prosecutor intends to submit the criminal case to the court and use the drafted protocols and their annexes during trial, the security classification must be removed from these documents.

L. Shcherbyna (2024) asserts that protocols and other operational documents, along with their annexes, relating to the conduct of CISAs, which are used as evidence in criminal proceedings, should generally be declassified simultaneously with the rulings of the investigating judge authorising their conduct. This requirement stems from the need to ascertain in a timely manner the legality of such actions, the lawfulness of temporarily restricting certain human rights, and their compliance with evidentiary admissibility standards, which cannot be properly assessed without considering the legal grounds and conditions under which they were carried out.

The procedure for declassifying protocols drawn up on the results of CISAs and their annexes (material information carriers containing photos, video files, photo tables, other items, and documents) is clear and properly regulated. The Instruction on the Organisation of Covert Investigative (Search) Actions and the Use of Their Results in Criminal Proceedings (hereinafter – the Instruction) provides a precise algorithm for investigators and prosecutors regarding the declassification of CISA materials. Specifically, the security classification of such materials is removed by an expert commission composed of at least three members of the body that conducted the CISA, based on a petition submitted by the head of the prosecutorial body. The submission of this petition is preceded by the issuance of a resolution to declassify the designated material carriers of classified information. This resolution is issued by the prosecutor exercising prosecutorial authority in the specific criminal case in the form of procedural guidance over the pre-trial investigation and must be approved by the head of the prosecution office³.

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² Criminal Procedural Code of Ukraine. (1960, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1001-05#Text>.

³ Instructions on the Organisation of Covert Investigative (Search) Actions and the Use of their Results in Criminal Proceedings. (2012, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0114900-12#Text>.

In addition to CISA protocols, documents authorising the conduct of CISAs are also subject to declassification. These may include resolutions issued by an investigator or prosecutor, or rulings of the investigating judge. Declassifying such documents is crucial for recognising the resulting evidence as admissible. Considering that resolutions issued by investigators or prosecutors are declassified according to a procedure similar to that applied to CISA protocols, it is useful to focus in greater detail on the issues that arise when declassifying investigating judge rulings.

O.V. Heselev (2019) asserts that declassifying and subsequently using these rulings during trial allows the prosecutor to evaluate the lawfulness of the actions of those conducting the CISA in terms of compliance with all conditions specified in the ruling regarding the persons involved, the location, type, and duration of such actions. It also allows the court to form an internal conviction regarding the admissibility of the evidence obtained, while ensuring adherence to the rule of law and protection of individual rights. For this reason, the panel of judges of the Supreme Court of Ukraine concluded in its ruling of 16 March 2017 in criminal case No. 671/463/15-к¹ that, in accordance with Article 290 of the CPC of Ukraine, not only the protocols recording the course and results of procedural actions but also the materials serving as the legal basis for those actions (rulings, resolutions, petitions) must be attached to the case file and disclosed to the defence. This ensures that both the defence and the court can verify the admissibility of such actions as evidence.

O.V. Heselev (2019) notes that neither the CPC² nor any other legislation provides a mechanism for declassifying rulings authorising the conduct of CISAs, which creates significant challenges for the prosecuting authorities in practice. Typically, once a prosecutor decides to declassify CISA protocols, they act by analogy with the provisions of the Instruction regarding the declassification of rulings. Specifically, the ruling is sent to the court that issued it and originally decided to classify it. Subsequently, the court's expert commission decides on the declassification of the ruling and, once the confidentiality mark has been removed, forwards the ruling to the prosecutor for inclusion in the criminal case file. However, given the absence of legislative regulation for this procedure, and the fact that the provisions of the Instruction³ do not apply to the activities of courts and are not binding on investigating judges, the final decision

on whether to declassify such rulings rests with the appellate court, independent of the prosecutor. Since there is no legally defined procedure for the declassification of these judicial rulings and their provision to the prosecutor for subsequent use in assessing the admissibility of evidence obtained through CISAs, judges may, and in some cases do, refuse to authorise such declassification, citing the lack of regulation in the law, even in light of the legal position expressed by the Supreme Court of Ukraine in its March 2017 ruling⁴. This entirely deprives the prosecutor of the ability not only to assess the admissibility of evidence but also to use protocols from CISAs as evidence in criminal proceedings. It also makes the prosecutor dependent both on the general situation of legal uncertainty and on the arbitrary decisions of individual investigating judges (Heselev, 2019).

In the absence of a statutory provision or a ruling of a higher court obliging investigating judges to declassify orders authorising CISAs and to provide them to the prosecutor before the completion of the pre-trial investigation, the prosecutor is placed in a situation where, in the words of L. Fuller (1999), he is "demanded to do the impossible". In this case, it involves ensuring the implementation of certain measures and taking responsibility for actions and decisions, the outcome of which is not in fact within his control (Heselev, 2019). Given this, if an investigating judge refuses to declassify an order authorising CISAs, the presiding judge may, if necessary, request the classified order for examination and, having verified the existence of a valid judicial decision, recognise as admissible the evidence obtained during the CISAs. The defence may likewise review the content of the authorising order, provided that security clearance for access to state secrets has been obtained.

Alongside this, practitioners encounter another issue. In connection with the full-scale invasion of Ukraine by the Russian Federation, certain law enforcement agencies and courts took measures to prevent the enemy from accessing classified documents in the event of seizing administrative buildings, which included destroying classified materials. Among these could have been court rulings granting permission to conduct CISAs. Under such circumstances, it is considered sufficient to confirm the legitimacy of conducting a CISA by obtaining a certificate from the court stating that a judge issued permission to carry out the action regarding a particular individual in a specific criminal proceeding.

¹ Resolution of the Supreme Court in the Case No. 671/463/15-к. (2017, March). Retrieved from <https://dl.if.court.gov.ua/sud0906/pres-centr/1/357697/>.

² Criminal Procedural Code of Ukraine. (1960, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1001-05#Text>.

³ Instructions on the Organisation of Covert Investigative (Search) Actions and the Use of their Results in Criminal Proceedings. (2012, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0114900-12#Text>.

⁴ Resolution of the Supreme Court in the Case No. 671/463/15-к. (2017, March). Retrieved from <https://dl.if.court.gov.ua/sud0906/pres-centr/1/357697/>.

It should be noted that when granting permission to conduct a CISA, the investigative judge examines the severity of the alleged crime, the circumstances giving reason to suspect the individual of committing the offence (i.e., reviewing the available evidence and documents confirming the person's involvement), as well as whether evidence can be obtained during the CISA that, alone or together with other evidence, may be of significant importance for clarifying the circumstances of the criminal offence or identifying the persons who committed it¹. Permission to conduct CISAs is granted by appellate-level investigative judges and judges of the High Anti-Corruption Court – judges who, in addition to legal knowledge, possess substantial professional and practical experience. Therefore, questioning the validity of their decisions without strong evidence of judicial bias constitutes an infringement on the fundamental principles of justice.

The same applies to the position regarding the need to declassify and provide the defence with access to criminal case materials that served as the basis for conducting covert investigative (search) actions, as noted by H.R. Kret (2021). However, declassifying these materials would lead to a complete reopening of the criminal proceedings and prolong the court process, which is already time-consuming. Moreover, the review of such materials would in no way affect the annulment of the court ruling granting permission to conduct the CISA, which, under the CPC², is not subject to appeal.

Another problematic issue that arises during the declassification of CISA materials and the decisions authorising their conduct is the use of a ruling granting permission to conduct such an action that was obtained in one criminal proceeding and later formalised in another. Obstacles to its use and to the defence's access may arise if the criminal proceeding in which the ruling was originally obtained is still under investigation, with ongoing investigative actions including CISAs, while in the criminal proceeding where the ruling has been formalised, the pre-trial investigation is already concluding. An important consideration when providing the ruling for review by the parties is the need to maintain the confidentiality of information contained in the ruling that may be unrelated to the criminal proceeding in which the materials are being disclosed to the parties. For clarity, the criminal proceeding in which the materials are opened for review can be referred to as Case B, while the proceeding in which the pre-trial investigation is still ongoing can be referred to as Case A, containing the facts and details of that investigation.

Under such circumstances, two courses of action are appropriate:

1. Instead of declassifying the ruling granting permission to conduct CISAs, use a court-issued certificate confirming that the decision was made concerning a specific individual in the relevant criminal proceeding.

2. Review the ruling granting permission to CISAs after it has been declassified, during which a copy of the ruling should be produced with information unrelated to Case B masked. This is necessary to prevent any adverse impact on the ongoing investigation of Case A if the copy is provided to the parties for inspection. Following this review, the masked ruling should be provided to the parties in Case B for inspection and copying in accordance with Article 290 of the CPC³, while the original ruling should be kept separately from the case materials.

In addition to providing the defence with access to the protocols of CISAs and the rulings authorising them, the prosecutor must also make available the investigator's order regarding the use of confidential cooperation with a specific individual in the relevant criminal proceeding. This individual was involved in conducting CISAs such as audio and video monitoring, supervision of criminal acts, and the execution of special tasks to uncover the criminal activities of an organised group or criminal organisation. In other words, this person directly interacted with the individuals who were later formally notified of suspicion of committing a crime.

If information regarding the true identities of such individuals has been altered, the prosecutor and the court must take measures to prevent the defence and the accused from establishing these identities during court examination, for example, by asking questions that could reveal personal information about these individuals. In addition to the necessity of declassifying the aforementioned documents, the defence often insists on formalising security clearance and access to state secrets for individuals involved in conducting CISAs, arguing that failure to do so may constitute a violation of Article 517 of the CPC. However, researchers S.R. Tahiev *et al.* (2023) disagree with this position. Their findings indicate that, despite persistent demands by the defence, judges across different jurisdictions generally consider that granting clearance to involved individuals is not required.

The issue of whether materials from CISAs should be classified as state secrets was examined by A.A. Kohut (2024), who established criteria for information to qualify as a state secret. Kohut concluded

¹ Criminal Procedural Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² *Ibidem*, 2012.

³ *Ibidem*, 2012.

that materials from CISAs do not meet the requirements for classified information as defined in the Law of Ukraine “On State Secrets”¹. The scholar argues that the confidentiality of CISAs can, in the vast majority of cases, be equated with the confidentiality of decisions to conduct searches, and that protection as pre-trial investigation data is sufficient. The issue raised by the researcher is highly debatable and requires more detailed study and discussion, as the Law sets out general criteria for information that may be classified as a state secret, and the more detailed description provided in the Register of Information Constituting a State Secret² leaves no doubt regarding the appropriateness of classifying particular information as a state secret.

Thus, in criminal proceedings, materials from CISAs – particularly protocols, decisions authorising their conduct, and orders involving confidential collaborators – must be disclosed to the parties, while ensuring the protection of personal data. If the real identities of such individuals have been altered, the court and the prosecutor are obliged to prevent their disclosure during court examination. Although the defence frequently insists on granting security clearance for those conducting CISAs, both judicial practice and academic research indicate that such a measure is unnecessary.

■ Conclusions

This article has analysed Ukrainian legislation as well as practical experience in conducting CISAs, including those involving individuals who confidentially cooperate with law enforcement agencies. The analysis reveals that, at present, Ukraine lacks legislative regulation concerning the declassification of judicial rulings granting permission to conduct CISAs, which creates an obstacle when examining the legality of such actions during court proceedings. The study also highlighted the necessity of properly formalising confidential cooperation with individuals who are subsequently planned to be involved in CISAs, as well as adhering to the procedural requirements

■ References

- [1] Bahrii, M.V., & Lutsyk, V.V. (2017). *Procedural aspects of covert information gathering: Domestic and foreign experience*. Kharkiv: Pravo.
- [2] Domin, Yu.M. (2018). *Certain aspects of the use of results of covert investigative (search) actions*. *Legal Ukraine*, 8, 31-39.
- [3] Dragojlović, J., & Filipović, N. (2022). Undercover investigator in legislation of the United States and the United Kingdom. *Culture of Polissia*, 19(1), 62-78 [doi: 10.51738/Kpolisa2022.19.1r.4df](https://doi.org/10.51738/Kpolisa2022.19.1r.4df).

for authorising such actions and respecting the prescribed timeframes.

The findings indicate a clear need for legislative regulation governing the involvement of individuals in CISAs and the declassification of judicial rulings authorising such actions. In summarising the results and the identified parameters for the admissibility of evidence obtained through covert investigative (search) actions, it should be emphasised that compliance with these conditions – both when obtaining authorisation for such actions and during their execution, including the preparation of protocols – must constitute an inviolable element of law enforcement practice. This is essential not only for the proper collection of evidence establishing the culpability of a given individual but also for fostering a culture of trust in law enforcement personnel, who must avoid acting *extra legem* in the course of their duties.

The lack of publicly available statistics from law enforcement agencies regarding the granting of authorisations for CISAs, the practical implementation of such authorisations, and related court decisions limits the ability to fully examine the appropriateness of the statutory timeframes and the conditions necessary for recognising the resulting evidence as admissible in court. Further research is required to delineate the concepts of “involvement of an individual in CISAs” and “use of confidential cooperation”, as well as to clarify the prosecutor’s powers in this context and to develop a regulatory framework for the removal of secrecy classifications from judicial rulings granting authorisation for CISAs.

■ Acknowledgements

None.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

¹ Law of Ukraine No. 3855-XII “On State Secrets”. (1994, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/3855-12/ed19940121#Text>.

² Order of the Security Service of Ukraine No. 383 “On the Approval of the Summary of Information Constituting a State Secret”. (2020, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0052-21#n13>.

- [4] Drozdova, O.V., & Zaritska, K.H. (2021). Investigating judge as a guarantor of ensuring the legality and justification of restrictions on constitutional human rights and freedoms during covert investigative (search) actions (CISA). *Scientific Papers of the National University "Odessa Law Academy"*, 29, 98-107. doi: [10.32837/npnuola.v28i29.721](https://doi.org/10.32837/npnuola.v28i29.721).
- [5] Fuller, L. (1999). *The morality of law*. Kyiv: Sphera.
- [6] Heselev, O.V. (2019). [Problematic issues of declassification and use in criminal proceedings of decisions of an investigating judge on the permission to hold secret investigators \(wanted\) actions](https://doi.org/10.32782/2524-0374/2019-3-29-38). *Legal Ukraine*, 3, 29-38.
- [7] Higher Anti-Corruption Court. (2021). *Generalisation of judicial practice on the consideration by investigating judges of the High Anti-Corruption Court of applications for permission to conduct covert investigative (search) actions and operational-search measures*. Retrieved from https://hcac.court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reviews/review_CIA_OSM.pdf.
- [8] Kaplina, O.V. (2024). Proper recording of carrying out of covert investigatory (detective) actions as a prerequisite for using their results as evidence in law enforcement activities. *Legal Scientific Electronic Journal*, 5, 441-445. doi: [10.32782/2524-0374/2024-5/109](https://doi.org/10.32782/2524-0374/2024-5/109).
- [9] Kohut, A.A. (2024). On the justification of classifying materials related to covert investigative (search) actions as state secrets. *Legal Scientific Electronic Journal*, 2, 426-428. doi: [10.32782/2524-0374/2024-2/105](https://doi.org/10.32782/2524-0374/2024-2/105).
- [10] Kret, H.R. (2021). Use of the results of covert investigative (search) actions in criminal proceedings. *Scientific Notes of the V.I. Vernadsky Tavria National University. Series: Legal Sciences*, 4, 88-93. doi: [10.32838/TNU-2707-0581/2021.4/14](https://doi.org/10.32838/TNU-2707-0581/2021.4/14).
- [11] Kudinov, S.S., Shekhavtsov, R.M., Drozdov, O.M., & Hrynenko, S.O. (2015). [Covert investigative \(search\) activities and the use of the results of operational-search activities in criminal proceedings](https://doi.org/10.32782/2524-0374/2015-3-4-44-48). Kharkiv: Oberih.
- [12] Kulitska, N. (2025). Problems of normative and legal regulation of engaging lawyers in confidential cooperation. *KELM*, 1(69), 172-179. doi: [10.51647/kelm.2025.1.25](https://doi.org/10.51647/kelm.2025.1.25).
- [13] Matijašević, J., & Zarubica, S. (2020). Types and conditions for the application of special investigative measures and preventive security measures by security services. *Pravo – Teorija i Praksa*, 37(4), 26-41. doi: [10.5937/ptp2004026M](https://doi.org/10.5937/ptp2004026M).
- [14] Panov, A.V., & Tyshchenko, D.R. (2024). Admissibility of evidence in echr practice as a guarantee of a fair trial. *Legal Scientific Electronic Journal*, 3, 476-478. doi: [10.32782/2524-0374/2024-3/114](https://doi.org/10.32782/2524-0374/2024-3/114).
- [15] Pohoretskyi, M.M. (2023). Guarantees of human rights when interfering in private communication during confidential investigations in the practice of the security service of Ukraine: Problem issues. *Criminal Justice Bulletin*, 3-4, 103-122. doi: [10.17721/2413-5372.2023.3-4/103-122](https://doi.org/10.17721/2413-5372.2023.3-4/103-122).
- [16] Serhieieva, D. (2016). [Use of the results of covert investigative \(search\) activities in evidence: on improving the provisions of the current Criminal Procedure Code of Ukraine](https://doi.org/10.32782/2524-0374/2016-1-105-107). *South Ukrainian Law Journal*, 1, 105-107.
- [17] Serhieieva, D. (2017). [The applying of the results of secret investigative \(search\) actions to obtain certain types of evidence in criminal proceeding: Problematic issues](https://doi.org/10.32782/2524-0374/2017-12-49-61). *Law of Ukraine*, 12, 49-61.
- [18] Shapoval, O.V. (2025). Topical issues of ensuring guarantees of legal professional activity during the conduct of covert investigative (detective) actions against defense attorneys in criminal proceedings. *Legal Scientific Electronic Journal*, 7, 214-216. doi: [10.32782/2524-0374/2025-7/48](https://doi.org/10.32782/2524-0374/2025-7/48).
- [19] Shcherbyna, L. (2024). Consequences of non-disclosure of the investigative judge's approvals, on the basis of which covert investigative (search) action, operational search and counter-intelligence measures were carry out, for criminal procedural evidence. *Law Journal*, 3, 294-304. doi: [10.32782/yuv.v3.2024.36](https://doi.org/10.32782/yuv.v3.2024.36).
- [20] Tahiiiev, S.R., Puzyrov, M.S., & Ivashko, S.V. (2023). Covert investigative (search) activities in war conditions: Selected theoretical and practical aspects (part II). *Electronic Scientific Publication "Analytical and Comparative Law"*, 2, 454-459. doi: [10.24144/2788-6018.2023.02.79](https://doi.org/10.24144/2788-6018.2023.02.79).
- [21] Talyzina Ya.O. (2022). [Regulatory support and implementation of confidential cooperation in criminal proceedings](https://doi.org/10.32782/2524-0374/2022-1-702-707). (Doctoral dissertation, Research Institute for the Study of Crime Problems Named After Academician V.V. Stashys National Academy of Legal Sciences of Ukraine, Kharkiv, Ukraine).
- [22] Volobuiev, A.F., & Smokov, S.M. (2025). Procedural terms in criminal proceedings: Problematic issues. *Electronic Scientific Publication "Analytical and Comparative Law"*, 1, 702-707. doi: [10.24144/2788-6018.2025.01.117](https://doi.org/10.24144/2788-6018.2025.01.117).

Проблема легітимності правоохоронної діяльності в умовах дефіциту законодавчого регламентування конфіденційного співробітництва

Наталя Куліцька

Аспірант

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0009-0004-3295-2070>

■ **Анотація.** Для ефективного розслідування тяжкого чи особливо тяжкого злочину проводять негласні слідчі (розшукові) дії, до яких залучають осіб, що конфіденційно співпрацюють з правоохоронними органами. Метою статті було дослідження юридичних параметрів допустимості результатів негласних слідчих (розшукових) дій як особливо чутливої форми збирання доказів з акцентом на баланс між оперативною доцільністю та процесуальною законністю в умовах кримінального провадження. Методологічна основа дослідження охоплювала системний аналіз законодавчих актів України, а також методи порівняльного правознавства, які дали змогу оцінити ефективність практичного використання норм законодавства. В умовах дефіциту законодавчого регламентування конфіденційного співробітництва правоохоронних органів необхідним є аналіз помилок, які можуть призвести до визнання доказів недопустимими. Акцентовано на можливості проведення негласних слідчих (розшукових) дій виключно під час розслідування злочинів певної категорії тяжкості та з дотриманням процедури отримання відповідного дозволу на їх проведення. Увагу спрямовано на необхідність належного оформлення залучення особи, яка конфіденційно співпрацює з правоохоронними органами, до проведення негласних слідчих (розшукових) дій, а також окреслено відомості, які мають бути зазначені в постанові про прийняття такого рішення. Досліджено питання розсекречення протоколів, складених за результатами проведення негласних слідчих (розшукових) дій та рішень про їх проведення, а також зосереджено увагу на відсутності механізму розсекречення ухвал слідчого судді про надання дозволу на проведення негласних слідчих (розшукових) дій та проблеми, які виникають у зв'язку з цим. Запропоновано механізм перевірки законності проведення негласних слідчих (розшукових) дій у разі відсутності ухвали слідчого судді про надання дозволу на проведення таких дій або нерозсекречування такої ухвали. Проблемні питання, які досліджено в цій статті, й виокремлені умови використання здобутих доказів стануть корисним інструментом у практичній роботі детективів, слідчих та оперативних підрозділів правоохоронних органів

■ **Ключові слова:** допустимість доказів; фіксація негласних слідчих (розшукових) дій; залучення особи; строки; працівники правоохоронних органів; розсекречування

UDC 343.1 + 343.337.4 + 343.98
DOI: 10.63341/naia-herald/3.2025.87

Features of the forensic classification of war crimes

Nataliia Rubanenko*

Postgraduate Student
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0009-0001-2958-4228>

Anna Myrovskya

PhD in Law, Associate Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0001-5714-1873>

■ **Abstract.** The relevance of the study was determined by the need to improve the forensic systematisation of war crimes in view of the current challenges and scale of criminal activity during the armed conflict in Ukraine, as well as the problems of investigating them in conditions of aggression. The aim of the study was to substantiate the expediency of distinguishing between war crimes according to criminal law and forensic criteria, as well as to form the basis for their criminalistic classification, taking into account the criminal law and criminalistic aspects of the acts under investigation. The methodological tools of the study included a set of methods, among which were formal-legal, comparative-legal, inductive, comparative, forecasting and forensic analysis methods to substantiate conclusions and provide recommendations on the subject of the study. The results of the study consisted in substantiating the criminal classification of war crimes as a necessary component (element) of the criminalistic methodology for investigating criminal offences. The classification criteria for differentiating war crimes by type of armed conflict, territorial factor of commission, methods of criminal activity, nature and scale of socially dangerous consequences, features of the subjective composition of the offence, as well as motivational and target-oriented guidelines for the behaviour of the perpetrators are substantiated. The importance of aggravating circumstances was highlighted, which, despite the absence of direct confirmation in the disposition of Article 438 of the Criminal Code of Ukraine, are of key importance for identifying the degree of individual responsibility. This refers to cases of the formation and implementation of criminal intent through the issuance of orders, the development of plans or strategies for committing war crimes, initiated at the highest level of the military and political leadership of the aggressor state. Emphasis is placed on the advisability of amendments and additions to Article 438 of the Criminal Code of Ukraine with the expansion of the list of aggravating circumstances, in particular if war crimes are committed against children or have negative consequences for the gene pool of the nation. The scientific novelty and practical significance of the results obtained lies in the formation of effective mechanisms for investigating war crimes through the analysis of criminal law, criminal procedure and criminalistic aspects of investigating violations of the laws and customs of war, as well as during the improvement of criminal legislation at both the national and international levels

■ **Keywords:** forensic activity; investigation of crimes; differentiation; evidence process; violations of the laws and customs of war; characteristics; international justice

■ **Suggested Citation:**

Rubanenko, N., & Myrovskya, A. (2025). Features of the forensic classification of war crimes. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 87-97. doi: 10.63341/naia-herald/3.2025.87.

■ *Corresponding author

■ Received: 05.06.2025; Revised: 05.09.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

■ Introduction

According to estimates by I. Basysta *et al.* (2023), law enforcement agencies registered over 59 thousand criminal offences qualified under Article 438 of the Criminal Code of Ukraine (CCU)¹ during just the first nine months of the full-scale aggression against Ukraine. In the same period, the Office of the UN High Commissioner for Human Rights documented over 16 thousand casualties among civilians (persons not involved in the armed conflict) (UN confirms over 6,300 deaths..., 2022). The majority of fatalities were caused by the use of wide-area explosive weapons in populated areas. Evidently, under these conditions, the actual number of victims is significantly higher. Representatives of various human rights organisations also draw attention to this circumstance. For example, some estimates suggest that in the city of Mariupol alone, the approximate number of deaths is assessed at 100 thousand, which points to the unprecedented scale of losses inflicted on the civilian population (In Mariupol, the invaders killed..., 2023).

According to reports from the Deputy Minister of Internal Affairs of Ukraine, Y. Yenin, the police documented around 600 cases of violations of the laws and customs of war in just two weeks following the de-occupation of Kherson (More than 9,400 have..., 2022). Simultaneously, according to A. Tolkach (2024), over 600 criminal proceedings were registered in the Chernihiv region regarding the commission of more than 800 crimes covered by Article 438 of the CCU².

Official assessments from juvenile prosecutors regarding international crimes committed against children also draw attention. Specifically, as of June 2022, over 700 children were affected by the armed aggression, and approximately 200 thousand were forcibly deported to the territory of the Russian Federation. Among other serious violations of international humanitarian law, as noted by L. Ostapchuk & T. Kuzmenko (2022) and D.L.R. Tchobo (2022), cases of mass murder, torture, sexual violence, looting, shelling, and seizure of critical infrastructure facilities, etc., have been recorded.

These figures comparatively indicate the mass nature of war crimes committed on the territory of Ukraine. In this regard, V. Tymoshenko (2024) points out that in the Chernihiv region alone, law enforcement agencies registered more cases of international crimes in just one month of hostilities than during the entire period preceding the full-scale invasion. For instance, according to certain verified data, from 2014 to 2022, 253 criminal offences concerning the commission of international crimes were documented in Ukraine, of which 172 related to violations of the laws and customs of war. In the structure of the

criminogenic situation at that time, this number accounted for only 0.054% of the total documented criminal offences.

The Office of the Prosecutor General notes that in 2022, the share of war crimes among the total number of criminal offences registered in Ukraine was about 17% (Unified report on criminal..., 2022). In 2023, against the background of a general increase in the criminogenic situation, this figure dropped to 13% (Unified report on criminal..., 2023), and in 2024, it accounted for nearly 6% (Unified report on criminal..., 2024).

The presented statistics show both an increase and a significant decline in the quantitative indicators for war crimes committed in Ukraine. For example, in 2023, the number of recorded criminal offences under Article 438 of the CCU increased by 0.92% compared to the previous year (Unified report on criminal..., 2023). At the same time, a decrease in cases of violations of the laws and customs of war by 53% is observed in 2024 (Unified report on criminal..., 2024), with the magnitude of the regress reaching 52% over three years.

This trend is driven by both objective factors, such as changes in the nature of combat operations and the redistribution of efforts by law enforcement and the security sector, and organisational factors, which relate to the specifics of recording and registering war crimes during different periods of the armed conflict. Despite this, the circumstance has not eased the investigation process. As noted, no law enforcement system in the world is capable of effectively responding to the consequences of hostilities without strengthening the personnel potential of pre-trial investigation bodies, their resource provision, interagency cooperation, and effective methodological support.

In this regard, L.J. Trautman & M. McFarlin (2023), O. Agarkova (2024), and V. Tymoshenko (2024) emphasise that the escalation of the criminogenic situation concerning war crimes, combined with active combat operations and the limited resource capabilities of the national law enforcement system, poses a serious threat to international legal order. Judicial practice confirms this. For example, in 2022, notices of suspicion were issued in 135 criminal proceedings, of which 34% were forwarded to court with an indictment, and only 7 resulted in a court verdict (Reporting on the state..., 2022).

In 2023, these indicators fell to 88 criminal proceedings where suspicion was notified, with 42% sent to court with an indictment, and 40 resulting in a court verdict (Reporting on the state..., 2023). In 2024, out of 64 criminal proceedings where suspicion

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

² Ibidem, 2001.

was notified, 72% of cases were sent to court with an indictment, and a court verdict was announced in 41 proceedings (1 in person, 40 in absentia) (Reporting on the state..., 2024).

This means that for the majority of the total number of war crimes committed in Ukraine, no judicial decisions have been rendered. This necessitates a comprehensive analysis of the issues surrounding the investigation of violations of the laws and customs of war, taking into account the forensic specifics of their classification and characterisation. This necessity is further confirmed by the content of Article 8 of the Rome Statute¹, which outlines a wide range of forms and methods for committing war crimes, and the fragmentary nature of Article 438 of the CCU², which requires the application of provisions from international criminal legislation, international humanitarian law, and the precedential practice of international tribunals. Consequently, this complicates the investigation process and highlights the need for forensic differentiation of violations of the laws and customs of war. In the opinion of E. Didenko (2024), clarifying the aforementioned circumstances using standard procedures of procedural and forensic activity will ultimately contribute to the development of effective mechanisms for investigating war crimes.

Therefore, the aim of this research was to define the theoretical and methodological foundations for the forensic classification of war crimes, develop their criteria and structural elements, and ascertain the practical significance of this classification for establishing the facts subject to proof in criminal proceedings concerning violations of the laws and customs of war.

■ Materials and Methods

The normative basis of this research was provided by the rules and provisions of the Rome Statute of the International Criminal Court³, the Criminal Code of Ukraine (CCU)⁴, and the Criminal Procedure Code of Ukraine⁵, which regulate the substantive, procedural, and criminal enforcement aspects of war crimes investigations. The theoretical foundation of the study consists of scholarly and methodological works by Ukrainian legal scholars, notably I. Hlovyuk & G. Teteryatnyk (2022), A. Shulzhenko (2022), O. Harasymov *et al.* (2025), and others, which examine specific features of proving war crimes, and also carry out their forensic classification and characterisation. The conceptual views on the scientific approaches of the aforementioned authors and other

specialists formulated the methodological and theoretical basis for analysing the subject of research and the issues surrounding the forensic classification of war crimes. They allowed for the systematisation of scholarly positions regarding the specifics of the forensic classification of violations of the laws and customs of war and for the reasoned formulation of the research conclusions.

The research methodology covered a set of general scientific and special methods that made it possible to discuss and obtain the results of the research. These methods include comparative analysis to identify patterns, trends and dynamics in the investigation of war crimes, as well as to substantiate practical recommendations for improving the mechanisms for their investigation. Content analysis was used to study and systematise scientific approaches and cause-and-effect relationships related to the subject of the study. The inductive method was used to form general conclusions based on the analysis of individual facts. The forecasting method was used to develop proposals for improving Ukrainian legislation on criminal liability for war crimes. During the criminal classification, the method of criminal analysis was used, taking into account the objective and subjective characteristics of the offence under investigation, which made it possible to systematise violations of the laws and customs of war according to criteria that ensure a consistent criminal characterisation of war crimes.

■ Results and Discussion

In its general understanding, forensic systematisation is based on the general features and characteristic specifics of a particular criminal offence. These allow for the differentiation of socially dangerous acts into corresponding groups (types), kinds, and/or sub-kinds according to criteria that facilitate their investigation process. In other words, it is formed in accordance with specific criteria and characteristic features that make it possible to formulate unified approaches to the mechanism of investigating criminal offences (Kostiuk, 2024). Despite this, questions regarding the criteria for this classification remain contentious in forensic theory. In attempting to comprehend the forensic aspects of war crimes, this research does not aim to reflect all existing scholarly views or approaches to carrying out this differentiation. Instead, it proposes to support the opinion of certain researchers who believe that forensic classification should be conducted considering a combination

¹ Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

² Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

³ Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

⁴ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

⁵ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

of both criminal law and forensic aspects of the commission of the respective unlawful acts.

Drawing on the theoretical aspects and practical specifics of criminal law activity, forensic science performs a comprehensive analysis of unlawful activity, taking into account the practical needs of law enforcement. On this basis, it forms its own forensic systems, focusing on the specifics of individual types, groups, kinds, and sub-kinds of socially dangerous acts, with the aim of developing effective mechanisms for their investigation and prevention. This particular feature is noted by other researchers, including Y. Paleshko *et al.* (2020), A. Repchok (2020), O. Pchelina & V. Pchelin (2022), and others. This circumstance creates the conditions for isolating the elements of the forensic profile of war crimes and provides the opportunity to carry out their criminal law assessment. The latter, in turn, is based on this classification, including a detailed analysis of criminal offences within the defined category (Kostiuk, 2024).

In studying the forensic classification of war crimes, O. Pchelina & V. Pchelin (2022) propose to carry it out based on three criteria, which depend on the method of commission, the object of the encroachment, and the victim. A similar, though somewhat more specific, form is adhered to by I. Hlovyuk & G. Teteryatnyk (2022), who divide war crimes according to three features. The first relates to the method of commission, distinguishing those associated with sexual violence, torture or other inhuman treatment, infliction of bodily harm, unlawful deprivation of liberty, unlawful deportation, hostage-taking, intentional killing, use of poisonous weapons, destruction or appropriation of property under special protection of international humanitarian law, and so forth.

The second relates to criminal orientation, namely acts directed against civilian objects, facilities engaged in providing humanitarian assistance or used by peacekeeping and security missions, objects designated for religious, educational, artistic, cultural, scientific and other purposes of social life, medical institutions and places where the sick and wounded are concentrated, as well as sites of cultural and historical heritage of national or global significance. Finally, the third group of criteria depends on the victim, ranging from civilians, military personnel, individuals engaged in humanitarian missions or peacekeeping, to children.

A somewhat different classification is suggested by A. Shulzhenko (2022), who proposes differentiating war crimes with regard to the classification features of the victims of such acts – i.e., the persons and/or parties who have suffered harm as a result of serious violations of international humanitarian law. Thus,

depending on the nature of the adverse consequences that shape the objective elements of violations of the laws and customs of war, and which also affect the process of proving them and the corresponding methodology of investigation, the scholar classifies war crimes by features characterising the victim. These include military personnel, prisoners of war, civilians, representatives of humanitarian missions protected under international humanitarian law, children, and the state itself in cases where the harm caused affects national interests or the people as a whole.

In carrying out this differentiation, the author's attention is focused on the fact that, according to the provisions of criminal procedural legislation, a person who has suffered physical, moral (psychological), material, or property damage as a result of unlawful acts may be recognised as a victim in criminal proceedings (Article 55 of the Criminal Procedure Code of Ukraine (CPC¹). The researcher does not question the provisions of the aforementioned article. The author's hypothesis is based on the assertion that the consequences of war crimes can affect the interests of the State, which, under certain circumstances, may act not only as the prosecution but also as the victim, or at least as the legal representative of the injured party. This is particularly true in situations where the criminal actions of one of the parties to the armed conflict violate the territorial integrity and sovereignty of the aggression's victim State, or if the armed aggression has caused significant damage to its citizens, environment, economy, cultural heritage, or the proper functioning of State institutions, especially in cases affecting the judicial or legislative branches of power.

Although the aforementioned classification can be used as a working model, it does not fully cover all the contextually legal elements (features) of the objective structure of the offence under investigation, and only partially satisfies the practical needs of the investigation process. For example, scholars do not account for the territorial feature of the committed act, which, in the opinion of A. Kovalenko (2022), is important for investigating war crimes, as it characterises the specifics of their pre-trial investigation and judicial proceedings.

In this regard, O. Harasymov *et al.* (2025), when classifying war crimes by territorial features, categorise them as those committed in controlled territory and, conversely, occupied territory. A similar, yet more detailed, classification form is adopted by A. Kovalenko (2022), who differentiates violations of the laws and customs of war into those committed: in territories not under enemy occupation and where no active hostilities took place; in de-occupied territories (liberated from occupation), provided that

¹ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

the investigation is conducted after the liberation of the relevant area; in temporarily occupied territories under enemy control; and in territories where active hostilities are ongoing, i.e., within zones of active combat operations.

In this context, the objective aspect (or objective element) of the investigated offence acquires fundamental significance, as it characterises the unlawful behaviour and determines the methods of committing war crimes, the object of the encroachment (criminal focus), the victim, the place of commission, as well as the socially dangerous consequences and their causal link to the committed act. These elements hold vital evidentiary significance for establishing the material circumstances of the criminal activity, which is a necessary condition for carrying out its legal assessment, formulating the prosecution's position in the adversarial process, and building the evidentiary basis within the scope of a specific act that falls under the elements of the crime's definition.

Under these conditions, war crimes should be understood as grave and/or serious violations of the laws and customs of war which contravene the fundamental principles of international humanitarian law. Given the above, it is expedient to carry out a forensic classification of violations of the laws and customs of war based on criteria dependent on the type of armed conflict within which they were committed, the place of their commission, and the focus of the criminal encroachment, the object of which may include: Firstly, civilians who are not taking part in the armed conflict, including children, who benefit from an increased level of protection in accordance with international humanitarian law. Secondly, servicemen who are participating in the armed conflict but may also enjoy protection under certain conditions stipulated by the norms of international humanitarian law. Thirdly, property rights as a special institution of international humanitarian law, considered in the context of prohibiting the unlawful destruction, appropriation, or confiscation of the property of civilians and objects that are not military targets. Fourthly, subjects with special status and heightened protection, represented by members of international organisations, humanitarian and monitoring missions, as well as specific categories of civilians performing functions related to human rights protection, provision of medical or humanitarian aid in armed conflict conditions, who enjoy an increased level of legal protection (immunity) in accordance with international humanitarian law norms. Fifthly, objects with special status and heightened protection, meaning objects that, in accordance with international humanitarian law, are not only removed from the category of lawful military targets but are also subject to enhanced protection due to performing humanitarian, medical, cultural, educational, religious,

or other social functions; these are inviolable or their operational disruption is dangerous to the population, humanity, or the environment, including those categorised as critically important and used to sustain the population's vital activities and the country's functioning. Sixthly, the natural environment, as an integral component of the object of protection under international humanitarian law, an attack on which may lead to large-scale and long-term damage that, in the context of armed conflict, may be qualified as a war crime, and in peacetime - as ecocide, provided the elements of the crime correspond to the norms of international and national law. Seventhly, justice, as an institution with enhanced immunity that ensures the realisation of the right to a fair trial, which is inseparable from the rule of law and the observance of fundamental human rights. Eighthly, prohibited means and methods of warfare. This refers to forms of force application in armed conflict that are explicitly prohibited by international humanitarian law norms because they contradict the principles of distinction, proportionality, and the prohibition of unnecessary suffering. These include the use of indiscriminate weapons or those causing excessive harm, conducting hostilities without distinction, use of weapons of mass destruction, including chemical and biological weapons, perpetrating terror against the civilian population, unlawful deportation, forced labour, performance of military tasks, etc. (Rubanenko, 2024).

Depending on the method of commission of war crimes, they can be differentiated into those that encroach upon a person's life and health, honour and dignity, inviolability and safety, property rights, the legal regime of special international protection, on objects that ensure the state's vital functions and are necessary for the population's sustenance, on justice, as well as on prohibited methods and means of warfare. Specifically, those encroaching upon life include wilful killing, killing of a combatant who has laid down arms or unconditionally surrendered, and aggressive actions that, under certain circumstances, resulted in fatal consequences.

Those crimes encroaching upon health can include torture, inhuman treatment, biological medical or scientific experiments that are not justified by treatment, wilful infliction of grievous bodily harm, severe suffering, injury to health, maiming, and compulsory sterilisation. Against honour and dignity are rape, sexual slavery, enforced prostitution, other forms of sexual violence including forced impregnation, as well as encroachment on human dignity in the form of insulting or humiliating treatment.

Crimes encroaching upon inviolability and safety include deportation or forcible transfer of the civilian population, as well as attacks on the civilian population or individual civilians who are not directly participating in hostilities. Against property

rights are the large-scale destruction and appropriation of property not justified by military necessity, including its seizure, as well as the pillage of cities and other populated areas. Against the legal regime of special international protection for subjects and objects defined by international law can be classified as attacks on personnel, objects, materials, units, or transports involved in providing humanitarian assistance or in peacekeeping and security missions in accordance with the UN Charter¹ including attacks on buildings, medical institutions and vehicles, and on personnel using identification emblems prescribed by the Geneva Conventions in accordance with international law.

Crimes against the functioning of vital infrastructure that provides for the basic needs of the population and stability in the country include attacks on civilian objects, buildings designated for religious, educational, artistic, scientific, or charitable purposes, historical monuments, hospitals, and places where the sick and wounded are concentrated, provided that they are not military targets. Those encroaching upon the functioning of justice include the wilful deprivation of a prisoner of war or another protected person of the right to a fair trial, unlawful deprivation of liberty, depriving citizens of the hostile party of the right to judicial protection by declaring their claims inadmissible or cancelling already established rights, the passing of sentences and carrying them out without prior trial before a court constituted in accordance with the requirements of law, or a court that does not guarantee compliance with the procedural rights necessary for a fair judicial decision.

Crimes that ignore the requirements of international humanitarian law regarding prohibited methods, means, and rules of warfare can be classified as, in particular, regarding established methods of warfare: attacks on undefended towns that are not military targets, attacks that cause harm to the civilian population or specific persons or the environment, taking of hostages, forcing prisoners of war to serve in the armed forces of a hostile power, compelling citizens of the hostile party to participate in hostilities, perfidy (treacherous killing or wounding), using children under the age of 15 for combat purposes, using the civilian population as a “human shield” for defence or cover, illegal displacement of the civilian population, and the declaration that no quarter will be given. Regarding established means of warfare: the use of poisonous substances or poisonous weapons, asphyxiating gases, toxic liquids, bullets that expand or flatten easily in the human body, weapons causing excessive suffering, and other indiscriminate means of warfare prohibited by international humanitarian law. Regarding established rules of warfare: the

improper use of protected symbols (flags, signs, UN), issuing unlawful orders; engaging protected persons in hostilities contrary to their status. Depending on the nature and scale of socially dangerous consequences that have led to loss of life, caused grievous bodily harm or maiming, damaged cultural or national heritage, and provoked large-scale humanitarian crises including socially dangerous consequences that have a limited but specific effect war crimes can include the recruitment and use of children in armed conflict, women, persons of other nationalities with the aim of engaging them in active combat and latent destruction by the enemy on the battlefield, etc.

The given forensic classification of war crimes is not exhaustive. This is because the circumstances defined therein may be complex and relate simultaneously to the methods, means, place of commission of the crime or the nature of the armed conflict. At the same time, in the context of analytical and forensic activities, it makes it possible to systematise the key features of violations of the laws and customs of war in order to better understand the circumstances of the commission and the specifics of the investigation.

In this context, the subjective characteristics that characterise violations of the laws and customs of war are no less important. This is because such offences are characterised by being committed with direct intent, or, as stated in the provisions of international criminal law – *mens rea* – i.e. guilt in the sense of understanding. From this point of view, *mens rea* consists in the awareness of the perpetrator of a criminal offence of the unlawful nature of their actions or inaction and their prohibition under international criminal law (Rubanenko, 2024). In turn, this is crucial for assessing the guilt of the accused and the correct legal classification of their actions.

In this context, it is advisable to classify war crimes according to subjective criteria, which can be divided into three groups. The first group concerns subjects who have committed unlawful acts. These include combatants from among the military personnel of the regular armed forces of a state participating in an armed conflict, persons acting on behalf of or in the interests of a party to the conflict and belonging to mercenaries, volunteers, members of irregular armed formations of one of the parties to the conflict, commanders, military leaders and persons from the military-political leadership who are vested with authority, who may not only personally commit acts but also give orders to commit such acts and bear responsibility for them, civilians, if they are involved in combat missions and actively participate in their implementation or act within the powers of the warring party (representatives of security agencies, intelligence agencies, law enforcement agencies, prison

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

services, medical institutions, various manufacturing or construction industries, etc.).

The second depends on the form of complicity on the part of individual (sole) perpetrators. That is, the sole commission of a war crime. Co-perpetrators, in the case of a coordinated joint commission of a war crime by several persons. Organisers and leaders who are authorised to give orders, plan, incite the commission of war crimes, as well as accomplices who provided means, information, logistics, cover and committed other acts that contributed to the commission of a war crime.

The third group covers the purpose and motives for the implementation of criminal intentions. It includes achieving military superiority (destruction of the enemy, weakening the will to resist, etc.), revenge or violent motivation against the population, the wounded, prisoners of war, ideological or political components (ethnic, national, religious, racial hatred, discrimination, including for the purpose of apartheid or genocide), mercenary motives (enrichment, seizure of property for any purpose,

satisfaction of material needs, promotion, etc.), motives related to sexual aggression (in the case of sexual violence).

Taking into account the above, it is advisable to differentiate the forensic classification of war crimes according to objective and subjective criteria, which corresponds to the systematic approach to the typology of criminal offences in forensics. This approach is dictated by the need to ensure a more effective organisation of investigations into violations of the laws and customs of war, including by establishing typical mechanisms for their commission, features of evidence, typical traces of crime and behaviour of the subjects of the criminal offence under investigation (Fig. 1). This duality is not only methodologically sound, but also practically oriented, as it allows the criminalistic model of investigation to be adapted to the specifics of individual groups, types or subtypes of war crimes, to isolate the elements of their forensic profile, to forecast forensically significant information, and to select effective methods for its detection, recording, seizure, and use in evidence.

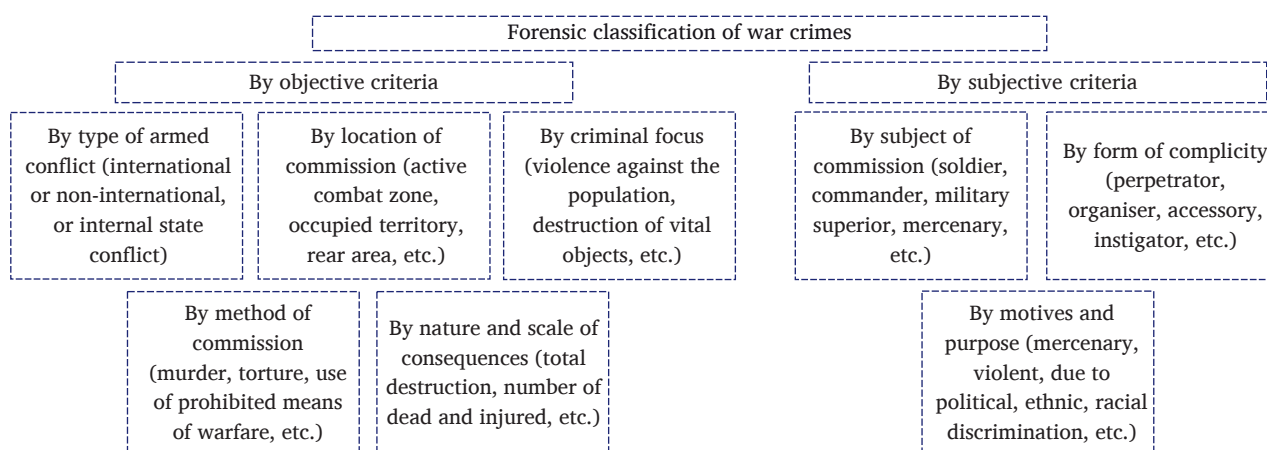


Figure 1. Forensic classification of violations of the laws and customs of war according to typological criteria that determine the objective and subjective characteristics of violations of the laws and customs of war

Source: developed by the authors

In this context, attention is drawn to improving the mechanisms for prosecuting certain subjects responsible for violations of the laws and customs of war. This implies the expediency of isolating the especially aggravating circumstances of the criminal offence in question, which could be defined in the disposition of Article 438 of the Criminal Code of Ukraine (CCU)¹ and the provisions of Article 8 of the Rome Statute of the International Criminal Court². This is because these circumstances are of significant importance for the individualisation of criminal

responsibility, especially when it concerns the collective execution of a criminal order, or the implementation of decisions or plans deliberately directed by the highest military-political leadership, which requires a distinct criminal law assessment.

Accordingly, the main criterion for qualifying a war crime should be the establishment of key circumstances which serve, first, to provide a legal evaluation of the role of each participant in the war crime who had (or has) the authority to make criminal decisions of a military nature contrary to international

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

² Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text.

humanitarian law. Secondly, to determine the degree of participation (responsibility) both of such persons and of their subordinates in the implementation (execution) of the criminal plan or decision. Thirdly, to ensure the formation of a sufficient and admissible evidentiary base to prove the guilt of each participant in the criminal activity carried out in the course of executing the criminal plan or decision.

Consequently, it seems justified to introduce amendments to Article 438 of the CCU¹ by supplementing its norm with a second part that would establish criminal liability not only for military commanders and superiors but also for senior officials of the military-political leadership who initiated, authorised, or transmitted criminal regulatory decisions related to the violation of the laws and customs of war. Specific attention should be paid to additions concerning the commission of war crimes against children. Such actions not only violate the norms of international humanitarian law but also threaten the nation's gene pool, destroying its biological, social, and cultural prospects. For this reason, the commission of war crimes against children must be considered an especially aggravating circumstance that requires a separate criminal law qualification and a corresponding response from national and international law enforcement agencies.

■ Conclusions

Consideration of the forensic aspects of violations of the laws and customs of war demonstrates the necessity of undertaking a forensic classification of war crimes, taking into account both the criminal-law and forensic dimensions of criminal activity. Such an approach makes it possible to view forensic differentiation not merely as a means of systematising knowledge about war crimes, but also as an instrument for identifying the objective and subjective features that define the structure of corresponding criminal offences. In turn, forensic differentiation becomes a methodological basis for the formation of elements of forensic characterisation and their proper evaluation, which includes an analysis of the methods of commission and concealment, as well as the determination of circumstances, motives, and consequences.

Within the framework of the proposed war crime classification, it is expedient to categorise them according to the following criteria: type of armed conflict, location of the crime's commission, method of implementing criminal intent, nature and scale of the resulting consequences, individuals who committed the crime, form of their complicity, and the purpose and motives of the criminal encroachment.

The suggested systematisation has not only theoretical significance but is also practically oriented, as it reates the preconditions for isolating the elements of the forensic profile and providing them with an appropriate legal assessment. This contributes to the effective documentation and, consequently, the proof of violations of the laws and customs of war.

It is essential to supplement the disposition of Article 438 of the Criminal Code of Ukraine with specific aggravating and especially aggravating circumstances which significantly increase the degree of public danger posed by war crimes. In this context, this refers to the execution of a criminal plan, strategy, or order initiated by the highest military-political leadership, especially when the violations of the laws and customs of war bear the hallmarks of mass acts of violence or genocidal practice. Acts of violence against children deserve particular attention in this regard. This is because such acts not only violate the fundamental norms of international humanitarian law but also pose a threat to the preservation of the nation's gene pool, thus demanding a special criminal law assessment. Consequently, this will contribute to enhancing the individualisation of criminal responsibility for committing war crimes and align with the fundamental principles of international criminal justice. Accordingly, it is justified to supplement Article 438 of the Criminal Code of Ukraine with such qualifying features as the commission of a war crime through the issuance of a criminal order, plan, or strategy by the highest military command or military-political leadership with the intent to destroy a particular population group, minors, or other especially vulnerable categories of persons in the context of a large-scale armed conflict or in an occupied territory.

In further research, attention should be focused on isolating the elements of the forensic profile of war crimes and providing them with a proper legal assessment. This will facilitate the establishment of the facts subject to proof and a clear delineation of their boundaries, which is a necessary prerequisite for developing effective mechanisms for the investigation of violations of the laws and customs of war.

■ Acknowledgements

None.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

¹ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

■ References

- [1] Agarkova, O. (2024). Detection and recording of violations of the laws and customs of war – a direction of law enforcement agencies' activities. *Scientific Bulletin of the International Humanitarian University. Series: Jurisprudence*, 68, 78-82. doi: [10.32782/2307-1745.2024.68.16](https://doi.org/10.32782/2307-1745.2024.68.16).
- [2] Basysta, I., Vlasova, G., & Stratonov, V. (2023). Prospects and inevitability of responsibility for the commission of war crimes, genocide, aggression and crimes against humanity (activities of the Joint Investigation Team to investigate serious international crimes in Ukraine (JIT); cooperation with the International Criminal Court; prospects for the creation of an AD HOC International Tribunal, etc.). In *War crimes and war crimes: Prerequisites, theory and practice* (pp. 25-72). Riga: Baltija Publishing. doi: [10.30525/978-9934-26-302-6-2](https://doi.org/10.30525/978-9934-26-302-6-2).
- [3] Didenko, E. (2024). Criminal-legal and procedural characteristics of war crimes in Ukraine (after the full-scale invasion of the Russian Federation into Ukraine). *Electronic Scientific Publication "Analytical and Comparative Law"*, 2, 569-573. doi: [10.24144/2788-6018.2024.02.96](https://doi.org/10.24144/2788-6018.2024.02.96).
- [4] Harasymov, O., Marko, S., & Ryashko, O. (2025). *How to punish war criminals in Ukraine: Mechanisms for restoring justice*. doi: [10.30525/978-9934-26-302-6-8](https://doi.org/10.30525/978-9934-26-302-6-8).
- [5] Hlovyuk, I., & Teteryatnyk, G. (2022). Contextual elements in war crimes proceedings: A sui generis subject of proof. *Legal Scientific Electronic Journal*, 6, 394-398. doi: [10.32782/2524-0374/2022-6/87](https://doi.org/10.32782/2524-0374/2022-6/87).
- [6] In Mariupol, the invaders killed about 100 thousand people – human rights activists. Ukrinform. (2023). Retrieved from <https://surl.li/boucwj>.
- [7] Kostiuk, I. (2024). Theoretical legal analysis of abuse of power or official authority by a military official in martial law or combat situation: Key aspects. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 61-74. doi: [10.56215/naia-herald/4.2024.61](https://doi.org/10.56215/naia-herald/4.2024.61).
- [8] Kovalenko, A. (2022). [Some legal and organizational problems of collecting, researching and using evidence during the investigation of criminal offenses under martial law](#). In *Issues of documentation, determination of damage and compensation for losses caused to Ukraine and its citizens as a result of the armed aggression of the Russian Federation: Proceedings of a scientific and practical conference* (pp. 114-117). Kharkiv: New Law University named after Ya. Mudry.
- [9] Ostapchuk, L., & Kuzmenko, T. (2022). Military and war crimes in domestic and international legislation. *Criminal and Executive System: Yesterday. Today. Tomorrow*, 1(11), 18-27. doi: [10.32755/sjcriminal.2022.01.018](https://doi.org/10.32755/sjcriminal.2022.01.018).
- [10] Paleshko, Ya., Kubetska, O., & Ostapenko, T. (2020). Concept and classification of crimes related to the economic sphere. *Scientific Notes of V.I. Vernadsky TNU. Series: Legal Sciences*, 31(70), 70-75. doi: [10.32838/TNU-2707-0581/2020.5/13](https://doi.org/10.32838/TNU-2707-0581/2020.5/13).
- [11] Pchelina, O., & Pchelin, V. (2022). [Forensic classification of war crimes](#). In *Modern trends in the development of forensics and criminal process under martial law: Proceedings of the scientific and practical conference* (334-338). Kharkiv: Kharkiv National University of Internal Affairs.
- [12] Pchelina, O., (2014). [Forensic classification of crimes in the sphere of official activity](#). *National Legal Journal: Theory and Practice*, 6, 267-271.
- [13] Prosecutor General's Office. (2022). *Unified report on criminal offenses for January-December 2022*. Retrieved from <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.
- [14] Prosecutor General's Office. (2023). *Unified report on criminal offenses for January-December 2023*. Retrieved from <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.
- [15] Prosecutor General's Office. (2024). *Unified report on criminal offenses for January-December 2024*. Retrieved from <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.
- [16] Repchonok, A. (2020). Concept, features and classification of crimes in the sphere of economy. *State and Regions*, 2(68), 278-284. doi: [10.32840/1813-338X-2020.2.47](https://doi.org/10.32840/1813-338X-2020.2.47).
- [17] Report on the state of administration of justice by local and appellate courts for 2022. (2022). Retrieved from <https://court.gov.ua/inshe/sudova-statystyka/>.
- [18] Report on the state of administration of justice by local and appellate courts for 2023. (2023). Retrieved from <https://court.gov.ua/inshe/sudova-statystyka/>.
- [19] Report on the state of administration of justice by local and appellate courts for 2024. (2024). Retrieved from <https://court.gov.ua/inshe/sudova-statystyka/>.
- [20] Rubanenko, N. (2024). Concept, typology and characteristics of international crimes: Systematic analysis. *Law Forum*, 79(2), 84-95. doi: [10.5281/zenodo.10933562](https://doi.org/10.5281/zenodo.10933562).

- [21] Rubanenko, N. (2024). Conceptual foundations of international legal proceedings. *Scientific Bulletin of the Kharkiv National University of Internal Affairs*, 2(105), 160-175. doi: [10.32631/v.2024.2.38](https://doi.org/10.32631/v.2024.2.38).
- [22] Shulzhenko, A. (2022). Problems of proving the objective side in crimes of violation of the laws and customs of war. *Bulletin of the Luhansk State University of Internal Affairs named after E.O. Didorenko*, 2(98), 261-270. doi: [10.33766/2524-0323.98.261-270](https://doi.org/10.33766/2524-0323.98.261-270).
- [23] Tchobo, D.L.R. (2022). Potential international crimes in Ukraine: Should atrocities in Bucha be classified as genocide, war crimes, or crimes against humanity? *Law and Safety*, 2(85), 13-20. doi: [10.32631/pb.2022.2.01](https://doi.org/10.32631/pb.2022.2.01).
- [24] Tolkach, A. (2023). Forensic characteristics of war crimes committed by the Russian army against the civilian population in the Chernihiv region from February 24 to April 2. *Electronic Scientific Publication "Analytical and Comparative Jurisprudence"*, 4, 413-417. doi: [10.24144/2788-6018.2023.04.66](https://doi.org/10.24144/2788-6018.2023.04.66).
- [25] Trautman, L.J., & McFarlin, M. (2023). Putin, Russia and Ukraine: International human rights violations, war crimes, & future implications. *SSRN*. doi: [10.2139/ssrn.4393282](https://doi.org/10.2139/ssrn.4393282).
- [26] Tymoshenko, V. (2024). Use of special knowledge during documentation and investigation of war crimes. *Bulletin of the Forensic Association of Ukraine*, 1(31), 307-314. doi: [10.32631/vca.2024.1.25](https://doi.org/10.32631/vca.2024.1.25).
- [27] UN Confirms more than 6,300 civilian deaths in Ukraine since Russia's invasion. (2022). Retrieved from <https://www.ukrinform.net/rubric-ato/3598541-un-confirms-more-than-6300-civilian-deaths-in-ukraine-since-russias-invasion-started.html>.
- [28] Yevgeny Yenin: More than 9,400 civilians have already died from the shelling of the occupiers. (2022). Retrieved from <https://ukurier.gov.ua/uk/news/yevgenij-yenin-vid-obstriliv-okupantiv-zaginulo-vz/>.

Особливості криміналістичної класифікації воєнних злочинів

Наталія Рубаненко

Аспірант

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0009-0001-2958-4228>

Анна Мировська

Кандидат юридичних наук, доцент

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0001-5714-1873>

■ **Анотація.** Актуальність дослідження обумовлена необхідністю вдосконалення криміналістичної систематизації воєнних злочинів з огляду на сучасні виклики та масштаби злочинної діяльності під час збройного конфлікту на території України, а також проблематикою їх розслідування в умовах агресії. Метою дослідження було обґрунтування доцільності розмежування воєнних злочинів за кримінально-правовими та криміналістичними критеріями, а також формування основ їх криміналістичної класифікації з огляду на кримінально-правові та криміналістичні аспекти досліджуваних діянь. Методологічний інструментарій дослідження охоплював комплекс методів, серед яких формально-юридичний, порівняльно-правовий, індуктивний, порівняльний, метод прогнозування та криміналістичного аналізу задля обґрунтування висновків і надання пропозицій щодо предмета дослідження. Результати дослідження полягали в обґрунтуванні криміналістичної класифікації воєнних злочинів як необхідної складової (елементу) криміналістичної методики розслідування кримінальних правопорушень. Обґрунтовано класифікаційні критерії для диференціації воєнних злочинів за типом збройного конфлікту, територіальним чинником учинення, способами реалізації злочинної діяльності, характером і масштабами суспільно небезпечних наслідків, особливостями суб'єктивного складу правопорушення, а також мотиваційно-цільовими орієнтирами поведінки винних осіб. Висвітлено значення особливо кваліфікуючих обставин, які, попри відсутність прямого закріплення в диспозиції ст. 438 Кримінального кодексу України, мають ключове значення для ідентифікації ступеня індивідуальної відповідальності. Ідеться про випадки формування та реалізації злочинного наміру шляхом віддання наказу, розроблення планів або стратегій вчинення воєнних злочинів, ініційованих на найвищому рівні військово-політичного керівництва держави-агресора. Акцентовано на доцільності змін і доповнень до ст. 438 Кримінального кодексу України з розширенням переліку обтяжуючих обставин, зокрема якщо воєнні злочини вчинені проти дітей чи мають негативні наслідки для генофонду нації. Наукова новизна і практична значущість одержаних результатів полягає у формуванні дієвих механізмів розслідування воєнних злочинів через аналіз кримінально-правових, кримінально-процесуальних і криміналістичних аспектів розслідування порушень законів та звичаїв війни, а також під час удосконалення норм кримінального законодавства як на національному, так і на міжнародному рівнях.

■ **Ключові слова:** криміналістична діяльність; розслідування злочинів; диференціація; процес доказування; порушення законів і звичаїв війни; характеристика; міжнародне судочинство

UDC 347.7:004.056.5

DOI: 10.63341/naia-herald/3.2025.98

The impact of judicial precedents in data breach cases on entrepreneurial activity: Current case studies

Igor Rudenko*

Master of Science

Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
<https://orcid.org/0009-0008-3582-3951>

Olha Khorolska

Master of Science

Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
<https://orcid.org/0009-0004-9853-2378>

Mariia Turchina

PhD in Law

Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
<https://orcid.org/0000-0002-1486-1122>

■ **Abstract.** This study aimed to examine the impact of judicial precedents in cases concerning the leakage of personal and corporate data on the development of legal practice and business strategies. The research involved an analysis of key court cases, which made it possible to determine how these incidents have influenced corporate liability and behaviour. The study addressed cases such as Equifax, Facebook-Cambridge Analytica, British Airways, T-Mobile, and the Ukrainian mobile operator Kyivstar. The rulings in these cases not only imposed fines but also established new principles of corporate ethics, requiring companies to adopt a systematic approach to personal data protection, ensure transparency in user interactions, and strengthen their internal legal culture. The number of incidents continues to grow: since 2024, there has been a 25% increase in recorded data breaches compared to previous years. This demonstrates that data breaches are no longer regarded merely as technical issues but have become legally significant events with substantial economic and regulatory implications. In response, businesses are compelled to reconsider their strategies, implement new data protection policies, and incorporate potential legal risks into risk management frameworks. The practical significance of the issue lies in the fact that analysing major cases enables the forecasting of possible consequences of data breaches, the assessment of legal risk levels, and the development of effective strategies for accountability and prevention

■ **Keywords:** cybersecurity; personal data; legal regulation; information security; data protection; offences; damages

■ **Suggested Citation:**

Rudenko, I., Khorolska, O., & Turchina, M. (2025). The impact of judicial precedents in data breach cases on entrepreneurial activity: Current case studies. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 98-111. doi: 10.63341/naia-herald/3.2025.98.

■ *Corresponding author

■ Received: 09.06.2025; Revised: 29.08.2025; Accepted: 29.09.2025



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

■ Introduction

Judicial precedents in the field under study establish certain standards for companies, reshaping classical approaches to risk management and corporate governance. The introduction of regulatory frameworks such as the General Data Protection Regulation¹ (GDPR) has significantly transformed the legal environment, imposing new levels of liability on companies and creating complex challenges for global commerce. Of particular importance is the examination of the influence of judicial decisions on innovative technology sectors, as traditional legal norms often fail to keep pace with rapid technological development. The analysis of recent cases helps to identify trends in the formation of new legal standards, which is critically important for strategic business planning in the context of the digital transformation of the economy. Moreover, the growing interdependence between cybersecurity issues and the financial stability of companies makes such research an integral component of contemporary corporate law and economic security.

O.O. Bernaziuk (2023), in a study, analysed current approaches to the concept of a “judicial precedent”, considering, in particular, the categories of judicial precedent and judicial practice within the framework of information law and administrative procedure. The scholar emphasises that judicial precedent is intended to ensure a uniform approach to the interpretation of legal norms, the resolution of contradictions, and the filling of gaps in legislation. Judicial precedent does not create new legal norms but determines the obligatory manner in which existing norms are to be applied, which is characteristic of the continental legal system of Ukraine.

I. Sopilko & E. Zubko (2024) examine the conceptual distinctions between hacking and data breaches, analysing the risks associated with information compromise. The scholars note that judicial decisions in cases concerning unlawful access to or leakage of personal data contribute to establishing clear legal boundaries of corporate liability. They emphasise that precedents define the required scope of technical and organisational security measures and promote the standardisation of good practice in the field of cybersecurity. I. Pokhylenko (2023), having studied the specifics of legal regulation in the protection of personal data, concludes that safeguarding personal data is not only a technical or legal issue but also a key element in guaranteeing human rights and freedoms, as well as an essential component of national security. Under conditions of martial law, cyberattacks, and the temporary occupation of parts of the country's territory, the likelihood of unauthorised access to sensitive information increases, creating additional threats to citizens. For this reason, an effective

system of personal data protection must be based on a combination of legislative guarantees, technical solutions, and public awareness of individual rights. Ensuring such protection is the responsibility of both the state and all entities that process personal data. In an article, K. Nekt (2020) considers the economic nature of personal data and argues for the necessity of its legal protection as a form of property. This has particular significance for businesses, as judicial precedents confirming the proprietary value of information compel companies to strengthen internal security policies and adopt a more cautious approach to the processing of customer data.

As noted in the study by O. Zadereyko *et al.* (2022), devoted to the challenges of ensuring user data protection in information systems, the consequences of data breaches for businesses can be extremely serious: loss of customers due to diminished trust, financial damage, lawsuits, regulatory sanctions, and reputational harm that may last for years and hinder corporate development. In some cases, a data breach becomes a critical turning point after which a company is unable to regain its market position. I.Y. Dumanska *et al.* (2022), in research focused on the impact of personal data protection policies on enterprise development, particularly in the IT sector, highlight the importance of a systematic approach to data management both at the level of state policy and within individual enterprises. This requires not only the implementation of effective technical solutions but also the enhancement of legal culture, the adaptation of international standards, and the advancement of sectoral research for a deeper analysis of the institutional environment's influence.

F. Schäfer *et al.* (2023), whose research addresses the challenges of data management and privacy protection in product-based businesses, observe that cases of data breaches compel enterprises to carefully review their contracts, privacy policies, and internal information-handling regulations. The risk of losing control over information presents new challenges for businesses, the most significant of which is the necessity of complying with legal requirements in the field of personal data protection. Companies are compelled to implement effective control measures, conduct regular audits, and ensure transparent reporting in order to comply with established standards. Such measures help minimise the risks of fines and reputational loss, while also maintaining the trust of clients and partners.

M. Kotenko *et al.* (2025), in a study analysing personal data protection in Ukraine through the lens of European judicial practice, emphasise the importance of adhering to the “three-part test” of lawfulness

¹ General Data Protection Regulation. (2016, May). Retrieved from <https://gdpr-info.eu/>.

in personal data interference: (1) in accordance with the law; (2) for the purpose of achieving a legitimate aim; and (3) by proportionate means. In their article, M. Bem & I. Horodysky (2019) draw attention to the serious challenges facing Ukrainian legislation on personal data protection, particularly regarding compliance with the requirements of the General Data Protection Regulation. The researchers note that, given the increasing prevalence of judicial decisions based on GDPR norms, Ukrainian businesses are increasingly adapting internal processes to European standards, even without direct integration with the EU.

This study aimed to determine how judicial decisions in cases of breaches of personal and corporate data confidentiality influence the development of legal practice and the shaping of corporate business strategies.

■ Materials and Methods

The study was based on the case study method, which made it possible to identify key legal precedents and their impact on business practice. Judicial rulings were examined in Case “Mr L Beresford v. British Airways Plc”¹, “People of the State of California, v. Equifax Inc.”², “United States of America v. Facebook”³, “Mr M Osborne v. British Airways Plc”⁴ and T-Mobile case⁵, as well as the Ukrainian case of the cyberattack on the country’s largest mobile operator, Kyivstar (as of June 2025, no court rulings are publicly available). Each case was analysed in terms of judicial decisions, regulatory findings, financial penalties, reputational consequences, and changes in corporate policies. This approach demonstrated how specific legal proceedings shape corporate governance practices, data protection policies, and communication strategies in times of crisis.

The comparative legal method enabled the examination of judicial approaches across different legal

systems, particularly those of the USA, the United Kingdom, and Ukraine. This facilitated the identification of both commonalities and divergences in the interpretation of corporate liability for data breaches, which in turn allowed for the formulation of broader conclusions regarding the influence of judicial practice on commercial activity.

Using the formal legal method, the study examined the regulatory framework, in particular: the GDPR⁶, the California Consumer Privacy Act⁷, the Gramm-Leach-Bliley Act⁸, and the Law of Ukraine “On the Protection of Personal Data”⁹. The research also included an analysis of annual data breach statistics in the USA (Statista, 2025). In addition, a prognostic approach was applied to formulate forecasts regarding future directions in corporate responsibility for personal data protection.

In exploring the impact of judicial precedents on data breaches in entrepreneurial activity, several theoretical methods were employed, including analysis, synthesis, induction, and deduction. The analytical method facilitated the examination of specific judicial decisions related to data breaches, enabling the identification of key legal approaches to determining corporate liability, characterising offences, and outlining typical consequences for businesses. The method of synthesis made it possible to combine information from diverse sources to construct a comprehensive understanding of the influence of case law on business activity. By applying induction, general conclusions were formulated from the analysis of individual cases, particularly concerning the growing stringency of data protection requirements. The deductive method, grounded in general principles of law and judicial practice, assisted in predicting potential risks and legal consequences for businesses in the event of breaches of data processing and storage norms.

¹ Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301827/2020 “Mr L Beresford v. British Airways Plc”. (2022, August). Retrieved from https://assets.publishing.service.gov.uk/media/63172208d3bf7f9312b7f95/Mr_L_Beresford_v_British_Airways_Plc_-_3301827-2020_-_Judgment.pdf.

² Final Judgement and and Permanent Injunction of the Superior Court of the State of California for the County of San Francisco Unlimited Jurisdiction in Case No. CGC-19-57780 “People of the State of California, v. Equifax Inc.”. (2019, July). Retrieved from <https://oag.ca.gov/system/files/attachments/press-docs/Equifax%20-%20Final%20approved%20%20judgment.pdf>.

³ Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief of the United States District Court for the District of Columbia in Case No. 19-cv-2184 “United States of America v. Facebook”. (2019, July). Retrieved from https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_order_filed_7-24-19.pdf.

⁴ Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301841/2020 “Mr M Osborne v. British Airways Plc”. (2021, October). Retrieved from https://assets.publishing.service.gov.uk/media/62388cf6e90e07799cd3de42/Mr_M_Osborne_v_British_Airways_PLC_3301841.2020_FMH_Reserved_Judgment.pdf.

⁵ Stipulation and Order of the United States District Court For The District of Columbia in Case “United States of America et al., Plaintiffs, v. Deutsche Telekom AG, T-Mobile US, INC., Softbank Group Corp., and Sprint Corporation”. (2019, July). Retrieved from https://www.justice.gov/d9/press-releases/attachments/2019/07/26/stipulation_and_order_0.pdf?utm.

⁶ General Data Protection Regulation. (2016, May). Retrieved from <https://gdpr-info.eu/>.

⁷ California Consumer Privacy Act. (2020, September). Retrieved from <https://oag.ca.gov/system/files/initiatives/pdfs/19-0017%20%28Consumer%20Privacy%20%29.pdf>.

⁸ Gramm-Leach-Bliley Act. (1999, November). Retrieved from <https://www.govinfo.gov/content/pkg/PLAW-106publ102/pdf/PLAW-106publ102.pdf>.

⁹ Law of Ukraine No. 2297-VI “On the Protection of Personal Data”. (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2297-17#Text>.

■ Results

In the modern business environment, where information is one of the most valuable resources, the protection of personal and corporate data has become a vital component of risk management strategies. Companies must implement effective cybersecurity measures, control access to information, train employees, and respond swiftly to potential threats. Judicial precedents in data breach cases exert a significant influence on business, shaping the legal environment and setting standards for information protection. This influence is reflected in several key areas. Companies operating internationally are obliged to take into account precedents from different jurisdictions, which complicates business operations but simultaneously raises the overall level of data protection. Changes in judicial practice began with major cyber incidents in the early 2000s, when courts first confronted the challenge of assessing the harm caused by the leakage of millions of citizens' personal data (Tapkir, 2023). The difficulty lay in the fact that traditional methods of damage assessment proved inadequate for new types of offences, where potential harm might only manifest years after the initial incident.

In the business environment of the USA, there is a clear and persistent trend towards an increase both in the number of data breach incidents and in the scale of their impact (Fig. 1). This phenomenon is driven by several factors. The digitalisation of business processes leads to the accumulation of large volumes of data in electronic form, making companies more attractive targets for cybercriminals. At the same time, cyberattack techniques are becoming increasingly complex and sophisticated, enhancing their effectiveness and making detection more difficult. Insufficient investment in modern cybersecurity systems and reliance on outdated technologies create vulnerabilities that facilitate unauthorised access to protected information. In addition, the growing use of mobile devices and remote working formats complicates the control of information flows and increases the likelihood of unauthorised access. Equally significant are the strengthened legislative requirements for incident reporting, which enhance the transparency of statistical data. Furthermore, the globalisation of business processes and the complexity of interactions with external partners lead to a greater number of potential vulnerabilities in supply chains, which in turn heightens the risks of data breaches.

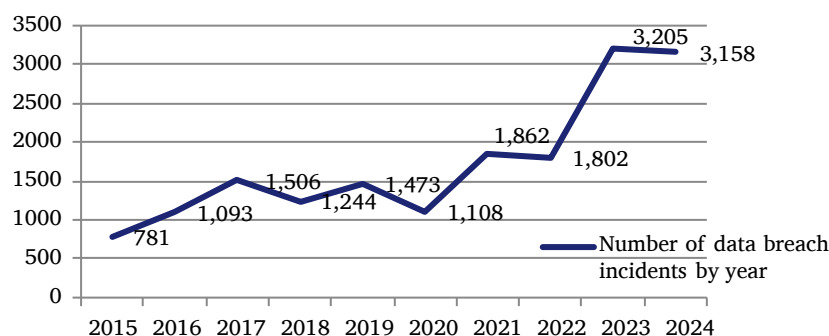


Figure 1. Annual number of data breaches and affected individuals in the USA

Source: compiled by the authors based on data from Statista (n.d.)

In 2015, 781 breaches were recorded, and by the following year, the number of incidents had risen to 1,093. This trend continued in 2017, reaching 1,506 incidents. However, in 2018, the figure declined to 1,244, which may indicate either improvements in data protection or a reduction in the reporting of such events. In 2019, the situation again intensified, with incidents increasing to 1,473, but in 2020 the number fell to 1,108. These fluctuations may be attributed both to changes in cybercriminal activity and to variations in corporate and governmental reporting policies. From 2021 onwards, the data show a sharp upward trend. In 2021, 1,862 incidents were recorded, while in 2022 the number fell slightly to 1,802. In 2023, however, the sharpest increase occurred, with 3,205 data breaches – almost twice as many as in the previous year. This surge may be linked to the

widespread adoption of digital technologies, the growing popularity of remote work, and the intensification of hacker attacks. In 2024, a minor decrease was recorded, down to 3,158 incidents, although the overall level remained critically high. Thus, the data illustrate a general upward trend in data breach incidents over the past decade. This dynamic underlines the increasing relevance of cybersecurity issues, the need to strengthen information protection measures, and the importance of raising awareness among organisations and users regarding the risks associated with unauthorised access to personal or corporate data.

The analysis of data breach statistics in the USA is of particular significance for understanding global trends in cybersecurity and has direct implications for businesses in Ukraine for several key reasons. The USA is a global leader in the digital economy

and serves as the home jurisdiction for many of the world's leading multinational technology corporations, including Google, Microsoft, Amazon, and Apple. This demonstrates that the American experience in cybersecurity reflects the most pressing challenges and the strategies adopted to address them in the field of data protection.

Data disclosure leads to direct financial losses, including regulatory fines, compensation payments to clients, legal costs, and reduced revenues. The average cost of a single incident can reach millions of dollars, particularly for large enterprises (Bhadouria, 2022). Often, the loss of customer trust exceeds the financial damage itself. Organisations lose existing clients, face difficulties in attracting new ones, and must allocate significant resources to restore their reputation. In addition, data breaches disrupt business processes, necessitate urgent IT system upgrades, and require the redesign of operational procedures, sometimes negatively affecting efficiency (Nejad, 2023). Companies also face investigations by regulatory authorities, class-action lawsuits from clients, and potential criminal inquiries targeting management, creating long-term legal risks. Data breaches reduce a company's competitiveness, as consumers and partners increasingly opt for more reliable alternatives in the market. Following such incidents, firms are compelled to substantially increase cybersecurity expenditures, which may lead to a reduction in investments in other areas of business development.

Case *People of the State of California v. Equifax Inc.*¹, which was considered from 2017, exemplifies how judicial decisions can radically transform an entire industry and establish new standards of corporate responsibility. Cybercriminals gained access to the private information of more than 147 million people, including social security numbers, driver's licence details, and financial data. The breach occurred due to a vulnerability in the Apache Struts web application, which Equifax failed to update in a timely manner despite the availability of a patch. This data breach resulted in an unprecedented fine of USD 700 million from the US Federal Trade Commission, as well as additional civil settlements exceeding USD 1.4 billion (Diniyatullah & Rindu, 2024).

The precedent-setting significance of this case lies in the creation of a new concept of corporate responsibility, which frames cybersecurity not merely as a technical procedure but as a strategic requirement of corporate management. During the

proceedings, the courts determined that companies bear full responsibility for protecting personal data entrusted to them, regardless of technological complexity or external threats. Consequently, the principle of "due diligence in cyberspace" was established, requiring organisations to implement industry best practices and continually enhance their security systems. This case significantly transformed business approaches to cybersecurity due to substantial financial losses and reputational damage. The main changes included a marked increase in organisational investment in preventive cybersecurity measures, as the cost of threat prevention proved far lower than the cost of mitigating consequences.

The Facebook data scandal involved the unauthorised access to and use of users' personal data. The scandal led to numerous lawsuits against Facebook, including a class-action suit and investigations by regulatory authorities (Tiwari, 2022). In Case "*United States of America v. Facebook*"², new and significant standards of liability for the unlawful use of personal data for political purposes were established. The scandal, which arose from the use of data from 87 million Facebook users for targeted political advertising, resulted in a USD 5 billion fine and substantial changes in the company's corporate governance.

The Facebook-Cambridge Analytica scandal emerged from allegations of unauthorised collection of data from approximately 87 million Facebook users without their consent. These data were used for political micro-targeting, including during the US presidential elections and the Brexit referendum. Although technically, Facebook did not allow a data breach in the conventional sense – since users had granted permission for the third-party application to access their data – regulators viewed this as an abuse of user trust and insufficient oversight of third-party applications. Case "*United States of America v. Facebook*"³ set a precedent for the personal liability of senior management for failures in data protection and established requirements for implementing the principle of "privacy by design" at all levels of corporate activity.

A particularly important aspect of this case was the establishment of the principle of transparency in the use of personal data, which obliges companies to provide users with complete information regarding the methods of collection, processing, and application of their data. During the proceedings of this case, it was established that complex and unclear

¹ Final Judgement and and Permanent Injunction of the Superior Court of the State of California for the County of San Francisco Unlimited Jurisdiction in Case No. CGC-19-57780 "*People of the State of California, v. Equifax Inc.*". (2019, July). Retrieved from <https://oag.ca.gov/system/files/attachments/press-docs/Equifax%20-%20Final%20approved%20%20judgment.pdf>.

² Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief of the United States District Court for the District of Columbia in Case No. 19-cv-2184 "*United States of America v. Facebook*". (2019, July). Retrieved from https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_order_filed_7-24-19.pdf.

³ *Ibidem*, 2019.

privacy policies cannot serve as a legal basis for the processing of personal data. This led to a significant simplification and standardisation of user notification processes. Facebook was fined USD 5 billion by the US Federal Trade Commission, setting a new benchmark for liability in privacy violations. The ruling compelled technology companies to reassess their spending on data security and regulatory compliance. Moreover, the incident demonstrated how rapidly privacy breaches can undermine consumer trust and diminish brand value. As a result, new roles emerged within organisations, such as Chief Privacy Officers and AI Ethics Officers.

The American mobile operator T-Mobile experienced a series of data breaches, the largest of which occurred in 2021 and affected over 76 million users (McLymore & Bartz, 2020). Attackers gained access to names, addresses, dates of birth, social security numbers, and driver's licence information. Despite the company's assurances that security measures had been strengthened following previous incidents, this new breach triggered widespread criticism. The series of T-Mobile data breaches from 2018 to 2023 demonstrated the cumulative impact on the company's reputation and the financial losses resulting from repeated security incidents. The uniqueness of this case lies in its role in establishing industry standards for the US telecommunications sector, which is considered critical infrastructure. One of the key measures was the appointment of a mandatory Chief Information Security Officer, required to report regularly to the board of directors on the state of security and the effectiveness of implemented measures. The company was obliged to adopt a "Zero Trust" architecture, which demands continuous verification of every access request, regardless of the user's or system's location. In addition, the organisation was required to implement phishing-resistant multi-factor authentication and modern vulnerability management systems, including regular scanning, patching, and security monitoring. Another important requirement was the minimisation of personal data collection and compliance with policies for data deletion or anonymisation when retention was not justified. The company came under enhanced oversight by the Federal Communications Commission and was fined USD 60 million. This demonstrated the determination of American regulators to enforce strict measures for systemic cybersecurity failures. Large class-action lawsuits from over 76 million affected

consumers exemplified the scale of compensation in the telecommunications sector.

In European Union countries, judicial precedents in the field of personal data breaches have become an important factor directly affecting business operations. As of 2023-2025, the number of data breach incidents in Europe remains consistently high, indicating increasing cyber risks for businesses and critical infrastructure. According to the European Union Agency for Cybersecurity (2024), between mid-2022 and mid-2023, more than 11,000 significant incidents were recorded across EU countries, of which approximately 41% resulted in personal data breaches. In 2024, the 15 leading European countries reported over 130,000 data protection violations – an average of more than 356 incidents per day. The highest numbers were recorded in the Netherlands (33,471 incidents), followed by Germany (27,829), Spain (2,989), and Italy (2,400); increases compared with 2023 were 65%, 47%, and 42% respectively.

These changes were driven by the implementation of the GDPR¹, which introduced new liability criteria and set a precedent for the extraterritorial application of national regulations. In particular, the regulation established the principle of accountability, requiring organisations not only to comply with data protection rules but also to demonstrate compliance through appropriate documentation and process verification. The GDPR emphasises transparency in the use of personal information, obliging companies to inform data subjects of the purposes, scope, and duration of processing, as well as any potential third-party access to that information. A further standard requires notification of data security breaches within 72 hours if the incident could threaten the rights and freedoms of individuals. This fundamentally changed the approach to corporate responsibility: shifting from mere formal compliance to active, documented accountability for protecting human rights in the context of personal data processing. The GDPR not only increased potential fines to up to 4% of a company's annual global turnover but also introduced the concept of "accountability", requiring organisations to demonstrate proactive measures to safeguard personal data (Tikkinen-Piri *et al.*, 2018).

Case "Mr L Beresford v. British Airways Plc"² and Case "Mr M Osborne v. British Airways Plc"³ illustrated the practical application of the GDPR and established European standards of liability for data breaches. Following a 2018 cyberattack that

¹ General Data Protection Regulation. (2016, May). Retrieved from <https://gdpr-info.eu/>.

² Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301827/2020 "Mr L Beresford v. British Airways Plc". (2022, August). Retrieved from https://assets.publishing.service.gov.uk/media/63172208d3bf7f79312b7f95/Mr_L_Beresford_v_British_Airways_Plc_-_3301827-2020_-_Judgment.pdf.

³ Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301841/2020 "Mr M Osborne v. British Airways Plc". (2021, October). Retrieved from https://assets.publishing.service.gov.uk/media/62388cf6e90e07799cd3de42/Mr_M_Osborne_v_British_Airways_PLC_3301841.2020_FMH_Reserved_Judgment.pdf.

compromised the personal data of 500,000 airline customers, a thorough investigation was conducted by the UK Information Commissioner's Office, which imposed a fine of GBP 20 million. The original fine of 183 million GBP was reduced in consideration of the economic impact of the COVID-19 pandemic (Voss, 2021).

The investigation concluded that the company had failed to implement appropriate technical and organisational measures as required under the GDPR. In 2020, the UK Information Commissioner's Office therefore imposed a 20 million GBP fine on British Airways. The court case drew attention to the necessity of continuous testing of digital infrastructure security, which became a key lesson for other industry players. The precedent set by this case lies in establishing clear standards for technical and organisational measures to protect personal data. The rulings in Case "Mr L Beresford v. British Airways Plc"¹ and Case "Mr M Osborne v. British Airways Plc"² defined detailed requirements for cybersecurity monitoring systems, incident detection and response procedures, and reporting obligations to regulators and affected individuals. Specifically, companies must have documented and tested incident response procedures that include the designation of responsible personnel, step-by-step action plans in the event of a security breach, and deadlines for each stage of the response. Particular emphasis was placed on the obligation to notify: under the GDPR³, organisations must inform supervisory authorities of a detected breach within 72 hours of its discovery. Furthermore, if an incident poses a significant risk to the rights and freedoms of individuals, the company is also required to notify affected persons promptly, clearly, and with recommendations for mitigating risks.

Given that Ukraine belongs to a continental legal system, where precedent does not have the force of law, the role of judicial practice is gradually increasing (Slotwinska, 2015). In particular, decisions of the Supreme Court and appellate courts are increasingly used as reference points for interpreting legislation. In the field of personal data breaches, courts are increasingly required not only to apply the provisions of the Law of Ukraine No. 2297-VI⁴ but also to interpret them in the context of new technological realities, taking into account European practice, including the provisions of the GDPR.

One consequence of personal data breaches for businesses in Ukraine is both public-law and private-law liability. This includes compensating individuals whose data has been exposed. In addition, the handling of cases involving state authorities imposing penalties for data breaches or inadequate protection helps to establish standards for responsible corporate behaviour. Court precedents indicate that judges consider how effectively a company has implemented security policies, conducted internal audits, and informed users about incidents. This encourages businesses to invest in cybersecurity, staff training, and legal support to ensure regulatory compliance.

Unlike in the USA and the EU, Ukraine lacks a significant number of high-profile court cases relating to personal data breaches. This is explained by several factors: relatively low fines for violations, insufficient enforcement of legislation, shortcomings in the regulatory framework, and low public awareness of individual rights. One of the most significant business-related data breaches was the cyberattack on Kyivstar in December 2023. As of June 2025, no court rulings regarding the Kyivstar attack are publicly available. The case remains under investigation by the SBU, with materials to be subsequently submitted to the International Criminal Court, as the suspects are Russian nationals outside Ukraine's jurisdiction. Considered the largest incident in the history of Ukraine's telecommunications sector, the attack highlighted the devastating impact that cyberattacks and data breaches can have on business operations. In terms of scale, the attack was unprecedented in the Ukrainian context. Mobile and internet services for Kyivstar subscribers across the country were completely disrupted, and users were unable to connect to other networks under domestic roaming agreements. The technical damage was catastrophic: numerous servers were destroyed, large volumes of data were erased, and overall, the attack compromised approximately 40% of Kyivstar's infrastructure.

The attack aimed both to inflict psychological pressure and to obtain intelligence information. The December cyberattacks on Kyivstar caused losses amounting to UAH 3.6 billion, covering only the customer compensation programme (Khramov & Opirskyy, 2024). These figures do not include the costs of fully restoring the infrastructure, which required substantial investment in new equipment and

¹ Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301827/2020 "Mr L Beresford v. British Airways Plc". (2022, August). Retrieved from https://assets.publishing.service.gov.uk/media/63172208d3bf7f79312b7f95/Mr_L_Beresford_v_British_Airways_Plc_-_3301827-2020_-_Judgment.pdf.

² Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301841/2020 "Mr M Osborne v. British Airways Plc". (2021, October). Retrieved from https://assets.publishing.service.gov.uk/media/62388cf6e90e07799cd3de42/Mr_M_Osborne_v_British_Airways_PLC_3301841.2020_FMH_Reserved_Judgment.pdf.

³ General Data Protection Regulation. (2016, May). Retrieved from <https://gdpr-info.eu/>.

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

security systems. The company was compelled not only to rebuild the damaged infrastructure but also to fundamentally revise its approach to cybersecurity. This required substantial additional investment and a restructuring of the 2024 budget, with millions of dollars allocated to cybersecurity programmes. The reputational consequences proved to be as severe as the financial losses.

For the Ukrainian business environment, the Kyivstar case served as a catalyst for reassessing the

importance of investing in cybersecurity as a critical component of corporate strategy, rather than merely a technical necessity. Analysis of judicial precedents shows that court decisions arising from such incidents not only imposed significant fines but also compelled companies to implement stricter cybersecurity measures. In response, organisations have been forced to review their internal policies and processes, as well as invest in advanced technologies and employee training. The results are summarised in Table 1.

Table 1. Impact of data breach causes on judicial precedents and business outcomes in high-profile cases

Case	Causes of data breaches	Judicial precedents	Impact on business operations
Equifax ¹	Vulnerability in a web application; insufficient protection	Court ruling (2017): 700 million USD fine for negligence in protecting the personal data of 147 million users	Large fines; increased cybersecurity requirements; loss of consumer trust; strengthened regulation in the USA
Facebook-Cambridge Analytica ²	Unauthorised third-party access to user data	Court proceedings in the USA and EU (2018-2020): fines for violations of the GDPR ³ and privacy laws	Changes to privacy policies; additional control over data access; reputational damage; stricter legislative requirements
British Airways ⁴	Cyber-attack exploiting website vulnerability	UK Information Commissioner's Office ruling (2020): 20 million GBP fine for GDPR violations	Fines; investment in IT infrastructure protection; strengthening of internal security procedures; loss of customer trust
T-Mobile ⁵	Data compromise via phishing and weak access controls	Legal claims (2021): fines and compensation to victims for the loss of millions of clients' data	Costs of compensation; reputational damage; strengthened security policies; employee training; investment in protective systems
Kyivstar	Large-scale hacker attack (December 2023); destruction of IT infrastructure; potential leak of personal and technical data	Investigations ongoing as of 2025; precedent-setting case on telecom companies' cybersecurity responsibilities in Ukraine	Disruption of mobile and internet services; erosion of customer trust; criticism of cybersecurity by authorities; increased requirements for telecom sector resilience

Source: compiled by the authors

Judicial precedents in the field of data breaches have had a significant impact across multiple sectors of the economy, prompting changes not only in technical methods of information protection but also in broader approaches to corporate governance. In the financial sector, the Equifax data breach, which involved the credit reports of millions of individuals, served as a catalyst for a substantial review of internal policies within banks, credit bureaus, and

insurance companies. Financial institutions now view the protection of personal information not merely as part of IT infrastructure but as a critical element of systemic risk, comparable to liquidity and solvency considerations. This precedent triggered a wave of legislative changes. In the United States, the 2020 California Consumer Privacy Act⁶ played a significant role, granting users new rights to control their personal data. Additionally, the Safeguards Rule

¹ Final Judgement and and Permanent Injunction of the Superior Court of the State of California for the County of San Francisco Unlimited Jurisdiction in Case No. CGC-19-57780 "People of the State of California, v. Equifax Inc.". (2019, July). Retrieved from <https://oag.ca.gov/system/files/attachments/press-docs/Equifax%20-%20Final%20approved%20%20judgment.pdf>.

² Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief of the United States District Court for the District of Columbia in Case No. 19-cv-2184 "United States of America v. Facebook". (2019, July). Retrieved from https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_order_filed_7-24-19.pdf.

³ General Data Protection Regulation. (2016, May). Retrieved from <https://gdpr-info.eu/>.

⁴ Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301827/2020 "Mr L Beresford v. British Airways Plc". (2022, August). Retrieved from https://assets.publishing.service.gov.uk/media/63172208d3bf7f9312b7f95/Mr_L_Beresford_v_British_Airways_Plc_-_3301827-2020_-_Judgment.pdf.

⁵ Stipulation and Order of the United States District Court For The District of Columbia in Case "United States of America et al., Plaintiffs, v. Deutsche Telekom AG, T-Mobile US, INC., Softbank Group Corp., and Sprint Corporation". (2019, July). Retrieved from https://www.justice.gov/d9/press-releases/attachments/2019/07/26/stipulation_and_order_0.pdf?utm.

⁶ California Consumer Privacy Act. (2020, September). Retrieved from <https://oag.ca.gov/system/files/initiatives/pdfs/19-0017%20%28Consumer%20Privacy%20%29.pdf>.

under the Gramm-Leach-Bliley Act¹ was modernised, strengthening security requirements for financial institutions, particularly in areas such as multi-factor authentication and regular audits. In Europe, national banks and regulators began requiring periodic security audits as part of operational resilience standards. Banks also increasingly invested in cyber insurance, while internal departments were granted significantly broader powers (Bond *et al.*, 2022). Consequently, data breach precedents in the financial sector initiated a long-term transformation of risk management practices and technological strategies within institutions.

In the technology sector, particularly among companies handling large volumes of data, the Facebook-Cambridge Analytica scandal had a profound impact². The incident demonstrated that even formally granted consent is insufficient justification for large-scale use of personal data for political or commercial purposes. Following this event, Facebook and other tech giants began implementing new product design approaches emphasising “privacy by design”, which integrates data protection measures from the earliest stages of functionality development. At the same time, attention to transparency increased: companies are now required to clearly inform users about the purposes of data processing, storage methods, retention periods, and options for withdrawing consent. Court rulings in this area have strengthened the accountability of executives, particularly at the board level, where directors are now required to report on compliance with ethical and legal standards in data processing.

In the aviation sector, the British Airways case demonstrated that companies handling large volumes of customer data must not only implement protective measures but also ensure their effective operation in real time. Following the breach of its booking system, which resulted in the leakage of financial and personal information, regulators in the United Kingdom and Europe emphasised that even minor vulnerabilities in the customer interface can lead to substantial fines. Airlines were compelled to upgrade their sales systems, commission independent security audits, and establish internal incident response teams.

Data breach precedents have become a catalyst for a significant reassessment of corporate strategies and business models, particularly for firms involved in the collection and processing of large volumes of

personal data. The principle of data minimisation has emerged as a key element of corporate strategy, prompting organisations to re-evaluate the necessity of collecting and storing personal information in terms of both business value and legal risk. Companies are increasingly adopting advanced pseudonymisation and anonymisation technologies, which preserve the analytical value of information while significantly reducing risks in the event of a potential data breach. Automated data lifecycle management systems ensure the deletion of personal information once it is no longer operationally necessary, thereby reducing the volume of data at risk of compromise.

In the context of Ukraine’s European integration trajectory, it is essential to align national legislation with the requirements of the General Data Protection Regulation. In this regard, Ukrainian court decisions in cases related to data breaches are increasingly significant, as they establish a legal precedent for corporate responsibility in ensuring information security. This will foster a legal culture within the business environment, where digital ethics and data protection become integral components of corporate social responsibility strategies.

■ Discussion

The findings of this study indicate that court precedents concerning personal data breaches have a substantial impact on business, particularly regarding reputational risks, financial losses, and growing cybersecurity obligations.

A study conducted by A. Alessi *et al.* (2021) emphasise that the implementation of the General Data Protection Regulation and related court rulings have significantly transformed corporate governance practices. As a result, the principle of “privacy by design” has evolved from a recommendation to a mandatory requirement codified in both legislation and judicial practice. As noted by A. Singh *et al.* (2020), these changes have led to the creation of new positions within corporate hierarchies, such as Chief Privacy Officer and Data Protection Officer, reflecting a structural reorganisation of company business processes. The analysis of Case “United States of America v. Facebook”³, significantly complements the conclusions of this study by illustrating the specific legal mechanisms underpinning this transformation. The court rulings in the Facebook case established a precedent for the personal liability of executives

¹ Gramm-Leach-Bliley Act. (1999, November). Retrieved from <https://www.govinfo.gov/content/pkg/PLAW-106publ102/pdf/PLAW-106publ102.pdf>.

² Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief of the United States District Court for the District of Columbia in Case No. 19-cv-2184 “United States of America v. Facebook”. (2019, July). Retrieved from https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_order_filed_7-24-19.pdf.

³ Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief of the United States District Court for the District of Columbia in Case No. 19-cv-2184 “United States of America v. Facebook”. (2019, July). Retrieved from https://www.ftc.gov/system/files/documents/cases/182_3109_facebook_order_filed_7-24-19.pdf.

for breaches of data protection standards, creating a strong economic incentive for companies to institutionalise data protection functions through the creation of specialised roles. The present study, within the framework of the Facebook case analysis, demonstrates that this case established modern standards of accountability for the misuse of personal information, particularly for political purposes. The rulings set a precedent for the personal responsibility of executives in data protection breaches and outlined requirements for implementing the principle of “privacy by design” at all levels of business operations.

Data breaches have substantial financial consequences for companies, resulting in direct losses that may include fines, compensation payments to affected clients, legal expenses, and decreased revenue due to lost consumer trust. Data breaches have caused significant financial damage: Equifax paid over USD 700 million, Facebook suffered losses due to the Cambridge Analytica scandal, British Airways was fined more than USD 200 million, T-Mobile experienced widespread losses, and Kyivstar became the victim of a large-scale cyberattack in 2023 with serious repercussions. Research conducted by S. Romanosky (2016) highlights considerable variations in the estimation of standard costs associated with data breaches.

The analysis of court rulings in Case “People of the State of California v. Equifax Inc.”¹, and case “Mr L Beresford v. British Airways Plc”², and Case “Mr M Osborne v. British Airways Plc”³, reveals certain divergences from the conclusions of J. Xu *et al.* (2024) regarding the mechanisms through which judicial practice influences corporate accountability. While J. Xu *et al.* argue that court decisions primarily establish new standards of responsibility through the creation of technical benchmarks, the findings of this study suggest a more nuanced picture. The analysis of the Equifax case indicates that court rulings primarily affect the transformation of organisational culture and managerial processes, rather than merely technical aspects of cybersecurity. This contrasts with the earlier analysis, as it demonstrates that the principle of “due diligence in cyberspace” entails the systematic integration of cybersecurity into strategic planning, extending beyond a purely technical approach. Assertions by A. Paraskevas (2022) that the British Airways case emphasised the need for technical security measures appear debatable, since this

study shows that the primary issue was not a lack of technical solutions but rather insufficient corporate oversight and strategic risk management. Conversely, the conclusions of J. Ebuzor (2024) regarding inadequate oversight of digital system security are entirely appropriate, as they align with the findings of this research on systemic shortcomings in British Airways’ organisational processes.

According to the findings of this study, judicial precedents have contributed to the development of entirely new approaches to cyber risk management, distinguished by the adoption of advanced technologies. In particular, companies have begun to employ continuous threat-monitoring systems based on artificial intelligence and machine learning to anticipate potential attacks. A. Tauseef (2023) emphasises that legal risks have indeed driven the implementation of automated cybersecurity systems within organisations. This has become especially relevant following the introduction of the General Data Protection Regulation in Europe and similar regulations in other countries. Fines can reach millions of euros or a percentage of annual revenue, making financial investment in preventive measures economically advantageous. Automated threat-detection systems enable companies to demonstrate “due diligence” to regulators, promptly identify and document incidents, respond to threats automatically without human intervention, and maintain detailed logs for potential legal proceedings.

The present study shows that losses in customer trust often exceed immediate financial damages. Companies not only lose existing clients but also face difficulties in attracting new ones and are compelled to allocate substantial resources to restoring their reputation. Loss of consumer confidence due to data breaches can have more severe consequences than direct financial losses, as it leads to long-term negative effects such as client attrition, reduced profitability, and the need for significant capital expenditure to rebuild corporate reputation. In a study conducted by M. Tripathi & A. Mukhopadhyay (2020), 131 cases of data breaches in the USA were analysed, revealing that announcements of such breaches negatively affect companies’ market value. Average financial losses amounted to USD 229 million in 2012, USD 241 million in 2013, and USD 108 million in 2014. These figures include not only direct costs

¹ Final Judgement and and Permanent Injunction of the Superior Court of the State of California for the County of San Francisco Unlimited Jurisdiction in Case No. CGC-19-57780 “People of the State of California, v. Equifax Inc.”. (2019, July). Retrieved from <https://oag.ca.gov/system/files/attachments/press-docs/Equifax%20-%20Final%20approved%20%20judgment.pdf>.

² Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301827/2020 “Mr L Beresford v. British Airways Plc”. (2022, August). Retrieved from https://assets.publishing.service.gov.uk/media/63172208d3bf7f9312b7f95/Mr_L_Beresford_v_British_Airways_Plc_-_3301827-2020_-_Judgment.pdf.

³ Judgement of the Employment Tribunal of the United Kingdom in Case No. 3301841/2020 “Mr M Osborne v. British Airways Plc”. (2021, October). Retrieved from https://assets.publishing.service.gov.uk/media/62388cf6e90e07799cd3de42/Mr_M_Osborne_v_British_Airways_PLC_3301841.2020_FMH_Reserved_Judgment.pdf.

but also indirect consequences, such as reduced customer trust and reputational damage. Furthermore, according to the Ponemon Institute (2024), 65% of consumers lose confidence in a company following a data breach, while 27% cease doing business with it. This confirms that the loss of customer trust can have long-lasting effects that exceed immediate financial losses.

The study also found that data breaches compel companies to significantly increase investment in cybersecurity. This involves implementing advanced threat-detection technologies, upgrading existing infrastructure, and strengthening access controls. Consequently, these unforeseen expenses create additional financial obligations, particularly for small and medium-sized enterprises, often necessitating the reallocation of resources. Research by C.Y. Jeong *et al.* (2024) corroborates that firms substantially increase investment in information security following major data breaches.

An analysis of case law concerning data breaches highlights its significant and multifaceted impact on commercial organisations. Legal precedents establish new standards of corporate responsibility, prompting companies to review their methods of protecting personal data and to strengthen cybersecurity measures. Court rulings demonstrate the high stakes of compensation for damages, compelling businesses to set aside significant reserves to cover potential costs and to invest in preventative security. Overall, judicial precedents in the field of data breaches foster the development of business practices oriented towards greater accountability and transparency, contributing to the emergence of a new culture of corporate data governance.

■ Conclusions

An examination of case law concerning data breaches has revealed that the protection of personal information is becoming increasingly important for business organisations. Well-known cases such as Equifax, Facebook-Cambridge Analytica, British Airways, and T-Mobile not only resulted in substantial economic losses for corporations but also established new legal standards for businesses regarding the protection of personal data. These incidents created precedents that influenced judicial practice, regulatory approaches, and corporate strategies in the context of digital security.

It was found that court decisions in the Equifax, Facebook-Cambridge Analytica, British Airways, and T-Mobile cases created new legal benchmarks that transformed the understanding of corporate responsibility for personal data protection. Analysis of these precedents indicates that courts increasingly interpret

technical incompetence as legal negligence, with corresponding financial and reputational consequences. The findings also show that the Facebook-Cambridge Analytica case contributed to a global discussion on digital ethics and the principle of accountability, while the Equifax and British Airways cases emphasised the critical importance of timely security system updates. The analysis revealed a clear trend towards the institutionalisation of the principles of “privacy by design” and “Zero Trust” as mandatory elements of corporate strategy. The findings indicate that judicial practice has acted as a catalyst for the creation of new managerial roles, such as Chief Privacy Officer and Data Protection Officer, reflecting a structural transformation in corporate governance.

In summary, the results suggest that court precedents not only establish standards of accountability but also shape a new paradigm of corporate governance, in which cybersecurity is integrated into strategic planning at all organisational levels. Conceptually, this indicates a shift from a reactive to a proactive approach to cyber risk management, where legal requirements serve as drivers of innovation in corporate practice. The analysis underscores that modern organisations must regard the protection of personal data not merely as a technical task, but as a strategic asset that determines competitiveness and long-term business resilience.

The study confirms that investments in cybersecurity and regulatory compliance should not be seen as expenses but rather as strategic capital allocations essential for maintaining stable business operations. Companies that embrace this perspective gain competitive advantages through increased consumer trust and reduced operational risks. A key limitation of this research is the confidentiality of many court cases, which significantly complicates the collection of comprehensive information on incident details. Future research prospects include a thorough analysis of the impact of artificial intelligence on the development of cyber threats and legal regulation, an evaluation of the effectiveness of international cooperation in combating cybercrime, and the study of the implementation of cybersecurity principles across different sectors.

■ Acknowledgements

None.

■ Funding

The study was not funded.

■ Conflict of Interest

None.

■ References

- [1] Alessi, A., Ciccarelli, G., Cipolli, L., Guidotti, L., Marsano, A., & Hanganu, A. (2021). *Privacy by design and by default in software development in order to prevent unlawful processing of personal data. Privacy certifications impact on software development and liabilities*. Retrieved from <https://surl.li/fmkrem>.
- [2] Bem, M., & Horodysky, I. (2019). [Liability for violation of personal data protection legislation: Problems of compliance of Ukrainian legislation with the requirements of the European Union regulation on the protection of personal data \(GDPR\)](#). *Law of Ukraine*, 2, 237-255.
- [3] Bernaziuk, O.O. (2023). Judicial precedent in the legal system of Ukraine: Modern approaches to the definition of the concept. *Uzhhorod National University Herald. Series: Law*, 1(80), 403-410. [doi: 10.24144/2307-3322.2023.80.1.60](#).
- [4] Bhadouria, A.S. (2022). Study of: Impact of malicious attacks and data breach on the growth and performance of the company and few of the world's biggest data breaches. *International Journal of Scientific and Research Publications*, 10(10). [doi: 10.29322/IJSRP.X.2022.p091095](#).
- [5] Bond, M., Human, K., & Kwon, N. (2022). *Analysis and implications for Equifax data breach*. Retrieved from <https://cs.ucf.edu/~mohaisen/doc/teaching/cap5150/fall2022/cap5150-proj2.pdf>.
- [6] Diniyatullah, L., & Rindu, K.B. (2024). [Crisis management and recovery strategies after a data leak: Equifax case study](#). *Journal of Information System and Technology*, 1(2), 76-81.
- [7] Dumanska, I.Y., Guseva, O.Y., Kazarova, I.O., Gorodetsky, M., Melnichuk, L.V., & Saienko, V.H. (2022). Personal data protection policy impact on the company development. *Transactions on Environment and Development*, 18, 232-246. [doi: 10.37394/232015.2022.18.25](#).
- [8] Ebuzor, J. (2024). Understanding customer perception of cyber attacks: Impact on trust and security. In P. Thealla, V. Nadda, S. Dadwal, L. Oztosun & G. Cantafio (Eds.), *Corporate cybersecurity in the aviation, tourism, and hospitality sector* (pp. 83-111). London: IGI Global. [doi: 10.4018/979-8-3693-2715-9.ch005](#).
- [9] European Union Agency for Cybersecurity. (2024). *ENISA threat landscape*. Iraclion: ENISA. [doi: 10.2824/0710888](#).
- [10] Jeong, C.Y., Lee S.-Y., & Lim, J.-H. (2024). Information security breaches and IT security investments: Impacts on competitors. *Information & Management*, 56(5), 681-695. [doi: 10.1016/j.im.2018.11.003](#).
- [11] Khramov, S., & Opirskyy, I. (2024). Analysis of the current state of cyberattacks in Ukraine during the war. *Ukrainian Information Security Research Journal*, 26(1), 214-222. [doi: 10.18372/2410-7840.26.18842](#).
- [12] Kotenko, M., Karagioz, R., Sopilko, I., Andrusiv, V., & Yermakova, H. (2025). Personal data protection in Ukraine via the prism of European judicial institutions' practise. *Estudios en Derecho a la Información*, 10(19), 147-170. [doi: 10.22201/ij.25940082e.2025.19.19032](#).
- [13] McLymore, A., & Bartz, D. (2020). *T-Mobile-Sprint merger wins approval from U.S. judge*. Retrieved from <https://www.reuters.com/article/technology/t-mobile-sprint-merger-wins-approval-from-us-judge-idUSKBN2042MG/>.
- [14] Nejad, L.P. (2023). Mitigating data loss and its impact on modern software engineering: A case study approach. *Journal of Applied Intelligent Systems & Information Sciences*, 4(2), 52-60. [doi: 10.22034/JAISIS.2023.418932.1072](#).
- [15] Nekt, K. (2020). Personal data and industrial data as objects of ownership: Evaluation of perspectives. *Journal of Civil Studies*, 36, 57-64. [doi: 10.32837/chc.v0i36.202](#).
- [16] Paraskevas, A. (2022). Cybersecurity in travel and tourism: A risk-based approach. In Zh. Xiang, M. Fuchs, U. Gretzel & W. Höpken (Eds.), *Handbook of e-tourism* (pp. 1605-1628). Cham: Springer. [doi: 10.1007/978-3-030-48652-5_100](#).
- [17] Pokhlylenko, I. (2023). Legal regulation of personal data protection. *Legal Bulletin "Air and Space Law"*, 4(69), 94-99. [doi: 10.18372/2307-9061.69.18322](#).
- [18] Ponemon Institute. (2024). *Beyond the balance sheet: The real costs of data breaches in 2024*. Retrieved from <https://f12.net/blog/beyond-the-balance-sheet-the-real-costs-of-data-breaches-in-2024/?utm>.
- [19] Romanosky, S. (2016). Examining the costs and causes of cyber incidents. *Journal of Cybersecurity*, 2(2), 121-135. [doi: 10.1093/cybsec/tyw001](#).
- [20] Schäfer, F., Gebauer, H., Gröger, C., Gassmann, O., & Wortmann, F. (2023). Data-driven business and data privacy: Challenges and measures for product-based companies. *Business Horizons*, 66(4), 493-504. [doi: 10.1016/j.bushor.2022.10.002](#).
- [21] Singh, A., Klarner, P., & Hess, T. (2020). How do chief digital officers pursue digital transformation activities? The role of organization design parameters. *Long Range Planning*, 53(3), article number 101890. [doi: 10.1016/j.lrp.2019.07.001](#).

- [22] Slotwinska, N. (2015). [Theoretical and legal approaches to understanding judicial precedent as a component of judicial practice](#). *National Law Journal: Theory and Practice*, 15(5/1), 18-21.
- [23] Sopilko, I., & Zubko, E. (2024). Data breach and data leak: Legal aspect. *Journal of the Kyiv University of Law*, 3, 62-68. [doi: 10.36695/2219-5521.3.2024.7](#).
- [24] Statista. (n.d.). *Annual number of data compromises and individuals impacted in the United States from 2005 to 2024*. Retrieved from <https://www.statista.com/statistics/273550/data-breaches-recorded-in-the-united-states-by-number-of-breaches-and-records-exposed/>.
- [25] Tapkir, R.S. (2023). [Privacy in Peril: Rise of data breaches in the entertainment and media industries](#). *Jus Corpus Law Journal*, 4, 443-465.
- [26] Tauseef, A. (2023). *Database technologies in AI: Transforming cybersecurity with automated threat detection systems*. [doi: 10.13140/RG.2.2.33122.54727](#).
- [27] 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](#).
- [28] Tiwari, P. (2022). [Misuse of personal data by social media giants](#). *Jus Corpus Law Journal*, 3, 1041-1064.
- [29] Tripathi, M., & Mukhopadhyay, A. (2020). Financial loss due to a data privacy breach: An empirical analysis. *Journal of Organizational Computing and Electronic Commerce*, 30(4), 381-400. [doi: 10.1080/10919392.2020.1818521](#).
- [30] Voss, W.G. (2021). [Airline commercial use of EU personal data in the context of the GDPR, British Airways and Schrems II](#). *Colorado Technology Law Journal*, 19(2), 377-428.
- [31] Xu, J., Yue, W.T., Leung, A.C., & Su, Q. (2024). Focusing on the fundamentals? An investigation of the relationship between corporate social irresponsibility and data breach risk. *Decision Support Systems*, 182, article number 114252. [doi: 10.1016/j.dss.2024.114252](#).
- [32] Zadereyko, O., Trofymenko, O., Prokop, Y., Loginova, N., Dyka, A., & Kukharenko, S. (2022). Research of potential data leaks in information and communication systems. *Radioelectronic and Computer Systems*, 104(4), 64-84. [doi: 10.32620/reks.2022.4.05](#).

Вплив судових прецедентів у сфері витоку даних на підприємницьку діяльність: актуальні кейси

Ігор Руденко

Магістр права

Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
<https://orcid.org/0009-0008-3582-3951>

Ольга Хорольська

Магістр права

Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
<https://orcid.org/0009-0004-9853-2378>

Марія Турчіна

Кандидат юридичних наук

Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
<https://orcid.org/0000-0002-1486-1122>

■ **Анотація.** Метою дослідження було вивчення впливу судових прецедентів у справах про витік персональних і корпоративних даних на формування правової практики та стратегії ведення підприємницької діяльності. У межах дослідження було здійснено аналіз ключових судових справ, що дало змогу визначити, як ці випадки вплинули на юридичну відповідальність і поведінку компаній. Дослідження пов'язане з такими справами, як Equifax, Facebook-Cambridge Analytica, British Airways, T-Mobile та мобільного оператора «Київстар». Судові рішення в цих справах не лише передбачають накладення штрафів, а й встановлюють нові принципи корпоративної етики, що потребує від компаній системного підходу до захисту персональних даних, прозорості у взаємодії з користувачами та покращення внутрішньої правової культури. Кількість інцидентів продовжує зростати: з 2024 року фіксується на 25 % більше випадків витоку даних порівняно з попередніми роками. Це засвідчує, що витоки даних вже не розглядаються суто як технічні питання – вони стали юридично важливими подіями, що мають значний економічний і регуляторний вплив. У відповідь на це підприємства вимушені переосмислювати власні стратегії, упроваджувати нові політики захисту даних і враховувати можливі правові ризики в управлінні ризиками. Практична значущість питань полягає в тому, що аналіз основних випадків дозволяє прогнозувати наслідки можливих витоків даних, оцінювати рівень юридичних ризиків та розробляти дієві стратегії відповідальності й профілактики

■ **Ключові слова:** кібербезпека; персональні дані; правове регулювання; інформаційна безпека; захист інформації; правопорушення; відшкодування збитків

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 30, № 3. 2025

Заснований у 1996 р.

Оригінал-макет видання виготовлено у відділі організації наукової діяльності
Національної академії внутрішніх справ

Відповідальний редактор:

Я. Шумко

Підписано до друку 29 вересня 2025 р. Формат 60*84/8

Умов. друк. арк. 13,2

Наклад 50 прим.

Адреса видавництва:

Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна

Тел.: +38 (044) 520-08-47

E-mail: info@lawscience.com.ua

<https://lawscience.com.ua/uk>

SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 30, No. 3. 2025

Founded in 1996.

The original layout of the publication is made
in the Organisation of Scientific Activity of National Academy of Internal Affairs

Managing Editor:

Y. Shumko

Signed for print September 29, 2025. Format 60*84/8

Conventional printed pages 13.2

Circulation 50 copies

Editors office address:

National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine

Tel.: +38 (044) 520-08-47

E-mail: info@lawscience.com.ua

<https://lawscience.com.ua/en>