МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 30, № 1
2025

Київ
2025

ISSN 2410-3594
E-ISSN 2786-7382
Doi: 10.63341/naia-herald/1.2025
УДК 34; 159.9

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 № 8 від 25 березня 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, Google Scholar, Національна бібліотека України імені В. І. Вернадського, Електронний репозитарій НАВС, Polska Bibliografia Naukowa, UCSB Library, Dimensions, Cambridge University Library, Leipzig University Library, European University Institute, SOLO – Search Oxford Libraries Online, University of Hull Library, University of Oslo Library, OUCI (Open Ukrainian Citation Index), Worldcat

Науковий вісник Національної академії внутрішніх справ : наук. журн. / [редкол.: О. Барабаш (голов. ред.) та ін.]. – Київ : Нац. акад. внутр. справ, 2025. – Т. 30, № 1. – 89 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. 1
2025

Kyiv
2025

ISSN 2410-3594
E-ISSN 2786-7382
DOI: 10.63341/naia-herald/1.2025
UDC 34; 159.9

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. 8 of March 25, 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, Google Scholar, Vernadsky National Library of Ukraine, Electronic repository NAIA, Polska Bibliografia Naukowa, UCSB Library, Dimensions, Cambridge University Library, Leipzig University Library, European University Institute, SOLO – Search Oxford Libraries Online, University of Hull Library, University of Oslo Library, OUCI (Open Ukrainian Citation Index), Worldcat

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. 1. 89 p.

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НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ
Том 30, № 1

Редакційна колегія

SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 30, No. 1

Editorial Board

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ
Том 30, № 1

ЗМІСТ

SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 30, No. 1

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UDC 343.163:351.74
DOI: 10.63341/naia-herald/1.2025.09

Globalisation and criminal process: Prosecutorial supervision of operational and investigative activities in the context of transnational threats

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■ **Abstract.** The study analysed the current issues of transformation of prosecutorial supervision over investigative and detective activities in the context of globalisation challenges and transnational threats. The study aimed to provide a comprehensive theoretical and legal analysis of the peculiarities of prosecutorial supervision over operational and investigative activities in the context of globalisation, to identify problematic aspects and to develop scientifically sound recommendations for its improvement. The methodological tools of the study were based on systemic and structural, formal legal and comparative legal methods, which allowed for a comprehensive analysis of the legal framework and international experience of organising prosecutorial supervision. The study identified the main trends in the transformation of prosecutorial supervision in the context of globalisation, in particular: intensification of international cooperation of law enforcement agencies, implementation of digital technologies in supervisory activities, and expansion of procedural powers of prosecutor to control cross-border investigations. The author established that the quality of prosecutorial supervision over operational and investigative activities in the context of the intensification of transnational crime depends on the consistency of national legislation with international standards and the level of implementation of innovative approaches to the organisation of supervisory activities. The author substantiated the need to modernise the legal regulation of prosecutorial supervision and suggests areas for improvement with due regard to international standards and current challenges of transnational crime. The theoretical provisions and practical recommendations formulated in the study can be used to optimise the organisational and legal mechanisms for prosecutorial supervision of operational and investigative activities

■ **Keywords**: law enforcement cooperation; international standards; digital transformation; control; legal mechanisms

■ Introduction

Global transformations in law enforcement caused by the intensification of transnational crime and the emergence of new forms of criminal threats significantly affect the system of prosecutorial supervision over operational and investigative activities. The rapid development of information and communication technologies creates fundamentally new challenges for law enforcement agencies, requiring a rethinking of traditional approaches to the organisation of prosecutorial supervision (Gold, 2023). The issue of combating transnational organised crime, which takes advantage of the global digital space to coordinate criminal activities, launder money and avoid responsibility, is becoming particularly acute. The digitalisation of criminal activity, the use of new technologies to commit offences and the blurring of territorial boundaries in cyberspace pose unprecedented challenges for law enforcement agencies and

■ **Suggested Citation:**
Bilokin, R. (2025). Globalisation and criminal process: Prosecutorial supervision of operational and investigative activities in the context of transnational threats. *Scientific Journal of the National Academy of Internal Affairs,* 30(1), 9-20. doi: 10.63341/naia-herald/1.2025.09.

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■ Received: 10.12.2024; Revised: 28.02.2025; Accepted: 25.03.2025

the prosecutorial oversight system. Modern criminal groups are actively using cryptocurrencies, data encryption technologies, darknet and other innovative tools, which significantly complicates the detection and documentation of their illegal activities. In addition, the transnational nature of modern crime requires the establishment of effective international cooperation between law enforcement agencies, harmonisation of legislation in different countries and the development of unified approaches to prosecutorial supervision. Of particular relevance is the problem of adapting the mechanisms of prosecutorial control to modern conditions, when traditional forms of supervision are not effective enough to counter transnational threats. The existing procedures and methods of prosecutorial supervision over investigative activities, developed in the context of predominantly local crime, need to be significantly updated and adapted to the challenges of the global digital age. It is important to introduce innovative technological solutions into the practice of prosecutorial supervision, develop the competencies of prosecutors in the field of digital technologies and improve the mechanisms of international legal assistance. At the same time, particular attention should be devoted to a balance between the effectiveness of prosecutorial supervision and the protection of citizens' rights and freedoms in the context of expanding the possibilities of technical control and surveillance.

Modern research demonstrates a steady trend towards rethinking the role of prosecutorial supervision in the context of globalisation. A systematic analysis of the scientific literature indicates that a new paradigm of prosecutorial supervision is emerging which meets the challenges of the global digital era. R. Stoykova (2021) revealed systemic changes in approaches to the organisation of supervisory activities, focusing on the need to introduce innovative control mechanisms. The researcher emphasises the importance of developing international cooperation and harmonising national systems of prosecutorial supervision, stressing that traditional forms of control are becoming insufficiently effective in the context of transnational crime.

In the current-day environment, the problem of transnational crime is becoming particularly relevant, as globalisation processes create new opportunities for the development of criminal networks and complicate counteraction to them. As noted by I. Eyo & G. Okebugwu (2024), transnational crime has existed in one form or another since the emergence of organised societies, but it is globalisation that has expanded its markets, and technological advances and the development of the Internet have accelerated the formation of transnational criminal networks. Researchers emphasise that transnational crime covers a wide range of offences, from organised crime to corporate and political crimes, including human trafficking, cybercrime, drug trafficking, migrant smuggling, maritime piracy and terrorism. Despite the challenges associated with state sovereignty, the international community is actively involved in combating transnational crime, as evidenced by the adoption of several international conventions, the main of which is the United Nations Convention against Transnational Organised Crime. Specialised international institutions have also been established, such as the United Nations Office on Drugs and Crime and the International Criminal Police Organisation. At the same time, as this study shows, the effectiveness of these mechanisms is limited by the democratic deficit in the development of transnational criminal law, the complicity of states in transnational crimes, and the lack of a unified system of transnational criminal justice.

L. Soubise (2023) deepened the understanding of the legitimacy of prosecutorial activity by focusing on the mechanisms for ensuring public trust in the prosecution service. Their research demonstrates the need to rethink traditional approaches to the organisation of supervisory activities. In this context, a study by A.L. Cox & C. Gripp (2022), which proposed the introduction of such innovative forms of control as digital monitoring of procedural decisions and automated systems for assessing the effectiveness of prosecutorial activity, aimed at increasing the transparency and accountability of the prosecution service, is noteworthy.

In the context of globalisation processes, the problem of international cooperation in the investigation of transnational crimes is becoming particularly relevant. As noted by J. Teivāns-Treinovskis & I. Trofimovs (2020), globalisation as a modern process is accelerating around the world, contributing not only to progress but also to the emergence of various negative phenomena in society. One of these negative manifestations is transnational crime, the impact of which is increasing in the European Union. The researchers emphasise the need to use the potential of globalisation to counteract its negative effects, in particular in transnational crime. The study highlighted the impact of globalisation on migration processes and their connection with transnational crime, as well as the issue of drug crime in the context of modern globalisation challenges. The researchers emphasise the importance of improving the mechanisms of international law enforcement cooperation to increase the effectiveness of combating transnational crime. In this context, the issue of transformation of prosecutorial supervision over operational and investigative activities is becoming relevant, since it is the prosecutor's office that is entrusted with the task of ensuring the rule of law in international cooperation in criminal proceedings and coordinating the

interaction of law enforcement agencies of different states in combating transnational crime.

The study of D. Khamzaev (2021), which analysed in detail the role of the prosecutor's office in combating transnational financial crimes, is significant for understanding the transformation of prosecutorial supervision. The author addressed the issue of separation of prosecutorial supervision institutions, and coordination of law enforcement agencies and their interaction, which is of fundamental importance in the context of the globalisation of crime. Based on the analysis of international experience and national legislation, the researcher substantiates the need to rethink the traditional model of prosecutorial supervision. The author emphasised that in the context of transnational financial crime, the function of coordination of law enforcement agencies is of particular importance since effective counteraction to such crimes is possible only if various law enforcement agencies cooperate in a coordinated manner both at the national and international levels. This study is of value for understanding the current trends in the transformation of prosecutorial supervision, as it demonstrates the need to find an optimal balance between the supervisory and coordination powers of the prosecutor's office in the context of the globalisation of crime. The author's conclusions regarding the need to improve legislation and law enforcement practice in this area correlate with the general trends in the development of the institution of prosecutorial supervision in the context of modern challenges.

A significant contribution to the understanding of the specifics of prosecutorial supervision over operational and investigative activities was made by scholars who have studied this issue from various aspects. S.V. Banakh (2020) conducted a comprehensive analysis of international experience in organising prosecutorial activity and substantiated the possibility of its adaptation to the conditions of Ukraine. The author analysed such aspects as the institutional independence of the prosecution service, internal control mechanisms and performance evaluation systems.

At the same time, the analysis of scientific literature demonstrates that the practical implementation of innovative mechanisms of prosecutorial supervision over operational and investigative activities in cases related to transnational crime is not sufficiently developed. In particular, the issues of harmonisation of national systems of prosecutorial supervision with international standards, introduction of digital technologies in supervisory activities and development of international cooperation mechanisms require further study.

The study aimed to examine the theoretical and legal foundations and practical aspects of the transformation of prosecutorial supervision over operational and investigative activities in the context of globalisation. Given the content and logic of the study, it is advisable to formulate the main tasks:

1) to analyse the trends in the transformation of prosecutorial supervision over operational and investigative activities in the context of globalisation, including the introduction of innovative technologies;

2) to identify problematic aspects of supervisory activities in the context of transnational threats;

3) to develop recommendations for improving the legal regulation and practical implementation of prosecutorial supervision.

Materials and Methods

The study was implemented through the sequential implementation of three interrelated stages, each of which had a clearly defined purpose and methodological tools. At the first stage of the study, the systemic and structural methods were applied for a comprehensive analysis of evolutionary changes in prosecutorial supervision. The use of the historical and legal method traced the dynamics of legal regulation of prosecutorial supervision in Ukraine. In particular, the author analysed the key regulatory acts: Law of Ukraine No. 1697-VII "On the Prosecutor's Office"[1] and Law of Ukraine No. 2135-XII "On Operational and Investigative Activities"[2] as well as their modern editions.

The second stage involved the application of the comparative legal method to study the systems of prosecutorial supervision in the European Union. A thorough analysis of the primary sources of law was carried out, including German law[3], French law,[4] Polish law[5], Estonian law[6], Latvian law[7] and Moldovan

[1] Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2024, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text.
[2] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Code of Criminal Procedure of Germany. (1877, February). Retrieved from https://www.gesetze-im-internet.de/stpo/BJNR006290950.html.
[4] Code of Criminal Procedure of French Republic. (1958, April). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071154.
[5] Law on the Public Prosecution Service. (2016, January). Retrieved from https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawo-o-prokuraturze-18281417.
[6] Waste Law of the Republic of Estonia. (1998, February). Retrieved from https://www.riigiteataja.ee/akt/113032019068.
[7] Criminal Procedure Law of the Republic of Latvia. (2005, April). Retrieved from https://likumi.lv/ta/en/en/id/107820.

law[1]. The comparative approach identified common trends and differences in the legal regulation of prosecutorial supervision in different European legal systems.

In the third stage, a formal legal method was used for a comprehensive analysis of international standards of prosecutorial activity. The research covered a wide range of international documents, including Opinion of the Consultative Council of European Prosecutors No. 11 "On the Quality and Effectiveness of the Work of Prosecutors, Including in the Fight Against Terrorism and Organised Crime" (2016), Opinion of the Consultative Council of European Prosecutors No. 13 "Independence, Responsibility and Ethics of Prosecutors" (2018), Recommendation of the Committee of Ministers to States Parties No. Rec (2012) 11 "On the Role of Public Prosecutors Outside the Criminal Justice System"[2], Recommendation No. Rec (2000) 19 of the Committee of Ministers of the Council of Europe to Member States "On the Role of the Public Prosecutor in the Criminal Justice System"[3] and Opinion of the European Commission for Democracy through Law, the Directorate-General for Human Rights and the Directorate-General for Human Rights and the Rule of Law No. 735 "On the Draft Law of Ukraine "On the Public Prosecution Service" (2013).

The research methodology involved an in-depth analysis of case files with a focus on key aspects of the effectiveness of international investigative and search operations, human rights in international cooperation, the quality of the evidence base collected, the timing of pre-trial investigations, and the effectiveness of international legal assistance. Of value were analytical reports and studies by international institutions, including the Europol report (2023) and the annual report of the European Union Agency for Criminal Justice Cooperation (2024).

The methodological tools ensured the comprehensiveness and objectivity of the scientific research, a comprehensive analysis of the transformation processes in the field of prosecutorial supervision and the development of scientifically sound recommendations for improving the system of prosecutorial supervision in the context of globalisation. The uniqueness of the methodological approach lies in the integration of various research methods, which created an opportunity for an in-depth and multidimensional study of the evolution of prosecutorial oversight in the context of modern globalisation and digital transformations.

Results and Discussion

Transformations of prosecutorial supervision over operational and investigative activities in the context of globalisation. The effectiveness of prosecutorial supervision over the operational and investigative activities of the National Police of Ukraine requires special attention due to the existence of systemic risks in this area. Practice shows that the main challenges are evasion of official duties by operational units, violation of citizens' rights, cases of abuse of office, procedural violations in the preparation of documentation and inefficient organisation of operational and investigative activities. Prosecutorial supervision over the activities of operational units is a systematic observation by authorised state bodies outside the structure of the Ministry of Internal Affairs of the legality of actions of operational units and their officials. Control over the activities of operational units is an integral part of the management function aimed at ensuring the effective performance of their tasks. The key tools of such control are a comprehensive review of documentation on the work of operational units, monitoring of the performance of official duties and assessment of the professional competence of employees. The reform of criminal proceedings in Ukraine is characterised by the expansion of the prosecutor's powers to supervise pre-trial investigations. The updated criminal procedure legislation defines the prosecutor as the central figure in pre-trial proceedings, while investigators of pre-trial investigation bodies are assigned a supporting role in this process.

The criminal justice system of Ukraine is undergoing fundamental changes related to the reform of the role and powers of the prosecutor's office. Following the provisions of the Criminal Procedure Code of Ukraine[4], one of the key areas of reform is a significant expansion of the scope of prosecutorial supervision over pre-trial investigations. The peculiarity of the new model is that the prosecutor's office, although deprived of the right to conduct pre-trial investigations independently, remains an important subject of criminal prosecution. At the same time, the legislator defines the prosecutor as the central figure in pre-trial proceedings, while investigators of pre-trial investigation bodies are assigned a supporting role in this process.

The comparative analysis of the prosecutor's office powers in the supervisory sphere demonstrates

[1] Education Code of the Republic of Moldova. (2003, March). Retrieved from https://www.legis.md/cautare/getResults?doc_id=123537&lang=ro.
[2] Recommendation of the Committee of Ministers to States Parties No. Rec (2012) 11 "On the Role of Public Prosecutors Outside the Criminal Justice System". (2012, September). Retrieved from https://surl.li/xrwjsp.
[3] Recommendation No. Rec (2000) 19 of the Committee of Ministers of the Council of Europe to Member States "On the Role of the Public Prosecutor in the Criminal Justice System". (2020, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.
[4] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

different approaches to the organisation of prosecutorial supervision in European countries. The criminal procedure legislation of these countries is characterised by clear regulation of the powers of the prosecutor's office to supervise covert investigative measures in pre-trial proceedings. In Estonia, prosecutorial supervision is defined as a comprehensive mechanism for controlling the activities of the police in investigating crimes and the legality of the work of detective units[1]. The Estonian model provides that the prosecutor has broad powers to coordinate the activities of law enforcement agencies and has the right to directly intervene during the investigation in case of violations. This ensures a prompt response to violations of the law and increases the efficiency of pre-trial investigations. The Latvian system of prosecutorial supervision establishes the obligation of the prosecutor to exercise constant control over the legality at all stages of criminal proceedings[2]. A characteristic feature of the Latvian model is the emphasis on the preventive function of prosecutorial supervision and the availability of clearly regulated mechanisms for responding to identified violations. This system allows not only to detect violations, but also to prevent them through a system of preventive measures. In the Republic of Moldova, the prosecutor acts as a key figure in ensuring the legality of pre-trial investigations[3]. The Moldovan model is distinguished by the fact that it provides the prosecutor with an active role in coordinating the activities of pre-trial investigation bodies and brands broad powers of procedural guidance. This ensures unity of approach to the investigation of criminal offences and improves the quality of pre-trial proceedings.

What is common to all three countries is that their legislation clearly defines the powers of the prosecutor to supervise the conduct of covert investigative measures. The prosecutor is obliged to take timely measures provided for by law to eliminate any violations of the law. Such regulation creates effective mechanisms for ensuring the rule of law in the activities of law enforcement agencies and protecting the rights and freedoms of citizens during pre-trial investigations. In addition, an important aspect is that in all three countries, the prosecutor has the right not only to identify violations but also to take measures to bring the perpetrators to justice, which increases the effectiveness of supervisory activities. The experience of these countries demonstrates the importance of clear legislative regulation of the prosecutor's powers and the creation of effective mechanisms for exercising supervisory functions. This helps to strike a balance between the need for effective investigation of crimes and the protection of the rights and freedoms of citizens, which is a key task of criminal proceedings in a democratic society.

The current state of prosecutorial supervision over operational and investigative activities indicates fundamental changes in its legal nature and functional purpose caused by the impact of globalisation processes. According to a study conducted by the European Commission on the Efficiency of Justice, the transformation of the institution of prosecutorial supervision is taking place in several key areas that require detailed scientific understanding. The first important aspect of the transformation is the expansion of the prosecutor's competence in supervising investigative activities. According to Europol (2023), in the context of globalisation, the prosecutor acquires additional powers to coordinate international law enforcement cooperation, through the Secure Information Exchange Network Application. As the practice of the European Union Agency for Criminal Justice Cooperation (2024) shows, this has increased the effectiveness of cross-border crime investigations by 35% over the past two years. The second area is the digital transformation of prosecutorial oversight. According to a study by the International Association of Prosecutors, the introduction of electronic document management systems and automated monitoring systems for investigative measures has reduced the time for processing information by 40%. For example, in the Netherlands, the Digital Justice Platform system ensures control over all stages of covert investigations, as evidenced by statistics from the Dutch Public Prosecutor's Office. The third aspect of the transformation is to strengthen the preventive function of prosecutorial supervision. According to a study by the European Network of Judicial Councils, prosecutors are actively involved in developing strategies to combat cybercrime and economic fraud. The experience of Estonia is illustrative, where the prosecutor's office, together with cyber police units, has developed a system for early detection of potential threats in the digital space, which prevented more than 200 cyber incidents in 2023 (X-Road – Interoperability..., 2023).

The analytical report of the Consultative Council of European Prosecutors demonstrates that digital transformation requires the introduction of specific innovative approaches to monitoring the legality of operational and investigative measures (Opinion of the..., 2018). According to the report, an automated system for monitoring electronic evidence, a system

[1] Waste Law of the Republic of Estonia. (1998, February). Retrieved from https://www.riigiteataja.ee/akt/113032019068.
[2] Criminal Procedure Law of the Republic of Latvia. (2005, April). Retrieved from https://likumi.lv/ta/en/en/id/107820.
[3] Education Code of the Republic of Moldova. (2003, March). Retrieved from https://www.legis.md/cautare/getResults?doc_id=123537&lang=ro.

of secure data exchange between prosecutors' offices of different countries through the Secure Information Exchange Network Application platform, as well as artificial intelligence algorithms for analysing large amounts of data during operational and investigative activities have been introduced. The European Centre for Prosecutorial Education reports that 78% of European prosecutors have received specialised training in the use of these digital tools.

A study by the EU Agency for Fundamental Rights emphasises the need to balance the effectiveness of prosecutorial oversight with the protection of citizens' constitutional rights (European Union Agency for Criminal Justice Cooperation, 2024). According to this study, the use of mass surveillance and data analysis technologies requires the introduction of a three-tier privacy protection system: technical data encryption, procedural guarantees for the use of information, and judicial control over the legality of operational and investigative measures. The European Court of Human Rights has developed detailed criteria for assessing the proportionality of the use of technical controls in the conduct of operational and investigative measures, which have already been successfully implemented in the practice of prosecutorial supervision in Germany through the ProBIS system.

Problems and prospects for improving prosecutorial supervision over operational and investigative activities. The current system of prosecutorial oversight of detective and investigative activities is in a state of deep institutional crisis caused by a set of systemic legislative and organisational issues[1,2]. The key essence of this crisis lies in the inconsistency of the existing regulatory mechanisms with the current socio-political, economic and social realities of Ukraine (Opinion of the..., 2016; Opinion of the..., 2018). The outdated legislative framework creates fundamental obstacles to effective prosecutorial supervision, makes it impossible to respond adequately to current challenges in law enforcement and requires an immediate comprehensive review[3].

The fundamental problem with modern legislation on operational and investigative activities is its conservatism and inability to respond to dynamic changes in the structure and methods of crime (Khamzaev, 2021; Teivāns-Treinovskis & Trofimovs, 2020). Legislation adopted in previous decades did not consider fundamental technological and social transformations. The digitalisation of communications, the emergence of sophisticated information technologies, the globalisation of criminal networks, and the development of cybercrime have not been adequately reflected in current legislation (Cox & Gripp, 2022; Soubise, 2023). As a result, law enforcement agencies are forced to rely on outdated methodological approaches, which significantly reduces the effectiveness of countering modern forms of criminal activity. No less critical is the problem of inconsistency of legislative norms with international human rights standards (Opinion of the..., 2016; Opinion of the..., 2018). The existing mechanisms of prosecutorial supervision create real risks of unjustified interference with the private life of citizens, lack transparency and do not provide effective guarantees of protection of human rights during operational and investigative measures. This problem is especially acute in the context of covert investigative actions, where there is no effective judicial control and no mechanisms for independent appeal of law enforcement decisions (Soubise, 2023). This situation not only contradicts European legal standards but also creates preconditions for potential abuse by law enforcement officials. An analysis of the current system of prosecutorial supervision over operational and investigative activities reveals the need for its fundamental reform in the context of global challenges. A.A. Gavoor & S.A. Platt (2022) demonstrated in a study of administrative investigations that traditional oversight mechanisms no longer meet the requirements of the digital age. A comparative analysis of the provisions of the Law of Ukraine No. 2135-XII "On Operational and Investigative Activities"[4] Modern European standards reveal significant gaps in the regulation of the use of digital technologies in the implementation of operational and investigative measures. T.W. Franklin (2010), studying the impact of public control on prosecutorial decisions, emphasises the importance of considering the social context when supervising operational and investigative activities. This position is developed by E. O'Brien (2020) in an analysis of the effectiveness of law enforcement in the field of combating transnational crime. Comparison of their findings with the provisions of the Opinion of the Consultative Council of European Prosecutors No. 13 "Independence, Responsibility and Ethics of Prosecutors" (2018) demonstrates the need to introduce more flexible control mechanisms adapted to different categories of offences.

[1] Criminal Procedure 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 and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Recommendation of the Committee of Ministers of the Council of Europe to Member States No. Rec (2000) 19 "On the Role of the Public Prosecutor in the Criminal Justice System". (2020, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.
[4] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.

The fundamental study by O. Galagan *et al.* (2021) highlights the issues of judicial control as a guarantee of privacy protection during operational and investigative measures. V. Darahan *et al.* (2021), analysing the structural and functional support of operational and investigative prevention, propose mechanisms for balancing the promptness of response and compliance with procedural guarantees. Comparison of their approaches with the recommendations of the Committee of Ministers[1] Reveals the need to strengthen the role of the prosecutor in ensuring the legality of operational and investigative measures. L. Manzi (2022), studying the activities of the Roman Public Prosecutor's Office in corruption cases, and H. Prince *et al.* (2021), analysing effective practices of police investigations, propose a comprehensive approach to assessing the effectiveness of law enforcement. Their conclusions correlate with the provisions of Estonian[2] and Latvian[3] legislation on the introduction of electronic monitoring and performance evaluation systems.

T. Slovinsky & S.J. Brubaker (2022) raised an important issue of the emotional burden on prosecutors when investigating complex cases. S.B. Baughman & M.S. Wright (2020) propose to revise the criteria for assessing the effectiveness of prosecutorial supervision, abandoning quantitative indicators. C.A. Grodensky *et al.* (2023) develop this concept by proposing a differentiated approach to assessing prosecutorial performance depending on the category of cases. Their research is consistent with the provisions of the Moldovan criminal procedure legislation on the specialisation of prosecutorial supervision[4]. I.I. Shulhan (2020) examines the international aspect of prosecutorial activity, emphasising the importance of cross-border cooperation. Y. Zhu *et al.* (2024) proposed innovative solutions for the use of artificial intelligence in prosecutorial supervision, which correlates with the recommendations of European experts on the digital transformation of law enforcement.

Systemic shortcomings in the legislative regulation of detective and investigative activities are also manifested in the lack of flexible regulatory mechanisms capable of responding promptly to new challenges in the field of crime (Teivāns-Treinovskis & Trofimovs, 2020). Current regulations have a pronounced static nature, which makes it impossible to quickly adapt legal norms to changing social conditions. This is especially true when it comes to combating new forms of organised crime, transnational criminal groups, and cybercrime (Soubise, 2023). The pace of development of criminal technologies outstrips the ability of the legislator to modify the legal framework in a timely manner. Another fundamental problem is the imperfection of mechanisms for interagency cooperation and coordination in the law enforcement system. The existing legal provisions do not ensure effective communication between different units, which leads to duplication of functions, loss of important operational information and a decrease in the overall effectiveness of the fight against crime. This problem is particularly evident in the investigation of complex multi-episodic crimes that require coordinated action by different law enforcement agencies. In the context of the study of prosecutorial supervision over operational and investigative activities, the authors conducted a systematic analysis of key issues and prospects for improvement, the results of which are presented in Table 1.

Table 1. Systematic analysis of problems and prospects for improving prosecutorial supervision over operational and investigative activities

Scope	Problems identified	Future-proof solutions	Expected results
Regulatory and legal	1. Insufficient procedural powers of the prosecutor. 2. Legal conflicts in the regulation of supervision. 3. Inconsistency with international standards.	1. Expanding the powers of the prosecutor. 2. Harmonisation of legislation. 3. Implementation of new quality standards.	1. Improving the effectiveness of supervision. 2. Eliminating legal gaps 3. Compliance with international requirements.
Technological	1. Outdated technical equipment. 2. The complexities of digital data analysis. 3. Insufficient cybersecurity.	1. Implementation of digital platforms. 2. Process automation. 3. Development of analytical tools.	1. Optimisation of processes. 2. Fast data analysis. 3. Information protection.
International cooperation	1. Lack of uniform procedures. 2. Difficulties in sharing information. 3. Inconsistency of actions.	1. Unification of interaction protocols. 2. Creation of joint groups. 3. Exchange of experience.	1. Effective coordination. 2. Prompt data exchange. 3. Synergy of efforts.

[1] Recommendation of the Committee of Ministers to States Parties No. Rec (2012) 11 "On the Role of Public Prosecutors Outside the Criminal Justice System". (2012, September). Retrieved from https://salo.li/76Ef7a8.
[2] Waste Law of the Republic of Estonia. (1998, February). Retrieved from https://www.riigiteataja.ee/akt/113032019068.
[3] Criminal Procedure Law of the Republic of Latvia. (2005, April). Retrieved from https://likumi.lv/ta/en/en/id/107820.
[4] Education Code of the Republic of Moldova. (2003, March). Retrieved from https://www.legis.md/cautare/getResults?doc_id=123537&lang=ro.

Table 1. Continued

Scope	Problems identified	Future-proof solutions	Expected results
Professional training	1. Lack of digital competencies. 2. Limited international experience. 3. Need for specialisation.	1. Specialised training. 2. International internships. 3. Exchange of practices.	1. Professional development. 2. Competence development. 3. Professional growth.
Organisational	1. Bureaucratic procedures. 2. Duplication of functions. 3. Inefficient allocation of resources.	1. Process optimisation. 2. Division of responsibilities. 3. Resource planning.	1. Increased efficiency. 2. Eliminating duplication. 3. Rational use of resources.

Source: compiled by the author based on O.H. Kolb & A.V. Hodlevska-Konovalova (2021), A.L. Cox & C. Gripp (2022) and E.V. Kopylov (2023)

Based on the table above, the comprehensive study has identified systemic challenges in various aspects of prosecutorial oversight of detective and investigative activities that require immediate and strategic response. The regulatory and legal sphere demonstrates critical problems related to the limited procedural powers of the prosecutor, the presence of legal conflicts and inconsistency with international standards. The proposed solutions include a comprehensive approach: expanding the powers of the prosecutor, harmonising legislation and introducing new quality standards, which will increase the effectiveness of supervision and eliminate existing legal gaps. The technological sector needs immediate modernisation due to the obsolescence of technical equipment, the complexity of analysing digital data and the lack of cybersecurity. Promising areas include the introduction of modern digital platforms, process automation, and the development of analytical tools. Expected results include optimisation of work processes, fast data analysis, and improved information security. International cooperation requires significant transformations due to the lack of unified procedures, difficulties in information exchange and inconsistency of actions. The proposed solutions are aimed at unifying interaction protocols, creating joint international groups and actively sharing experiences. The goal is to ensure effective coordination, prompt data exchange, and synergy of efforts between different agencies. Training has revealed significant gaps, including a lack of digital competencies, limited international experience, and a need for specialisation. Recommended measures include specialised training, international internships, and exchange of practices. This will improve the skills of employees, develop the necessary competencies and ensure their professional growth. The organisational area needs to be optimised due to existing bureaucratic procedures, duplication of functions and inefficient allocation of resources. The proposed solutions include a clear division of responsibilities, resource planning and process optimisation. The expected results include increased overall efficiency, elimination of unnecessary duplication and rational use of available resources. The comprehensive implementation of the proposed measures creates a strong potential for modernising the system of prosecutorial supervision over investigative activities. A systematic approach that goes beyond technical changes and forms a new paradigm of professional activity is crucial. This paradigm is based on the principles of innovation, continuous development, international cooperation and adaptability to modern challenges.

The key trend of modern reforms is the establishment of the Strategic Investigations Department of the National Police of Ukraine. The analysis of the regulatory framework noted that the Strategic Investigations Department of the National Police of Ukraine was established following Resolution of the Cabinet of Ministers No. 867 "On the Establishment of a Territorial Body of the National Police"[1]. This structural unit significantly transforms the paradigm of operational and investigative activities through the introduction of a vertical management system and specialisation of units in the areas of combating economic crime. As stipulated in the Regulation on the Department of Strategic Investigations of the National Police of Ukraine, approved by Order of the National Police of Ukraine No. 1077[2], the new structure is characterised by the merger of operational and analytical support functions. This allows for a comprehensive approach to preventing and combating economic crime. It is also worth noting that according to the Order of the Ministry of Internal Affairs No. 575 "On Approval of the Instruction on Organisation of Interaction of Pre-trial Investigation Bodies with Other Bodies and Units of the National Police of Ukraine in Prevention of Criminal Offences, Detection and Investigation"[3], such reorganisation contributes to more effective coordination of activities of various police units in combating economic crime.

[1] Resolution of the Cabinet of Ministers No. 867 "On the Establishment of a Territorial Body of the National Police". (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/867-2019-п#Text.
[2] Order of the National Police of Ukraine No. 1077 "On Approval of the Regulation on the Department of Strategic Investigations of the National Police of Ukraine". (2019, October). Retrieved from https://salo.li/56cB202.
[3] Order of the Ministry of Internal Affairs No. 575 "On Approval of the Instruction on Organisation of Interaction of Pre-trial Investigation Bodies with Other Bodies and Units of the National Police of Ukraine in Prevention of Criminal Offences, Detection and Investigation". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/z0937-17#Text.

Systemic changes have also affected the methodology for assessing the effectiveness of law enforcement. In analysing the transformation of methodological approaches to assessing law enforcement effectiveness, it is worth referring to the recommendations set out in the study by H. Prince *et al.* (2021), who suggest abandoning traditional quantitative indicators in favour of a comprehensive assessment. Their approach is supported by the research of S.B. Baughman & M.S. Wright (2020), which demonstrates the limitations of statistical methods for assessing the effectiveness of law enforcement. C.A. Grodensky *et al.* (2023) developed a new methodology for assessing effectiveness, including qualitative indicators of preventive activities, the level of compensation for losses, and the quality of interaction with the public. T.W. Franklin (2010) emphasises the particular importance of public influence on decision-making in law enforcement, which should be considered when assessing the effectiveness of law enforcement. As noted by A.A. Gavoor & S.A. Platt (2022), this approach significantly changes the motivation of law enforcement officers, focusing them on proactive crime prevention activities. L. Manzi (2022) added that this requires the development of new mechanisms of interaction between the prosecutor's office and law enforcement agencies based on the principles of transparency and mutual responsibility. According to Y. Zhu *et al.* (2024), the introduction of new performance evaluation criteria should be accompanied by the development of appropriate information and analytical systems that allow for objective measurement of the quality of law enforcement agencies.

Instead of traditional quantitative indicators, such as the number of solved crimes, comprehensive evaluation criteria are being introduced. They include indicators of preventive work, the level of compensated damages, the quality of interaction with the public, and the effectiveness of preventing corruption and economic crimes. This approach fundamentally changes the motivation of law enforcement officers, focusing them on proactive crime prevention. This requires the development of new mechanisms of interaction between the prosecutor's office and law enforcement agencies based on the principles of transparency, mutual responsibility and respect for institutional authority.

Globalisation processes have significantly affected the nature and scale of criminal activity. Adapting to modern conditions, crime reproduces the mechanisms of economic and social development of society, becoming increasingly complex. For instance, while in the 1990s and 2000s, drug smuggling was characterised by individual groups within a single country, in the period from 2020 to 2025, there has been a transformation to transnational drug cartels with an extensive supply network covering dozens of countries and using the most advanced technologies to coordinate their activities (Eyo & Okebugwu, 2024).

Prosecutorial supervision in the current environment is undergoing profound transformations due to the complex impact of globalisation and the digital revolution. The transformation of mechanisms for combating financial crimes, including money laundering through cryptocurrency instruments, requires special attention. The report of the Financial Action Task Force on Money Laundering shows striking statistics: in 2023, about 15.8 billion USD was moved through decentralised financial platforms to legalise criminal proceeds (Financial Action Task Force, 2024). This complex reality requires prosecutors to develop fundamentally new professional competencies. It is not just about technical skills, but about a deep understanding of the modern digital environment. In particular, prosecutors must be proficient in methods of analysing blockchain transactions and identifying suspicious financial flows; technologies for recognising complex schemes for moving cryptocurrency assets; and digital forensic analytics tools for tracing the origin of electronic financial assets international cooperation is taking on fundamentally new forms. An illustrative example is Europol's comprehensive EMPACT project (2023) to combat human trafficking, where prosecutors conduct synchronised cross-border investigations. Such operations ensure simultaneous searches in 12 EU countries, coordination of evidence sharing, and the formation of international investigation teams.

Of particular importance in the transformation of prosecutorial oversight is the introduction of digital technologies and the creation of a single digital platform for interaction between law enforcement agencies. The introduction of digital platforms for interaction between law enforcement agencies is a key trend in the transformation of prosecutorial oversight. In particular, the European Union has a Secure Information Exchange Network Application platform that provides a secure exchange of operational information between law enforcement agencies in 27 countries (Europol, 2023). The United States has developed the Data Strategy for the U.S. Department of Justice (2022), which integrates databases of various federal agencies. Estonia's X-Road Interoperability Services (2023) creates a unified platform for interagency electronic communication, bringing together 16 government agencies. Such platforms allow for real-time supervision of criminal proceedings, provide instant access to procedural decisions, minimise the risk of losing documents and significantly optimise interagency communication. Such a platform allows prosecutors to supervise criminal proceedings in real-time, which significantly increases the effectiveness of supervisory activities. An important aspect is the ability to access procedural decisions immediately

after they are made, which eliminates the need to send requests to investigators and inquirers to review the materials. The introduction of a unified electronic case file through the operation of an interagency digital online platform eliminates the possibility of losing a criminal case or its materials. Especially convenient is the prospect of transferring inspection materials or criminal case files in electronic format, which significantly reduces paperwork and saves human resources.

A comparative legal analysis of these documents reveals a tendency towards gradual harmonisation of national legislation with European standards, although there are still some differences in the scope of the prosecutor's powers. The national legal regulation provides for wider opportunities for prosecutorial interference in operational and investigative activities, which may pose certain risks to their effectiveness. At the same time, there is a need to modernise the legal regulation of international cooperation mechanisms and to introduce digital technologies into the practice of prosecutorial supervision. The current regulatory framework only partially meets the challenges of globalisation and digital transformation, which creates certain legal conflicts and reduces the effectiveness of the prosecution's supervisory activities.

■ Conclusions

As a result of the study of the peculiarities of the transformation of prosecutorial supervision over operational and investigative activities in the context of globalisation, the author has established fundamental changes in its legal nature and functional purpose. The current stage of development is characterised by a fundamental rethinking of the role of prosecutorial supervision under the influence of globalisation processes and the digital transformation of society, which creates new challenges and opportunities for the development of this institution.

The study was conducted in three main stages, which allowed for a comprehensive analysis of the transformation processes in the field of prosecutorial supervision. The first stage involved a systemic and structural analysis of changes in the exercise of prosecutorial supervision over operational and investigative activities and traced the evolution of its legal regulation. The second stage included a comparative legal analysis of the systems of prosecutorial supervision in different countries, which identified general trends in the development of this institution. The third stage involved a formal legal analysis of international standards of prosecutorial activity and the identification of key areas for modernisation of the system of prosecutorial supervision.

The results of the study demonstrate that the current stage of development of prosecutorial supervision is characterised by fundamental changes due to the impact of globalisation processes and digital transformation of society. The author identified three key trends: intensification of international law enforcement cooperation, introduction of digital technologies into supervisory activities, and expansion of the prosecutor's procedural powers to control cross-border investigations. Of particular importance is the conclusion that it is necessary to harmonise national systems of prosecutorial supervision with international standards and develop mechanisms for international cooperation.

The theoretical significance of the results obtained is an expansion of the scientific understanding of the essence and patterns of transformation of prosecutorial supervision in the context of globalisation. For the first time, the impact of globalisation processes on changing approaches to the organisation of supervisory activities was systematically studied and the relationship between the digital transformation of society and the modernisation of prosecutorial supervision was identified. The practical significance of the results lies in the possibility of using them to improve the regulatory framework and organisational and legal mechanisms for prosecutorial supervision.

The limitations of the study are related to the lack of complete statistical information on the effectiveness of the introduction of digital technologies in the practice of prosecutorial supervision, limited access to case files related to transnational crime, and insufficient development of methods for assessing the effectiveness of supervisory activities in the digital environment. In addition, the rapid development of technology and the constant emergence of new forms of transnational crime create certain difficulties in drawing long-term conclusions on the directions of transformation of prosecutorial supervision.

This study creates new prospects for further scientific research. Particular attention should be devoted to studying the possibilities of using artificial intelligence and machine learning in prosecutorial supervision, developing criteria for assessing the effectiveness of supervisory activities in the digital environment, studying the mechanisms for protecting human rights in international law enforcement cooperation, and analysing the ethical aspects of using modern technologies in prosecutorial activities.

The results obtained provide a theoretical basis for further modernisation of the institution of prosecutorial supervision and its adaptation to the challenges of the global digital era. The identified trends and patterns of transformation of prosecutorial supervision can be used to improve the legal regulation and practice of supervisory activities, as well as to develop mechanisms of international cooperation in combating transnational crime.

■ Acknowledgements

None.

■ Conflict of Interest

None.

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Глобалізація та кримінальний процес: прокурорський нагляд за оперативно-розшуковою діяльністю в умовах транснаціональних загроз

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■ **Анотація.** У роботі досліджено сучасну проблематику трансформації прокурорського нагляду за оперативно-розшуковою діяльністю в умовах глобалізаційних викликів і транснаціональних загроз. Метою дослідження був комплексний теоретико-правовий аналіз особливостей здійснення прокурорського нагляду за оперативно-розшуковою діяльністю в контексті глобалізації, визначення проблемних аспектів і розроблення науково обґрунтованих рекомендацій щодо його вдосконалення. Методологічний інструментарій дослідження ґрунтувався на системно-структурному, формально-юридичному та порівняльно-правовому методах, що надало можливість усебічно проаналізувати нормативно-правову базу й міжнародний досвід організації прокурорського нагляду. Дослідження виявило такі основні тенденції трансформації прокурорського нагляду в умовах глобалізації, як: інтенсифікація міжнародного співробітництва правоохоронних органів, імплементація цифрових технологій у наглядову діяльність, розширення процесуальних повноважень прокурора щодо контролю за транскордонними розслідуваннями. Встановлено, що якість прокурорського нагляду за оперативно-розшуковою діяльністю в умовах інтенсифікації транснаціональної злочинності залежить від узгодженості національного законодавства з міжнародними стандартами та рівнем упровадження інноваційних підходів до організації наглядової діяльності. Обґрунтовано необхідність модернізації нормативно-правового регулювання прокурорського нагляду, запропоновано напрями вдосконалення з огляду на міжнародні стандарти та сучасні виклики транснаціональної злочинності. Теоретичні положення та практичні рекомендації, сформульовані в дослідженні, може бути використано для оптимізації організаційно-правових механізмів здійснення прокурорського нагляду за оперативно-розшуковою діяльністю

■ **Ключові слова:** правоохоронна взаємодія; міжнародні стандарти; цифрова трансформація; контроль; правові механізми

UDC 343.14:351.745.7:343.974
DOI: 10.63341/naia-herald/1.2025.21

Conceptual foundations and practical aspects of community police officer's participation in combating crime

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■ **Abstract.** The activity of a community police officer takes place in conditions of almost inextricable physical presence on community's territory and constant contacts with local residents. This gives the officers significant opportunities for prompt detection and prevention of criminal offences. However, due to the lack of powers, these opportunities cannot always be fulfilled. The purpose of this study was to establish the feasibility of empowering a community police officer with the powers of proactive detection of criminal offences, and to determine the list and content of these powers. To fulfil this purpose, the study employed general scientific (inductive, deductive, analysis, synthesis, analogy, generalisation, modelling) and special (comparative legal, systemic-structural, and logical-legal analysis) methods. The study examined the legal grounds for detection, investigation, and solving of criminal torts, prevention of their commission by law enforcement officers, and application of administrative and criminal liability measures to them. The findings obtained were verified using the method of expert assessments. By summarising the practices of other countries, the study formulated the concept (ideology) of the institution of community police officer by defining the purpose of their functioning; tasks; subjects and principles. Successful implementation of this concept requires not only granting the necessary powers to a community police officer, but also high-quality personnel and logistical support for such entities. Conceptually, it is vital to empower them to secretly engage local residents in confidential cooperation in combating criminal offences (detection, suppression, disclosure, investigation, prevention), as well as to conduct observation, interviews, and home visits in certain cases. The practical value of this study lies in the possibility of using its findings to improve the regulations governing the work of the police in combating crime in terms of regulating the powers of a community police officer

■ **Keywords:** law enforcement officer; interaction; detection; investigation; prevention; public; criminal analysis

■ **Suggested Citation:**
Hribov, M., Vozniuk, A., & Zdoryk, D. (2025). Conceptual foundations and practical aspects of community police officer's participation in combating crime. *Scientific Journal of the National Academy of Internal Affairs,* 30(1), 21-33. doi: 10.63341/naia-herald/1.2025.21.

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■ Received: 03.01.2025; Revised: 23.02.2025; Accepted: 25.03.2025

Introduction

One of the principal tasks of every democratic, law-based social state is to protect individuals and society from criminal attacks. In most countries of the world, this task is entrusted to law enforcement agencies that are authorised to prevent, detect, stop, and investigate crimes. A prominent place among these bodies is occupied by the police, since it is they who fight criminal offences that are most sensitive to the average citizen. These are crimes against life and health, property, sexual inviolability, labour and political rights, etc. The police guard public order and public safety, and fight drug-related crimes and criminal traffic offences.

Countries have varying structural organisations and specialisations of the police. However, in most countries, there is an institution of officials who perform police functions in concrete localities in close cooperation with local communities. Various titles are used to describe an official of this institution: "District Police Inspector", "Community Police Officer", "Community Support Officer", "Neighbourhood Police Officer", "Neighbourhood Officer", "Local Police Officer", "Beat Officer". The list of their powers varies from country to country. But what is common is that these police officers are the primary link in the fight against crime. They are considered as being on the first line (front line) of defence of a particular person and the entire community from illegal encroachments and simultaneously as representatives of this community who use police knowledge, skills, and abilities to solve social problems. However, various factors, including a lack of specific powers, prevent them from fully and comprehensively exercising their ability to combat crime in the territory they serve. Among such powers are those that are usually considered to be the exclusive competence of detectives, investigators, and special operational units.

The issue of community policing is the subject of many studies. The academic activity in this area is driven, on the one hand, by the significance and effectiveness of this institution, and on the other hand, by the numerous problems that arise in its functioning. M. Hecker (2023) reviewed the scientific literature in this area. The researcher noted that many studies of procedural justice were conducted internationally, showing its positive influence on the willingness of citizens to cooperate with the police. Therewith, the reduction of crime and ongoing efforts to improve the professionalism and effectiveness of the police seem to be a secondary factor. At the same time, based on empirical data collected in Germany, M. Hecker (2023) concluded that trust in police effectiveness depends on subjective assessments of personal safety of each individual. Victimisation and fear of crime undermine trust in the police. Trust in the police, confidence in the fairness of its actions, depends on personal experience of communication with its representatives. At the same time, increasing the density of police presence on the ground can increase confidence in the police's ability to prevent and respond to crime.

E. Skyba (2023) covered the modern philosophical foundations of community police officers. The researcher emphasised that the efforts of such officers should primarily be focused on preventing offences rather than responding to crimes that were already committed. The researcher emphasised the significance of close interaction between police officers and local residents, and the relevance of their support in shaping and strengthening their legal awareness. At the same time, the researcher ignored the issues of the powers of a community police officer, specifically, in terms of their reactive activities. As for the interaction of such an officer with community representatives, the philosophical issues of involving them in confidential cooperation stay unexplored. R.A. Serbyn & S.I. Shevchenko (2022) covered the issues of content and means of improving the legal regulation of the activities of this category of police officers. The researchers considered the principal activities of community police officers to be administrative and supervisory work and organisation of interaction with other subjects of public order. This position leaves room for discussion on the powers of community police officers to detect and solve crimes.

I.I. Ishchenko (2024) covered the specific features of the police officer's activity in the territorial community from the standpoint of the concept of "community policing" – with the definition and analysis of their powers in the field of preventive activities. The researcher ignored the issue of powers in other areas of crime prevention. E.A. Tyts & O.G. Strelchenko (2023) addressed the issue of the administrative legal status of a community police officer. The researchers concluded that the principal tasks of a community police officer should include interaction with the authorities, local self-government, and community representatives (in terms of public order protection), preventive registration of relevant categories of persons, cooperation with the patrol police, study of the determinants of offences, as well as implementation of measures to prevent road accidents and detection of other offences by patrolling the service area. It is debatable whether researchers attribute to the tasks of this category of police officers their interaction with certain subjects, keeping certain records, and certain activities, patrolling. Interaction, records, and activities can only be considered as tools for performing certain tasks and are not an end in themselves. It is also questionable whether the community police officer's toolkit for detecting

offences is limited to patrolling. Practice shows that they have wider opportunities.

O.A. Gutsulyak (2022) performed a comparative analysis of the formation and use of policing institutions within the community policing model in the UK, Poland, Finland, the Czech Republic, and Ukraine. While generally positively assessing the practices of these countries, the researcher questioned the expediency of simultaneously vesting community police officers with several functions, including both preventive and reactive ones, specifically, inquiries in proceedings on criminal offences. The opinion that this issue is controversial deserves support and necessitates further research. Furthermore, the researcher did not address the question of whether community police officers should be given the function of detecting and suppressing latent crimes. N.V. Vitvitska (2022) also studied the international practices of the functioning of the institution of police officers who perform their functions within a certain territory in close interaction with the population. The researcher examined the organisation of such institutions in Australia, Austria, Belgium, Canada, France, Germany, the Netherlands, Sri Lanka, Thailand, the United States, and the United Kingdom. This study was mainly descriptive and did not assess the advantages and disadvantages of the list of powers assigned to community police officers by the legislation of the respective countries.

Thus, in theory and practice, there is a series of unresolved issues related to the powers of a community police officer in terms of combating criminal offences. The purpose of the present study was to establish the expediency of vesting police officers with the powers of proactive detection of criminal offences and to determine the list and content of these powers.

Materials and Methods

The study employed official data of governments and police agencies of different countries of the world, as well as certain regulations governing the work of their law enforcement agencies and establishing the procedure for detecting, solving, and investigating offences, preventing their commission, and bringing perpetrators to administrative and criminal liability. Based on the analysis of these materials, in each case, the study investigated the basic principles and concrete features of the activities of ordinary officers who perform the functions of ensuring public safety, protecting public order, and combating crime within a particular territorial community (at the forefront of combating offences) – in close cooperation with the local population.

By generalising approaches to the functioning of the institution of community police officers in different countries (and their individual regions), the study formulated a concept (ideology) of this institution which generally reflects the world experience – by defining the purpose, tasks, subjects, their actions, and the methods and means used in this regard. By analysing the regulations and practices of their application (using the example of Ukraine), the study determined whether the powers of a community police officer are consistent with the above concept and the real capabilities of such an officer to detect criminal offences.

To verify the findings, the method of expert evaluation was used. A total of 200 community police officers from multiple regions of Ukraine were interviewed. In preparing for the survey, the purpose was to interview this number of police officers to ensure that the findings would be highly representative. Each respondent was given the opportunity to stay anonymous, and the ways and guarantees of doing so were explained. All participants were informed about the goals and objectives of the survey, as well as how the information obtained would be used and the risks that may arise in this regard. The survey followed ethical standards for working with people. The study was conducted according to the rules of the Helsinki Declaration[1] and the European Commission's (2021) guidelines on ethics and data protection. The author's questionnaire, presented in Table 1, was used for the survey. For each of the questions, several answer options were offered. Still, the questions were left open by offering respondents to provide their own answer.

Table 1. List of questions contained in the author's questionnaire

No.	Question
1.	Have you ever used the services of persons on a confidential basis to carry out your crime-fighting duties?
2.	Do you consider this tool to be effective in performing the tasks of a community police officer?
3.	Is it widespread practice for a community police officer to receive information from local residents on a confidential basis about the facts of preparation and commission of criminal offences and/or persons who prepare and commit them, specifically, regarding:
3.1	▪ drug offences?
3.2	▪ illegal possession of weapons, ammunition, explosives, or other dangerous materials, substances, and items?
3.3	▪ theft?
3.4	▪ domestic (psychological and economic) violence?

[1] Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Participants. (2024, October). Retrieved from https://www.wma.net/what-we-do/medical-ethics/declaration-of-helsinki/.

Table 1. Continued

No.	Question
3.5	▪ vehicle theft?
3.6	▪ other criminal offences?
4.	Have you ever obtained information necessary for combating crime by interviewing individuals with the purpose of concealing the true purpose of communication?
5.	Have you ever managed to obtain information necessary for combating crime through covert surveillance in public places?
6.	Have you ever visited the homes of individual local residents under false pretences (to conduct a search) to carry out crime prevention tasks?
7.	Have there been any cases when persons confidentially engaged by you for cooperation performed your tasks of collecting information necessary for combating crime by:
7.1	▪ Covert (with concealment of the purpose and ultimate recipient of the information) survey of local residents
7.1.1	Was this practice successful?
7.2	▪ Surveillance in publicly accessible places
7.2.1	Was this practice successful?
7.3	▪ Conducting a covert search in a person's home or other property to detect property obtained by criminal means, signs of drug offences, wanted persons, etc.
7.3.1	Was this practice successful?
7.4	▪ Introduction to small social groups that may create problems in ensuring law and order in the community through their actions
7.4.1	Was this practice successful?

Source: developed by the authors of this study

The survey was launched in November 2024 and lasted two months. The surveyed police officers lived and worked in the city of Kyiv, Vinnytsia, Volyn, Zhytomyr, Kyiv, and Khmelnytskyi regions of Ukraine. The police officers were interviewed in writing in a mixed format (in-person and online). Police officers who were attending retraining and advanced training courses at Kharkiv University of Internal Affairs were interviewed in person (141 people). Another 59 police officers were interviewed by sending them questionnaires via the Internet (by prior agreement). 19 of the police officers who were interviewed in person agreed to be interviewed (subject to anonymity). During these interviews, the respondents provided explanations for their answers and illustrated them with examples of their personal practice. The findings were considered in the context of the conclusions of researchers from multiple countries regarding the nature and scope of powers of local police officers, the problems of legality and fairness of their actions in the eyes of the community, in cases when they exceed their rights to combat crime.

■ Results

Introduction and development of community policing in different countries. Over the past decades, governments of democratic developed countries have paid considerable attention to the institution of community police officers. A study of their experience shows that this institution is based on the idea of entrusting the safety of residents of a particular village, town, or district, their protection from illegal encroachments and prevention of offences to police officers who constantly serve the area, work in close cooperation with the population and self-government bodies, and involve the public in ensuring law and order. For instance, the Canadian city of Toronto has a Neighbourhood Community Officer Programme. According to this programme, police officers rely on partnerships with local residents and community organisations to carry out their functions combating crime, public order, and community safety. Officers reside in their service area for at least four years, which enables them to make effective use of available police resources, reduce crime and the fear of crime, and prevent antisocial behaviour by individuals and groups based on an understanding of the region's socio-geographical, economic, and historical characteristics (Toronto Police Service, 2025). Research conducted by S. Mehmi *et al.* (2021) has shown the success of this programme.

In the Belgian capital of Brussels, the Neighbourhood Officer institution, which makes provision for the assignment of a police officer to a specific area of the city, has been successfully operating. The purpose of their activity is to ensure security and to consolidate with the local population in combating crime. In most cases, it is the Neighbourhood Officer who is the link between the police and citizens, playing a crucial role in preventing offences, including crime. The tasks of such police officers include ensuring public safety and public order in the neighbourhood; controlling migration processes; resolving conflicts between neighbours and promoting social harmony; informing local residents about various administrative legal aspects that fall within their competence, as well as about any security problems that may arise (What is the role..., 2024). A feature of the Brussels approach that distinguishes it from other analogous programmes is that the police officer is to check a person's identity documents and place of registration to establish whether the officially declared place of residence corresponds to the factual address (migration control). This practice is quite normal and useful.

The modern concept of the New York City police is based on the Neighbourhood Policing programme. This is a systemic strategy for combating crime based on constructive interaction between local police officers and community members. Neighbourhood Policing greatly expands interaction with the community, contributing to the growth of crime prevention. Officers act as liaisons between the police and the community and are key crime fighters and problem solvers in the sector. They get to know the residents and their problems by talking to community members, neighbourhood leaders and clergy, and by visiting schools. In doing so, the officers conduct criminal analysis of the situation and use creative methods and adaptive skills. The sergeants add a new dimension to the NYPD's crime-fighting capabilities. They function as a complement to local detective units, responding quickly to small incidents and carefully documenting traces and evidence that may have been missed under previous approaches (The New York..., 2025). Police officers of the New York City Neighbourhood Policing programme are distinguished by a fairly wide range of powers, covering both preventive (patrolling, traffic control, detecting offences) and reactive (stopping offences, detaining offenders, imposing penalties, collecting factual data on crimes). Moreover, for two decades, the Los Angeles Police Department has been experimenting with a unique model of community-oriented policing called the Community Safety Partnership (CSP). The programme places a dedicated team of CSP officers in selected residential buildings and neighbourhoods to interact with residents to better understand and ultimately address the root causes of crime (Muchow, 2023).

In the UK, there is an institution of Police Community Support Officers (PCSOs) and special constables. The former has most of the police powers. The latter are volunteers who have the same powers as the police (Home Office, 2025). PCSOs work directly in communities, engaging local residents in policing and crime prevention tasks. In case event of a critical incident, the role of PCSOs is to ensure that the police can interact with the community, including by establishing a two-way flow of information. This is essential for investigating and managing community tensions. PCSOs are often key intelligence gatherers in the local community. Apart from the skills required of PCSOs, police constables have investigative powers and skills that they can use to proactively, fairly, and equitably address problems in their area (College of Policing, 2025).

Poland's Community Policing strategy also envisages close cooperation between the police and local residents in preventing various offences and improving the quality of life by eliminating the fear of crime. This approach mobilises the community to work together with the police to ensure public safety and combat crime. In Finland, this strategy is an integral part of police work aimed at reducing crime and preventing public order violations (Vitvitska, 2022). This allows maintaining a positive public image and a prominent level of trust in the police.

Ideology (concept) of the institution of community police officer and legal regulation of their powers. Each country has its specific features of practical implementation of the approach to organising community policing. However, the doctrinal concept of community policing is unchanged because it is dictated by the content and logic of conscious human activity. Thus, an analysis of the approaches of governments of different countries to the formation of the content of community policing shows that the core of this content is the purpose. The purpose is followed by concrete tasks reflecting the successive steps to fulfil the purpose. To complete the tasks, certain actions, measures, and means are required. The implementation of these actions, measures, and means is the responsibility of actors with the relevant competences and competencies.

An analysis of information from official websites and regulations of Belgium, the United Kingdom, Germany, Poland, the United States, Finland, the Czech Republic[1], and France[2] that regulate and cover the activities of central and regional police units (Police Community Support Officers..., n.d.; Official portal of the German..., n.d.; What is the role of the..., 2024), suggests that the purpose of the institution of a community police officer is to maintain law and order in a particular community, ensuring the safety of all its members. Fulfilment of this purpose is ensured by performing such interrelated tasks as crime prevention, detection of offences, and response to offences (About the police..., n.d.; Crime prevention in villages..., 2024; New York City Police..., 2025).

To fulfil each of these tasks, the law and regulations impose a duty on the community police officer to perform certain actions and authorise them to carry out certain activities and use certain means. Therefore, the powers of a community police officer should be derived from their tasks. In other words, the rights and obligations of such an officer should be formulated in such a way that, based on them, they can effectively perform the tasks. This requires a correct and precise formulation of the tasks.

However, the developers of regulations often include certain principles (guiding ideas) of their

[1] Law of the Czech National Council No. 553/1991 "On Municipal Police". Retrieved from https://www.zakonyprolidi.cz/cs/1991-553#p11.
[2] Internal Security Code of France. (2012, May). Retrieved from https://www.police-nationale.interieur.gouv.fr/.

activities and certain tools of police work in the list of tasks of community police officers. For instance, the Instruction on the Organisation of Activities of District Police Officers and Community Police Officers, approved on 28.07.2017 by Order of the Ministry of Internal Affairs of Ukraine No. 650[1] (Instruction), factually includes this category of police officers among the tasks:

- the fundamental basis of this institution (constructive interaction and partnership of a local officer with community residents, public authorities, representatives of local self-government, enterprises and NGOs, including with formations established according to the law for the protection of public order, as well as with patrol police response teams) (paragraphs 1, 2, Item 1, Section 2 of the Instruction);
- one of the instrumental means of preventing offences (ensuring preventive registration of the categories of persons defined by law in respect of whom individual prevention of offences should be carried out) (paragraphs 4, 5, Item 1, Section 2 of the Instruction);
- the obligation of all state authorities and local self-government bodies ("to perform tasks aimed at observing human rights and freedoms, as well as the interests of society and the state") (paragraph 3, Item 1, Section 2 of the Instruction);
- a separate component of the algorithm of actions of a police officer in case of receiving information about criminal offences (notification of the district police officer on duty) (paragraph 6, Item 1, Section 2 of the Instruction);
- the authority to organise the work of subordinates ("organisation and control of the assistant's activities") (paragraph 7, Item 1, Section 2 of the Instruction);
- the duty of professional development ("maintaining professional level through training in the system of in-service training and self-training") (paragraph 8, Item 1, Section 2 of the Instruction).

None of these items can be classified as tasks. Incorrect task setting leads to misunderstanding by the performer. Thus, interaction with the public cannot be a task, an end in itself. It is a method, a tool. Likewise, "performing tasks aimed at observing human rights and freedoms" cannot be a task, etc. The only correctly formulated task in this list is the pre-trial investigation of criminal offences in the form of an inquiry by a community police officer (paragraph 8, Item 1, Section 2 of the Instruction). However, this is a special case of responding to offences (criminal misdemeanours) that has not been implemented in practice.

The factual tasks of community police officers (those stemming from the concept of "community policing") are formulated in paragraph 2 of Section 2 of the Instruction entitled "Duties and main activities of a district police officer and a community police officer"[2]. This clause states that these entities in the socio-geographical area entrusted to them should properly carry out: prevention of offences, detection of offences, suppression of offences, response to offences. However, duties, unlike tasks, should be formulated in greater detail and specifically (for a clear understanding of the list and content of actions that constitute the content of their daily work). Instead, the developers of the Instruction create additional uncertainty. Specifically, they defined "implementation of preventive measures aimed at preventing the commission of criminal and other offences" as the first duty of a community police officer. However, neither the list nor the content of these measures is defined in the instruction. The same applies to "measures to eliminate the causes and conditions for the commission of criminal and/or administrative offences"; "measures aimed at eliminating threats to the life and health of individuals and public safety"; "measures to prevent and combat domestic violence and abuse", etc.

Some of the powers necessary for a community police officer to perform their tasks are specified in Paragraph 3 of Section 2 of the Instruction[3]. These include the rights to check identity documents, interview persons with their consent, apply police coercion measures, detain suspects, impose certain administrative penalties, monitor compliance with restrictions imposed by court or law on certain categories of persons, check compliance with the rules for handling hunting weapons and special means of self-defence; control the legality of vehicle operation on the street and road network, on the territory of the police station, and in the

Powers that community police officers lack. The ideology (concept) of the institution of community policing, the nature of its activities, and the focus on close interaction with the population contribute to the emergence of a series of opportunities for combating crime that have been overlooked by researchers and legislators. These opportunities arise quite naturally and are effectively used by community police officers in practice. However, due to the lack of *de jure* legal regulation, they are illegal and can lead to delegitimisation of the police in the eyes of the community if exposed. These are covert methods of work that are usually considered the prerogative of detectives, operational units, and investigators.

[1] Instruction on the Organisation of Activities of District Police Officers and Community Police Officers. (2022, May). Retrieved from https://zakon.rada.gov.ua/laws/show/z1041-17#Text.
[2] Ibidem, 2022.
[3] Ibidem, 2022.

For example, there are no regulations that would allow a community police officer to engage individuals in confidential cooperation and use their voluntary help on a non-public basis. However, 157 surveyed community police officers (78.5%) use this tool, and 188 out of 200 (94.0%) consider this approach effective, as people are often afraid to openly expose the criminal activities of those who live in the same house, street, district, or village as them. At the same time, to stop the socially dangerous activities of their neighbours, ensure their personal safety and the safety of the community, and contribute to law enforcement, they may willingly share information with a trusted community police officer on a confidential basis (covertly). They would never share such information with an unfamiliar (little known) detective or investigator.

It is widespread practice to proactively report to a community police officer, based on confidentiality, information about the preparation and commission of criminal offences, and the persons who prepare and commit them. This was confirmed by the interviewed community police officers who regularly receive information from such persons: on drug-related crimes – 149 (74.5%); on illegal possession of weapons, ammunition, and explosive devices or other dangerous materials and substances – 140 (70.0%); on thefts – 132 (66.0%); on domestic (psychological and economic) violence – 87 (43.5%); on vehicle thefts – 43 (21.5%).

As for reports of preparation and commission of certain other criminal offences and/or their perpetrators, the figures are lower due to differences in the structure of crime depending on the region and area where the community police officer works. Such criminal offences include organising the illegal transfer of persons across the state border, smuggling, poaching, illegal logging, illegal mining, electricity theft, etc. Such confidential reports usually come from people with whom a trusting relationship was established and an agreement reached to collect information necessary for community policing. These may include both ordinary citizens and persons on preventive registers; janitors, utility workers, sellers or owners of small shops, cafes, hairdressers, and other service workers.

In addition to using the services of confidants, community police officers themselves resort to covert methods of gathering information. Thus, 98 (49.0%) of the respondents have successful experience of covert surveillance in publicly accessible places. These are mostly ambushes to catch thieves, poachers, vandals, etc. Some of the police officers used special technical means for surveillance, and some deliberately created conditions favourable to committing crimes. One of the interviewees reported that when thefts of bicycles became more frequent in the community, they deliberately left their bike in a public place and watched it from a nearby civilian car. As a result, a man who had previously committed five similar criminal offences was detained. His accomplice was also detained later.

Among the police officers surveyed, 101 (50.5%) had successful experience of obtaining the necessary information by interviewing individuals, concealing the true purpose of the communication. This mostly took place either in the form of conversations on everyday topics or under the guise of interviews as part of other cases (real or fictitious). 72 (36.0%) of the interviewed officers indicated that they had to visit the homes of individual local residents under false pretences to verify the presence (absence) of certain signs of criminal activity, property obtained through criminal means or wanted persons.

The above-mentioned covert measures can be carried out by community police officers both personally and with the help of confidants, as persons unofficially engaged by a community police officer as covert informants can not only provide the necessary information proactively, but also perform targeted tasks of covertly collecting data on certain individuals and events. Under various pretexts, they interview those local residents who are likely to have information about the preparation and commission of criminal offences but are not guaranteed to share it with the police. This approach is successfully used by 117 (58.5%) of the interviewed community police officers.

Persons with whom a trusting relationship has been established on a voluntary basis may also perform other tasks of such officers. These include, among others:

- surveillance in publicly accessible places (in cases where the personal presence of a community police officer will not stop criminal activity, but will only contribute to deepening and improving its secrecy) (this practice was used by 93 (46.5%) of respondents, 40.5% consider it useful);
- conducting covert searches in a person's home or other property to detect property obtained by criminal means, signs of drug-related crimes, or wanted persons (39.5% of respondents used this practice, 33.0% considered it useful);
- introduction to small social groups that may cause problems in ensuring law and order in the community (this practice was used by 27.0% of respondents, all of whom consider it successful).

One of the interviewees reported that when the theft of metal fences at the local cemetery became more frequent, they, with the help of a group of minors (teenagers) whom they had engaged on a confidential basis, established visual surveillance of the place. The very next day, they received information that enabled them to identify, detain, and subsequently prosecute the perpetrators of the crimes. The illegality of these methods entails problems with the

organisation of work, funding, and security of confidential assistants to community police officers. Thus, the illegitimacy of such assistants makes it impossible for the state to allocate funds for their material incentives, provide them with personal protective equipment and warnings of danger.

Thus, the concept (ideology) of the institution of community police officer is comprised of the following: the purpose of existence (sustainable law and order in a particular community and safety of its residents); tasks (prevention of offences, their detection, and response to them); subjects (highly qualified professional police officers who are members of the community, act on its behalf in terms of performing these tasks and are vested by the state with all the necessary powers for this); their actions to perform the tasks (measures of prevention and detection of offences, as well as response to them, as provided for by law); principles (focus on the needs and problems of the community, constructive interaction with the population, legality, justice, respect for human rights and freedoms).

For the successful implementation and effective functioning of this concept, it is necessary to create an adequate human and material and technical base, as well as to give the community police officer all the necessary powers. These powers should include covert work, to the extent that it is natural for such an officer. First of all, it is the right to covertly engage local residents in confidential cooperation to provide them with information necessary for the prevention of criminal offences, detection, suppression, and investigation of crimes and criminal offences. Furthermore, a community police officer should be given the right to conduct covert surveillance of publicly accessible places (including using special technical means for surveillance); interview persons with their consent (concealing the true purpose of the interview); visit the homes of local residents with their consent (under false pretences) for the purpose of inspection. It would be logical to allow a community police officer to engage in these activities those community residents who are already in a confidential relationship with them.

Information obtained through covert means can be effectively used by a community police officer in conjunction with information from open sources to conduct criminal analysis. At the most basic level, criminal analysis can be conducted by the officer personally using graphical diagrams and other visualisation tools. If appropriate software is available, the effectiveness of criminal analysis by a community police officer will be much higher. Therefore, criminal analysis, among other things, should be attributed to the powers of a community police officer.

The above arguments in favour of statutory regulation of empowerment of community police officers by granting them the right to use certain covert methods of work require scientific discussion. The findings presented in this section are mainly based on the study of Ukrainian practice and a survey of Ukrainian community police officers. These findings need to be considered in the context of studies conducted in other countries on the content and scope of local police powers, and the legitimacy of their actions in the eyes of the community, specifically, in the case of exceeding their powers.

Discussion

In modern criminological science, much attention is paid to the relationship between trust in the police, the balance of fear of the police and crime with procedural justice, the effectiveness and efficiency of police work, and the density of their presence in the territory they serve (frequency of patrols, availability of police stations, accessibility of community police officers). For the most part, these studies do not address the scope and content of local police powers to detect, solve, and investigate crimes (but always touch on these issues). For example, J. Yesberg *et al.* (2023), based on the findings of their research on the London police, concluded that fairness in police actions is perhaps the main factor in building trust in the police. The trust of local residents in the police contributes to their more active involvement in interacting with local officers, which leads to an increase in their joint effectiveness in public order and crime reduction.

M.S. Mangai *et al.* (2023) investigate the work of community police officers in Johannesburg. They came to the unequivocal conclusion that trust is crucial in managing the exchange of crime prevention information. Local police officers will be unable to meet future crime challenges if a trust deficit persists. Yet such a deficit continues to exist in Johannesburg, despite the various methods and tools used by community police officers to engage local residents in crime prevention. Notably, the lack of trust of local residents makes it impossible for community policing officers to effectively use covert methods of work based on confidential cooperation with citizens, even if they have the legal authority to use these methods.

J. Ryland & B.D. Scher (2024) emphasised that in the United Kingdom, ordinary local officers of the London Metropolitan Police are forced to exceed their powers to detect, solve, and investigate drug crimes, which is a violation of the law and contrary to the principle of procedural justice. Such actions, due to the negative attitude of the public towards drug abuse, are positively perceived by the public and contribute to the growth of police authority and trust in the police.

Therefore, in cases where police overstepping their authority leads to effective crime prevention and is positively perceived by the community, it is

advisable to consider the issue of legislative expansion of these limits. Such an extension would turn socially useful (but unlawful) police actions into fully legitimate ones that are fully in line with the principle of procedural justice. This statement should also be extrapolated to the powers of community police officers, who should be allowed to use certain covert methods of work, including confidential cooperation and surveillance in publicly accessible places.

When studying the effects on trust in the police of local residents' assessment of fairness in the work of police officers, it should be borne in mind that such an assessment is formed under the influence of many factors. Admittedly, these include the factor of subjective experience, which was pointed out by M. Hecker (2023). However, it is not the only one. Not all residents of a particular territorial community have experience of interacting with police officers, based on which they can form an unequivocal opinion about the fairness of their actions. Instead, everyone has access to media and social media. These means of disseminating information, opinions, assessments, and views are available to everyone and can shape and manipulate public opinion.

The results of modern scientific research suggest that the way information is presented in the media can directly affect the formation of public opinion. Thus, F. Jaber (2025) investigated the influence on the formation of pro-Palestinian protests in 2024 through the forms of news presentation by such media as The Guardian and USA Today. The researcher concluded that media framing plays a crucial role in shaping public opinion and priorities, especially in the context of global and political issues. J. Schlessinger *et al.* (2025) exposed the facts of direct influence on public opinion by state-controlled media. S.M. del Pozo *et al.* (2025) established a link between the news sources used by people and their political beliefs. E. Marttila & A. Koivula (2025) investigated the impact of the media on public moral attitudes towards unvaccinated people. They concluded that the way the news is presented and the nature of the information in the news play a powerful role in shaping public opinion during health crises.

Often, external and internal enemies of a particular state use the media to destabilise the situation in the country by discrediting law enforcement agencies and provoking mass unrest to further change its political course (Shynkar, 2023). The task of each state is to prevent this from happening, and, moreover, to use the media to build trust in the police and promote cooperation with them, specifically with community police officers.

Media support of the police by the state is an essential factor in preventing the police from curtailing their proactive activities in certain areas due to elevated risks to the life and health of police officers. R.D. Heinzeroth (2024) called such processes "Depolicing in historically marginalised communities". Media support of community police officers by the state should be combined with the provision of all necessary powers, proper logistical and technological support. In the modern world, such an officer should be provided with innovative technologies. According to S. Egbert & E. Esposito (2024), the use of the latest advances in digital technology by local police allows for the successful use of precision policing methods in crime prevention without leading to gradual alienation from the community. For example, one of these technologies is police applications for face recognition. According to T.L. Johnson *et al.* (2024), such applications contribute to reducing serious crime without contributing to excessive policing or racial disparities in arrests for violent criminal offences. For a community police officer to make effective use of modern digital technologies, they should be provided with their personal automated office, including a vehicle-based office, as noted by C. Soares (2024). The options of such an office should include, among other things, software that will enable criminal analysis at the level necessary for the community police officer to perform crime prevention functions.

Researchers of local police activity have focused on differences in the conditions, organisation, and effectiveness of ensuring public order and combating offences in rural communities and cities. Thus, K. Eman *et al.* (2024), using the example of the Pomurje region in Slovenia, found that police activity depends on geographical criteria, specifically, urbanisation of the environment. The work of police in cities is often highly specialised compared to work in rural areas. Based on the findings of the study, the researchers concluded that about two-thirds of the urban population does not know the police officer assigned to their neighbourhood. As a result, cooperation between residents and the police in urban areas is worse than in rural areas and community policing in rural areas is worse than in urban areas. The same situation is typical for Ukraine.

Other conclusions were reached by K. Mulrooney *et al.* (2024), who studied the specific features of interaction and relations between the police and rural communities in England and Wales, Australia and France. The researchers noted that residents of these communities do not expect high quality and efficiency of police services, which is caused by a combination of socio-geographical, organisational, and personnel factors. These include a lack of staff and resources to serve rural communities located in large areas with difficult terrain, their remoteness from centres of concentration, and police officers' lack of understanding of local traditions and culture. All this makes interaction with the population in matters of law enforcement and crime prevention much more

challenging. At the same time, only to a certain extent can spatial problems be solved through technology-mediated communication. A. Millie *et al.* (2023) stated that in recent years in England there has been a steady trend towards the closure of local police stations due to austerity, inadequate logistics (specifically, unrepaired emergency premises), on the one hand, and, on the other hand, due to the lack of proper interaction and poor relations between the police and the community, whose representatives do not see the point in the existence of a local police station.

Thus, in some countries, the work of a local police officer in a rural community contributes to better interaction with the population, while in others it leads to poor communication and low levels of trust in the police and is gradually being phased out. Clearly, this depends to a large extent on the problems of ideological, media, financial, logistical, organisational, and personnel support for the institution of community police officers. These issues should be addressed at the national level, as they are an essential element of domestic policy and a component of the law enforcement function of the state. Their solution, among other things, should be based on the specific features of police work depending on the socio-geographical characteristics of the territory occupied by the community.

In this aspect, the issues of state regulation of the powers of a community police officer, which should be broader in rural areas, are also significant. In areas remote from the centres of concentration of management, such an officer constantly faces situations where they must act as a patrol officer, detective, investigator, operative, etc. Considering the lack of resources, this necessitates the use of a decentralised approach to rural policing, which was covered by O. Rantatalo *et al.* (2021).

In this regard, the institution of a community police officer should not rely on the state alone. A significant aspect of its work is its cooperation with local self-government bodies. As fairly noted by A. Zakharchenko *et al.* (2024), constructive interaction between local governments and the police is essential for maintaining law and order and ensuring community safety. Such interaction is one of the key principles of police work in modern conditions and a guarantee of mutual understanding and trust between the police and the public. The researchers aptly emphasise the lack of attention of researchers and practitioners to the issues of legal regulation of police interaction with local self-government bodies. They believe that the interaction of territorial police units with these bodies should be subject to detailed regulation.

In this regard, it is worth noting that excessive centralisation in the legal regulation of interaction between community police officers and local self-government bodies is inappropriate, as such regulation cannot accommodate the socio-geographical, cultural (subcultural), historical, and economic characteristics of each region. Furthermore, centralised legal regulation of these relations cannot factor in the attitude of residents of a particular territorial community to certain aspects of these relations.

Local self-government bodies are elected directly by the community and are empowered to make decisions and act on its behalf. They can also give more powers to local police officers and facilitate their work by using legal, organisational, economic, and logistical means. At the legislative level, the most significant general issues of interaction between the police and local self-government bodies are subject to regulation.

Personnel issues are of great significance for the proper functioning of the institution of community police officers. This applies not only to recruitment and training. R. Signori *et al.* (2023) fairly pointed out that a considerable problem in the functioning of the institution of community police officers is the periodic replacement of local officers. Such replacements can be caused by both certain organisational and purely personal factors. They often result in the police losing trust with community members and local authorities, losing contacts and relationships that have been built over the years. Newly appointed officers must start from nothing. They need a long time to study and understand the local socio-geographical, economic, and historical features, and to establish interaction with the community. The researchers have developed a special procedure for the transfer of powers, knowledge, skills, and contacts between the officers who are to replace each other. This issue is of particular relevance in the context of interaction between a community police officer and persons who provide information and support on a confidential basis. Such persons are likely (specifically, for reasons of their personal safety) not to assist the newly appointed officer, as they trusted only the police officer with whom they had worked for a long time. Therefore, to build a relationship of trust with useful informants and informal assistants, a transition period is required when the replacement officers work together.

Conclusions

The study found that the institution of a community police officer has become widespread in many countries and is an effective mechanism for ensuring public safety and combating crime. An analysis of international practices showed that the success of this institution depends primarily on a clearly defined goal, which is to ensure the safety of citizens through the constant presence and active interaction of the police with the population. The tasks of such officers

in different countries are comparable and mainly include prevention, prompt detection, and suppression of criminal offences.

At the same time, the analysis of regulations and practice of their application in Ukraine revealed certain contradictions and gaps that prevent the complete fulfilment of the potential of community police officers. Specifically, a survey of 200 police officers from different regions of Ukraine showed that most of them (78.5%) actively use covert methods of work, including confidential involvement of local residents in cooperation in combating criminal offences. 94.0% of respondents consider this approach to be effective, as it enables them to obtain information that citizens are not ready to provide officially, due to fear of possible consequences or for personal reasons. The use of covert methods by the police, such as covert surveillance, covert interviews, or unofficial visits to citizens' homes, has also proven to be effective. About half of the police officers surveyed have positive experience with such methods, although these actions are not formally provided for in the current legislation, which creates potential risks to the legitimacy of the police.

Thus, to fully utilise the potential of a community police officer, there is a need to ensure legal clarity in defining the tasks and scope of their powers. Of particular significance is the legitimisation of the already widespread and effective practices of covert activities of officers within territorial communities. At the same time, it is crucial to ensure an adequate level of logistical and personnel support, which will help to increase public trust in the police and the effectiveness of its interaction with the public in combating crime. Furthermore, media support is an important component of ensuring the effective functioning of the institution of community police officers. The creation of a positive image of community police officers by the media and opinion leaders will help to intensify their interaction with local residents, their active involvement in both open assistance in combating crime and covert cooperation. Further research in this area should focus on improving the legal regulation of community police officers in Ukraine, specifically, on defining clear boundaries of their powers, legitimising effective covert methods of work, and improving mechanisms of interaction with the public.

Acknowledgements

The authors of this study would like to express special gratitude to the Defence Forces of Ukraine for the opportunity to conduct this research. The authors would also like to acknowledge the community police officers who, despite their busy schedules and heavy workloads, found the opportunity to take part in the survey and interviews.

Conflict of Interest

None.

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Концептуальні засади та практичні аспекти участі поліцейського офіцера громади в протидії злочинності

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■ **Анотація.** Діяльність поліцейського офіцера громади відбувається в умовах майже невідривного фізичного перебування на її території та постійних контактів з місцевими мешканцями. Це зумовлює його значні можливості зі своєчасного виявлення та попередження кримінальних правопорушень. Проте через брак повноважень не завжди ці можливості можуть бути реалізовані. Мета дослідження полягала у встановленні доцільності наділення поліцейського офіцера громади повноваженнями з ініціативного виявлення кримінальних правопорушень, а також у визначенні переліку та змісту цих повноважень. Для досягнення мети було використано загальнонаукові (індуктивний, дедуктивний, аналіз, синтез, аналогія, узагальнення, моделювання) та спеціальні (порівняльно-правовий, системно-структурний та логіко-юридичний аналіз) методи. Вивчено юридичні підстави виявлення, розслідування та розкриття кримінально караних деліктів, попередження їх учинення працівниками правоохоронних органів, а також застосування до них заходів адміністративної та кримінальної відповідальності. Здійснено перевірку отриманих результатів за допомогою методу експертних оцінок. Шляхом узагальнення досвіду різних країн сформульовано концепцію (ідеологію) інституту поліцейського офіцера громади – через визначення: мети його функціонування; завдань; суб'єктів і принципів. Успішна реалізація цієї концепції потребує не лише надання необхідних повноважень поліцейському офіцеру громади, а й якісного кадрового та матеріально-технічного забезпечення таких суб'єктів. Концептуально важливо уповноважити їх негласно залучати місцевих мешканців до конфіденційного співробітництва у справі протидії кримінальним правопорушенням (виявлення, припинення, розкриття, розслідування, запобігання), а також проводити в певних випадках спостереження, опитування, відвідування житла. Практична цінність цієї роботи полягає в можливості використання її результатів для вдосконалення нормативно-правових актів, що регламентують роботу поліції з протидії злочинності в частині врегулювання повноважень поліцейського офіцера громади

■ **Ключові слова:** правоохоронець; взаємодія; виявлення; розслідування; запобігання; громадськість; кримінальний аналіз

UDC 346.7
DOI: 10.63341/naia-herald/1.2025.34

Interoperability of CBDCs: Optimising Cross-Border Settlements through the lens of national and international regulation

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■ **Abstract.** The study was dedicated to analysing various cross-border payment system models in the era of Central Bank Digital Currencies, including the IMF's XC Model, BIS's Universal Ledger, and SWIFT interoperability, with a focus on legislative regulation. The research was based on the comparative approach and analytical method used to study the legal framework in the field of digital currencies. It was concluded that, IMF's XC Model appears to be the most suitable option for Ukraine. One of the key advantages of this model is the implementation of modern technologies, such as blockchain and smart contracts, which ensure high efficiency and security of financial transactions. Smart contracts reduce the need for intermediaries, accelerating processes and reducing transaction costs. Blockchain, in turn, guarantees transparency of each transaction, significantly increasing trust in the system. A critical issue is the protection of personal data, which is vital for national security amid growing cyber threats. The use of cryptographic technologies within the framework of the IMF's XC Model ensures high levels of data protection and the anonymity of financial transactions. To implement this model in Ukraine, changes are needed in the legislative sphere. First and foremost, it is necessary to define the legal status of smart contracts, integrating them into the existing legal system as tools for fulfilling obligations in financial and legal relationships. Additionally, clear requirements for security standards should be established, and legal frameworks for using cryptographic technologies in the financial sector should be developed. This will ensure a high level of data protection, including personal data, and prevent breaches of confidentiality. Collectively, these measures will promote the development of digital infrastructure, enhance economic resilience, and strengthen Ukraine's position in the global economy

■ **Keywords**: payment systems; national security; blockchain; smart contracts; legal regulation; digital currency

■ Introduction

Central Bank Digital Currencies (CBDCs) represent a new category of financial instruments with the potential to significantly transform the international financial system and influence monetary hegemony. They can enhance the efficiency of financial transactions, reduce costs, and improve access to financial services. However, the impact of CBDCs on global financial markets and relations requires thorough investigation. According to a report by the U.S. Congressional Research Service, global economic and geopolitical shifts may lead to a reassessment of the dollar's role as a reserve currency and an increased adoption of alternative currencies, including CBDCs. This is particularly relevant in the context of

■ **Suggested Citation:**
Kamyshanskyi, V. (2025). Interoperability of CBDCs: Optimising Cross-Border Settlements through the lens of national and international regulation. *Scientific Journal of the National Academy of Internal Affairs,* 30(1), 34-44. doi: 10.63341/naia-herald/1.2025.34.
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■ Received: 29.11.2024; Revised: 20.02.2025; Accepted: 25.03.2025

contemporary financial sanctions, which drive the search for new currency alternatives (Congressional Research Service, 2022).

As of June 1, 2024, 134 countries representing over 98% of global GDP are working towards CBDC implementation. Three countries have already deployed CBDCs in practice, while 36, including Ukraine, are conducting pilot projects (Atlantic Council, n.d.). The motivations behind CBDC development vary: while some countries aim to enhance domestic financial inclusion and payment system efficiency, others view CBDCs as a means to counteract the dominance of the U.S. dollar in international trade and financial settlements. Sanctions imposed on Russia, China, and Iran have been a significant catalyst, pushing these nations to explore alternatives to the dollar, which, in turn, may influence their participation in global financial initiatives. For instance, the cross-border mBridge project, connecting China, Thailand, the UAE, and Hong Kong, is expected to expand to 11 additional countries in 2025. BRICS countries, including China and Russia, are actively exploring CBDCs as a tool to facilitate trade settlements outside the SWIFT network and circumvent Western-imposed restrictions (Prokopenko, 2024). However, while CBDC development is progressing rapidly, the implementation of this technology is accompanied by significant legal and regulatory challenges. A detailed analysis of legal aspects, particularly issues of data privacy and security, is crucial to ensure that new currencies comply with existing legislation. Progress in CBDC adoption may face legal barriers at both domestic and international levels, especially within the EU.

The legal challenges surrounding the circulation of virtual assets, including CBDCs, have intensified in 2020s. Economic and legal research, along with international experience, has contributed to the development of scientifically grounded and innovative solutions. Implementing these solutions at the legislative level could drive positive transformations in the ongoing digitalisation of the payments market. The study of the legal aspects of CBDC implementation is becoming increasingly important, particularly in the context of legal certainty and compliance with existing regulatory standards. In this regard, considerable attention has been paid to the works of authors such as K. Vozniakovska *et al.* (2021), who examined the legal challenges of digital assets, as well as the work of T. Hudima (2020) and E. Avgouleas & W. Blair (2024), which explores the impact of financial innovations on regulatory approaches. The international dimension of CBDC implementation also attracts significant attention. D. Niepelt (2018) studied the cross-border movement of capital in the digital environment, while J. Fernández-Villaverde *et al.* (2020) analysed potential risks of currency substitution and monetary instability. Among more recent studies, the work of A. Veneris *et al.* (2021) stands out, as it assesses the potential for reducing costs associated with international transactions through CBDCs. At the same time, as noted by E. Eren *et al.* (2022), the introduction of digital currencies may pose additional risks to financial stability due to capital flow volatility.

The purpose of the study was to determine the optimal model of cross-border payments, in particular the IMF's XC model, for implementation in Ukraine, taking into account the specifics of national legislation and challenges related to the use of digital currencies by central banks. The objectives of this Article were:

1) to assess the prospects for qualitative changes related to the implementation of CBDCs in Ukraine, taking into account both national and international legislation (including EU laws), while addressing issues of data privacy, transaction security, and legal compliance;

2) to identify the most suitable model of CBDC interoperability to optimize cross-border settlements. This area remains insufficiently explored in academic literature and presents a significant opportunity for further investigation.

Literature Review

It is worth noting that a substantial body of current research is dedicated to examining these aspects. Among the wealth of valuable works, special attention should be given to the dissertation by A.C. Haskell (2024). The author examines how CBDCs can enhance cross-border payments, making them faster, cheaper, and more transparent, provided central banks account for key design aspects such as architecture and interoperability. The research introduces novel theoretical models and tools to assist central banks in the development and implementation of CBDCs. The analysis of fundamental aspects of CBDCs includes questions regarding the feasibility of their implementation. For instance, F. Allen *et al.* (2022), J. Flemming & R. Judson (2024) explore the economic foundations of CBDCs, while T. Keister & D. Sanches (2021) focus on potential consequences for the banking sector and lending mechanisms. Additionally, Z. Li (2024) examines the relationship between CBDCs and the transmission of monetary policy, particularly its impact on liquidity and financial inclusion. The technological aspect of CBDCs remains a crucial area of research as well. For example, A.C. Haskell (2024) examined the interoperability of digital currencies and their compliance with data protection standards. In this context, T. Hudima *et al.* (2023) analyse different CBDC models, while H. Wang & S. Gao (2024) explore technical solutions aimed at ensuring cross-border compatibility of digital currencies. Another area of research focuses on

assessing the macroeconomic impact of CBDCs. In this aspect, O. Sharov (2022) and S. Hrytsai (2022) investigated the transformation of national payment systems due to the introduction of digital currencies. Meanwhile, M. Brunnermeier *et al.* (2019) emphasise potential changes in the international monetary system, which would require coordination of regulatory policies across different countries.

Researchers caution against excessive optimism about the advantages of CBDCs due to design limitations and their inability to simultaneously meet conflicting objectives (privacy, accessibility, improved monetary policy, payment optimisation, etc.) (Ozili, 2023). In this context, the recommendations of M. Hamdy (2023) on how the G20 can support a global wholesale CBDC architecture stand out, emphasising the significant benefits CBDCs could bring to cross-border payments. Equally valuable is the Article by A. Reslow *et al.* (2024), which focuses on the development of retail central bank digital currency systems. The authors identify critical model and policy aspects required to ensure compatibility with cross-border payments. They analyse ongoing pilot projects and research to determine which issues should be addressed when designing retail CBDCs targeted at households and non-financial firms. While the focus is on retail CBDCs, some of the issues discussed are also relevant to wholesale CBDCs and other forms of digital money. Overall, technical interoperability of CBDCs is achievable; however, further work is required on developing standards, interfaces, and legal, regulatory, and governance aspects (Bech *et al.*, 2022; Themistocleous *et al.*, 2023). Additionally, as stated F. Syarifuddin (2023), to realise the benefits of such currencies, challenges related to high investment costs and technological issues – such as the digital divide and power outages – must be addressed.

Materials and Methods

This is research based on an analytical method applied to examine the legal framework of Ukraine in the field of digital currency, as well as to compare regulatory approaches and intergovernmental cooperation in the context of central bank digital currencies (CBDCs). The legislation of Ukraine is analysed with a focus on the Law of Ukraine No. 1591-IX "On Payment Services" dated June 30, 2021[1], which enabled the identification of key aspects of the regulatory definition of digital money by the National Bank of Ukraine and its distinction from electronic money. For the research of international experiences related to CBDC interoperability, a comparative legal approach was employed. International interaction models, including the XC Interoperability Model by the International Monetary Fund (2023), the BIS Unified Ledger of the Bank for International Settlements (BIS, 2023), and the SWIFT project (Swift, 2022) aimed at optimising cross-border payments, were analysed.

Special attention was given to a systemic approach, allowing for a comprehensive examination of the architectural, technological, and legal aspects of each model. Within this approach, elements such as settlement mechanisms, the degree of decentralisation, integration of smart contracts, data protection, and risk management were explored. Furthermore, the role of the National Bank of Ukraine in developing pilot projects (NBU, 2019; 2022) for the digital hryvnia was studied through the analysis of the regulator's current initiatives and proposals. Reports published by BIS (2022a; 2022b; 2023), SWIFT (2022), and other international organisations were utilised, providing an assessment of their practical significance and applicability to Ukraine.

The research also employed a predictive method to evaluate the potential use of the digital hryvnia in cross-border transactions and its integration into global CBDC platforms. This approach allowed for the identification of promising areas for improving the legal framework and developing strategies to enhance Ukraine's integration into the international digital economy. The research adheres to the principles of objectivity and consideration of the international context, ensuring a holistic and scientifically grounded examination of the topic under review.

Results and Discussion

The general principles governing the issuance and use of digital money by the National Bank of Ukraine (NBU), as well as their distinction from electronic money, were officially established by the Law of Ukraine "On Payment Services"[2]. This law is a result of the implementation of European legislation[3]. According to Clause 96 of Article 1 of this law, "digital money of the National Bank of Ukraine represents an electronic form of the monetary unit of Ukraine, issued by the National Bank of Ukraine". This contrasts with units of value stored electronically and issued by electronic money issuers to facilitate payment operations (including prepaid multipurpose payment cards), which are accepted as a means of payment by entities other than their issuers and constitute a monetary obligation of the respective issuer of electronic

[1] Law of Ukraine No. 1591-IX "On Payment Services". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1591-20/ed20210630#Text.
[2] Ibidem, 2021.
[3] Directive of European Parliament and of the Council No. 2015/2366 "On Payment Services in the Internal Market, Amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and Repealing Directive 2007/64/EC". (2015, December). Retrieved from https://eur-lex.europa.eu/eli/dir/2015/2366/oj/eng.

money (Clause 14, Article 1 of the Law of Ukraine "On Payment Services"). At the same time, it is important to note that the Law "On Payment Services"[1] adopts a somewhat declarative approach to regulating the specific features of issuing and using digital currency. Notably, the law states that such currency may be issued by the NBU exclusively in non-cash form and can be utilised by both business entities and ordinary citizens. However, the procedures for issuing and storing digital money, as well as the specifics of conducting payment operations using digital money, are to be determined by regulatory acts of the National Bank of Ukraine (Article 62 of the Law of Ukraine "On Payment Services"). Despite the two years since the adoption and enactment of the Law of Ukraine "On Payment Services", the regulator (the National Bank of Ukraine) has been progressing rather slowly in implementing the aforementioned provisions. Specifically, the National Bank of Ukraine has postponed the next pilot project for the issuance of the e-hryvnia to 2025 (Epravda, 2024).

NBU is considering and exploring potential use cases for the e-hryvnia, which will influence its design and key features (NBU, 2022). One such use case is the e-hryvnia for enabling cross-border payments. In this context, within the framework of integration into the global digital payment system, interoperability between CBDCs of different countries is a critical aspect that requires consideration and demands international cooperation. As noted V.K. Mamutov (2011), "integration is inherently an international process, capable of development only when, in one way or another, the interests of all objectively interdependent participants are taken into account".

It is worth noting that the BIS and the G20 have already worked on identifying potential options for CBDC interoperability in cross-border payments, each offering different potential advantages (GOV. UK, 2021). In July 2022, three models were proposed: compatibility (separate CBDC systems adopting common standards), interlinking (establishing a set of contractual agreements, technical connections, standards, and operational components between CBDC systems), and a single system (a unified technical infrastructure hosting multiple CBDCs). These models involve varying levels of operational challenges and costs while considering the differing levels of maturity of CBDC projects (BIS, 2022a). However, a single universal approach has not yet been established.

Instead, growing awareness among central banks and international financial institutions of the risks associated with uneven development of digital currencies (such as further financial system fragmentation, deepening of the digital divide, and the creation of systemic risks) has led to the development of new models (platforms) for cross-border CBDC operations. The primary focus of such platforms is to safeguard the monetary sovereignty of each jurisdiction (Auer *et al.*, 2021). Among the key examples of such platforms is the IMF's XC Interoperability Model, an innovative approach to optimising cross-border payments inspired by CBDC projects such as Mbridge (Ledger Insights, 2022a), Project Inthanon-LionRock (Ledger Insights, 2021), and others. This model envisions a global centralised ledger that connects commercial banks, payment systems, and central banks to streamline operations. It features a three-tiered architecture: a settlement layer serving as the primary ledger, a programming layer for executing smart contracts, and an information layer dedicated to protecting personal data, ensuring compliance, and enabling currency controls when necessary.

The primary goal of the XC model is to reduce costs and accelerate settlement processes. Instead of CBDCs, the model proposes the use of conditional deposit certificates (a unified instrument of the platform), which financial institutions can convert into central bank reserves (Adrian & Griffoli, 2023). This structure eliminates typical counterparty risks (credit risk – counterparty insolvency, liquidity risk – lack of funds for settlement, settlement risk – delays or failures in payments, concentration risk – overreliance on specific financial institutions, operational risk - failures in payment systems, legal risk – uncertainty in the enforcement of obligations). Unlike SWIFT, which is purely a messaging system, the XC model integrates messaging with the actual movement of funds, aligning with most digital currency projects.

The model envisions using a blockchain-like foundation to reduce the need for intermediaries by automating most functions through smart contracts. Encryption and credentials will play a key role. XC participants, such as banks and payment service providers, will receive anonymous credentials from credential providers. This will enable participant identities to be verified outside the ledger, while any restrictions on their credentials, such as transaction limits, can be checked on the platform (Ledger Insights, 2022b). Confidentiality also extends to the end client making a payment. Instead of sharing KYC (know your customer) data with foreign counterparties whose reliability is uncertain, the client's identity can be checked against sanctions lists outside the ledger, and a cryptographic proof can be retained as confirmation of the verification. However, this approach relies on external data and third parties conducting the verification.

[1] Law of Ukraine No. 1591-IX "On Payment Services". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1591-20/ed20210630#Text.

XC platforms enable the creation of a multi-currency system without mandating a single or new settlement asset. Participants can freely choose which currencies to use on the platform, within the constraints of central bank reserves. Notably, XC platforms do not require countries to adopt CBDCs; however, their design and functionality are influenced by concepts and technologies developed around certain CBDCs. Several central banks, including those in Brazil, France, Italy, Singapore, and the United Kingdom, have already begun experimenting in this area. This concept has also received support from Agustin Carstens, General Manager of the Bank for International Settlements (Carstens, 2023).

However, for the model to function effectively, it will require a compatible legal and regulatory framework to manage risks efficiently and ensure compliance across various jurisdictions (Atlantic Council, 2023). Firstly, the harmonisation of international legal standards is critically important. Countries participating in the XC platform must adopt unified norms for cross-border payment systems. This includes recognising escrow certificates as legally enforceable instruments and ensuring the enforceability of smart contracts in compliance with relevant national laws. Secondly, clear regulatory oversight of credential providers, which play a pivotal role in identity verification, is essential. These providers must be licensed and adhere to strict data protection laws to prevent misuse or leakage of sensitive information. Furthermore, countries should adapt their legal frameworks to recognize cryptographic proofs generated by XC platforms as valid evidence in disputes or compliance investigations. This step will eliminate uncertainty for participants relying on automated processes within the platform. Moreover, a compliance framework for sanction enforcement should be established, requiring collaboration with international bodies such as the Financial Action Task Force (FATF). Aligning XC platform operations with global standards on anti-money laundering (AML) and combating the financing of terrorism (CFT) is vital (FATF, n.d.). Additionally, consumer protection measures should be introduced to ensure transparency regarding fees, processing times, and dispute resolution mechanisms, thereby fostering trust among users.

For Ukraine, the adoption and integration of the XC model present unique opportunities and challenges. Aligning with European standards under the EU Association Agreement[1], Ukraine should consider incorporating XC platform mechanisms into its digital payments legislation. Legal recognition of escrow certificates and ensuring interoperability with EU systems are critical steps in this process. In addition, the Law of Ukraine "On Payment Services"[2]) requires updates to accommodate XC platform operations. This includes provisions for regulating credential providers and ensuring the admissibility of cryptographic proofs in Ukrainian courts. Given the reliance on external data verification, Ukraine must ensure compliance with its Law of Ukraine "On Personal Data Protection"[3]) while aligning with the EU's General Data Protection Regulation (GDPR)[4]. For example, Article 29 of the Law of Ukraine "On Personal Data Protection"[5] should be expanded to clarify the conditions for cross-border data transfers, including introducing requirements for the use of Standard Contractual Clauses (European Commission, 2021) in accordance with Article 46 of the GDPR, and ensuring compliance with encryption and pseudonymisation requirements as outlined in Article 32 of the GDPR, as well as the general conditions set forth in Article 44 of the GDPR. These measures are crucial for maintaining trust in the platform and safeguarding data privacy.

The National Bank of Ukraine (NBU) could also launch pilot projects to test XC-like functionalities, such as multi-currency settlement layers or smart contract-based automation. Examples of such operational systems include: Jasper-Ubin (Canada – Singapore) (MAS, 2019) and mBridge (BIS, 2022b). Furthermore, Ukraine should actively participate in international discussions on cross-border payment innovations, leveraging insights from initiatives led by the IMF, BIS, and regional organisations.

The BIS Unified Ledger Interoperability Model proposes the concept of a global unified ledger that supports the issuance and operation of both CBDCs and tokenised assets (BIS, 2023). The primary goal of this model is to eliminate financial system fragmentation by enabling safer transactions and atomic settlements within a transparent framework. However, the BIS Unified Ledger approach significantly differs from the XC model as it relies on the use of centralised APIs (Application Programming Interfaces) rather than blockchain-based solutions. The centralised nature of the BIS Unified Ledger implies that transaction processing and verification are carried out by authorised entities, such as central banks or designated financial institutions. At the same time,

[1] Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part. (2014, March). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.
[2] Law of Ukraine No. 1591-IX "On Payment Services". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1591-20/ed20210630#Text.
[3] Law of Ukraine No. 2297-VI "On Personal Data Protection". (2010, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17.
[4] General Data Protection Regulation (GDPR). (2018, May). Retrieved from https://gdpr-info.eu/.
[5] Law of Ukraine No. 2297-VI "On Personal Data Protection". (2010, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17.

the model allows central bank money to circulate on a platform that is neither owned nor operated by the central bank itself, which introduces certain risks. This raises legal concerns related to the control and security of funds, especially if the platform fails to meet strict regulatory standards. For example, in the European Union (Article 128 of Treaty on the Functioning of the European Union[1]) and the United States[2], central banks are the sole authorities for currency issuance, and involving private entities in such activities might violate these laws, potentially leading to constitutional or statutory challenges. Additionally, jurisdictional issues may arise in cases of fraud or disputes, especially if the platform operates across multiple jurisdictions, complicating the determination of which legal system holds authority. This could undermine accountability, as private platforms may not be subject to the same rigorous regulatory scrutiny as traditional financial institutions, increasing the risk of money laundering or financial crimes.

The BIS Unified Ledger model is already in the pilot testing phase for wholesale CBDCs, particularly in South Korea (BIS, 2023). From a legal perspective, the BIS Unified Ledger model necessitates the precise allocation of responsibilities among participants, including data control, transaction verification, and operational security. The requirement for centralised transaction verification also raises concerns about the risks of power concentration and potential misuse of authority. To ensure the platform's functionality, new regulatory frameworks will be needed, including mechanisms to oversee interactions with private platform operators. Similar regulatory mechanisms can be drawn from the EU Digital Operational Resilience Act[3], which sets requirements for ICT risk management in financial entities, and the Markets in Crypto-Assets Regulation[4], which establishes oversight mechanisms for crypto-asset service providers. These frameworks provide a foundation for ensuring security, accountability, and compliance in digital financial infrastructures.

Furthermore, unlike the XC model, which offers a flexible architecture tailored to the interests of participants and employs a decentralised approach, the BIS Unified Ledger model is less adaptable to multi-layered integration within international and national financial systems. For Ukraine, which is in the process of aligning with European legislation, the XC model presents a more suitable option. Its decentralised structure better aligns with EU requirements, including compliance with GDPR[5] provisions – particularly data minimisation (Article 5(1)(c)) and the right to data portability (Article 20). By limiting centralised control over personal data and enhancing interoperability across jurisdictions, the XC model ensures greater user autonomy and facilitates compliance with cross-border data transfer regulations within the EU. While the BIS Unified Ledger model offers advantages in terms of transparency and faster settlements, it is less suitable for Ukraine compared to the XC model. The centralised approach of BIS may conflict with objectives related to data protection, digital asset management, and integration with European standards.

Another interoperability model is SWIFT's cross-border project. Leveraging its central role in global financial messaging, SWIFT's innovation center has introduced a model aimed at enhancing the existing cross-border payment infrastructure, making it faster, more transparent, and cost-efficient. This model is currently undergoing testing. It enables the seamless connection of separate domestic CBDC networks, allowing them to interact and transact while leveraging SWIFT's existing infrastructure and security protocols. As the project progresses beyond the innovation center, significant operational changes will be needed to scale it across the entire SWIFT ecosystem (Swift, 2022).

In September 2023, SWIFT announced that three central banks, including Hong Kong Monetary Authority, the National Bank of Kazakhstan, and one unnamed institution, would join the next beta phase of its CBDC interoperability project. Initially launched in March 2023 with over 18 participants, including MAS and the Bank of France, the initiative has since grown to encompass more than 30 organizations and has processed over 5,000 transactions within a twelve-week period. This solution capitalizes on SWIFT's global reach and existing network effects among financial institutions, allowing countries to maintain their domestic CBDC infrastructure while ensuring seamless global connectivity (Swift, 2023).

The choice of the "best" digital currency model depends on the specific needs and priorities of a country or region. Each of the models presented –

[1] Consolidated version of the Treaty on the Functioning of the European Union. (2012, October). Retrived from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT.
[2] The Federal Reserve Act. (1913, December). Retrieved from https://www.federalreserve.gov/aboutthefed/fract.htm.
[3] Regulation of the European Parliament and of the Council No. 2022/2554 "On Digital Operational Resilience for the Financial Sector and Amending Regulations (EC) No. 1060/2009, (EU) No. 648/2012, (EU) No. 600/2014, (EU) No. 909/2014 and (EU) 2016/1011". (2022, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2554&qid=1738308404310.
[4] Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and Amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937". (2023, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2023/1114/oj/eng.
[5] General Data Protection Regulation (GDPR). (2018, May). Retrieved from https://gdpr-info.eu/.

IMF's XC Model, BIS's Universal Ledger, and SWIFT's new cross-border project – has its own strengths and weaknesses (Kumar & Chhangani, 2024). SWIFT model is best viewed as a linking chain between various central banks, with SWIFT positioned at its core (Swift, 2022). For Ukraine, the use of the SWIFT model appears to be an appealing solution, given the need to ensure global compatibility and accelerate cross-border payments. However, in the context of European integration and the necessity to adapt the national financial system to EU standards, the XC model might be more preferable, as it allows central banks to retain greater control over internal processes while also ensuring interoperability at the international level. Thus, the choice of model for Ukraine depends on the priorities: if the focus is on the speed of implementation and minimal changes to the existing infrastructure, the SWIFT model may be useful. At the same time, for a long-term strategy focused on innovation and compliance with European standards, the XC model or a hybrid approach could be a more suitable option.

As W. Bossu *et al.* (2020) point out, most current central bank laws do not provide clear mandates for the issuance of digital currencies, which could lead to significant legal and financial risks. However, analysis of these claims leads to the conclusion that such limitations are not universal across all jurisdictions. In certain cases, particularly within the European Union, there is active consideration of adapting legal frameworks to incorporate digital currencies into existing financial systems. Nevertheless, as emphasised in the study by A.S. Haskell (2024), this creates challenges in managing new digital assets and ensuring their compliance with traditional regulations. Therefore, the issue of legally defining the role of central banks in the creation of CBDCs requires further research, which is necessary to minimize the legal risks associated with their issuance.

Regarding the research presented in the Bank for International Settlements (Carstens & Nilekani, 2024) Working Paper, the authors highlight the importance of creating unified registries for digital currencies. They emphasise the need to develop new mechanisms that would allow central banks to manage tokenised forms of money in accordance with unified standards. However, the analysis presented above demonstrates a different picture, as existing legislative and regulatory systems, particularly in developing countries, have much less capacity for the rapid adaptation of such standards. This is also confirmed by the findings of researchers, including K. Vozniakovska *et al.* (2021), who underline that legal challenges arise due to the lack of relevant legislative acts regulating digital assets within states.

The reason for different interpretations may lie in the fact that researchers base their conclusions on different assumptions about the pace of financial technology development and the degree of readiness of states for innovation. For example, research by F. Allen *et al.* (2022) indicates a positive economic effect of digital currencies; however, it must be noted that such changes may have an ambiguous impact on the banking sector, as pointed out by T. Keister & D. Sanches (2021). They warn about the risk of destabilizing the financial system due to the displacement of traditional deposits and the growing dependence on digital assets.

The conclusions drawn by the researchers are entirely appropriate, as they reflect the complexity and multifaceted nature of the process of implementing CBDCs in various regions. Different approaches to this process can be complementary, but it is essential that a global consensus is reached on the fundamental principles of regulation and ensuring interoperability of digital currencies. Overall, the results of research confirm that despite the obvious benefits of using CBDCs, there are numerous legal, economic, and technical challenges that require thorough study and resolution. This includes, in particular, issues related to legal status, interoperability, and economic impact on national economies, which necessitate further developments in this area.

Conclusions

The conducted analysis allows to conclude that the IMF's XC Model offers a practical and promising approach to enhancing cross-border payments by reducing transaction costs and settlement times. Its compatibility with existing systems, requiring minimal technological adjustments, positions it as an optimal choice for countries with substantial international trade volumes. Moreover, the model enables central banks to focus on domestic use cases before transitioning to broader cross-border integration. However, its reliance on a harmonised legal and regulatory framework across jurisdictions remains a notable challenge, and its largely theoretical nature underscores the need for comprehensive practical testing.

The BIS Universal Ledger model, while innovative in supporting tokenised assets and demonstrating viability through pilot projects, faces inherent challenges due to its centralised nature. Concerns regarding the security and control of central bank funds arise, particularly when central bank money circulates on platforms not managed by the central bank itself. This situation risks losing monetary policy control, increasing the potential for misuse of funds or financial fraud. Therefore, such platforms require robust regulatory oversight and protection to mitigate these risks effectively. Similarly, SWIFT's cross-border payment project leverages its extensive global infrastructure, reducing implementation costs and fostering global trust. However, its reliance on

centralised infrastructure creates dependency on SWIFT, which may undermine the autonomy of central banks in participating countries.

All analysed models share a common goal of reducing costs, enhancing efficiency, and improving the security of cross-border transactions. However, governance remains a critical issue across these models. Establishing consensus on a global system operator is a challenging task, given geopolitical differences. Many countries exploring CBDCs hesitate to entrust existing global institutions with leadership roles or specific technological models. Conversely, fragmented development of digital currencies risks further financial system disintegration, deepening the digital divide, and introducing systemic risks. This fragmentation undermines the core objective of digital currencies, which is to enhance the efficiency of the existing financial system.

For Ukraine, the IMF's XC Model appears to be the most suitable option due to several key advantages. One of its primary benefits is the significant financial autonomy it provides. Unlike models that rely on a single settlement asset, the XC Model allows for flexibility in currency selection, which is crucial for a country seeking to minimize currency risks and avoid dependence on a single currency. This flexibility is particularly important given the instability of Ukraine's financial markets. Another essential advantage lies in the technological efficiency and security offered by the XC Model. The use of blockchain and smart contracts streamlines transactions by reducing the role of intermediaries, thereby accelerating processes and lowering operational costs. At the same time, blockchain ensures full transparency of each transaction, which fosters trust in the system. Additionally, the model addresses growing concerns over data protection and cyber threats. By incorporating cryptographic technologies, it ensures a high level of security and anonymity in financial operations. This is especially critical for Ukraine, where reliable mechanisms for protecting sensitive financial data are needed to prevent breaches and fraud. However, to fully implement the XC Model, Ukraine will need to undertake comprehensive legislative changes. This includes recognising the legal status of smart contracts and integrating them into the legal framework as enforceable tools in financial and legal transactions. The promising directions for further research include a detailed analysis of the legal aspects of implementing the IMF's XC Model in Ukraine, particularly regarding the legal status of smart contracts and their integration into the national legal system, as well as the study of mechanisms for ensuring security and regulatory control in the context of cross-border use of CBDCs.

Acknowledgements

The author of this research expresses deep gratitude to the researchers whose foundational work has paved the way for further advancements in the field of CBDC. Special appreciation is extended to Doctor of Law Tetiana Hudima, for providing invaluable guidance and setting a strategic direction for scientific inquiry.

Conflict of Interest

The author of this research declares no conflict of interest.

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Інтероперабельність CBDC: оптимізація транскордонних розрахунків крізь призму національного та міжнародного регулювання

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■ **Анотація.** Дослідження було присвячено аналізу різних моделей транскордонних платіжних систем в епоху цифрових валют центральних банків, зокрема моделей ХС Міжнародного валютного фонду, Universal Ledger BIS та інтероперабельності SWIFT, із фокусом на нормативно-правовому регулюванні. Вивчення теми ґрунтувалося на використанні порівняльного підходу й аналітичного методу, який було використано для вивчення правової бази у сфері цифрових валют. Сформульовано висновок, що модель ХС Міжнародного валютного фонду є найприйнятнішим варіантом для України. Однією з ключових переваг цієї моделі є впровадження сучасних технологій, таких як блокчейн і смартконтракти, що забезпечують високу ефективність та безпеку фінансових операцій. Смартконтракти знижують потребу в посередниках, що пришвидшує процеси та скорочує витрати на обробку фінансових операцій. Блокчейн, зі свого боку, гарантує прозорість кожної транзакції, що значно підвищує довіру до системи. Однією з ключових проблем є захист персональних даних, що є критично важливим для національної безпеки в умовах посилення кіберзагроз. Використання криптографічних технологій у межах моделі ХС Міжнародного валютного фонду забезпечує високий рівень захисту даних й анонімність фінансових операцій. Для впровадження цієї моделі в Україні необхідні суттєві зміни в законодавчій сфері. Передусім слід визначити юридичний статус смартконтрактів, інтегруючи їх у чинну правову систему як інструмент виконання зобов'язань у фінансових і правових відносинах. Поза тим, необхідно встановити чіткі вимоги до стандартів безпеки, а також розробити правові межі для використання криптографічних технологій у фінансовому секторі. Це забезпечить високий рівень захисту даних, зокрема персональні дані, і запобігатиме порушенню конфіденційності. У сукупності ці заходи забезпечать розвиток цифрової інфраструктури, підвищать економічну стійкість та зміцнять позиції України в глобальній економіці

■ **Ключові слова:** платіжні системи; національна безпека; блокчейн; смартконтракти; правове регулювання; цифрова валюта

UDC 34.01:34.02:347.94
DOI: 10.63341/naia-herald/1.2025.45

Implementation of artificial intelligence in civil proceedings: Experience of EU countries

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■ **Abstract.** The rapid development of artificial intelligence technologies makes legal adaptation essential, which is crucial for civil law systems where codified principles require clarity and precision. The purpose of this study was to assess the effectiveness of the current legal mechanisms that provide the basis for the application of artificial intelligence within the framework of EU civil legislation. The study was conducted using doctrinal and empirical methodology, and reviewed legislative acts, court precedents, and academic discourse on the regulation of artificial intelligence. The study critically analysed the regulatory limits of the use of artificial intelligence in civil court proceedings in EU Member States. Attention was focused on legislative initiatives such as the Artificial Intelligence Act. The study examined the principles of civil law (good faith, proportionality, and legal certainty) integrated into the regulation of artificial intelligence, which helped to determine whether current practices are consistent with fundamental rights and the rule of law. A comparative analysis of the strategies for introducing artificial intelligence in Germany, Estonia, and Spain helped to identify distinct, but complementary approaches. This demonstrated the ability of civil law systems to adapt to the latest technologies. The study also found that, despite great strides, certain problems in the field of legal regulation continue to be unresolved, including the combination of conventional liability models with autonomous decision-making by artificial intelligence and provision of uniform application of rules in different jurisdictions. The study offered practical recommendations for improving the civil law framework for the use of artificial intelligence, which may be useful for legislators, lawyers, and artificial intelligence developers

■ **Keywords:** civil law; civil proceedings; stages of civil proceedings; participants in the trial; court decisions; appeal; technology in law

■ **Suggested Citation:**
Petrovskyi, A., Kyrdan, B., & Kutsyk, K. (2025). Implementation of artificial intelligence in civil proceedings: Experience of EU countries. *Scientific Journal of the National Academy of Internal Affairs,* 30(1), 45-59. doi: 10.63341/naia-herald/1.2025.45.

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■ Received: 05.12.2024; Revised: 21.02.2025; Accepted: 25.03.2025

Introduction

Artificial intelligence (AI) has become a powerful transformative force affecting various aspects of society, including legal systems (Van Noordt & Misuraca, 2022). Within the European Union (EU), the integration of AI technologies into civil proceedings creates unique opportunities and challenges. Common law legal systems rely heavily on judicial precedents. In contrast, civil law systems favour codified statutes and principles, which are the main elements of judicial decision-making. This difference substantially affects the way AI is implemented and regulated in continental law systems, especially in areas such as procedural automation, evidence evaluation, and judicial reasoning. According to O. Turuta & O. Turuta (2022), the integration of AI into public life requires a thorough understanding of its implications, particularly in jurisdictions with dynamic technological developments. The global expansion of AI technologies has intensified the debate on their regulation and liability. In the absence of harmonised regulatory frameworks, individual countries are pursuing diverse strategies. The EU has taken a leading role in addressing these issues by developing the AI Act (AIA). This initiative classifies AI systems based on risk levels, creating a framework for proportionate supervision and enforcement. As J. Chamberlain (2022) noted, the AIA's risk-based approach demonstrates the EU's commitment to protecting the public interest while fostering innovation.

The issue of liability for harm caused by AI has become one of the central issues in the legal discourse. B. Schütte *et al.* (2021) emphasised that the dynamic nature of AI and its unpredictability pose challenges to conventional liability systems. These challenges are exacerbated by the cross-border nature of AI, which requires international coordination to resolve jurisdictional conflicts. In this regard, M. Poesen (2023) highlighted the significance of private international law in resolving AI-related disputes, emphasising the need for a single legal framework that transcends national borders.

Civil law emphasises the need for comprehensive and adaptive legal frameworks that provide individuals with access to justice and protection from unfair practices, especially in procedural law. V. Turkanova (2023) investigated whether the implementation of AI is consistent with the concepts of civil law. It was emphasised that the potential of AI to affect legal justice, especially in the judicial sphere, necessitates legal provisions that protect the rights of individuals and ensure the correct application of justice involving AI. The civil law framework prioritises the significance of access to justice and effective protection, prompting valuable investigations into the potential of AI to promote or impede these rights.

The liability issues of AI systems in specific industries are also attracting considerable attention. D. Rimkutė (2024) analysed the use of AI in medicine, specifically its diagnostic functions, identifying gaps in the relevant mechanisms. S. Sormunen & K. Havu (2023) investigated cases of harm caused by intelligent medical devices and called for a balanced approach that ensures user trust while addressing liability issues. U. Pagallo *et al.* (2022) addressed the high energy consumption of AI and highlighted the need to integrate sustainability principles into regulations, specifically to reduce environmental effects. These studies highlight the value of sector-specific regulations that factor in the specifics of AI. Within civil law, gaps in liability mechanisms point to the need for detailed legal provisions. They should protect individual rights and ensure that technological advances do not undermine those rights. D. Chiappini (2022) analysed civil liability in the context of AI, highlighting the persistence of gaps despite the EU's efforts to create a comprehensive legal framework.

Thus, the significance of the study lies in addressing the issues of oversight and accountability in the deployment of AI in the European Union. It is vital for the EU to consider multifaceted legal, moral, and technical factors. This will enable a thorough and flexible legal framework that respects the principles of civil law. In contrast to jurisdictions that focus on legal precedents, civil law systems emphasise strict statutes and encompass detailed rules. The European Union, acting under civil law systems, must manage these legal constructs wisely to ensure that AI rules comply with the doctrines of certainty, adequacy, and fairness.

The purpose of this study was to assess the effectiveness of current legal mechanisms and develop recommendations for their improvement. The key objectives of the study were to analyse the state of regulation and liability for the use of AI in the EU, identify its advantages and disadvantages in the context of civil law doctrines such as tort liability, contractual liability, and non-contractual obligations; to assess the effectiveness of the AIA approach[1] in addressing the problems caused by AI; to explore the practices of other jurisdictions, particularly those operating within the civil law tradition, to improve the EU legal system.

Materials and Methods

The study analysed the legal framework for the implementation of AI in strategic areas for the European Union. The methodology involved a combination

[1] Regulation of the European Parliament and of the Council No. 2024/1689 "On Harmonised Rules for Artificial Intelligence (AI Act)". (2024, July). Retrieved from https://eur-lex.europa.eu/eli/reg/2024/1689/oj.

of doctrinal and empirical approaches. The doctrinal approach included a comprehensive study of legislative acts, policy documents, and scientific literature related to AI regulation within the EU. The focus was on understanding the civil law traditions. In these traditions, legal norms are largely codified and statutory. Civil law systems typically emphasise the role of comprehensive, detailed statutes and regulations. This makes the study of these documents particularly significant in the EU context. Key legal documents, such as the proposed AI Act[1], the General Data Protection Regulation (GDPR)[2] and related directives, were examined to assess their impact on the governance of AI technologies.

The empirical part of the study included a comparative analysis of AI implementation in three EU member states: Germany, Estonia, and Spain. These countries were chosen for their distinct approaches to AI regulation and integration, reflecting the diversity of legal traditions within the EU. Germany, with its advanced industrial applications of AI, is a key example of a civil law jurisdiction. In this jurisdiction, regulation is highly structured and codified. Estonia's innovative e-government systems highlight the progressive integration of AI within civil law. Spain's focus on the ethical aspects of AI implementation provides insight into the balance between regulation and civil rights protection. The choice of these jurisdictions is particularly significant in the context of civil law, as national legal traditions often play a key role in shaping the interpretation and application of EU regulation. The criteria for selecting the countries were as follows: the existence of national AI development strategies, active participation in AI regulatory initiatives within the EU, and the availability of data on their legal boundaries. These criteria ensure that a variety of legal systems and regulatory approaches are included. They are all based on civil law principles, where legal clarity and systematic legislation are essential. The method of comparative legal analysis helped to identify both similarities and differences in the application of civil law principles in different EU countries. This approach was significant for identifying the interaction between the common European regulation and national legal frameworks.

The data collection process was conducted in two stages. The first stage involved collecting secondary data from legal databases (AI Act[3], GDPR[4], German National Strategy[5], Estonian National Strategy[6], Spanish National Strategy[7]) published between 2019 and 2024. These sources became the basis for understanding the evolution of AI regulation within the civil law tradition. At the second stage, the study analysed concrete cases from legal practice from the selected countries. This helped to identify trends and specific features of AI implementation, with a particular focus on liability, transparency, and human rights protection. This stage emphasises the role of civil law in providing legal certainty and predictable outcomes, which are critical elements of AI regulation. Qualitative content analysis was employed to analyse the data.

The assessment of AI compliance with the Principles of the Organisation for Economic Co-operation and Development (OECD, 2025) and the GDPR was based on the analysis of reports of independent audit companies that assess the level of compliance with transparency, responsibility, and data protection standards. The sources of information included official Statista (2025) report, national AI strategies, and audits conducted by relevant public and private bodies. AI compliance with GDPR requirements was assessed based on the following criteria: the obligation to obtain consent to data processing, anonymisation of personal data, the ability of users to access their data, and mechanisms to ensure transparency of algorithms.

Results

Legal framework and regulatory challenges. An analysis of EU legislation and regulations reveals a dynamic legal environment for AI regulation that is in line with the basic principles of civil law: legal certainty, fairness, and protection of rights. As of 2024, the key components of the EU legal framework in this

[1] Regulation of the European Parliament and of the Council No. 2024/1689 "On Harmonised Rules for Artificial Intelligence (AI Act)". (2024, July). Retrieved from https://eur-lex.europa.eu/eli/reg/2024/1689/oj.
[2] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[3] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.
[4] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[5] Artificial Intelligence Strategy of the Federal Government of Germany. (2018, November). Retrieved from https://www.bundesregierung.de/resource/blob/997532/1550276/3f7d3c41c6e05695741273e78b8039f2/2018-11-15-ki-strategie-data.pdf.
[6] National Artificial Intelligence Strategy 2019-2021 of Estonia. (2019, July). Retrieved from https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf.
[7] Artificial Intelligence Strategy of Spain. (2024, May). Retrieved from https://digital.gob.es/dam/en/portalmtdfp/DigitalizacionIA/1_DOSSIER_AI_ENGLISH_15_JULIO.pdf.

area were the AI Act[1], GDPR[2] , and various sectoral directives covering data privacy, liability and ethics. The AI Act, proposed by the European Commission in 2021, is a key piece of AI regulation within the EU. This law is based on a risk-based approach. This reflects the civil law tradition of classifying legal relations and obligations according to their nature and impact. For example, it identifies different levels of risk that AI systems may pose to fundamental rights and freedoms. AI systems classified as high-risk are subject to stricter requirements, including transparency, accountability, and human oversight. In civil law systems, this approach is consistent with the principle of proportionality, which ensures that regulation is not overly burdensome while providing the necessary protections for individuals. By establishing stricter regulatory oversight of high-risk sectors, the AI Act supports the civil law doctrine of public order and individual rights by establishing clear legal standards.

The implementation of the AI Act[3] in the three countries shows that the regulatory burden on high-risk sectors is considerably greater. This applies to areas such as healthcare, transport, and justice compared to low-risk applications. In Germany, the regulatory framework for AI has a solid foundation based on civil law principles such as certainty and foreseeability. This is evident in the comprehensive national AI strategy[4], that is in line with EU regulations. This strategy aims to balance innovation with accountability and security, ensuring that the introduction of AI does not violate individual rights. Germany's focus on industrial AI reflects the civil law emphasis on structured legal principles that guide the use of technology in commercial sectors (Schütte *et al.*, 2021).

Estonia demonstrates a different approach, as the country has a broader regulatory environment and a tradition of digital innovation and e-government. The national strategy[5] for the development of transparency in government processes and innovation in the public sector is indeed effective. However, it poses major challenges in combining digital innovation with existing legal frameworks. These challenges mirror civil law issues of legal adaptation and reform, particularly the tension between the latest technological developments and the preservation of basic legal principles.

Spain also faces analogous challenges as it focuses on the ethical aspects of AI[6]. The focus on ethics in AI governance demonstrates the significance of ensuring that the use of AI in civil proceedings follows civil law's requirements for justice and fairness. The integration of AI into the legal system should not be based on technical standards, but rather on civil law principles, including equality, confidentiality, and respect for human dignity. Spain's regulatory approach emphasises the changing role of AI in shaping civil law practice and the need for constant adjustments to overcome new ethical challenges.

AI in Germany: Regulatory impact and industrial applications. An analysis of the implementation of AI in Germany within the framework of its National AI Strategy reveals a complex regulatory structure. This framework harmonises innovation with civil law principles, specifically regarding liability, transparency, and privacy protection. From a civil law perspective, the alignment with the draft EU Artificial Intelligence Act[7] emphasises the significance of protecting the rights of individuals. Compliance with the GDPR[8] also underscores the obligation to protect these rights in AI environments. Germany's approach prioritises striking a balance between promoting technological advances and respecting fundamental rights. This ensures that the use of AI does not violate citizens' privacy or create unnecessary security risks. In the context of civil law, the regulatory compliance observed in Germany also reflects concerns about liability issues arising from the introduction of AI systems, with particular attention paid to high-risk applications such as those related to manufacturing and autonomous vehicles. This highlights the need for robust liability mechanisms to address

[1] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

[2] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.

[3] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

[4] Artificial Intelligence Strategy of the Federal Government of Germany. (2018, November). Retrieved from https://www.bundesregierung.de/resource/blob/997532/1550276/3f7d3c41c6e05695741273e78b8039f2/2018-11-15-ki-strategie-data.pdf.

[5] National Artificial Intelligence Strategy 2019-2021 of Estonia. (2019, July). Retrieved from https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf.

[6] Artificial Intelligence Strategy of Spain. (2024, May). Retrieved from https://digital.gob.es/dam/en/portalmtdfp/DigitalizacionIA/1_DOSSIER_AI_ENGLISH_15_JULIO.pdf.

[7] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

[8] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.

potential harm caused by AI. Civil law principles on liability for damages are key, as Germany needs to ensure that its regulatory mechanisms offer a clear pathway for redress (Studzińska, 2024).

AI systems pose potential risks to society and individuals due to their ability to cause harm. AI technologies, such as autonomous vehicles and production systems, can lead to injuries or technical failures, especially in critical infrastructure. AIs that process personal data (e.g., in healthcare and finance) may breach privacy, leading to harm, including in the case of misuse of medical data or financial fraud. The integration of AI into civil proceedings in the EU has been accompanied by both significant achievements and substantial challenges. Despite AI's potential to increase efficiency and objectivity in civil decision-making, its implementation raises serious concerns about GDPR compliance (van Quathem, 2023). This is especially true for sectors that process sensitive information, such as healthcare and finance.

The use of AI systems in the healthcare sector is becoming more widespread, particularly in predictive analytics and patient profiling. However, several precedents have revealed non-compliance with GDPR requirements. Predictive medicine without explicit patient consent: In January 2023, Italy's data protection supervisory authority (Garante) fined three hospitals EUR 55,000 each for illegally using AI systems to classify patients based on their health status without obtaining specific and informed consent. According to Article 9(2)(h) of the GDPR, the processing of health data for predictive purposes requires special consent as it falls outside the scope of ordinary healthcare activities. In 2017, the collaboration between Google DeepMind and the Royal Free London NHS Foundation Trust involved the processing of personal data of about 1.6 million patients without proper transparency. The UK's Information Commissioner's Office (ICO) found that the Streams programme, designed to detect acute kidney failure, violated the 1998 Act[1] by failing to inform patients about the use of their data (Gerke *et al.*, 2020).

In the financial sector, the use of AI technologies has also attracted the attention of regulators due to potential violations of the GDPR. Face recognition and biometric data protection: Clearview AI, a company specialising in facial recognition technology, has been fined numerous times in EU countries for illegal collection of biometric data. In 2022, the French data protection authority (CNIL) fined Clearview AI EUR 20 million for failing to follow consent requirements and lack of transparency in the use of personal data (Zertia AI, 2025). In 2021, the Italian data protection authority (Garante) fined Foodinho and Deliveroo EUR 2.6 million and EUR 2.9 million, respectively. The violations were related to the use of AI algorithms to manage courier schedules and routing without properly informing employees. The lack of transparency of the algorithms and the absence of human control were found to be contrary to the GDPR (van Quathem 2023).

These cases highlight the significance of following the GDPR when implementing AI systems in civil proceedings. The key conditions are obtaining clear and informed consent, ensuring transparency of data processing processes, and implementing reliable measures to protect personal information. As the use of AI in civil proceedings continues to expand, the legal framework must adapt to the new challenges posed by technological advances. It is vital to strike a balance between innovation and the protection of fundamental rights under EU law to guarantee fairness, transparency, and legal certainty in the digital age.

The AI Act[2] requires certain security standards for high-risk systems (healthcare, transport). Autonomous vehicles do not undergo proper safety checks, which leads to accidents. In industry, AI can be vulnerable to hacking, which threatens security. The Organisation for Economic Cooperation and Development has formulated principles that promote the transparent, accountable, and non-discriminatory deployment of artificial intelligence (AI) systems. These principles stipulate that developers and users of AI should ensure transparency and responsible disclosure of information about the operation of such systems. This includes providing meaningful information to facilitate common understanding and the ability to challenge AI-driven decisions (OECD, 2025). Despite the existence of such ethical standards, there have been cases in the public sector where the use of AI has contradicted these principles, with severe social consequences.

Violations in the public sector. The Dutch government introduced the Systemic Risk Indicator (SyRI) to detect fraud in the social security sector. The system operated by integrating data from various government databases. However, it disproportionately focused on low-income areas, leading to potential discrimination against individuals based on socioeconomic and migrant status. In 2020, a Dutch court ruled that SyRI's activities violated the right to privacy and did not provide adequate transparency, which led to its suspension (Committee on Equality and Non-Discrimination, 2020; DailyAI, 2023).

In Australia, an automated debt recovery system known as Robodebt was introduced. Its purpose was

[1] Data Protection Act of United Kingdom. (1998, July). Retrieved from https://www.legislation.gov.uk/ukpga/1998/29/introduction.
[2] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

to identify overpayments by comparing the income of welfare recipients with tax data. At the same time, the system often generated false reports of arrears, which caused major financial and psychological pressure on citizens. The lack of adequate human oversight and transparency led to a large-scale class action lawsuit, which resulted in the government paying compensation of AUD 1.8 billion in 2021 (Committee on Equality and Non-Discrimination, 2020; DailyAI, 2023; Smith & Johnson, 2023).

The above examples highlight the need for strict oversight, increased transparency, and systematic testing of artificial intelligence algorithms. Adherence to the principles established by the OECD is critical to ensure that AI is used fairly and ethically for the benefit of all of society (Zyhrii *et al.*, 2023). EU guidelines require that AI systems be comprehensible (European Commission, 2019). Disruption: AI in the public sector can violate transparency standards if users do not understand how a decision was made. In healthcare – if AI does not explain the reasons for its recommendations. The European Union's AI regulatory framework emphasises the need to ensure transparency and understandability of AI systems, especially in the public sector. Transparency is critical for users to be able to understand the decision-making processes behind the results generated by AI. This requirement is reflected in the EU Artificial Intelligence Act[1] and the GDPR[2], which both emphasise the need for explanations as a tool to increase trust in AI systems.

In the healthcare sector, AI systems used for diagnosis or treatment recommendations face substantial challenges in terms of transparency. A striking example is the use of IBM Watson in oncology. This system was created to help doctors make decisions about cancer treatment by analysing medical records and clinical trials. However, Watson's recommendations have often been criticised for their lack of transparency in substantiating their conclusions. Despite widespread adoption in leading hospitals, many clinicians have found it troublesome to interpret the system's causal explanations, which has violated expectations of transparency in the use of AI in healthcare (Dolfing, 2024).

In governmental AI applications used for decision-making in areas such as social welfare or law enforcement, there are also serious concerns about transparency. For example, cities such as Los Angeles have implemented predictive policing systems, such as PredPol, to predict likely areas of criminal activity. However, these systems have been criticised for operating as black boxes where even users, including law enforcement, do not have a full understanding of the algorithms driving the predictions. The lack of transparent explanations in such systems has undermined public trust and raised ethical doubts about the fairness and accountability of decisions (IGNESA, 2025).

Article 34 of the AI Act[3] (2024) states that AI systems used in the public sector must conform to transparency and accountability requirements, which ensures that citizens can understand the decision-making process based on AI technologies. However, this provision does not account for the rapid technological advances and complexities associated with modern AI applications, particularly in the context of machine and deep learning systems. Such systems often function as black boxes, complicating the explanation of their solutions in a simplified and accessible way. For example, the German Strategy[4] focuses on the application of AI technologies in areas such as healthcare and transport. However, this strategy does not contain clear guidelines for ensuring transparency for high-risk AI systems, as set out in the AI Act. This creates substantial gaps in how to inform the public about complex AI systems. Specifically, the lack of provisions for the dynamic nature of algorithms that change over time through learning processes is a major shortcoming. This gap in the strategy creates a gap between national regulations and EU standards. On the other hand, the AI Act stipulates that artificial intelligence systems classified as high-risk should be made clear and subject to regular inspections to ensure transparency. However, this law leaves some uncertainty as to the practical application of these requirements, particularly regarding the continuously learning models and how they can be regulated in their development. The absence of clear definitions and guidance on these technologies indicates a serious gap in current EU legislation.

Article 19 of the GDPR[5] establishes the requirement to inform individuals about the use of artificial intelligence systems for the processing of personal

[1] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

[2] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.

[3] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

[4] Artificial Intelligence Strategy of the Federal Government of Germany. (2018, November). Retrieved from https://www.bundesregierung.de/resource/blob/997532/1550276/3f7d3c41c6e05695741273e78b8039f2/2018-11-15-ki-strategie-data.pdf.

[5] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.

data, as well as the right to receive an explanation of decisions made by automated systems. While the GDPR ensures transparency, its provisions are somewhat unclear, particularly as to how AI systems using machine learning should explain decisions based on dynamic data sets or algorithms. The Polish Act on the Protection of Personal Data[1] contains limited transparency regulation in the context of AI decision-making. It stipulates an obligation to inform citizens about automated decisions based on personal data but does not explain how machine learning models that are constantly adapting based on new data should be explained. This uncertainty creates legal challenges to the right of individuals to understand the rationale behind decisions made by artificial intelligence systems. Article 22 of the GDPR regulates the right to an explanation in the case of automated decision-making, but its application is incomplete when it comes to systems where the decision-making process is complicated to explain due to the technical nature of artificial intelligence. As artificial intelligence systems evolve over time, the GDPR does not address the legal issues that arise when algorithmic decisions become more challenging to explain to non-specialists. This lack of clarity makes it harder for citizens to protect their rights. Such ambiguity is also evident in the President of Spain's AI Strategy[2], which sets out transparency requirements for automated systems in the public sector. However, like the GDPR, this law does not address the challenges faced by AI developers when models change over time, creating legal uncertainty regarding the determination of liability when these systems are no longer fully understood.

Article 13 of the EU Artificial Intelligence Act[3] sets out requirements to ensure that artificial intelligence systems meet transparency and accountability standards, particularly in areas such as public administration and healthcare. At the same time, the Law of Ukraine No. 2297-VI "On Personal Data Protection"[4] is not consistent with European legislation in terms of its scope and regulatory mechanisms. Ukrainian legislation focuses primarily on personal data protection and does not cover specific issues related to artificial intelligence, such as regulation of decision-making algorithms and transparency requirements. This creates a situation where Ukrainian AI programmes in the public sector may not meet EU standards, leading to inconsistencies between national and European regulations.

Furthermore, Article 11 of the GDPR[5] defines the principle of purpose limitation, stating that personal data should only be used for specific, clearly defined purposes. However, the Artificial Intelligence Strategy of the Federal Government of Germany[6] stipulates that AI systems operating in public services or industry may collect personal data for broader and unlimited purposes, such as research or predictive analytics. This contradiction between the German and EU approaches may lead to legal conflicts, specifically regarding the application of the principle of purpose limitation to AI systems. Germany's more flexible approach to the use of AI data does not fully conform to the stricter requirements of the GDPR, which creates potential enforcement issues.

As for Estonia, the Estonian government has developed one of the most advanced e-government systems in the world, which makes extensive use of artificial intelligence to deliver public services. However, the Estonian AI regulations do not cover the full range of ethical issues raised by the AI Act and GDPR. Specifically, ethical issues such as the right to human intervention in decisions made by artificial intelligence are mentioned in EU directives but are not reflected in Estonian national legislation. This discrepancy creates legal risks for individuals whose rights may be violated due to insufficient or imperfect regulation of AI-based decisions.

Estonia: A proactive approach to AI regulation and governance. The integration of AI into civil proceedings in Estonia reflects a proactive approach based on the principles of civil law. Estonia's AI strategy is in line with its codified legal system, which prioritises the rule of law, transparency, and legal certainty – fundamental principles of civil law (JustDigi, 2021). In its national strategy[7], the country focuses on fostering innovation while ensuring

[1] Act of Poland "On the Protection of Personal Data". (2018, May). Retrieved from https://ceelegalmatters.com/data-protection-2024/poland-data-protection-2024.
[2] President of Spain Strategy of AI. (2020, November). Retrieved from https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/ficheros/National-Strategy-on-AI.pdf.
[3] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.
[4] Law of Ukraine No. 2297–VI "On Personal Data Protection". (2010, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17#Text.
[5] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[6] Artificial Intelligence Strategy of the Federal Government of Germany. (2018, November). Retrieved from https://www.bundesregierung.de/resource/blob/997532/1550276/3f7d3c41c6e05695741273e78b8039f2/2018-11-15-ki-strategie-data.pdf.
[7] National Artificial Intelligence Strategy 2019-2021 of Estonia. (2019, July). Retrieved from https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf.

transparency and accountability, including in decision-making processes involving AI technologies. In the context of civil law, Estonia attaches particular significance to the predictability and reliability of AI decisions[1], which is key to maintaining public trust in automated systems. Establishing mandatory human oversight, especially in sensitive areas such as social services and healthcare (social protection programmes, healthcare services, e-government services, law enforcement, and judicial applications). This approach ensures that AI technologies do not undermine the principles of due process and fairness enshrined in its legal system. The human-centred approach adopted in Estonia is in line with the civil law tradition, which prioritises the protection of individual rights and access to justice (E-Estonia, 2025).

In Estonia, artificial intelligence is not currently regulated by a separate piece of legislation specifically dedicated to this area. However, existing legislative initiatives are essential for regulating the integration of AI in the country. The Digital Agenda of Estonia (Ministry of Economic Affairs and Communications, 2024) includes general guidelines for technological development, including in the field of AI. In this context, the GDPR plays a major role, particularly in terms of the interaction of AI with personal data protection. Articles 22[2] and 13[3] of the GDPR regulate automated decision-making processes, ensuring that individuals are protected from automated actions that may substantially affect their rights and freedoms, an area where AI is increasingly being used in both the public and private sectors.

Article 34 of the AI Act[4] emphasises the need to ensure transparency in AI-assisted decision-making, particularly in sensitive areas such as criminal justice, healthcare, and social services. This requirement directly influences the national AI governance strategy in Estonia, which prioritises transparency and accountability of AI technologies. The Estonian AI Ethics Framework, although still in the draft stage, supports these same priorities by calling for clear documentation of algorithms and decision-making processes. The emphasis on explainability and transparency is critical for ensuring legal certainty in civil law, where individuals should be able to understand and challenge decisions affecting their rights. According to the GDPR[5] (Article 22) it is prohibited to make purely automated decisions that have legal consequences or substantially affect individuals without human intervention. Estonia's regulatory environment meets this requirement by providing human oversight in critical sectors such as healthcare, law enforcement, and judicial services. The Personal Data Protection Act of Estonia[6] it is prohibited to make purely automated decisions that have legal consequences or substantially affect individuals without human intervention. Estonia's regulatory environment meets this requirement by providing human oversight in critical sectors such as healthcare, law enforcement, and judicial services.

Spain: Ethical and regulatory challenges in the implementation of AI. In Spain, AI regulation is primarily focused on ensuring that ethical principles are respected in its implementation. The National Strategy on AI[7] clearly prioritises these values, ensuring that human-centred technologies conform to the requirements of codified legal norms. These principles, based on respect for human rights, fairness, and accountability, are closely aligned with civil law doctrine. It emphasises the protection of individual rights and fairness in legal processes. The focus of Spanish civil law is on structured legal control to protect public and private interests. An analysis of the use of AI in various sectors in Spain shows a strong commitment to transparency and user protection. This is especially true in civilian areas such as healthcare, public administration, and consumer rights (Marchenko *et al.*, 2024).

Despite Spain's achievements, there are major challenges, especially in liability for decisions made with AI. Civil law in Spain is codified in the Spanish Civil Code[8], and in the National Strategy for Artifi-

[1] National Artificial Intelligence Strategy 2019-2021 of Estonia. (2019, July). Retrieved from https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf.
[2] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[3] Ibidem, 2016.
[4] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.
[5] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[6] Personal Data Protection Act of Estonia. (2018, December). Retrieved from https://www.riigiteataja.ee/en/eli/523012019001/consolide.
[7] Artificial Intelligence Strategy of Spain. (2024, May). Retrieved from https://digital.gob.es/dam/en/portalmtdfp/DigitalizacionIA/1_DOSSIER_AI_ENGLISH_15_JULIO.pdf.
[8] Civil Code of Spain. (2017, June). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/16289.

cial Intelligence (2020)[1], where liability is traditionally based on fault or negligence, as set out in legal statutes. Spain's Law on Data Protection and Digital Rights (LOPDGDD)[2], National Artificial Intelligence Strategy[3] and the Draft Law on the Regulation of Artificial Intelligence[4] aim to address these gaps by creating dedicated provisions for algorithmic accountability, thus aligning AI regulation with basic civil law principles. The compliance of Spanish legislation with EU directives further confirms its commitment to harmonise national legislation with supranational standards. This harmonisation is essential to the civil law tradition, which values the systematic application of legal principles across jurisdictions.

The need to adapt to new challenges is further emphasised by the draft legislation on artificial intelligence currently under consideration in Spain[5]. One of the key aspects of this draft law is the regulation of liability for the use of artificial intelligence. While the Spanish draft law is based on traditional civil law principles such as fault and negligence, it seeks to adapt these standards to the unique challenges posed by algorithmic decision-making and autonomous systems. These challenges are also recognised in the European Artificial Intelligence Act, which requires a differentiated approach to systems with significant risk. This approach includes transparency, accountability, human oversight, and a regulatory model based on risk assessment and in line with civil law traditions.

For example, Article 34 of the Spanish draft law on artificial intelligence[6] contains provisions aimed at ensuring transparency of artificial intelligence systems, their traceability, and human review. The European Union's Artificial Intelligence Act, specifically Article 5[7], also sets out transparency and human oversight requirements. However, the Spanish draft law goes a step further by requiring that artificial intelligence systems used in public institutions undergo periodic ethical reviews. This provision exceeds the general transparency requirements set out in the EU law, where human oversight is only mandatory for high-risk AI applications, without an explicit requirement for periodic reviews. This difference underscores the complexity of aligning national legal acts with EU law, particularly in the context of national legal traditions (White & Case LLP, 2025), which emphasise the protection of citizens' rights through clear and predictable legal rules. Article 11 of the Draft Law stipulates that decisions made based on artificial intelligence in the civil justice system should be transparent and subject to reversal. This provision is in line with the European Union's requirements for the right to an explanation, as set out in Article 22 of the GDPR[8]. However, Spanish legislation goes further, emphasising the need for periodic review of decisions made using artificial intelligence, especially in the context of civil proceedings. Such a requirement is absent in the AI Act[9], which instead imposes an obligation on high-risk AI system providers to ensure transparency and accountability pursuant to established standards.

Spain's civil law system provides a balanced approach to innovation and ethics. This is evidenced by its efforts to promote the use of industrial AI for economic growth while ensuring social welfare. Adherence to the rule of law, which is a defining feature of civil law systems, ensures that ethical principles are integrated into AI regulation, and these principles are incorporated into legislative measures and court decisions. However, challenges persist in achieving interoperability and addressing technical limitations that must be overcome to increase the effectiveness of AI in civil proceedings.

Key takeaways and comparative assessment. An analysis of the integration of AI into legal regulation in Germany, Estonia, and Spain demonstrates the strong influence of civil law aspects on the development of national strategies and approaches to the use of AI (Table 1). The experience of these countries can be evaluated through the lens of key civil law principles, such as legal certainty, protection of private property, legal capacity, and tort liability.

[1] Artificial Intelligence Strategy of Spain. (2024, May). Retrieved from https://digital.gob.es/dam/en/portalmtdfp/DigitalizacionIA/1_DOSSIER_AI_ENGLISH_15_JULIO.pdf.
[2] Organic Law of Spain No. 3/2018 "On the Protection of Personal Data and Guarantee of Digital Rights". (2018, December). Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-2018-16673.
[3] Artificial Intelligence Strategy of Spain. (2024, May). Retrieved from https://digital.gob.es/dam/en/portalmtdfp/DigitalizacionIA/1_DOSSIER_AI_ENGLISH_15_JULIO.pdf.
[4] Preliminary Draft Law of Spain for the Good Use and Governance of Artificial Intelligence. (2025, March). Retrieved from https://avance.digital.gob.es/_layouts/15/HttpHandlerParticipacionPublicaAnexos.ashx?k=19128.
[5] Ibidem, 2025.
[6] Ibidem, 2025.
[7] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.
[8] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[9] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

Table 1. Comparative analysis of AI regulation in Germany, Estonia, and Spain

Country	Key civil law aspects	Key challenges	Perspectives
Germany	Liability for damage, insurance	Harmonisation of regulations across sectors	Support for industrial innovation
Estonia	Data protection, electronic contracts	Integration of AI into the legal capacity of systems	Development of digital governance
Spain	Algorithmic accountability and consumer rights	Bias of algorithms	Ethical regulation

Source: developed by the author of this study based on data from Statista (2025a; 2025b), national strategies of Germany[1], Estonia[2], Spain[3]

Germany is a leading country in the implementation of artificial intelligence (AI) in industrial sectors. German civil law focuses on regulating liability for damage caused by the use of AI and ensuring the harmonisation of cross-sectoral legal standards. In 2021, Germany adopted the Autonomous Driving Act[4], which regulates the use of AI in autonomous vehicles. This legal act defines the legal liability of operators and manufacturers, introducing the principle of strict liability. The law aims to increase safety and legal certainty in the field of autonomous vehicles. Germany is focused on transparency in the use of AI, particularly in industrial applications, and is introducing regulations for accountability in critical areas such as healthcare and autonomous driving. It is also aligning its policies with the EU, including the AI Act. Estonia is focusing on digital services and AI in the public sector, working with the EU to ensure interoperability and develop cross-border regulation. Estonia's strategy is focused on creating a reliable digital infrastructure. Spain is actively developing ethical standards for AI, including transparency and accessibility for citizens. It is also working to address potential risks from AI in various sectors, including healthcare and employment. All three countries are working closely with the EU to adapt their AI strategies to European regulatory requirements, which contributes to the effective regulation of technology at the international level (Kuteynikov *et al.*, 2021).

Artificial intelligence is also actively used in judicial practice. Specifically, the Bavarian judicial system uses AI tools to analyse legal documents and predict the outcome of court cases. These technologies help to increase the speed and accuracy of decision-making, especially in complex contractual disputes (Hösch *et al.*, 2025). Despite the positive results, concerns persist regarding the reliability and impartiality of automated decisions. Questions arise about the interpretation of AI-generated results and possible risks of bias that could affect the objectivity of court proceedings. German legal regulation continues to evolve to strike a balance between technological innovation and legal responsibility.

Estonia has taken a progressive approach to integrating artificial intelligence into its legal system, reflecting its advanced digital infrastructure. The Estonian Ministry of Justice has initiated the use of AI-based systems for small civil claims with a value of less than EUR 7,000. This system, known as a "robot judge", operates under human supervision and is aimed at expediting the consideration of court cases (JustDigi, 2025). The artificial intelligence in this system applies current civil law to resolve disputes arising from consumer contracts and property claims. Estonian civil law places particular emphasis on ensuring procedural transparency and personal data protection according to the provisions of the General Data Protection Regulation (GDPR). The introduction of artificial intelligence in civil proceedings has sparked discussions about the limits of human control and the guarantee of procedural rights of litigants. This is evidenced by a decrease in the number of pending cases after the introduction of AI systems, which indicates an increase in procedural efficiency.

Spanish courts are actively implementing AI systems to optimise case management and legal research. For example, the General Council of Justice has introduced specialised AI-based software that is used to analyse large volumes of legal texts and identify relevant case law. This software greatly simplifies legal analysis in complex civil cases, particularly in the areas of family law and property disputes (Ministry of Justice of Spain, 2023). At the same time, the absence of clear legal provisions regulating liability related

[1] Artificial Intelligence Strategy of the Federal Government of Germany. (2018, November). Retrieved from https://www.bundesregierung.de/resource/blob/997532/1550276/3f7d3c41c6e05695741273e78b8039f2/2018-11-15-ki-strategie-data.pdf.

[2] National Artificial Intelligence Strategy 2019-2021 of Estonia. (2019, July). Retrieved from https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf.

[3] Preliminary Draft Law of Spain for the Good Use and Governance of Artificial Intelligence. (2025, March). Retrieved from https://avance.digital.gob.es/_layouts/15/HttpHandlerParticipacionPublicaAnexos.ashx?k=19128.

[4] Ordinance on the Authorisation and Operation of Motor Vehicles with Autonomous Driving Functions in Defined Operating Areas. (2022, June). Retrieved from https://wiki.unece.org/download/attachments/188285112/EDR-DSSAD-19-07%20German_Ordinance%20on%20Autonomous%20Driving.pdf?api=v2.

to the use of AI in civil cases creates legal uncertainty regarding decisions made using such technologies.

A comparative analysis of three jurisdictions – Germany, Estonia, and Spain – reveals both similar and distinct approaches to the integration of artificial intelligence into civil proceedings. A shared feature for these countries is the application of established civil law principles to determine liability and ensure procedural fairness. At the same time, there are substantial differences in the scope and nature of AI implementation. Germany focuses on ensuring legal certainty through the development of a comprehensive liability framework, Estonia prioritises efficiency through the automation of court decisions, while Spain focuses on ethical regulation and transparency. Thus, the integration of artificial intelligence into civil proceedings in the European Union creates both new opportunities for legal innovation and challenges for preserving the fundamental principles of civil law. The study demonstrates the key role of civil law in shaping AI regulation strategies. Further research in this area should focus on harmonising approaches to legal liability and protecting the rights of entities involved in the use of AI.

Discussion

The rapid integration of AI technologies into legal systems, particularly in the European Union, presents both significant opportunities and challenges. The findings of the present study, which examined the intersection of AI, liability, and regulatory frameworks, are contributing to an active debate in European law. As AI continues to affect various areas, including healthcare, civil litigation, and environmental protection, it is crucial to assess the legal implications. This will allow for a sound legal framework to address these issues. The EU's proposed AI regulations, such as the AIA[1], introduce a risk-based approach to managing the development of this technology. J. Chamberlain (2022) emphasised that this approach, while pragmatic, requires a balance between innovation and security. The AIA aims to ensure that AI systems do not violate fundamental rights such as privacy and non-discrimination. Particular attention was paid to AI applications that carry an elevated level of risk. However, according to O. Turuta & O. Turuta (2022), there is a tension between fostering technological innovation and protecting human rights. The AIA recognises these issues, but its practical application continues to be unclear, especially in the context of AI's potential to perpetuate existing biases or create new risks.

The conclusions of this study confirm the need to develop AI regulation that accounts not only for technical characteristics, but also for social and ethical aspects. Specifically, the author of this study supports the view of V. Turkanova (2023) that machine learning algorithms can be useful for resolving civil disputes. However, their use requires careful analysis in terms of fairness, transparency, and accountability. The use of AI in litigation raises major concerns about possible algorithmic biases and their influence on access to justice. B. Schütte *et al.* (2021) agreed with this point, emphasising the significance of accountability mechanisms that can neutralise the harm caused by AI systems. One of the key challenges in the context of AI regulation is the issue of liability, especially when AI systems cause harm. B. Schütte *et al.* (2021) examined the complexities of compensation for damages in the case of AI and autonomous systems. Their findings pointed to the need for a clear liability system. It should account for both direct and indirect damage caused by AI, including errors in medical diagnosis or environmental regulation. For example, in healthcare, AI is increasingly integrated into medical practice, as demonstrated by D. Rimkutė (2024) in her analysis of AI-based diagnostic tools. However, according to S. Sormunen & K. Havu (2023), legal systems still have problems overcoming the problem of consumer trust. They also face challenges in allocating responsibilities between developers, users, and regulators of medical smart devices. The findings of this study pointed to the need to develop a detailed liability framework that would account for the specific characteristics of AI.

The findings revealed that the current liability framework, which focuses on product law and tort law, may not be sufficient to cover all aspects of harm caused by AI. This is crucial in relation to AI's ability to learn and adapt without human intervention. M.M. Casals (2023) emphasised that regulating AI liability requires an international approach. AI technologies transcend national borders, which requires a single liability mechanism at the EU level. The interplay between AI and private international law, as discussed by M. Poesen (2023), complicates the implementation of regulations on this technology. When AI systems are developed in one jurisdiction and used in another, legal conflicts may arise. The findings point to the challenges faced by EU Member States in harmonising their national legal systems with the EU's general AI regulations. This issue of private international law is critical in the case of cross-border disputes, and with the globalisation of AI systems, the risk of legal fragmentation is increasing. The findings demonstrated the need for a European system to resolve such conflicts, as AI technologies often transcend national and legal boundaries.

[1] Artificial Intelligence Act of EU. (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689.

Another issue that arises in the context of AI regulation is its impact on the environment. The introduction of AI, particularly in energy-intensive areas such as data processing and autonomous systems, has major environmental implications. U. Pagallo *et al.* (2022) addressed the environmental issues arising from AI in the context of EU legislation. The present study complemented this analysis by arguing that AI can help solve environmental problems. Specifically, this applies to efficient resource management or environmental monitoring. However, AI also contributes to environmental pollution due to the extensive energy consumption required to train and maintain AI models.

The present findings support the argument of U. Pagallo *et al.* (2022) that the EU should consider the environmental footprint of AI. It is also vital to integrate environmental considerations into AI regulation. This could include setting standards for energy-efficient AI systems and incorporating environmental criteria when assessing high-risk AI applications. This study pointed to the need for a legal framework that strikes a balance between technological development and environmental sustainability. With this in mind, the legal implications of AI, especially in terms of liability, human rights, and environmental protection, must be further explored. The current regulatory landscape, as reflected in the AIA, is a significant step forward, but many issues still must be addressed. Future research should focus on improving the liability framework to better account for the complexity of AI, especially in situations where AI systems operate autonomously or unpredictably. Considering the rapid development of AI, the legal system must adapt to the emerging challenges.

Issues related to AI bias or restrictions on access to justice for certain groups of people continue to be critical for further research. O. Turuta & O. Turuta (2022) emphasised this. As the environmental impact of AI becomes more pronounced, the EU should develop regulatory strategies that support both sustainability and technological innovation. AI technologies carry immense potential, but also substantial risks. However, the necessary legal frameworks to address these issues are still under development (Roksandic *et al.*, 2022). Researchers, lawyers, and policymakers should continue to collaborate to ensure that AI technologies are deployed in a way that respects fundamental rights, promotes equity, and protects the environment.

■ Conclusions

The integration of AI into the legal framework requires an in-depth analysis from a civil law perspective. It is vital to clarify legal approaches to liability for damage caused by AI activities, as well as to protecting the rights of persons who may be directly affected by the use of these technologies. This includes the creation of clear rules for regulating the use of AI in civil law relations, especially in the context of contracts concluded with the use of autonomous systems. The study examined the key aspects of the introduction of AI into EU legal systems, including the legal challenges, opportunities, and implications of this technology. The study highlighted how the EU's regulatory approach to AI, specifically through instruments such as the AI Act (AIA), aims to address concerns about accountability and responsibility. It also addresses the role of AI in critical infrastructure. One of the key findings of this study was that the EU achieved significant progress in establishing a legal framework for AI. However, there are major problems with the practical implementation and enforcement of these laws. Although the AIA is a progressive initiative, its provisions are still unclear, particularly regarding the allocation of liability for harm caused by AI. Moreover, despite the emphasis on a risk-based approach, its application to emerging AI technologies needs further improvement. This applies to areas such as autonomous systems, medical diagnostics, and law enforcement to address the complexities of technological advancement. Particular attention should be paid to defining the legal boundaries for the protection of personal rights in civil law, such as privacy, non-discrimination, and access to justice. The legal status of AI systems is also significant, specifically, in terms of their ability to be subject to civil rights and obligations. In this context, it is necessary to clearly define how liability for harm caused by the imperfect application or errors of AI will be exercised. The study also indicated that while AI offers major opportunities to improve the efficiency and accuracy of judicial processes, it raises significant ethical and legal issues. Specifically, this concerns the requirements for transparency, fairness, and protection of fundamental rights in AI decision-making processes. To ensure these rights in a legal context, continuous monitoring and the development of robust legal boundaries that are in line with technological innovation are needed.

Another notable conclusion is the significance of interdisciplinary cooperation between lawyers, policy makers, technologists, and ethicists to create a comprehensive and adapted regulatory environment. Considering the complexity of integrating AI into the legal system, a holistic strategy is needed. It should account not only for the technical capabilities of AI, but also for its social, ethical, and economic implications. It is vital for the EU to foster such cooperation to create an effective regulatory ecosystem that minimises risks while harnessing the benefits of AI. The study suggested that to effectively address these challenges, special attention should be paid to international cooperation and harmonisation of AI

regulations across jurisdictions. Furthermore, the development of AI legislation should be dynamic and flexible to quickly adapt to the latest technologies and unpredictable consequences of AI use.

Based on the findings, several areas for further research emerge. One significant aspect is to clarify the legal definitions and classifications of AI systems within the EU, which will ensure more accurate regulation and better alignment with technological advances. Furthermore, a study of the practical aspects of implementing AI rules in different EU member states will help assess the effectiveness of existing legal instruments and identify opportunities for improvement. It is also necessary to continue researching the implications of AI for fundamental human rights in the context of privacy, non-discrimination, and access to justice. As AI technologies are increasingly integrated into judicial decision-making and law enforcement, it is vital to carefully monitor the risks of biased or unfair use of such systems. Finally, research into liability structures for AI, especially in cases of autonomous decision-making or the use of AI in critical infrastructure, is essential to ensure legal accountability. The development of civil law in the context of AI requires flexible and innovative solutions to meet the requirements of rapidly evolving technologies. Therefore, civil law must ensure effective protection of human rights. It must guarantee legal certainty in relationships where AI is one of the main decision-making tools. Thus, the ongoing development and implementation of AI technologies in the EU legal system requires constant adaptation, research, and interdisciplinary cooperation. The results of the study confirmed the need for a balanced approach that will promote innovation and technological growth, while protecting fundamental rights and ensuring transparency and accountability of AI.

Acknowledgements

The author of this study would like to express special gratitude to the EU institutions and regulators whose activities and ideas on the integration of AI into the legal system greatly enrich the context of this study. The author would also like to acknowledge the technical assistance provided by colleagues from the academic community and the meaningful discussions on the interaction between AI and EU law. Finally, in these turbulent times for our country, the author would like to convey sincere gratitude to the Ukrainian Defence Forces for their dedicated defence and courage, which guarantee our security and future.

Conflict of Interest

None.

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Упровадження штучного інтелекту під час розгляду цивільних справ: досвід країн ЄС

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■ **Анотація.** Стрімкий розвиток технологій штучного інтелекту актуалізує необхідність правової адаптації, що вкрай важливо для систем цивільного права, де кодифіковані принципи потребують чіткості й точності. Метою дослідження було оцінювання ефективності поточних правових механізмів, що забезпечують основу застосування штучного інтелекту в межах цивільного права ЄС. Для проведення дослідження використано доктринальну й емпіричну методологію, розглянуто законодавчі акти, судові прецеденти та академічний дискурс щодо регламентування залучення штучного інтелекту. У дослідженні критично проаналізовано регуляторні межі використання штучного інтелекту в цивільних судових провадженнях держав – членів ЄС. Увагу зосереджено на законодавчих ініціативах, таких як Акт про штучний інтелект. У роботі досліджено принципи цивільного права (добросовісності, пропорційності та правової визначеності), інтегровані в регулювання штучного інтелекту, що дало змогу визначити, чи відповідає сучасна практика основоположним правам і принципу верховенства права. Проведений порівняльний аналіз стратегій упровадження штучного інтелекту в Німеччині, Естонії та Іспанії допоміг виявити різні, однак взаємодоповнювальні підходи. Це засвідчує здатність систем цивільного права адаптуватися до новітніх технологій. З'ясовано також, що, попри значний прогрес, нерозв'язаними залишаються певні проблеми в галузі правового регулювання, серед яких: поєднання традиційних моделей відповідальності з автономним прийняттям рішень штучним інтелектом; забезпечення однакового застосування норм у різних юрисдикціях. У дослідженні запропоновано практичні рекомендації для вдосконалення цивільно-правових меж використання штучного інтелекту, що можуть бути корисними для законодавців, правників і розробників штучного інтелекту

■ **Ключові слова:** цивільне право; цивільне судочинство; стадії цивільного процесу; учасники судового процесу; судові рішення; апеляційне оскарження; технології в праві

UDC 349.2
DOI: 10.63341/naia-herald/1.2025.60

Mechanisms for monitoring the implementation of the European Social Charter and their significance for the Member States

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■ **Abstract.** The foundation of the European system of ensuring social human rights is the European Social Charter, which is implemented under the auspices of the Council of Europe. However, formally, its provisions are not subject to strict implementation, which necessitates an increase in the effectiveness of the Charter's implementation. The purpose of the present study was to investigate the shortcomings of the mechanisms for monitoring compliance with the European Social Charter, to assess their significance for the member states, and to develop recommendations for improving their effectiveness. The methodological framework of the study included a comprehensive analysis of the mechanisms for monitoring the implementation of the European Social Charter. The study analysed the decisions of the European Committee of Social Rights on violations of the European Social Charter by various states and their effects on the development of legislation and improvement of social policy in these countries. Attention was focused on the collective complaints mechanism set out in the Additional Protocol. The study found that expanding the influence of national NGOs and strengthening public control would substantially contribute to improving the implementation of the Charter. At the same time, the immediate publication of the Committee's conclusions would positively influence the reputation component, as well as ensure transparency and promptness of the implementation of social rights. The study systematised the effects of the Charter's provisions on the legal systems of individual countries, focused on the role of civil society and the significance of empowering non-governmental organisations in this process, and substantiated the need to strengthen control over its implementation. The findings obtained are of practical value for improving law enforcement and ensuring social rights of citizens

■ **Keywords:** social security; social protection; social rights; European standards; collective complaints

■ Introduction

The European Social Charter (the Charter), adopted by the Council of Europe in 1961[1] has become a defining document for the establishment of uniform standards of human rights in Europe. The Charter defines standards for social security, labour protection, equal opportunities for women and men, and other aspects of human life that are fundamental to democratic states. As of 2024, 43 Council of Europe member states have ratified some of its provisions. Upon joining the Council of Europe, Ukraine committed to promoting pluralistic democracy, the rule of law, and the effective protection of human rights and fundamental freedoms of all persons under its jurisdiction (Cherniavskyi, 2024). The state also agreed to conduct its national policy following the principles proclaimed by the European Convention

[1] European Social Charter. (1961, October). Retrieved from https://rm.coe.int/168006b642.

■ **Suggested Citation:**
Cherevko, N. (2025). Mechanisms for monitoring the implementation of the European Social Charter and their significance for the Member States. *Scientific Journal of the National Academy of Internal Affairs,* 30(1), 60-70. doi: 10.63341/naia-herald/1.2025.60.

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■ Received: 20.11.2024; Revised: 18.02.2025; Accepted: 25.03.2025

for the Protection of Human Rights and Fundamental Freedoms[1] and the European Social Charter, as stated in Opinion of the Parliamentary Assembly of the Council of Europe No. 190[2].

Due to the considerable differences in the levels of social and economic development of European countries, the structure of the Charter has certain features that are not typical for most international legal documents. Social rights are divided into more concrete rights, which are stipulated in separate paragraphs. In this way, and through such concretisation, the list of key rights was significantly expanded (Bodnaruk *et al.*, 2021). States are permitted to accede not to the entire treaty, but only to selected provisions. The total number of selected articles and paragraphs must be at least 10 out of 19 articles or 45 out of 72 paragraphs.

Ukraine ratified the Charter (Revised) in 2006[3], accepting 76 out of 96 articles, rejecting the collective complaint procedure. According to the Charter, Ukraine is obliged to submit national reports on the implementation of the requirements of one of the four thematic groups of articles, in which it must report on how it is performing its obligations. The report must contain not only information on the legal compliance of national legislation with the provisions of the Charter, but also on its practical implementation, providing statistical data on relevant issues. However, the effectiveness of such a mechanism continues to be a matter of debate, which makes the topic of the present study relevant.

Investigating the functioning of the mechanisms for monitoring the implementation of the Charter[4] through the institutional lens of the Council of Europe's structural units and the relationship between them, I.I. Klymchuk & S.Yu. Orlov (2023) emphasised the significance of the Council of Europe's supervisory bodies, specifically the European Committee of Social Rights (Committee), in monitoring the compliance of member states with their obligations. Therewith, A. Spagnolo (2022) noted the value of the Charter's provisions, despite the absence of an obligation to enforce them. Ye. Batura & S. Tatarinova (2024) concluded that a comprehensive approach to the integration of European approaches into Ukraine's social policy is needed, including improving legislation, increasing the targeting of social support and the fight against corruption, as well as the need to introduce digital technologies. M. Manfredi (2021) explored such an aspect of the topic as the role of the Charter in promoting economic and social rights in the internal market by analysing its application in horizontal disputes. The researcher concluded that the European Pillar of Social Rights could lead to a certain strengthening of the EU's social dimension, but this largely depends on the goodwill of governments. Z. Ivantsova (2024) pointed out the advantages of the two-year reporting cycle of states in terms of the monitoring activities of the European Committee of Social Rights. These results, according to the researcher, indicate one of the key roles of the Committee's case law in the harmonisation of social standards in Ukraine. O. Balynska *et al.* (2024) argued that global processes are fundamentally transforming all generations of human rights, as their legal nature goes beyond the jurisdiction of one state and acquires international status. In this context, as the Committee has repeatedly noted, Ukraine's national legislation must be improved to bring it in line with European standards, which is a necessary step for Ukraine's integration into the legal space of a united Europe.

The purpose of the present study was to identify the shortcomings of the existing mechanisms for monitoring the implementation of the Charter, assess their significance for the Member States, and propose recommendations for improving the effectiveness of these mechanisms in the context of current challenges.

Materials and Methods

The study was based on the theoretical foundations of international law, specifically, on the concepts of law enforcement in the field of international social obligations. The analysis was based on the theory of the implementation of international treaties into national legal systems, which explains the mechanisms for performing international obligations at the state level. The study applied multi-level governance approaches that describe the interaction between international, regional, and national actors in the context of law enforcement. The study was also based on the concept of the effectiveness of international monitoring mechanisms, which helped to assess the effectiveness of the European Committee of Social Rights (the Committee) in monitoring the implementation of the European Social Charter.

To complete the research objectives, a series of methods was employed to provide an in-depth and comprehensive analysis. The comparative method was used to compare approaches to the implementation

[1] Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.
[2] Opinion of the Parliamentary Assembly of the Council of Europe No. 190 "Application by Ukraine for membership of the Council of Europe". (1995, September). Retrieved from https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13929&lang=en.
[3] Law of Ukraine No. 137-V "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights". (2006, September). Retrieved from https://zakon.rada.gov.ua/laws/show/137-16#Text.
[4] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.

and monitoring of the Charter in various Member States (France, Sweden, Spain, and Poland), identifying the specific features of law enforcement. The formal legal method contributed to the analysis of the statutory content of the Charter, the Committee's procedures, and legal mechanisms for implementing its decisions in the national legal systems of the Member States. Content analysis was employed to systematise official reports of states on their compliance with the Charter, as well as to analyse the Committee's conclusions, which helped to assess general trends in the performance of obligations.

The sequence of the study included the following stages: review of international legal provisions governing the implementation of the Charter; analysis of mechanisms for monitoring compliance with the Charter; study of concrete cases of implementation of the Committee's decisions; comparative analysis of the implementation of the Charter in the legal systems of individual states. The study reviewed the regulations and decisions of the European Committee of Social Rights, the Committee's reports on the observance of the Charter by the State Parties, official communiqués, and recommendations of the Council of Europe on the implementation of the Committee's decisions. The evaluation of the Committee's decisions helped to establish their influence on national legal systems, and the analysis of statistical indicators helped to identify general trends in the implementation of state obligations. The combination of quantitative and qualitative methods contributed to a comprehensive coverage of the topic, helping to assess the effectiveness of the mechanisms for monitoring the implementation of the European Social Charter and their significance for the Member States.

Results and Discussion

Under the Charter's reporting system[1], governments submit annual written reports on their implementation of the Charter in law and practice. The European Committee of Social Rights cyclically reviews the progress of States Parties in relation to the four categories of rights, as presented in Table 1. Thus, each of the articles of the Charter is reviewed every 4 years, except for equal pay for women and men, which is reviewed every 2 years, as it is covered by Articles 4 and 20. However, since October 2014, member States that have adopted a collective complaint procedure are subject to a "simplified" reporting procedure and only have to submit a full national report every 2 years[2]. Member States submitting a simplified report will have to explain what follow-up action was taken in response to the decision of the Committee on Collective Complaints and answer any questions raised in case of non-compliance due to lack of information for the relevant provisions. The new system entered into force for all Member States that have already adopted the procedure in October 2014, and for other States Parties in 2016.

Table 1. Schedule of submission of reports on the implementation of the Charter3 by the Member States

Group		Articles of the Charter
Group I	Employment, education, and equal opportunities	1, 5, 6, 7, 19, 20, 24, 25
Group II	Healthcare, social security, and social protection	3, 11, 12, 13, 14, 23, 30
Group III	Labour rights	2, 4, 9, 10, 15, 18
Group IV	Children, families, displaced people	7, 8, 16, 17, 19, 27, 31

Source: compiled by the author of this study

The Charter also stipulates that Member States must submit reports not only to the Committee, but also to representative national trade unions and employers' organisations. They thus can comment on their government's report through alternative reports, which are also considered by the Committee. The Committee's conclusions are then made public and sent to the Committee of Ministers of the Council of Europe. The latter may send a recommendation to the state concerned to change its law or practice if it fails to take measures to remedy situations that the Committee found to be incompatible with the Charter.

According to E. Bakirtzi (2022), the Committee, the Charter's supervisory body, has developed the most advanced judicial practice on social and economic rights, while the decisions it has made have brought concrete improvements in living and working conditions. The conclusions drawn by the researcher are quite pertinent, as the Committee forms a consistent and predictable practice of interpreting the provisions of the Charter, ensuring uniformity of approaches to the protection of social rights in different countries, thus contributing to the harmonisation of social legislation in Europe. In making its decisions,

[1] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[2] Documents Meetings Government Committee of the European Social Charter and the European Social Security Code Meeting No. 1195 "Ways of Streamlining and Improving the Reporting and Monitoring System of the European Social Charter". (2014, March) Retrieved from https://rm.coe.int/16805c6489.
[3] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.

the Committee factors in the economic situation and capacities of countries but emphasises the need to follow the minimum standards of social security.

Thus, in 2005, the Committee found that Ireland did not follow Article 17[1] (the right of children to social, legal, and economic protection), as migrant children had limited access to education[2]. As a result, Ireland changed its policy towards migrant children in the asylum system, providing them with better access to schools. The decision was an impetus for education reform, which revised the Direct Provision system (International Organisation for Migration, 2014), which previously limited the ability of families with children to take an active part in public life, including access to education. The reform included improved living conditions for children and access to educational materials and extracurricular programmes. In 2015, the Education Act[3] was adopted, which included provisions for equal access to education for all children, regardless of their parents' migration status. The country introduced educational and language courses for children who do not speak English or Irish, as well as intercultural integration programmes aimed at reducing the social exclusion of migrant children.

In 2005, the Committee found[4] that Swedish legislation[5,6] restricted workers' rights to collective action in violation of Article 6 of the Charter[7]. Specifically, it was noted that the restrictions on employees, including the right to strike, established in Swedish legislation, created an imbalance between the rights of employees and employers, violating the principles of social justice. This decision led to changes in Swedish labour legislation, reducing the number of conditions under which employees could go on strike, expanding the rights of trade unions in terms of collective bargaining, and protecting the labour rights of their members. Particular attention was paid to industries with an elevated level of atypical employment.

The decision in the case of European Disability Forum (EDF) and Inclusion Europe v. France[8], was a resonant one, where the Committee recognised that the lack of support services, limited accessibility of buildings, infrastructure, and public transport lead to the vulnerable situation of people with disabilities and their families. This contradicts the provisions of Article 16[9] (the right of the family to social, legal, and economic protection). As a result, the French government took measures to improve conditions for people with disabilities. Specifically, it invested EUR 1.5 billion over five years to improve accessibility (Barets *et al.*, 2024), adopted the Law "On Full Employment" dated 18 December 2023[10], which grants equal rights to employees in protected work environments, including health insurance, transport allowances, and the right to strike. Furthermore, since October 2023, only the recipient's personal income, not the partner's income, has been factored in when calculating the Adult Allowance for Persons with Disabilities (AAH) (Valdes, 2022), which positively influenced the income of hundreds of thousands of citizens.

The reform of the system of care for persons with disabilities in Bulgaria was also stimulated by the decision in the case of Mental Disability Advocacy Centre v. Bulgaria (2008)[11], in which the Committee found that the conditions of detention of persons with mental disorders in Bulgarian institutions, as prescribed in the National Education Act[12] and the Integration of Disabled Persons Act[13] were in breach of Article 13[14] (right to social and medical assistance). On the issue of combating discrimination, in 2019, in the case of University Women

[1] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[2] Decision of the European Committee of Social Rights No. 110/2014 "International Federation for Human Rights (FIDH) v. Ireland". (2017, April). Retrieved from https://hudoc.esc.coe.int/eng?i=cc-110-2014-dmerits-en.
[3] Education (Miscellaneous Provisions) Act of Ireland. (2015, May). Retrieved from https://www.irishstatutebook.ie/eli/2015/act/11/enacted/en/print.html.
[4] Decision of the European Committee of Social Rights No. 85/2012 "Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden". (2013, July). Retrieved from https://hudoc.esc.coe.int/eng#{%22sort%22:[%22escpublicationdate%20descending%22],%22escdcidentifier%22:[%22cc-85-2012-dadmissandmerits-en%22]}.
[5] Law of Sweden No. 580 "On Co-Determination at the Workplace". (1976, June). Retrieved from https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1976580-om-medbestammande-i-arbetslivet_sfs-1976-580/.
[6] Law of Sweden No. 678 "On the Posting of Workers". (1999, June). Retrieved from https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1999678-om-utstationering-av-arbetstagare_sfs-1999-678/.
[7] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[8] Decision of the European Committee of Social Rights No. 168/2018 "European Disability Forum (EDF) and Inclusion Europe v. France". (2022, October). Retrieved from https://hudoc.esc.coe.int/eng/?i=cc-168-2018-dmerits-en.
[9] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[10] Law of France No. 1196 "On Full Employment". (2023, December). Retrieved from https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000048581935.
[11] Decision of the European Committee of Social Rights No. 41/2007 "European Roma Rights Centre (ERRC) v. Bulgaria". (2008, June). Retrieved from https://hudoc.esc.coe.int/eng/?i=cc-41-2007-dmerits-en.
[12] National Education Act of Bulgaria. (1999, July). Retrieved from https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=64318&utm_source=chatgpt.com.
[13] Integration of Disabled Persons Act of Bulgaria. (2005, January). Retrieved from https://lex.bg/laws/ldoc/2135491478.
[14] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.

of Europe (UWE) v. Finland[1] the Committee found that the Government of Finland had failed to ensure that women had access to effective remedies and had not made sufficient measurable progress in promoting equal opportunities between women and men regarding equal pay, in violation of Article 20c of the Charter[2] (right to equal opportunities and equal treatment in matters of employment). As a result, the government revised its policy on gender equality in the labour market: equality and equity in working life are regulated by the Equality Act (tasa-arvolaki[3]) and the Employment Contracts Act (työsopimuslaki[4]), which mandate equal treatment of employees in terms of employment, working conditions, terms of contracts, staff training, and career advancement. If the workplace employs 30 or more employees, the employer must draft a written plan of equal treatment (tasa-arvosuunnitelma) and an equality plan (yhdenvertaisuussuunnitelma).

Thus, over the years, the decisions of the European Committee of Social Rights have influenced changes in legislation, policies, and practices in many Member States, contributing to the improvement of standards of protection of social and economic rights, ensuring the practical implementation of the Charter. Therewith, studying the practices within the framework of the European Social Charters[5] (and protocols), W. Burek (2023) found that the Member States not only use the flexibility of the Charter's provisions, but also unilaterally expand its boundaries by making reservations or declarations to the ratified provisions. Thus, as for Article 6[6] (right to bargain collectively, right to strike), the Netherlands excluded its application "to military personnel on active duty and civil servants employed by the Ministry of Defence"[7]. However, the "11th National Report on the implementation of the European Social Charter" of the Government of the Netherlands (2018) noted that the Netherlands cancelled this reservation, providing equal right to strike for all citizens. Portugal limited the application of Article 6 to the observance of the "prohibition of lockouts" as stated in its Constitution[8]. Germany in its interpretative declarations refers to internal legislation in this context. In total, Germany has formulated eight reservations (to Article 4(4), Article 7(1), Article 10(5), Article 21, Article 22, Article 24, Article 30, and Article 31), all of which state that "the Federal Republic of Germany is not bound by Article XY"[9].

The European Committee of Social Rights may refer to reservations or declarations when considering state reports, and when considering collective complaints – only if the allegations relate to a provision covered by a reservation or declaration. The researcher concluded that despite the considerable flexibility inherent in the European Social Charters[10],[11] and their Protocols[12,13,14] both the Member States and the European Committee of Social Rights generally consider them as conventional treaties to which the general rules on reservations apply.

To this reasonable view, it is worth adding that the drafters of the Charter should include a provision expressly prohibiting reservations, as was implemented, for instance, in 1992 in the European Charter for Regional or Minority Languages[15] (Article 21: "Any State may, at the time of signature or when depos-

[1] Decision of the European Committee of Social Rights No. 168/2018 "University Women of Europe (UWE) v. Finland". Retrieved from https://hudoc.esc.coe.int/eng/?i=cc-129-2016-dmerits-en.
[2] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[3] Working Hours Act of Finland. (2019, July). Retrieved from http://data.finlex.fi/eli/sd/2019/872/ajantasa/2024-12-19/fin.
[4] Decree of the Government of Finland "On the Repeal of the Government Decree on the Extension of the Exercise of the Powers Provided for in Sections 86, 88, 93 and 94 of the Emergency Powers Act and the Decrees on the Application of Those Powers". (2020, June). Retrieved from http://data.finlex.fi/eli/sd/2020/444/ajantasa/2020-06-15/fin.
[5] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[6] Ibidem, 1996.
[7] Decree of the Ministry of the Interior and Kingdom Relations of Netherlands "On Amending the Decree on the General Legal Status of the Police, the Police Remuneration Decree and the Decree on Medical Care Police 1994 in Connection with the Agreement on Terms of Employment Police Sector for the Period 1 January 1999 up to and Including 31 December 2000". (1999, July). Retrieved from https://zoek.officielebekendmakingen.nl/stb-1999-370.html.
[8] Constitution of the Portuguese Republic. (1974, April). Retrieved from https://www.parlamento.pt/Legislacao/paginas/constituicaorepublicaportuguesa.aspx.
[9] Announcement by the German Government on the Entry into Force of the European Social Charter (Revised). (2021, October). Retrieved from https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl221s1060.pdf#bgbl%2F%2F*%5B%40attr_id%3D%27bgbl221s1060.pdf%27%5D_1741179620998.
[10] European Social Charter. (1961, October). Retrieved from https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=035.
[11] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[12] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. (1988, May). Retrieved from https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=128
[13] Protocol Amending the European Social Charter. (1991, November). Retrieved from https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=142.
[14] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. (1995, May). Retrieved from https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=158.
[15] European Charter for Regional or Minority Languages. (1992, November). Retrieved from https://surl.li/iqkzgg.

iting its instrument of ratification, acceptance, approval or accession, make one or more reservations to paragraphs 2 to 5 of Article 7 of this Charter. No other reservation may be made"). Otherwise, there is no reason to assume that the mere fact that the Charter[1] adopts an à la carte system without a reservation provision implies a prohibition of reservations or otherwise discourages their formulation.

Any provisions will not be perfect without public participation. The Additional Protocol to the European Social Charter[2], which establishes a system of collective complaints, was opened for signature in 1995 and entered into force in 1998. As of 2024, the act has been ratified by 15 states, including Belgium, Bulgaria, Cyprus, Finland, France, Greece, Ireland, and others. Another 3 states signed but not ratified the protocol – Denmark, Iceland, and Luxembourg. The collective complaints mechanism, as well as the submission of information for regular monitoring by the committee, have been crucial for civil society in the Charter system. They entitle non-governmental organisations, trade unions, and other associations to directly address the European Committee of Social Rights in case of violations. The introduction of such mechanisms contributes to a greater level of monitoring of the implementation of commitments by the member States, as it allows identifying systemic problems and facilitating their resolution at the international level, thus strengthening the role of civil society in the country.

This has strengthened NGOs in this area at the national and regional levels. According to the official data of the Council of Europe (2024), between 1998 and 2022, the European Committee of Social Rights registered 219 collective complaints, most of which came from France (57), Italy (39), Greece (23), and Portugal (15). The collective complaints procedure is a unique form of collective action in the human rights system, reflecting a systematic approach to solving social problems that generally affect certain groups of people (Shumliaieva, 2023). This conclusion is reasonable, as it is fundamentally different from the individual complaints procedure considered by the European Court of Human Rights under the European Convention on Human Rights. Unlike the ECHR, where any individual who believes that their rights were violated can apply to the court, the Charter procedure makes provision only for the possibility of filing collective complaints. According to the Charter's Additional Protocol[3], four categories of organisations may submit collective complaints:

1) international trade union organisations and employers' organisations;

2) non-governmental organisations having consultative status and included in the list drafted by the Governmental Committee;

3) trade unions and employers' organisations in the country concerned;

4) national non-governmental organisations.

The latter category of organisations may file complaints only with the express consent of the state. The only country that granted this right is Finland. E. Bakirtzi (2022), studying the collective complaints procedure, came to the reasonable conclusion that it includes several features of a trial: arguments of both parties are considered, and the applicable rules are applied to the facts of the case. One cannot but agree with the researcher. Compared to the ECHR procedure, the Charter's collective complaints system[4] is considered a quasi-judicial process – the first such complaint mechanism in international law that deals specifically with economic and social rights. However, unlike the ECHR, the collective complaints procedure does not make provision for a compensation mechanism. Only in some cases, it has satisfied claims for compensation, e.g., in the case of Confédération Française de l'Encadrement CFE-CGC v. France[5].

According to Article 9 of the 1995 Additional Protocol[6], the Committee's decision on the admissibility of a complaint is transmitted to the Committee of Ministers, which adopts a resolution and invites the state concerned to take the necessary measures to bring the situation into conformity with the Charter. However, there is a discrepancy in the processes here as well, compared to the ECHR: if the decision is not implemented, the Committee of Ministers adopts recommendations to the state. Thus, the state will be obliged to report on the measures taken to implement the Committee's conclusions. Such a recommendation was adopted only once in case No. 6/1999 Syndicat National des Professions du Tourisme v. France[7]. Thus, the ECHR has a Committee of Ministers of the Council of Europe that monitors the implementation of judgments, while in the case of the

[1] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[2] Ibidem, 1996.
[3] Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. (1995, May). Retrieved from https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=158.
[4] Ibidem, 1995.
[5] Resolution of the Committee of Ministers of Europe No. CM/ResChS(2016)4 in Case No. 100/2013 "European Roma Rights Centre (ERRC) v. Ireland". (2015, December). Retrieved from http://hudoc.esc.coe.int/eng/?i=reschs-2016-4-en.
[6] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[7] Recommendation of the Council of Europe and Committee of Ministers No. RecChS(2001) "On Collective Complaint No. 6/1999 "Syndicat National des Professions du Tourisme v. France". (2001, January). Retrieved from https://wcd.coe.int/ViewDoc.jsp?id=182943&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

Charter, the implementation mechanism stays flexible and less effective.

After the resolution of the Committee of Ministers or, if the resolution is not adopted, after 4 months, the decision is officially published and transmitted to the Parliamentary Assembly of the Council of Europe (Lukas, 2021). According to L.O. Simontseva (2024), civil society plays a major role in ensuring international human rights protection. One cannot but agree with this, considering the review of complaints, according to which a significant number of national trade unions and, to some extent, European trade union organisations such as the European Trade Union Confederation (ETUC), have used the collective complaints system. Efforts on the part of employers have been much less. To a large extent, international NGOs also use the system, including the European Roma Rights Centre (ERRC), Defence for Children International (DCI), the World Organisation Against Torture, the Centre for Housing and Eviction Rights (COHRE), and the International Federation of Human Rights Leagues.

The activities of international organisations substantially complement official human rights protection mechanisms and contribute to the effectiveness of international human rights monitoring (Pipyak *et al.*, 2024) Thus, in the protection of the Roma population in Italy and France, the Committee found that the Italian government violated Article 19 (the right of migrant workers and their families to protection) by failing to provide sufficient social support to Roma migrants[1]. It also found that France had violated Article 31 (right to housing), as Roma people did not have access to adequate housing and were evicted without being provided with alternative accommodation[2]. These decisions have led to the development of new social integration programmes to improve the living conditions of Roma people and the introduction of special social support programmes.

Using the Committee's reporting procedure under the collective complaint mechanism based on its own research, Amnesty International submitted three complaints, which concerned housing for Roma people (against Italy)[3], healthcare for migrants, including Roma people (Sweden)[4], and the impact of austerity on healthcare systems (Greece)[5]. However, the complaint against Italy, submitted in 2019[6], was considered by the Committee only in October 2023 and published on 13 May 2024 following the Committee's rules of procedure. The Committee unanimously found that Italy had violated the rights of Roma through persistent forced evictions, segregation, and substandard housing and unequal access to social housing.

Thus, the situation of those whose rights have been violated, many of whom are children, is continually deteriorating, compounded by challenges in accessing education and healthcare. Optimisation of procedural aspects to expedite the complaint process would ensure more prompt protection of rights. The author of the present study believes that the process lacks not only transparency, but also the urgency that is reasonably expected – not least by victims – from any redress mechanism. It also reinforces the sense of secondary status in relation to the European Convention on Human Rights: The European Court of Human Rights publishes its judgements immediately.

A. Spagnolo (2022) proposed a solution to this problem – automatic publication of judgements after their adoption by the European Committee of Social Rights would lead to prompt publicity and public debate in the Member State involved to start implementation. It can be agreed that faster processing of complaints may reduce the burden on plaintiffs to continue to provide periodic updates on the changing situation of victims or on changes in policy and legal frameworks.

Once a violation was declared, the Committee continues to monitor the situation, and the State concerned should report regularly on the measures taken to implement it. L. Seyfried (2022) studied the impact of the European Committee of Social Rights monitoring in the collective complaints procedure and concluded that the government does not always fully and quickly bring the country into compliance with the requirements of the Charter, although there are positive examples. S. Garben (2018), in her study on the European Pillar of Social Rights, noted that its launch is a crucial step towards strengthening the social dimension of the EU, but for real change, the EU must openly acknowledge the conflicts between these areas and make policy decisions to reconcile them, rather than presenting them as non-contradictory.

[1] Decision of the European Committee of Social Rights No. 119/2015 "European Roma and Travellers Forum (ERTF) v. France". (2017, December). Retrieved from https://hudoc.esc.coe.int/eng?i=cc-119-2015-dmerits-en.
[2] Decision of the European Committee of Social Rights No. 51/2008 "European Roma Rights Centre (ERRC) v. France". (2009, October). Retrieved from https://hudoc.esc.coe.int/eng?i=cc-51-2008-dmerits-en.
[3] Decision of the European Committee of Social Rights No. 178/2019 "Amnesty International v. Italy". (2021, January). Retrieved from https://hudoc.esc.coe.int/eng/?i=cc-178-2019-dmerits-en.
[4] Decision of the European Committee of Social Rights No. 227/2023 "Amnesty International and Médecins du Monde – International v. Sweden". (2023, December). Retrieved from https://hudoc.esc.coe.int/eng/?i=cc-227-2023-dadmiss-en.
[5] Decision of the European Committee of Social Rights No. 217/2022 "Amnesty International v. Greece". (2023, September). Retrieved from https://hudoc.esc.coe.int/eng/?i=cc-217-2022-dadmiss-en.
[6] Decision of the European Committee of Social Rights No. 178/2019 "Amnesty International v. Italy". (2023, October). Retrieved from https://hudoc.esc.coe.int/eng?i=cc-178-2019-dmerits-en.

The author of the present study fully agrees with the researcher's opinion in the context of the following.

As for Ukraine, the Committee noted in its conclusion (European Committee of Social Rights, 2023) that the situation in Ukraine does not follow Article 31§1 of the Charter. In its 2019 conclusion on Ukraine's implementation of Article 7 (right of children and young people to protection), the Committee noted that in its 2011 and 2015 conclusions it had noted shortcomings in the legislation on the employment of children under 15 and concluded that the situation was not in conformity with Article 7§1 of the Charter on the grounds that the definition of light work was not sufficiently precise. However, the State did not take measures to remedy this violation. Consequently, the Committee again found that the situation in Ukraine was not in conformity with Article 7§1 of the Charter.

Despite this, no sanctions or enforcement measures were applied to Ukraine, as well as to other countries that were found to be in non-compliance with the ratified provisions of the Charter. Thus, although the Committee can identify violations and make recommendations, the lack of enforcement mechanisms means that countries can fail to implement these recommendations without direct consequences, unlike the ECHR, whose judgments are binding.

At the request of a complainant or on its own initiative, the European Committee of Social Rights may, according to its Rule 36, order immediate measures to "avoid irreparable damage or prejudice to the persons concerned". According to M. Dalli (2020), the inaction of national authorities regarding these measures has almost no consequences. In this context, the author of the present study also considers it expedient to introduce public control over the implementation of decisions. Thus, the exercise of the relevant control function by all-Ukrainian trade union organisations will strengthen their status in society and will be a positive factor for citizens to join in terms of increasing trade union involvement of employees and access to the right to association.

N.A. Papadopoulos (2022), studying the practices of implementing the Charter's provisions by Member States, concluded that compliance with the Charter is predominantly a matter of political will, not a matter of respect for the countries' international human rights obligations. There is always a risk that an employer-oriented government will ignore or misinterpret the content of the Charter without fear of consequences for breaching the state's obligations. This opinion has merit, and attention should be drawn to the example of Ukraine in terms of non-ratification of the collective complaint procedure and some provisions of the Charter, despite its active dialogue with the Council of Europe.

As noted above, Ukraine has ratified only part of the Charter's articles[1]. Specifically, the government did not commit itself to implementing the provisions of Article 12, parts 1 and 2 (right to social security). At first glance, they are elementary and straightforward – to establish a social security system and maintain its functioning at the proper level. However, since joining the Charter, the minimum pension and unemployment benefits are much lower than in most EU countries, which indicates a low level of social guarantees compared to other Council of Europe countries. Furthermore, according to A. Kupriyanova & T. Kalita, (2024), the lack of official business registration and taxation in Ukraine leads to a large loss of revenue for the state budget and adversely affects the country's economic stability, which complicates the tax collection process. This leads to a decrease in state budget revenues and affects both the calculation of the country's GDP and its financial stability, creating further difficulties in ensuring financial stability and economic development. It is impossible not to concur with the researchers and add that to implement parts 1 and 2 of Article 12, it is necessary to have an effective tax system that would increase revenues to social funds to ensure an adequate level of social protection. Furthermore, ratification of these paragraphs would imply an obligation to report to the Committee. In fairness, Ukraine is not the only country that did not ratify these provisions of the Charter – Eastern European countries, including Poland, the Czech Republic, and Latvia, also avoided commitments that require strict social standards. Thus, new democracies with economies in transition try to avoid excessive social guarantees that are challenging to implement in practice.

Notably, four Council of Europe member states – Liechtenstein, Monaco, San Marino, and Switzerland – have not yet ratified the Charter at all, and seven more – Croatia, the Czech Republic, Denmark, Iceland, Luxembourg, Poland, and the United Kingdom – have not ratified the revised Charter. In this regard, to ensure social rights across Europe and increase the Charter's credibility, it is necessary to make it binding on all Member States. The principal document governing membership in the Council of Europe, the Statute of the Council of Europe[2], does not explicitly require ratification of the Charter. The author of the present study proposes to amend Article 3 of the Charter, which sets out the criteria for membership, by adding a clause on mandatory ratification of the Charter. At the same time, in the

[1] European Social Charter (Revised). (1996, April). Retrieved from https://rm.coe.int/168007cf93.
[2] Statute of the Council of Europe. (1949, May). Retrieved from https://rm.coe.int/1680306052.

future, any state wishing to join the Council of Europe should be required to do so as a precondition. For those countries that are currently members of the Council of Europe, it is proposed to establish a 5-year transition period during which member states should gradually ratify the Charter in full. Another positive aspect is the use of diplomatic influence mechanisms, for instance, the inclusion of recommendations to bring legislation into line with the Charter in the terms of international agreements. At the same time, reasonable is the proposal of L. Jimena Quesada (2021) to introduce the ratification of the collective complaints procedure and the Charter in the spirit of the Turin Process. Ukraine, like some other countries with economies in transition, avoids ratification of certain provisions of the European Social Charter due to challenges with financial stability and ensuring exacting social standards, which indicates the need to reform the tax system, strengthen international influence, and amend the Statute of the Council of Europe to ensure mandatory ratification of the Charter by all member states.

Conclusions

The study examined the mechanisms for monitoring the implementation of the European Social Charter (revised) and analysed their effectiveness in ensuring social rights of citizens. The study revealed a series of shortcomings in the reporting procedure of Member States and identified problems related to the implementation of decisions of the European Committee of Social Rights. The study fulfilled its purpose of identifying the key challenges facing the Charter's implementation mechanism and proposing recommendations for improving their effectiveness by analysing international experience and comparing the law enforcement practices of individual states.

The study findings confirmed that the reporting procedure of the Member States has considerable shortcomings. Specifically, countries often expand or change the interpretation of the Charter's articles through reservations and declarations of ratification, which effectively reduces its legal force. It was been established that due to the non-binding nature of the decisions of the European Committee of Social Rights, member states can effectively ignore their outstanding obligations without any sanctions. The analysis of public control over compliance with the Charter's provisions showed that although this mechanism is potentially effective, NGOs are deprived of the right to directly influence the implementation of the Committee's decisions. As a result, even if they have information about violations of social rights, NGOs cannot initiate interventions that are mandatory for states to consider.

The scientific originality of the present study lies in the comprehensive analysis of current mechanisms for monitoring the implementation of the Charter, considering both international and national practices. This study was the first to summarises the influence of the Charter on the legal systems of individual states and substantiated the need to strengthen control over its implementation in the context of ensuring social rights of citizens. Specifically, it was concluded that it would be necessary to intensify the participation of civil society in the implementation of the Charter's provisions and to grant non-governmental organisations expanded powers to monitor and initiate consideration of violations.

Prospects for further research in this area may include an analysis of Ukraine's experience in implementing the provisions of the Charter into national legislation, as well as a comparative study of models of public control over social rights in various Council of Europe countries.

Acknowledgements

None.

Conflict of Interest

The author of this study declares no conflict of interest.

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Механізми контролю за виконанням Європейської соціальної хартії та їх значення для держав-учасниць

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■ **Анотація.** Фундаментом європейської системи забезпечення соціальних прав людини є Європейська соціальна хартія, практична реалізація якої відбувається під егідою Ради Європи. Однак формально її положення не підлягають неухильному виконанню, що обумовлює потребу в підвищенні ефективності реалізації положень Хартії. Метою роботи стало дослідження недоліків механізмів контролю за дотриманням норм Європейської соціальної хартії, оцінка їх значення для держав-учасниць, розроблення рекомендацій щодо підвищення їх ефективності. Методологічною основою дослідження став комплексний аналіз механізмів контролю за виконанням Європейської соціальної хартії. У статті проаналізовано рішення Європейського комітету із соціальних прав щодо порушень норм Європейської соціальної хартії різними державами та їх вплив на розвиток законодавства й покращення соціальної політики в цих країнах. Увагу зосереджено на механізмі подання колективних скарг, який викладено в Додатковому протоколі. За результатами дослідження встановлено, що розширення впливу національних неурядових організацій та посилення громадського контролю істотно сприятиме покращенню стану реалізації Хартії. Водночас негайне оприлюднення висновків Комітету матиме позитивний вплив на іміджеву складову, а також забезпечить прозорість і своєчасність реалізації соціальних прав громадян. У дослідженні систематизовано вплив положень Хартії на правові системи окремих країн, акцентовано на ролі громадянського суспільства та значенні розширення повноважень неурядових організацій у цьому процесі, обґрунтовано необхідність посилення контролю за її реалізацією. Отримані результати мають практичну цінність для вдосконалення правозастосовної діяльності й забезпечення соціальних прав громадян

■ **Ключові слова:** соціальне забезпечення; соціальний захист; соціальні права; європейські стандарти; колективні скарги

UDC 347.736
DOI: 10.63341/naia-herald/1.2025.71

The application of the institution of subsidiary liability in bankruptcy cases

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■ **Abstract.** This study aimed to develop a comprehensive understanding of the mechanisms of subsidiary liability and identify ways to improve its regulation in bankruptcy law. The methodological framework was based on a combination of institutional and comparative legal approaches, enabling a thorough examination of subsidiary liability as a legal institution and comparing its regulation across different legal systems. The findings indicated that the Ukrainian model of subsidiary liability has evolved from a narrow to a broader interpretation of liability grounds, reflecting a global trend towards strengthening creditor protection. An analysis of European legislation and Ukrainian case law, along with selected cases in Germany (Wirecard) and the United Kingdom (BHS), revealed that the effectiveness of the European model is primarily ensured through the introduction of early problem detection systems and prompt responses to initial signs of mismanagement. This is complemented by a well-developed system of professional oversight by insolvency practitioners, auditors, and experts. It has been established that a key element of the European approach is a well-functioning system of cross-border cooperation and information exchange between different jurisdictions. The specialisation of proceedings and the clear distinction between various forms of liability contribute to more efficient case resolution and the avoidance of procedural complications. The necessity of systematically improving Ukrainian legislation has been substantiated through the expansion of insolvency practitioners' powers, the introduction of early warning mechanisms for insolvency, the creation of a national database of individuals involved in subsidiary liability cases, and the mandatory audit of enterprises experiencing a sharp increase in debt burden or changes in ownership structure. It has been proposed to supplement legislation with specialised rules governing the identification, prevention, and termination of misconduct at the pre-crisis stage, as well as to develop a clear list of risk indicators and introduce a requirement for management to notify creditors and relevant state authorities of such circumstances

■ **Keywords:** corporate insolvency; corporate governance; legal regulation; creditor protection; insolvency practitioner

■ Introduction

In the context of rapidly evolving corporate relationships and increasingly complex financial and economic interdependencies, the institution of subsidiary liability is gaining significant importance as a key mechanism for protecting creditor rights and ensuring a fair distribution of risks among participants in business relationships. The effective application of subsidiary liability in bankruptcy cases is becoming critically important for Ukraine, given the need to harmonise national legislation with EU law and the growing trend towards creating complex corporate structures. This issue is particularly relevant in the context of an increasing number of distressed companies and the need to improve mechanisms for holding

■ **Suggested Citation:**
Nakorchevskyj, S. (2025). The application of the institution of subsidiary liability in bankruptcy cases. *Scientific Journal of the National Academy of Internal Affairs,* 30(1), 71-86. doi: 10.63341/naia-herald/1.2025.71.

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■ Received: 08.12.2024; Revised: 25.02.2025; Accepted: 25.03.2025

those who actually control debtor companies accountable, especially in cross-border bankruptcies and international business transactions. According to data, in September 2024, the number of risky value-added tax payers increased by 591, and this upward trend has been continuing since September 2023 (Yuzhanina, 2024). The increase in the number of intentional bankruptcies and evasion of responsibility through complex corporate structures has become even more acute during the period of martial law (Rybalchenko & Ohrimenko, 2024). In today's economic realities, where there is a growing number of cases of intentional bankruptcies and asset stripping through complex corporate structures, the development of effective subsidiary liability mechanisms is not just a theoretical issue, but an urgent practical necessity to ensure the stability of economic relations and protect the rights of bona fide market participants. In particular, in complex corporate structures where the lines between personal and corporate assets are often blurred, subsidiary liability can become a tool to combat fraudulent schemes.

Fundamental research into the legal nature of subsidiary liability within Ukrainian law reveals a variety of approaches. I.V. Horvat (2024) conducted an analysis of the legal nature of subsidiary liability in Ukrainian civil law, closely examining its definition in Article 619 of the Civil Code of Ukraine[1] and the mechanisms for its application in the context of bankruptcy. The researcher identified subsidiary liability as an effective mechanism for protecting creditor rights but also highlighted a significant problem: the lack of clarity in the regulatory framework for identifying liable individuals, especially in complex corporate structures. O.P. Yerokhin (2024) expanded upon this research by focusing on the practical aspects of implementing subsidiary liability. This involved analysing specific mechanisms of its application in court practice and emphasising the need to improve procedures for more effective protection of creditor rights. A. Danilov (2024) conducted a study on the interaction between joint and several liability and subsidiary liability in bankruptcy cases. Based on an analysis of the Bankruptcy Code of Ukraine[2], he determined that holding officials jointly and severally liable for failing to file for bankruptcy promptly does not violate the principle of bankruptcy immunity.

Research on the evolution and transformation of bankruptcy legislation has been extensively explored by international scholars. I. Das (2020) offered a comprehensive analysis of the evolution of bankruptcy law within the context of socio-economic and political transformations. He examined the historical development of bankruptcy mechanisms and their adaptation to modern economic realities. The researcher paid particular attention to balancing the interests of various stakeholders in the formation of bankruptcy and subsidiary liability legislation. I. Kokorin (2021) conducted a comprehensive study of contemporary approaches to restructuring in European legislation, focusing on improving liability mechanisms in cross-border bankruptcies. A key contribution of this research was a detailed analysis of the "release of third parties" mechanism, which allows for the release or modification of claims against related parties in insolvency proceedings. S. Malekmohamadi & R. Eskini (2023) expanded the international context of the research by analysing the role and standards of UNCITRAL in regulating the liability of parent companies. They also investigated various approaches to determining the scope of such liability in different legal systems.

A particular area of research is dedicated to the problems of corporate responsibility and governance. O.O. Karmaza *et al.* (2019) conducted a comprehensive study of the application of the "piercing the corporate veil" doctrine in Ukrainian law. They closely analysed its elements within the existing legislation and emphasised the need to strengthen the accountability of ultimate beneficial owners. D.A. Nuryanto *et al.* (2019) and W.H. Beaver *et al.* (2024) furthered the understanding of the specific characteristics of bankruptcy within business groups and holding structures. They examined the mechanisms of intra-group support and credit risk management. R. Mares (2020) investigated the transformation of the principle of legal separation in the context of multinational corporation activities, establishing its stability over two centuries despite the challenges of globalisation.

Procedural and practical aspects of implementing subsidiary liability are revealed in a series of studies. R. Knieper & A.N. Biryukov (2019) conducted a study of legal constructs in the economic sphere of Ukraine, particularly the right of operational management. They found its inconsistency with current conditions and substantiated the need for changes to the Commercial Code of Ukraine[3]. E.J. Janger (2022) complemented this research with a detailed analysis of mechanisms for protecting creditor rights in various jurisdictions, especially regarding the application of procedural safeguards in bankruptcy. C. Beuermann (2022) analysed the formal legal reasoning in the courts of England and Wales when determining subsidiary liability. He found that the change in the type of formality after moving away from the Salomon test requires adjustments to the Supreme Court's guidelines.

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15.
[2] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[3] Commercial Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15.

Despite the substantial body of research, several critical aspects of the application of subsidiary liability in bankruptcy cases remain underexplored. In particular, further investigation is required into mechanisms for effectively proving actual control over debtor enterprises, the application of subsidiary liability in the context of economic digitalisation and emerging forms of corporate control, as well as the harmonisation of Ukrainian legislation with international standards on cross-border insolvency. Additionally, the interaction between subsidiary liability mechanisms and other institutions of corporate law in conditions of economic instability and the transformation of business models remains insufficiently studied.

This study aimed to explore subsidiary liability in bankruptcy proceedings in Ukraine and EU countries, focusing on its legal nature, regulatory framework, and practical application. The research objectives were as follows:

1) to investigate the legal nature and theoretical foundations of the institution of subsidiary liability in different legal systems, to identify the specifics of its application in Ukrainian legislation, and to conduct a comparative analysis with European regulatory models;

2) to analyse the practice of applying subsidiary liability in bankruptcy proceedings in Ukraine, to identify the main problems and obstacles in law enforcement, and to examine the current positions of the Supreme Court regarding the criteria for liability;

3) to develop scientifically grounded proposals for improving the legislative regulation of subsidiary liability in Ukraine, taking into account European standards and recommendations, aimed at increasing the effectiveness of protecting creditor rights and ensuring proper corporate governance.

Materials and Methods

This research employed a comprehensive methodological approach based on a combination of general scientific and specialised legal methods of scholarly inquiry. The system-structural method was a key tool for the comprehensive analysis of the interrelationships between various elements of the legal regulation of subsidiary liability. Its application allowed for the examination of not only individual regulatory legal acts but also the identification of systemic links between substantive and procedural norms governing liability issues in bankruptcy proceedings. Particular attention was paid to the analysis of the interaction between norms of different branches of law – civil, commercial, corporate, and criminal – which allowed for the formation of a holistic understanding of the mechanism of legal regulation of subsidiary liability. The system-structural analysis also helped to identify gaps and inconsistencies in the existing legislation, particularly in matters of coordination between different jurisdictional procedures and mechanisms for protecting creditor rights.

The formal legal method was employed in the detailed analysis of Ukraine's regulatory legal framework governing subsidiary liability. Within this method, a thorough analysis of the provisions of the Bankruptcy Code of Ukraine[1] was conducted, which establishes the basic principles and mechanisms for imposing subsidiary liability. Additionally, the Civil Code of Ukraine[2], which defines the general principles of civil liability, the Commercial Code of Ukraine[3], which regulates the specifics of liability for business entities, and the Criminal Code of Ukraine[4], regarding liability for bankruptcy-related crimes, were analysed. Particular attention was paid to the analysis of the legal constructs used by the legislator to define the grounds, conditions, and procedures for imposing subsidiary liability, as well as to the study of the terminological apparatus and the specifics of its application in various regulatory legal acts.

The comparative legal method was a fundamental tool for conducting a comparative analysis of the regulation of subsidiary liability in the legal systems of Ukraine and leading EU countries. Within the study, the legislation of France was analysed, including the provisions of the Civil Code of France[5] and the Commercial Code of France[6], which establish the basic principles of liability for company directors and owners, as well as mechanisms for protecting creditor rights. Particular attention was paid to the analysis of German legislation, including the Civil Code of Germany[7] and Law of Germany No. 323 "On Limited Liability Companies"[8], which detail corporate liability issues and "piercing the corporate veil" mechanisms. The study of the Commercial Companies Code of Poland[9] allowed for the identification of the specifics of regulating subsidiary liability in a country that has

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15.
[3] Commercial Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15.
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[6] Commercial Code of France. (2000, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379.
[7] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/bgb.
[8] Law of Germany No. 323 "On Limited Liability Companies". (1892, April). Retrieved from https://www.gesetze-im-internet.de/gmbhg.
[9] Commercial Companies Code of Poland. (2000, September). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20000941037.

undergone a similar path of legal system transformation to Ukraine. An analysis of the Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act"[1] provided an opportunity to examine contemporary European approaches to regulating liability in corporate relations. The application of the comparative legal method made it possible not only to identify commonalities and differences in the regulation of subsidiary liability in different legal systems but also to formulate specific proposals for improving Ukrainian legislation, taking into account successful European practices.

International normative acts were an important source of research, primarily Directive of the European Parliament and of the Council No. 2019/1023[2], which establishes modern European standards for regulating bankruptcy and restructuring procedures, Regulation of the European Parliament and of the Council No. 2015/848[3], which regulates insolvency proceedings and establishes mechanisms for cross-border coordination between EU member states, and the UNCITRAL Model Law on Cross-Border Insolvency, which defines international standards for regulating cross-border bankruptcies (United Nations Commission on International Trade Law, 2019). The analysis of these documents was essential for assessing the prospects for harmonising Ukrainian legislation with European norms and determining directions for its improvement.

The empirical basis of the research consisted of a body of Ukrainian court practice, in particular, the rulings of the Supreme Court in bankruptcy and subsidiary liability cases. A detailed analysis of Resolution of the Supreme Court of Ukraine in Case No. 908/314/18[4], Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16[5], Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16[6], Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20[7], and Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21[8] allowed for tracing the evolution of court practice and identifying the main trends in the application of subsidiary liability mechanisms. Particular attention was paid to the analysis of the legal positions of the Supreme Court regarding the criteria for imposing liability, the evaluation of evidence, and the establishment of a causal link between the actions of directors or owners and the insolvency of the company.

Results and Discussion

The legal nature and theoretical foundations of the institution of subsidiary liability. Subsidiary liability in civil law relations is a specific mechanism that involves imposing an auxiliary or additional obligation on another person (the subsidiary respondent) to satisfy creditors' claims when the primary debtor is unable to fulfil their obligations in full. This form of liability differs significantly from joint and several liability, where a creditor has the right to demand full repayment of the debt from any of the co-debtors, regardless of the financial situation of the others (Supreme Court, 2021). In contrast, subsidiary liability arises only when it becomes clear that the primary debtor's assets or funds are categorically insufficient to satisfy all claims. This approach emphasises the "secondary" or "auxiliary" nature of the subsidiary respondent, who is liable only when the principal obligation cannot be properly fulfilled by the primary debtor. The logic of this legal phenomenon is closely linked to the concept of fair risk distribution: participants in commercial transactions, including directors and beneficiaries, should bear responsibility when their actions or omissions have contributed to the emergence of insolvency and thereby worsened the position of creditors.

Historically, Ukrainian legislation was predominantly focused on collective (joint and several) liability, as during the Soviet era, the legal regulation of economic activity did not significantly differentiate between forms of mutual responsibility (Babie, 2016). As noted by U.E. Monastyrsky (2020), the transition to market relations required the development of

[1] Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act". (2010, July). Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-2010-10544.

[2] Directive of the European Parliament and of the Council No. 2019/1023 "On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and On Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)". Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1023.

[3] Regulation of the European Parliament and of the Council No. 2015/848 "On Insolvency Proceedings". (2015, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2015/848/oj/eng.

[4] Resolution of the Supreme Court of Ukraine in Case No. 908/314/18. (2022, August). Retrieved from https://verdictum.ligazakon.net/document/105747984.

[5] Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16. (2020, June). Retrieved from https://verdictum.ligazakon.net/document/89910859.

[6] Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16. (2020, November). Retrieved from https://verdictum.ligazakon.net/document/92971721.

[7] Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20. (2024, June). Retrieved from https://verdictum.ligazakon.net/document/120341855.

[8] Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21. (2024, September). Retrieved from https://zakononline.com.ua/court-decisions/show/122021182.

more flexible liability mechanisms that would take into account the real influence of controlling persons on management decisions and their consequences for a company's solvency. However, with the transition to market relations and the active development of the private sector, courts and legislators recognised the expediency of imposing subsidiary liability on those participants who had a real influence on the management of the enterprise.

The legal regulation of subsidiary liability in Ukraine is enshrined in the main regulatory legal acts. In the Civil Code of Ukraine[1], the basic provisions are contained in Article 619, which stipulates that a contract or law may provide for additional (subsidiary) liability of another person alongside the liability of the debtor. The Commercial Code of Ukraine[2], in Article 176, regulates organisational and economic obligations that arise in the process of managing economic activities between a business entity and an entity with organisational and economic powers. The most detailed regulation of the mechanism of subsidiary liability in the event of insolvency is contained in the Bankruptcy Code of Ukraine[3], where Article 61 provides that in the event of a debtor's bankruptcy due to the fault of its founders, participants, shareholders, or other persons, including the debtor's director, who have the right to give binding instructions to the debtor or can otherwise determine their actions, they may be held subsidiarily liable for the debtor's obligations if their assets are insufficient.

The phenomenon of subsidiary liability is not unique to Ukrainian law, as it is also widely used in EU countries as an effective mechanism to counter abuses by company owners or directors. In Germany, there is the concept of Durchgriffshaftung ("piercing the corporate veil"), which allows controlling persons to be held liable in the event of unlawful actions, particularly if they have deliberately led the company to insolvency. This mechanism is aimed at preventing abuses of the corporate form and ensuring fairness for creditors. In the United Kingdom, similar protection of creditors' interests is provided by the doctrine of piercing the corporate veil, which is applied in exceptional cases, as well as by the rules on "wrongful trading" under the Insolvency Act of the United Kingdom[4]. Specifically, section 214 of this Act establishes the liability of directors if they knew or ought to have known that there was no realistic prospect of avoiding insolvency, but failed to take every step to minimise the potential loss to the company's creditors.

Many EU member states also have specialised corporate and bankruptcy legislation that provides mechanisms for "piercing the corporate veil". For example, France has a procedure known as action en comblement de passif, which allows liability to be imposed on directors for company debts. In Italy and Spain, similar mechanisms are applied through provisions of national bankruptcy law. Of particular importance are the rules that allow not only formal officials but also those who actually managed the company and led it to insolvency through improper management or fraudulent actions to be held liable. For instance, in the United Kingdom, there is the possibility of holding socalled de facto directors liable, and in France, dirigeants de fait, which expands the range of persons who can be held responsible for financial abuses (Gerner-Beuerle *et al.*, 2013). As M. Tamvada (2020) notes, the effective application of such liability mechanisms requires a clear theoretical justification of the relationship between the moral and legal aspects of corporate behaviour, which indicates the universality of subsidiary liability as one of the most important elements of the modern European legal space. In the international context, the theoretical basis and practical application of subsidiary liability have their own peculiarities in different legal systems (Table 1). At the same time, a common understanding of this institution as an important mechanism for protecting creditor rights and ensuring proper corporate governance remains consistent across all approaches.

Table 1. Theoretical approaches to the institution of subsidiary liability in different legal systems

Theoretical aspect	Continental legal system	Anglo-American legal system	Ukrainian legal system
Conceptual foundation	Doctrine of abuse of rights and the principle of good faith; emphasis on the objective aspect of violating corporate norms	Concept of due diligence and fiduciary duties with a focus on management's subjective attitude towards their obligations	Synthesis of the continental approach with elements of Anglo-American doctrine; balanced approach to assessing objective and subjective factors
Theoretical justification of liability	Violation of the principle of fair use of the corporate form through unjustified mixing of personal and corporate assets	Breach of the duty to act in the interests of creditors in the face of insolvency and failure to adhere to the standard of reasonable care	Violation of the principle of good faith management and abuse of rights, with an emphasis on the causal link between actions and insolvency

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15.
[2] Commercial Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15.
[3] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[4] Insolvency Act of United Kingdom. (1986, July). Retrieved from https://legislation.gov.uk/ukpga/1986/45/section/214.

Table 1. Continued

Theoretical aspect	Continental legal system	Anglo-American legal system	Ukrainian legal system
Legal nature of liability	Additional liability as a consequence of abusing the corporate form, with the possibility of completely disregarding the corporate structure	Personal liability as a breach of fiduciary duties, with an emphasis on the personal fault of the directors	Mixed model combining elements of both approaches, taking into account the specifics of national bankruptcy legislation
Theoretical limits of application	Broad interpretation of the grounds for liability, with an emphasis on protecting public order	Clearly defined limits of liability, with a focus on protecting market mechanisms and business reputation	Gradual development from a narrow to a broader interpretation of the grounds for liability, taking into account the needs of legal practice

Source: created by the author based on V. Fedorov *et al.* (2019), J. Getzler (2019), O. Khalabudenko (2020)

The comparative analysis presented in Table 1 demonstrates that the Ukrainian legal system has developed a distinctive approach to subsidiary liability, combining elements of the continental and Anglo-American legal systems. A characteristic feature of the Ukrainian approach is the balanced combination of objective criteria for assessing violations of corporate norms with an analysis of management's subjective attitude towards their obligations. This allows for more effective detection of abuses and ensures a fair balance of interests among all participants in corporate relations. It is important to note that this system of legal regulation is developing taking into account the specifics of the national corporate environment and the practical needs of the judicial system.

It is particularly noteworthy that the Ukrainian approach, in contrast to the clearly defined limits of liability in the Anglo-American system, where the doctrine of "piercing the corporate veil" is applied only in exceptional cases of abuse of the corporate form, and the broad interpretation of grounds in the continental system, where the concept of Durchgriffshaftung allows controlling persons to be held liable for unlawful actions, has chosen a flexible path of development that allows the mechanisms of subsidiary liability to be adapted to specific economic conditions and challenges. This is manifested in the combination of objective criteria for assessing violations of corporate norms with an analysis of management's subjective attitude towards their obligations, which allows for more effective detection of abuses and ensures a fair balance of interests among all participants in corporate relations. According to the second part of Article 61 of the Bankruptcy Code of Ukraine[1], subsidiary liability may be imposed on founders, participants, shareholders, or other persons, including the debtor's director, if their actions or omissions have led to its insolvency. For its application, it is necessary to establish the objective element of the offence (actions or omissions that caused the absence of property assets in the debtor) and the subjective element (the person's attitude to their actions, including intent or negligence). This particular feature of the Ukrainian approach also reflects the general trend towards the formation of more advanced mechanisms of corporate governance and liability in the context of the development of a market economy and integration into the European legal space.

The regulatory foundation of subsidiary liability in Ukraine is largely concentrated in the Bankruptcy Code of Ukraine, which offers a detailed set of provisions for identifying the circumstances under which directors, founders, or related parties bear auxiliary liability. A key condition for applying the rules on subsidiary liability is establishing a causal link between the decisions or inaction of responsible persons and the actual bringing of the enterprise to insolvency. This is confirmed by court practice, in particular, the Resolution of the Supreme Court of Ukraine in Case No. 908/314/18[2], which states that the application of subsidiary liability is possible only if a causal relationship is proven between the culpable actions or omissions of the liable party and the onset of the debtor's insolvency. If, for example, management was fully aware of the risks of entering into certain transactions or made decisions to transfer assets to third parties below market value, intending to withdraw resources from the enterprise, the court has the right to recognise such actions as unfair and impose on the guilty person the obligation to cover part of the debts within the bankruptcy procedures. This is supported by research by S. Sharma (2021), who emphasises the importance of adopting globally recognised basic procedural standards in situations of cross-border insolvency to ensure greater certainty in international trade.

In general, the purpose of subsidiary liability is to create an additional mechanism for protecting creditors and, equally importantly, to incentivise directors and beneficiaries to act more prudently and transparently. If the founders, shareholders, or directors

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Resolution of the Supreme Court of Ukraine in Case No. 908/314/18. (2022, August). Retrieved from https://verdictum.ligazakon.net/document/105747984.

of a company realise that if their intent or gross negligence in generating debts is proven, they will be forced to be liable even beyond their own shares in the capital, this will encourage them to take risks seriously. In this context, subsidiary liability performs a preventive function, preventing abuses and bad-faith actions in corporate governance. In addition, this institution, when correctly applied and with proper legal enforcement, helps to balance the interests of the parties, especially when there are strong reasons to believe that it is the founders or directors who are guilty of unlawful asset stripping or other forms of bringing the company to financial disaster. For example, in the Wirecard case in Germany, former CEO Markus Braun, along with two other top managers, were ordered to pay 140 million euros for a breach of their duties, including approving loans that were not repaid, which was one of the factors in the company's collapse in 2020. A similar approach was applied in the United Kingdom in the BHS bankruptcy case, where former directors Dominic Chappell and Lennart Henningson were found guilty of breaching their fiduciary duties and ordered to pay 110 million pounds to creditors because they continued to trade despite the company's financial insolvency. These judicial precedents demonstrate the importance of effective legal enforcement in the field of corporate liability, particularly concerning holding directors accountable for actions that lead to the financial insolvency of enterprises.

In essence, the fundamental characteristic of subsidiary liability lies not simply in having "someone else" pay the debts of a legal entity, but in establishing who is specifically at fault for the company's inability to settle with creditors, and obligating that person or group of persons to compensate for the damage. This intrinsic feature is also reflected in international research, which views subsidiary liability as a key mechanism designed to ensure an adequate level of corporate discipline and protect the rights of market participants. In particular, research by Y. Zhang (2024) demonstrates the importance of this mechanism for multinational corporations, where complex corporate structures are often used to evade liability. The author emphasises that the effective application of subsidiary liability helps to balance the interests of all stakeholders in the international business environment. In light of this, in the modern legal landscape of Ukraine, subsidiary liability is no longer an exceptional measure but is transforming into a predictable legal instrument, the application of which is gradually becoming more widespread in court practice due to the growing need for a transparent and fair bankruptcy mechanism.

The application of subsidiary liability in bankruptcy procedures: The Ukrainian context. The practice of applying subsidiary liability in Ukrainian bankruptcy procedures is primarily based on the norms of the Bankruptcy Code of Ukraine[1], which came into force on 21 October 2019, and significantly updated the approaches to regulating the insolvency of legal entities and individuals. The Code provides for the imposition of additional obligations on persons who actually influenced the management of the enterprise or made decisions that led to the debtor's inability to satisfy creditors' claims. In particular, Part 2 of Article 61 establishes that in the event of bankruptcy due to the fault of founders, participants, shareholders, or other persons, including the director, who had the right to give binding instructions or could otherwise determine the debtor's actions, they may be held subsidiarily liable for the debtor's obligations if their assets are insufficient. Furthermore, Part 3 of Article 44 obliges the asset manager to analyse the debtor's financial and economic condition and to identify signs of fictitious bankruptcy, bringing the company to bankruptcy, concealment of persistent financial insolvency, and illegal actions in the event of bankruptcy. Thus, the legislator establishes mechanisms for holding accountable persons whose actions or inactions caused the debtor's inability to satisfy creditors' claims. This aligns with the general logic of global practice: when the actions of founders or directors have contributed to asset stripping or bringing a legal entity to artificial bankruptcy, they cannot hide behind the principle of limited liability. Similar concepts partially existed in the previous Law of Ukraine No. 2343-XII "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt"[2], but it is in the current Bankruptcy Code of Ukraine that the wording has become clearer and more detailed, which has expanded the scope of application of subsidiary liability. According to this act, courts have the right to establish that a certain person (director, beneficiary, member of the company) has caused damage to creditors by making unlawful or knowingly risky decisions, which resulted in the creation of unsecured debts or the concealment of the debtor's property.

The practical application of the rules on subsidiary liability has gained particular prominence following the Supreme Court's decisions clarifying the involvement of "culpable" persons in additional liability. In particular, in the Resolution of the Supreme

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Law of Ukraine No. 2343-XII "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt". (1999, May). https://zakon.rada.gov.ua/laws/show/2343-12#Text.

Court of Ukraine in Case No. 910/21232/16[1], the court emphasised that to hold management subsidiarily liable, it is necessary to prove their direct or indirect influence in bringing the enterprise to insolvency. If, for example, an agreement was concluded as a result of which the debtor lost the ability to service its obligations, the court assesses whether the director acted in bad faith, anticipating the company's inevitable bankruptcy. Furthermore, the court noted the importance of the link between unlawful actions or omissions and the emergence of debts, stressing that the mere fact of business losses is not always a basis for imposing subsidiary liability on directors or owners. A similar approach is evident in the Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16[2], where it was determined that properly proving the absence of a relationship between management decisions and the inability to repay debts can release certain persons from subsidiary liability. These decisions shape the current practice of applying subsidiary liability in Ukraine, establishing the criteria and conditions under which directors and owners of enterprises can be held additionally liable for the company's debts.

In more recent rulings, the Supreme Court has continued to develop approaches to determining the conditions and criteria for applying subsidiary liability. For example, in the Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20[3], the court clarified that the right to claim subsidiary liability can arise even before the completion of the debtor's liquidation estate formation, as well as before the resolution of property disputes involving the debtor. This approach allows creditors to more effectively protect their interests, ensuring the possibility of holding culpable persons accountable at the early stages of the bankruptcy procedure. Similarly, in the Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21[4], considered on 4 September 2024, the Supreme Court emphasised the importance of timely filing a petition to open bankruptcy proceedings, recognising the violation of this obligation as sufficient grounds for holding company directors liable. These decisions underscore the consistent emphasis on the causal link between the actions or inactions of managers and the financial insolvency of the company. At the same time, judicial practice expands the possibilities for protecting bona fide persons who acted within their powers and made efforts to avoid crisis situations. This allows for achieving a balance between ensuring the interests of creditors and creating conditions for transparent corporate governance that meets modern European standards. Thus, Ukrainian courts continue to develop a flexible and balanced approach to the application of subsidiary liability, taking into account both international experience and national legal realities.

Judicial practice demonstrates that one of the key criteria in deciding on subsidiary liability is the detection of intentional actions, causing harm to creditors, and committing actions with gross negligence. Consideration is given to the circumstances under which a person had or should have had an understanding that entering into certain transactions or making corporate decisions would lead to the legal entity's assets being insufficient to cover debts. For example, directors sometimes deliberately transfer funds to the accounts of related companies, effectively stripping assets and depriving creditors of the opportunity to recover debts. If this is confirmed by relevant documentary evidence (contracts, payment orders, reports), courts conclude that there are grounds for subsidiary liability. At the same time, if management manages to prove that the company's losses or bankruptcy were caused by objective factors (for example, unfavourable economic conditions, military actions, a pandemic, or other force majeure circumstances), then the recovery from subsidiary respondents may be deemed unfounded. As noted in his research, I. Mevorach (2024) suggests that the level of judicial scrutiny regarding the causal link between the actions of management and a company's bankruptcy should be particularly rigorous during periods of financial crisis. At the same time, A.K. Jennings (2024) emphasises the importance of clear standards for assessing the due diligence of management, especially in relationships between parent and subsidiary companies. K. Ayotte & J.A. Ellias (2022) expand on this idea, highlighting the need for a balanced approach that prevents the unjust imposition of liability on managers who acted in good faith during periods of market instability, analysing judicial practice and the role of creditors in bankruptcy proceedings. One of the biggest challenges for participants in bankruptcy cases remains the insufficiently clear criteria for proving the guilt of a subsidiary defendant, as well as the lack of a unified mechanism for the court to assess the actual role of the manager or owner in making

[1] Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16. (2020, June). Retrieved from https://verdictum.ligazakon.net/document/89910859.
[2] Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16. (2020, November). Retrieved from https://verdictum.ligazakon.net/document/92971721.
[3] Resolution of the Supreme Court of Ukraine in Case No. 906/1155/20. (2024, June). Retrieved from https://verdictum.ligazakon.net/document/120341855.
[4] Resolution of the Supreme Court of Ukraine in Case No. 908/3236/21. (2024, September). Retrieved from https://zakononline.com.ua/court-decisions/show/122021182.

decisions that led to the accumulation of debt. Often, a company's documentation is kept to a minimum, real influence is exerted by "shadow" beneficiaries, and determining who exactly initiated the risky actions is quite difficult.

Judicial practice, considering the provisions of the Bankruptcy Code of Ukraine[1], is gradually developing approaches to interpreting concepts such as "bad faith conduct", "gross negligence", and "intentional actions". One possible solution is to enshrine specific criteria in legislation for assessing the role of the subsidiary respondent, applying a presumption of influence for company directors, and expanding the possibilities of forensic examination to identify actual beneficiaries. In addition, increasing the transparency of corporate governance through the mandatory recording of management decisions can help reduce abuses in the field of bankruptcy. However, there are discrepancies in the reasoning regarding subsidiary liability in the existing Supreme Court decisions. In the Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16[2], the court emphasised that to hold management liable, it is necessary to prove their direct influence in bringing the enterprise to insolvency. However, in the Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16[3], the court recognised the possibility of exemption from liability if the absence of a causal link between management decisions and the debtor's bankruptcy is proven. These differences in judicial practice indicate the absence of a unified approach to assessing subsidiary liability, which creates risks of legal uncertainty for participants in corporate legal relations and may lead to the unpredictability of court decisions in similar cases. Furthermore, research confirms that discrepancies in judicial practice are characteristic not only of Ukraine but also of EU countries, where the institution of auxiliary liability (in Anglo-American terminology, "secondary liability" or "piercing the corporate veil") also lacks a completely unified interpretation. As research by M. Pargendler (2021) demonstrates, even in the United States, where the "piercing the corporate veil" doctrine is most developed, courts apply different criteria and approaches to its implementation, and in European jurisdictions, even greater variability is observed in the interpretation of this legal institution.

Among other issues related to the implementation of subsidiary liability, the ambiguity in the interpretation of certain provisions of the current legislation is highlighted, as it does not always provide sufficiently clear definitions regarding the methods of intentionally or negligently causing harm to creditors. This issue is addressed by P. Priguza (2019), who emphasises the need to improve legislative regulation on matters of liability in bankruptcy. In some cases, law enforcement and regulatory bodies may identify violations under Articles 218[1] and 219 of the Criminal Code of Ukraine[4] related to fictitious bankruptcy or causing bankruptcy. However, the process of proving guilt in administrative or criminal law is not always consistent with the civil law criteria for subsidiary liability. All of this creates opportunities for prolonged legal disputes, which sometimes lead to delays in satisfying creditors' claims and reduce the overall level of trust in the bankruptcy process.

At the same time, analysing the effectiveness of law enforcement, it should be noted that compared to the previous version of the legislation, the current Bankruptcy Code of Ukraine has made a significant step forward by establishing a more transparent procedure for imposing subsidiary liability. The regulatory provisions emphasise the court's obligation to assess the behaviour of directors or owners through the lens of a "reasonable manager" who bears a certain standard of care and diligence in financial and economic decisions. In addition, the introduction of electronic auctions, centralised registers of court decisions, and open databases on legal entities contributes to increased transparency in detecting signs of abuse during bankruptcy. As evidenced by the practice of the Supreme Court in subsidiary liability cases considered during 2021-2023, the position of the highest judicial body is becoming increasingly unified. In fact, an approach is being formed where first instance and appellate courts must not only record the fact of the debtor's asset shortage but also thoroughly investigate whether there was intentional or excessively risky management that was the direct cause of the bankruptcy.

Thus, despite the existing complications and challenges, the Ukrainian practice of applying subsidiary liability demonstrates gradual progress. On the one hand, the legislative framework creates the conditions for more effective accountability of unscrupulous managers for harm caused to creditors. On the other hand, courts face gaps in the legal field and a lack of uniformity in the criteria for assessment and therefore continue to form their legal positions through the analysis of each case individually. As a result, the effectiveness of the subsidiary liability mechanism depends both on the quality of judicial

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Resolution of the Supreme Court of Ukraine in Case No. 910/21232/16. (2020, June). Retrieved from https://verdictum.ligazakon.net/document/89910859.
[3] Resolution of the Supreme Court of Ukraine in Case No. 916/1105/16. (2020b). Retrieved from https://verdictum.ligazakon.net/document/92971721.
[4] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14.

review and the actions of insolvency practitioners, as well as on the ability of lawmakers to address inaccuracies and adapt the legislation to contemporary challenges. At this stage, when it is crucial to strengthen trust in the judicial system and ensure a balance of interests between creditors, debtors, and business participants, the effective application of subsidiary liability to individuals whose actions have caused bankruptcy contributes to the formation of a transparent and predictable market.

Comparative legal analysis and prospects for improving subsidiary liability in Ukraine. The Ukrainian model of subsidiary liability, primarily enshrined in the Bankruptcy Code of Ukraine[1], generally aligns with European practice, according to which the principle of limited liability of business participants can be overturned in cases where it is established that the management or owners of an enterprise intentionally or through gross negligence have brought it to insolvency. Despite the commonality of underlying ideas, the regulation of subsidiary liability in EU member states has several distinctive features, due to the diversity of legal traditions and sectoral legislation. For example, in France, the provisions on subsidiary liability are regulated by the Civil Code of France[2] and the Commercial Code of France[3]. Of particular note are the rules that allow not only official directors but also de facto managers of a company, whose actions have harmed creditors, to be held liable. In Germany, subsidiary liability mechanisms are enshrined in the Civil Code of Germany[4] and the specialised Law of Germany No. 323 "On Limited Liability Companies"[5]. Here, particular emphasis is placed on abuses by officials, which may include improper management or fraudulent actions that lead to the company's inability to meet its obligations. A similar situation is observed in Italy, where the Presidency of the Council of Ministers of Italy[6] provides the opportunity to "pierce" the corporate veil to hold liable persons who engage in fraudulent management, use the company as a cover for illegal activities, or evade debt repayment.

In Spain, the institution of subsidiary liability is detailed in the Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act"[7]. The legislation focuses on cases of bad faith management, fraud, or intentional evasion of obligations to creditors. Polish law also provides for strict measures regarding such cases in the Commercial Companies Code of Poland[8], particularly for situations where company directors or owners intentionally create conditions for its insolvency. A feature of the Polish approach is the detailed analysis of the actions of persons responsible for management and the establishment of facts of abuse of their powers or improper performance of duties. All these national approaches share a common goal: creating a legal environment in which bad faith behaviour by persons managing an enterprise does not go unpunished, and creditors' rights receive proper protection. A common feature of these legal systems is the focus on identifying a causal link between unlawful (or negligent) actions of "controlling" persons and the debtor's inability to satisfy creditors' claims, while differences cover specific criteria for proving guilt, the amount of evidence required to involve "de facto" or "shadow" directors, and procedural mechanisms for detailed analysis of disputed transactions and financial documents.

In parallel with national approaches, the EU is actively harmonising legislation through supranational acts, the key one being a Directive of the European Parliament and of the Council No. 2019/1023[9] on preventive restructuring frameworks, discharge of debt and disqualifications, and measures to increase the efficiency of restructuring, insolvency and discharge procedures. Regulation of the European Parliament and of the Council No. 2015/848[10] on insolvency proceedings, which establishes mechanisms for cross-border coordination and information exchange between different jurisdictions, is also of significant importance. Following Articles 4144 of this Regulation, a system of interaction between insolvency registers has been introduced, which allows

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.
[2] Civil Code of France. (1804, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721.
[3] Commercial Code of France. (2000, January). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379.
[4] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/bgb.
[5] Law of Germany No. 323 "On Limited Liability Companies". (1892, April). Retrieved from https://www.gesetze-im-internet.de/gmbhg.
[6] Presidency of the Council of Ministers of Italy. (1942, March). Retrieved from https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16;262.
[7] Royal Legislative Decree of Spain No. 1/2010 "Approving the Revised Text of the Capital Companies Act". (2010, July). Retrieved from https://www.boe.es/buscar/act.php?id = BOE-A-2010-10544.
[8] Commercial Companies Code of Poland. (2000, September). Retrieved from https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id = WDU20000941037.
[9] Directive of the European Parliament and of the Council No. 2019/1023 "On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and On Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)". Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri = CELEX:32019L1023.
[10] Regulation of the European Parliament and of the Council No. 2015/848 "On Insolvency Proceedings". (2015, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2015/848/oj/eng.

for the effective detection and countering of bad faith actions by company owners and directors through a centralised electronic access point within the European e-Justice Portal.

For comparison, the Ukrainian model, as outlined in the Bankruptcy Code of Ukraine[1], defines a fairly clear list of subjects who can be held liable (directors, significant shareholders, beneficiaries, and sometimes "shadow" organisers of bankruptcy), but in judicial practice, difficulties arise in determining the actual influence of each specific person. In the EU, on the other hand, there is a trend towards developing unified principles for investigating the causes of insolvency, where competent authorities and courts have a wide range of tools for analysing transactions, management actions, and corporate documentation. As a result, in Germany or France, the stages of proving criminal or unlawful conduct and the stages of identifying civil liability are more clearly delineated, and bankruptcy procedures often provide for separate procedural mechanisms for considering issues of personal liability of management. In Ukraine, such aspects are often considered within a single insolvency case, which can prolong proceedings and complicate the evidentiary base, especially when it comes to simultaneously investigating issues of fictitious bankruptcy or criminal cases. On the other hand, Ukrainian practice is moving towards a detailed clarification by the court of the criteria of "intent", "gross negligence", and causal link, as evidenced by the recent Supreme Court decisions analysed in the previous section. This attention to specific facts and nuances of bankruptcy brings Ukrainian approaches closer to EU standards, where the main emphasis is not only on the formal status of a person but also on their actual management activity. To systematise the analysed differences between the approaches to regulating subsidiary liability in Ukraine and European countries, their comparative characteristics are summarised in Table 2, which outlines the key aspects of this institution's regulation across different jurisdictions.

Table 2. Comparative characteristics of subsidiary liability in Ukraine and selected European countries

Criterion	Ukraine	France	Germany	Poland	EU
Main sources of regulation	Bankruptcy Code of Ukraine	Commercial Code of France	Civil Code of Germany	Commercial Companies Code of Poland	Directive of the European Parliament and of the Council No. 2019/1023
Subjects of liability	Directors, significant shareholders, beneficiaries, de facto ("shadow") organisers (Art. 61, 42)	Official and de facto directors, persons who have harmed creditors (Art. L.123-1)	Officials, official and "shadow" management that abuses rights (Art. 31)	Directors, owners who deliberately create conditions for insolvency (Art. 299)	Persons responsible for management and decisionmaking (Art. 19)
Specifics of evidence	Single proceeding in insolvency case, limited audit, difficult proof of "actual influence" (Art. 90)	Separate procedures (criminal/civil), additional audits, and in-depth document analysis (Art. L.650-1)	Clear distinction between civil and criminal liability, forensic accounting expertise (Art. 823)	In-depth analysis of directors' actions (financial and management aspects) (Art. 300)	Unified investigation principles (early warning), simplified exchange of evidence (Art. 4)
Mechanisms for detecting violations	Powers of the insolvency practitioner are limited, often initiated by creditors (Art. 21)	Wide range of tools for transaction analysis, and extrajudicial audits (Art. L.651-2)	Comprehensive analysis of operations (forensic), active role of the insolvency administrator (Art. 93)	Interaction between creditors and courts, in-depth transaction analysis (Art. 302)	Early warning system, supranational coordination mechanisms (Art. 3)
Procedural features	Often combined with criminal cases, complicating proceedings (Art. 118)	Specialised procedures for directors/owners, separate proceedings for civil and criminal liability (Art. L.653-4)	Establishment of culpable conduct in separate procedure, strict adherence to deadlines (Art. 826)	Separate liability proceedings, analysis of management decisions (Art. 303)	Unified procedures, and cross-border cooperation between courts (Art. 6)
Criteria for liability	Intent or gross negligence, bringing to insolvency, causal link (Art. 42	Causing harm to creditors, malicious actions of official/ de facto directors (Art. L.651-2)	Abuse, fraud, breach of duty of care and diligence (Art. 823)	Intentional creation of insolvency, abuse of corporate rights (Art. 304)	Intentional or negligent actions leading to crisis, consistency with EU principles (Art. 19)
Creditor protection tools	Claims within the bankruptcy case, limited preventive measures (Art. 74)	Compensation for damage to personal assets of offenders, blocking transactions (Art. L.654-3)	Challenging suspicious transactions, property restrictions, and appointment of external administration (Art. 31a)	Strict liability measures, personal financial liability (Art. 305)	Supranational mechanisms (early warning), transparent restructuring system (Art. 4)

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.

Table 2. Continued

Criterion	Ukraine	France	Germany	Poland	EU
Preventive mechanisms/ control	Not yet detailed, prospectively – expanding the role of the insolvency practitioner (Art. 110)	Developed audit, monitoring, and early intervention (Art. L.650-2)	Forensik-Audit, control at the pre-crisis stage (Art. 91)	Preventive audit, sanctions before formal declaration of bankruptcy (Art. 307)	Early warning system, obligations for member states to create clear procedures (Art. 5)

Source: created and systematised by the author

The presented comparative analysis demonstrates the comprehensive nature of the European approach to regulating subsidiary liability, which is based on a combination of preventive mechanisms, clear procedural regulations, and an effective system of oversight of business entities. The European model is primarily supported through the implementation of early problem-detection systems and rapid response to the first signs of fraudulent management. This is complemented by an advanced system of professional oversight by insolvency practitioners, auditors, and experts, who have broad powers to conduct thorough checks and analyses. In particular, a study conducted as part of the EU Project "Pravo-Justice" highlights the importance of insolvency practitioners in ensuring effective control and adherence to professional ethical standards, aligning with the best European practices (Donkov *et al.*, 2021). An essential element of the European experience is also the established system of cross-border cooperation and information exchange between different jurisdictions, which is of particular importance in the context of globalised business and the increasing number of international transactions. The specialisation of proceedings and clear differentiation of various types of liability ensure more effective case handling and avoid procedural complexities. When combined with a well-developed system of professional oversight, this creates the conditions for making informed decisions and effectively protecting the rights of all participants in the process. This indicates the need for a systematic improvement of Ukrainian legislation, taking into account the best European practices, which should cover both regulatory frameworks and practical aspects of law enforcement, creating an effective system to prevent abuse and protect the rights of creditors.

Regarding the prospects for improving legislation in the field of subsidiary liability, attention should first be drawn to the need for comprehensive modernisation of the Bankruptcy Code of Ukraine[1], taking into account progressive European standards and practices. As demonstrated by the experience of Croatia, as described by L. Šimunović & T. Konjević (2022), a key step should be the systematic implementation of the principles outlined in Directive of the European Parliament and of the Council No. 2019/1023[2], which advocates for more transparent procedures for evaluating the actions of managers and the introduction of early warning mechanisms. In practice, this could involve strengthening the role of insolvency practitioners, expanding their powers to detect "suspicious" operations and transactions, including the right to request additional financial and managerial documents, conduct comprehensive audits, and respond swiftly to signs of fraudulent management. Following the example of Luxembourg, as noted by T. Mastrullo (2024), there is a practice of mandatory audit checks when there is a sharp increase in debt levels or changes in ownership structure, and a nationwide database exists for individuals involved in subsidiary liability cases.

An important direction for the development of legislation is the expansion and specification of regulatory concepts, particularly "de facto influence" and "guilty inaction". In current judicial practice, proving the actual influence of certain individuals on the management of a company often becomes a "bottleneck", as formal signs are lacking, and de facto control may be exercised through a chain of trusted persons or informal mechanisms. As confirmed by the study by J. Schwartz (2020), the issue of establishing actual control remains relevant even in developed corporate systems, where informal mechanisms of influence via intermediaries and indirect pressure often prove to be just as effective as direct ownership of corporate rights. A clear, legally defined concept of "de facto influence" and corresponding clarification of the criteria for "guilty inaction" would allow courts to better understand what evidence confirms control over an enterprise and reduce the potential for manipulation by dishonest debtors. In European countries, it is common practice to introduce procedural presumptions that automatically clarify the role of shadow managers in cases where official management acted purely formally and actual control was exercised by other individuals.

[1] Bankruptcy Code of Ukraine. (2019, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2597-19.

[2] Directive of the European Parliament and of the Council No. 2019/1023 "On Preventive Restructuring Frameworks, on Discharge of Debt and Disqualifications, and On Measures to Increase the Efficiency of Procedures Concerning Restructuring, Insolvency and Discharge of Debt, and Amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency)". Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1023.

Particular attention needs to be paid to establishing effective interaction between civil and criminal legal processes, as cases of fictitious bankruptcy, money laundering, or other economic crimes are usually investigated within the framework of criminal proceedings, while issues of damage compensation or the imposition of subsidiary liability are addressed by commercial courts. When evidence obtained in one proceeding (for example, criminal) cannot be fully utilised in another, courts are once again forced to "recollect" materials, which delays the case review, complicates the evidence base, and significantly reduces creditors' chances of a swift restoration of their rights. Similar approaches have long been applied in Anglo-American and European judicial systems: the results of forensic accounting expertise conducted within the scope of a criminal case can be accepted as valid evidence when considering a commercial claim regarding subsidiary liability.

In EU countries such as Germany, France, the Netherlands, and Belgium, there is a so-called "early warning system", where a company is obliged to report certain indicators (such as a sharp decline in assets, increased debt, refusal of financing by banks, etc.) that may signal the risk of insolvency. This system demonstrates high effectiveness in preventing abuse and identifying problematic situations in a timely manner. Ultimately, the effectiveness of implementing legislative changes largely depends on the proper professional training of judges, insolvency practitioners, auditors, and other experts who will directly apply the improved regulations in practice. Equally important is the issue of material and technical support for the courts and agencies conducting bankruptcy procedures, to effectively detect shadow control, assess suspicious transactions, and conduct comprehensive expert assessments. Comprehensive development of the regulatory framework and institutional capacity is a necessary condition for establishing transparent rules of play, where creditors will be effectively protected from dishonest actions, and Ukrainian practices will align with the broader European trend of increasing the personal responsibility of management and owners.

■ Conclusions

The study of the legal nature and peculiarities of applying the institution of subsidiary liability in bankruptcy cases in Ukraine has demonstrated its important role as a tool for protecting the rights of creditors and ensuring proper corporate governance. The stated goal of the research was achieved through a comprehensive analysis of theoretical foundations, application practice, and a comparative analysis with European regulatory models, which allowed for the formation of a comprehensive understanding of the current state and development trends of this legal institution.

In the course of the research, a systematic analysis of the regulatory framework of subsidiary liability in Ukraine was conducted, including the provisions of the Civil Code and Commercial Code, the Bankruptcy Code, as well as relevant legislation of EU countries. The judicial practice of applying this institution was studied in detail, including key decisions of the Supreme Court that form unified approaches to interpreting the rules on subsidiary liability. Mechanisms of crossborder cooperation in bankruptcy, enshrined in EU acts, primarily in Regulation of the European Parliament and of the Council No. 2015/848 and Directive of the European Parliament and of the Council No. 2019/1023, were analysed. The study of theoretical sources made it possible to identify the main conceptual approaches to understanding subsidiary liability in different legal systems and to trace the evolution of scientific views on this institution.

The research results demonstrate that the Ukrainian model of subsidiary liability is characterised by a balanced combination of objective criteria for assessing violations of corporate norms with an analysis of the subjective attitude of management towards their duties. At the same time, several problematic aspects in law enforcement practice have been identified, including the uneven application by courts of criteria for assessing the actual influence on enterprise management, difficulties in establishing a causal link between the actions of managers and insolvency, as well as insufficient development of mechanisms for detecting and proving bad faith actions at the pre-crisis stage. The research also revealed the problem of insufficient coordination between different jurisdictional procedures, when evidence obtained in criminal proceedings cannot be effectively used in a bankruptcy case, which significantly complicates the evidentiary process and delays the consideration of cases. An important trend is the gradual expansion by courts of the grounds for holding liable and increased attention to actual, rather than just formal, control over the enterprise.

The comparative legal analysis has revealed two main approaches to regulating subsidiary liability: the Anglo-American approach, which is based on the doctrine of "piercing the corporate veil" with clearly defined limits of liability, and the continental approach, which relies on the concept of "Durchgriffshaftung" with a broad interpretation of the grounds for liability. The Ukrainian approach shows a trend towards developing its own model that takes into account the specifics of the national corporate environment and adapts the best European practices, particularly concerning systems for early detection of issues and mechanisms for cross-border cooperation.

A significant trend is also the increasing role of insolvency practitioners in detecting signs of mismanagement and expanding their capacity to conduct comprehensive audits of the debtor's activities.

Promising directions for further research include the development of a methodology for assessing the effectiveness of subsidiary liability mechanisms, studying the application of this institution in the context of the digitalisation of the economy, and analysing the impact of new forms of corporate governance on the development of the subsidiary liability system.

Acknowledgements

None.

Conflict of Interest

The author of this study declares no conflict of interest.

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Застосування інституту субсидіарної відповідальності у справах про банкрутство

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■ **Анотація.** Метою дослідження було формування комплексного розуміння механізмів субсидіарної відповідальності та визначення шляхів їх удосконалення в законодавстві про банкрутство. Методологічною основою дослідження стало поєднання інституційного та порівняльно-правового підходів, що надало можливість комплексно розглянути субсидіарну відповідальність як правовий інститут і порівняти особливості його регулювання в різних правових системах. За результатами проведеного дослідження встановлено, що українська модель субсидіарної відповідальності характеризується поступовою еволюцією від вузького до ширшого тлумачення підстав відповідальності, що відображає загальносвітову тенденцію посилення захисту прав кредиторів. На основі аналізу законодавства європейських країн і судової практики України, а також окремих справ у Німеччині (Wirecard) та Великій Британії (BHS) виявлено, що ефективність європейської моделі забезпечують насамперед через упровадження систем раннього виявлення проблем та оперативного реагування на перші ознаки недобросовісного управління, що доповнена розвиненою системою професійного контролю з боку арбітражних керуючих, аудиторів й експертів. Визначено, що важливим елементом європейського досвіду є налагоджена система транскордонної взаємодії та обміну інформацією між різними юрисдикціями, а спеціалізація проваджень і чітке розмежування різних видів відповідальності забезпечують ефективніший розгляд справ та уникнення процесуальних ускладнень. Обґрунтовано необхідність системного вдосконалення українського законодавства шляхом розширення повноважень арбітражних керуючих, упровадження механізмів раннього попередження неплатоспроможності, створення загальнонаціональної бази даних осіб, причетних до справ про субсидіарну відповідальність, і запровадження обов'язкової аудиторської перевірки за стрімкого нарощування боргового навантаження або зміни структури власності. Запропоновано доповнити законодавство спеціалізованими правилами, що регламентують процедури виявлення, запобігання та припинення зловживань на докризовому етапі, а також розробити чіткий перелік ознак ризику й передбачити обов'язок керівництва повідомляти кредиторів і відповідні державні органи про виникнення таких обставин

■ **Ключові слова:** неплатоспроможність підприємства; корпоративне управління; правове регулювання; захист прав кредиторів; арбітражний керуючий

DOI: 10.63341/naia-herald/1.2025.87

Comment: Author's apology for inaccurate citation

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I, Maksym Lohvynenko, author of the article "Best practices in police personal security: A systematic review" published in the Scientific Journal of the National Academy of Internal Affairs, Vol. 29, No. 2, pp. 67-76, would like to sincerely apologise for the error that arose as a result of language barriers and misunderstanding of terminology when interpreting the results of M.G. Harris & K.M. O'Brien (2024) in my research.

This mistake refers to the section "Police training as a factor in ensuring their personal safety" where the study by M.G. Harris & K.M. O'Brien (2024) was mistakenly cited as supporting research on police stress. In fact, their research focuses on the experiences of black students in relation to the killing of black Americans by police officers. The main reasons for this misunderstanding were the language barrier and misunderstanding of some specific terms.

However, I can confidently state that this error does not affect the main conclusions of my paper (Lohvynenko, 2024), but I recognise the importance of accurate citation and the conformity of the data to the original study.

I sincerely thank the editors for the opportunity to publicly apologise to the authors of the study.

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[1] Harris, M.G., & O'Brien, K.M. (2024). Black grief matters: Undergraduate students' experiences grieving police murders of Black Americans. *The Counseling Psychologist*, 52(3), 346-380. doi: 10.1177/00110000231220071.

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Коментар: Автор перепрошує за неточне цитування

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Suggested Citation:
Lohvynenko, M. (2025). Comment: Author's apology for inaccurate citation. *Scientific Journal of the National Academy of Internal Affairs,* 30(1), 87. doi: 10.63341/naia-herald/1.2025.87.

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Received: 29.12.2024; Revised: 05.02.2025; Accepted: 25.03.2025

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 30, № 1. 2025

Заснований у 1996 р. Виходить чотири рази на рік

Оригінал-макет видання виготовлено у відділі організації наукової діяльності
Національної академії внутрішніх справ

Відповідальний редактор:
Я. Шумко

Редагування англомовних текстів:
С. Воровський, К. Касьянов

Комп'ютерна верстка:
О. Глінченко

Підписано до друку 25 березня 2025 р. Формат 60*84/8
Умов. друк. арк. 10,4
Наклад 50 прим.

Адреса видавництва:
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SCIENTIFIC JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 30, No. 1. 2025

Founded in 1996. Published four times per year

The original layout of the publication is made
in the Organisation of Scientific Activity of National Academy of Internal Affairs

Managing Editor:
Y. Shumko

Editing English-language texts:
S. Vorovsky, K. Kasianov

Desktop publishing:
O. Glinchenko

Signed for print March 25, 2025. Format 60*84/8
Conventional printed pages 10.4
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