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Address of the Editorial Team:
Yaroslav Mudryi National Law University,
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: tlaw@nlu.edu.ua

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Oleksii Yu. Lialiuk
Yaroslav Mudryi National Law University
Kharkiv, Ukraine

Alla A. Grynchak*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: a.a.grynchak@nlu.edu.ua*

Nataşa Danelciuc-Colodrovschi
Aix Marseille University
Marseille, France

Abstract
The article focuses on the issues of European integration of Ukraine through the lens of implementing municipalities at the lowest (basic) level of territorial organization of local self-government, which is relevant given the current decentralization reforms aimed at bringing the local self-government system closer to the European model of local democracy. For this purpose, the article analyzes the experience of organization and functioning of municipalities in European countries. The study employs a comprehensive methodology, including formal-legal, dialectical, and prognostic methods, as well as methods of comparative analysis and synthesis. The study reveals the three-component structure of a municipality, which consists of territory within defined boundaries, the population of this territory, and governing bodies. The authors emphasize the importance of comprehensive understanding of municipality, warning against reducing it merely to the territorial aspect, as such approach does not solve the problems of low public activity and ineffective governance. The paper analyzes the European model of local self-government, where the fundamental principle is the recognition of local communities or administrative-territorial units as bearers of legal rights and obligations, rather than local councils or their executive bodies. The study questions the expediency of maintaining the institution of territorial community in current Ukrainian legislation, arguing this with insufficient integration of local self-government bodies with the territorial community and territory. It is concluded that in Ukraine, communal property is formed taking into account the corporate model (with population – territorial

community – defined as the owner). Significant inconsistencies between the elements of the corporate model of local self-government and peculiarities of Ukraine's legal system have been identified, indicating necessary directions for reform in implementing municipalities. It is proposed to establish the triune structure of municipality, defining the interdependence between territory, population, and the system of local self-government bodies. This approach will facilitate effective implementation of European standards in the organization of municipal government in Ukraine.

Keywords: *local self-government; municipality; territorial organization of local self-government; European standards of local self-government.*

Муніципалітети в системі територіальної організації публічної влади європейських країн: перспективність для України

Олексій Юрійович Лялюк
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

Алла Анатоліївна Гринчак*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: a.a.grynchak@nlu.edu.ua*

Наташа Данельчук-Колодровскі
Екс-Марсельський університет
Марсель, Франція

Анотація

Стаття присвячена проблематиці європейської інтеграції України через призму впровадження муніципалітетів на найнижчому (базовому) рівні територіальної організації місцевого самоврядування, що є актуальним з огляду на сучасні реформи децентралізації, спрямовані на наближення системи місцевого самоврядування до європейської моделі локальної демократії. З цією метою проаналізовано досвід щодо організації та функціонування муніципалітетів у країнах Європи. У роботі застосовано комплексну методологію, що включає формально-юридичний, діалектичний та прогностичний методи, а також методи порівняльного аналізу та синтезу. У роботі розкрито трикомпонентну структуру муніципалітету, яка складається з території у визначених межах, населення цієї території та органів управління. Наголошено на важливості

комплексного розуміння муніципалітету, застерігаючи від його редукції лише до територіального аспекту, оскільки такий підхід не вирішує проблем низької громадської активності та неефективного управління. Проаналізовано європейську модель місцевого самоврядування, де фундаментальним принципом є визнання місцевих громад або адміністративно-територіальних одиниць носіями законних прав та обов'язків, а не місцевих рад чи їхніх виконавчих органів. Дослідження ставить під сумнів доцільність збереження інституту територіальної громади в сучасному українському законодавстві, аргументуючи це недостатньою інтеграцією органів місцевого самоврядування з територіальною громадою та територією. Сформульовано висновки, що в Україні комунальна власність сформована з урахуванням корпоративної моделі (власником визначено населення – територіальна громада). Виявлено суттєві невідповідності між елементами корпоративної моделі місцевого самоврядування та особливостями правової системи України, що вказує на необхідні напрямки реформування при впровадженні муніципалітетів. Запропоновано законодавчо закріпити триєдину структуру муніципалітету, визначивши взаємозалежність між територією, населенням та системою органів місцевого самоврядування. Такий підхід сприятиме ефективній імплементації європейських стандартів організації муніципальної влади в Україні.

Ключові слова: *місцеве самоврядування; муніципалітет; територіальна організація місцевого самоврядування; європейські стандарти місцевого самоврядування.*

Introduction

The basic structural unit of the territorial organization in European states is a community, which has various terminological variations (municipality, commune, gmina, etc.). Such unification of administrative-territorial units at the basic level creates objective preconditions for forming homogeneous approaches to their functioning, development, and provision of public needs.

The community, integrating territorial, demographic, and power components, where the latter is implemented through local self-government bodies or directly by the population, acquires the status of a full-fledged subject of public-power relations. In fact, it functions as a specific public corporation that has its own interests protected by the judicial system, yet operates exclusively within the legal framework and under state and public control.

In the context of terminological discussion, it should be noted that the proposal by domestic scholars (O.M. Boryslavska, A.P. Zaiets, OV. Ilnytskyi, V.S. Kuibida, R.A. Maidanyk) to replace the legally established concept of "territorial community" (which reflects only the administrative-territorial aspect) with a more comprehensive concept of "community" (encompassing

both administrative-territorial and self-governing components) [1, p. 11] does not resolve the problem of terminological ambiguity. This situation highlights the need to define the terminological apparatus more precisely.

Therefore, it must be acknowledged that the issue of implementing municipalities or communities at the local level in Ukraine requires addressing both terminological and functional-organizational matters.

This study aims to conduct a scientific analysis of "municipality" as a legal category, to reveal its essence and relationship with related legal concepts, to determine its content and level of prevalence in European states, and to outline possible directions and prerequisites for its application in Ukraine.

Based on this objective, the article addresses the following research task:

- to assess the extent and scope of legal regulatory frameworks of the concept of "municipality" in national legislation and directions of its application;
- to outline the essence of the concept of "municipality", identify its key elements (components) and characterize their role in the organization of municipal governance;
- to identify related legal categories that are close in content to the concept of "municipality", in particular, community, administrative-territorial unit, and show their relationship;
- to establish foreign experience and practice of using the concept of "municipality", characterize the content and significance of this category in European countries;
- to demonstrate the importance of implementing municipalities in Ukraine in the context of its European integration and propose directions for improving domestic legislation in the field of local self-government.

Literature review

Some issues of reforming the basic territorial level towards implementing a comprehensive administrative-territorial unit following the practices of European countries have been analyzed by such scholars as I.I. Bodrova [2], S.H. Serohina [3], M.I. Titov [4], A. Tkachuk [5], O. Peresada [6], N. Gavkalova [7], M. Petryshyna [8] and others. Among foreign researchers studying territorial organization of local self-governance in European states, it is worth noting J. Boggero [9], who thoroughly described the defining features of European constitutional legislation on local self-government and municipalities, particularly using both international and comparative legal perspectives, emphasizing existing differences between local self-government systems in Europe and the necessity of establishing a coherent framework of constitutional principles, uniformly applied within

the European legal area, based on the principles outlined in the European Charter of Local Self-Government. H. Neuhofer [10] comprehensively examines the organization and tasks of Austrian municipalities through comparison between federal lands from constitutional law perspective, local political perspective, addressing the understanding of municipality in the EU as a whole. Legal characterization in a brief, modern, and synthetic form, providing a concise overview of the key aspects of legal regulation for local authorities in the 27 EU member states, is contained in the publication under the general editorship of A.M. Moreno [11].

Materials and Methods

The object of analysis included both normative legal acts of Ukraine and European states, writings of Ukrainian and foreign researchers, international legal documents and publications of international organizations.

To achieve the stated purpose, a complex of methods was used: dialectical (for objective and comprehensive understanding of the municipal institution in foreign countries, considering various factors (in particular, political-territorial structure), in development), formal-legal (to establish the content of legal norms, analyze their application practice and to formulate author's approaches and conclusions), methods of analysis and synthesis (for analyzing the constitutional legislation of Ukraine and European states regarding the local self-government organization) and others. The comparative legal method was applied as the primary method (for comparing European and Ukrainian approaches regarding the nature of municipality and developing practical recommendations for optimizing the structure of local self-governance in Ukraine). The use of the generalization approach through establishing common properties and features of the legal status of municipalities in European countries enabled the formulation of conclusions about the possibility of implementing such an institution in Ukraine. The prognostic method was used for developing research conclusions and formulating further directions in searching for possible ways of organizing local self-governance in Ukraine. The involvement of a broad methodological base in the research makes its provisions complete and well-founded.

Results and Discussion

Despite the introduction of a scientific specialty in municipal law in Ukraine and numerous textbooks on this scientific discipline, the definition "municipality" in its classical understanding and meaning (as perceived in European countries) has not been adopted into Ukraine's legislative system. Simultaneously, this category is used in some legal acts, both in

content and titles. In particular, "On authorizing O. Kuleba to sign the Letter of Waiver of certain conditions and amendments to the Financial Agreement (project 'Municipal Infrastructure Development Program of Ukraine' between Ukraine and the European Investment Bank" [12], Some issues of reimbursement of childcare service "municipal nanny" during martial law and for three months after its termination or cancellation [13], On attracting credit and grant from the Credit Institution for Reconstruction ("KfW") for the implementation of the project "Municipal Water Management Project of Chernivtsi, Stage 2" (Municipal Climate Protection Program II) [14], and others. All these and other acts emphasize the quite widespread use of the category "municipal" in domestic legislation, however without a precise definition or explanation of its nature and substance. A variant of this category is the concept of "municipality". It has a direct connection to the organization of local self-government as a type of public authority at the local level.

For achieving the purpose of this article, the defining of the essence of the concept of "municipality" is crucial. According to M.I. Titov, "municipality" (from Latin municipium – self-governing unit) is used in many countries to denote the smallest (basic) administrative-territorial unit governed by an elected body [15, pp. 287-288]. Thus, the author reduces the nature of municipality to merely designating an administrative-territorial unit.

In December 2021, the Centre of Expertise for Good Governance of the Department of Democracy and Governance of the Directorate General of Democracy of the Council of Europe proposed a set of recommendations regarding the implementation of legal personality at the local level in Ukraine [16]. Analyzing European experience and considering the European Parliament resolution from February 2021, which calls for implementing the definition of administrative-territorial unit as a legal entity, one can identify fundamental aspects for further transformation of the local self-government system in Ukraine. Within the Council of Europe, a unified, though sufficiently flexible, approach to defining legal personality at the local level has been formed. According to the Explanatory report, local authorities should be interpreted as territorial public entities characterized by their own legal personality [17, p. 43].

This raises the key question, the answer to which is crucial for further reforms in Ukraine: wouldn't it be more appropriate to replace the current approach (which, although not contradicting the European Charter, creates much confusion into the perception of these social relations, as will be demonstrated below) with a clearer and more unambiguous one? Wouldn't it be more appropriate to move from the practice of granting legal personality to various local authorities as representatives of territorial communities to

the concept of legal personality of municipalities as a generalizing triune category of "territory – population – self-government bodies"?

It would be worthwhile to proceed from the generalized European model implemented by most member states of the Council of Europe, which fundamental principle is the recognition of local communities or administrative-territorial units (rather than authorities – councils or their executive bodies) as bearers of legal rights and obligations.

Considering the experience of other countries, which developed during the long evolution of local self-government and especially in European countries, it can be noted that a "municipality" is represented by a complex combination of several elements. Among them, first, is territory, which occupies a central place as it serves as a spatial factor in the organization of public authority. It has its classification, division into certain types, which affects the legal status of the municipality as a whole. Second, a constituent element of the municipality is the population of such territory. Third, the municipality includes a system of governing bodies for such territory. All of these are considered inseparable from each other, which ultimately allows us to speak about the existence of a holistic "municipality". Furthermore, municipal property serves as an important factor of the municipality itself. In this regard, it is essential to analyze the structural elements of municipality and understand the theoretical and practical possibility of its implementation in Ukraine. In light of the European integration processes actively conducted in Ukraine, it will inevitably face the question of implementing the European approach to local self-government organization, where municipality serves as a fundamental unit of authority structure.

Across numerous European countries, constitutional frameworks increasingly codify and protect the legal standing of municipal entities, although in some jurisdictions this matter is regulated by general or special legislation [18-20]. The regulation of local self-governance is substantially influenced by the form of political-territorial structure: in federal states, the fundamental principles of local self-government organization are articulated in the federal constitution, while their further elaboration is carried out at the level of legislative acts of the federation subjects (Austria [21], Federal Republic of Germany [22]). Belgium's legal system presents a particular scientific interest, where, unlike other European states, the legal status of municipal entities is based on customary law norms, which is historically conditioned.

In comparative analysis of European states' legal systems, there is variability in the application and interpretation of the term "municipality". In many European states, this term is used to denote a basic territorial

unit (for instance, in Bulgaria [23],[1] Portugal [24], Romania [25], Slovakia [26][2] and Spain [27]). Similarly, in some states (for example, in Poland [28], Germany[3]), this term is used to denote a community, while municipal authorities are excluded from the scope of this concept. In Greece [29], the term "municipality" has a dual nature, encompassing both the territorial entity and its administrative bodies. A somewhat different interpretation is observed in countries such as Denmark [30] and France [31],[4] where the concept of "municipality" correlates primarily with local authorities, including mayors and municipal councils. Special mention should be made of the common usage of the term "municipality" in many countries, where it is employed not to signify the community as such, but is associated with the authority or complex of services provided within local self-government. The legislation of such states as Moldova [32][5] and Romania [33],[6] uses the Latin version of the term "municipium" for cities, while in Portugal it represents a level of local government higher than primary parishes [34].[7]

The granting legal personality to municipalities opens prospects for significant improvement of the existing conceptual model, which involves optimizing internal structure, rationalizing relationships with citizens and central authorities, as well as strengthening democratic governance

[1] Art. 136 of the Constitution: Municipality is the basic administrative-territorial unit in which local self-government is exercised. Citizens participate in municipal governance both through their elected local self-government bodies and directly through referendum and general population meetings. Municipal boundaries are determined after polling the population. The municipality is a legal entity.

[2] The term "municipality" applies only to the territorial unit, while the municipal bodies are the mayor and municipal council.

[3] The term "Gemeinde" (municipality) denotes the municipality as a territorial community. The defining characteristics of a municipality as a territorial community are the municipality's residents and municipal territory, which together constitute the local community. The bodies (mayor or council) of the municipality are not defined by the term "municipality".

[4] Currently, the term "municipality" is almost ignored by law, but it is still used in everyday language to denote the representative body (municipal council) and executive body (mayor) of the commune. Sometimes the term "municipality" is used in a more limited sense, to denote only the municipal executive authority.

[5] According to Art. 7 of the Law on Administrative-Territorial Organization of the Republic of Moldova, the term "municipium" denotes an urban settlement with a special role in the country's economic, socio-cultural, scientific, political, and administrative life. That is, the term "municipiu" indicates large cities with special status. This understanding is also used in Art. 5 of Law No. 436/2006 on Local Public Administration. Retrieved from https://www.legis.md/cautare/getResults?doc_id=144148&lang=ru.

[6] Art. 105 of the Administrative Code of Romania establishes that local autonomy is exercised by local government bodies at the level of communes, cities, municipalities (municipiilor), and counties.

[7] The concept of "municipality" applies only to the corresponding territorial unit, not to the local authority (councils or their executive bodies). See also: Art. 3 of the Law of the Republic of Portugal "On the Legal Regime of Local Authorities".

mechanisms. In the long term, a transformation of the social paradigm and consolidation of belief in the priority role of individuals in the local self-government system is predicted. The realization of this concept potentially contributes to simplifying interaction mechanisms between representative and executive bodies of local self-government.

From citizens' perspective, increasing transparency and enhancing the functioning of local government, its structural units is undoubtedly a positive factor. The current state is marked by the existence of numerous communal legal entities (communal services, enterprises), whose activities are often determined by narrow departmental interests, generating conditions for competency conflicts, diminished transparency, inefficient use of financial resources, which shapes the corresponding public perception of this situation.

Territory as a structural element of municipality

Territory serves as a key element in the structure of municipality. It is an area for exercising municipal power and delineates the boundaries of its implementation. The regulatory jurisdiction of municipal authorities is confined within their territorial boundaries. Furthermore, it enables self-organization of the population residing in this territory. Legislation defines specific types of territories. Traditionally, these are the respective territorial-administrative divisions upon which a municipality is established. In Ukraine, administrative-territorial units include village, settlement, city, city district, district, and oblast. However, not all of them can serve as a territorial foundation for municipal structure. Primarily, these can only be basic-level territories within which population resides. Regions, subregions, districts, etc. have a completely different purpose than basic-level territories, therefore organization of municipalities is possible only at the lowest territorial level. In this regard, among the above-mentioned administrative-territorial units, organization of municipalities is possible only based on villages, settlements, and cities.[8]

The normative definition of municipality in the Slovak Republic is established in Para 1 of Act. No. 369/1990 on municipal formation: a municipality is constituted as an autonomous territorial self-governing and administrative unit that integrates persons who have permanent residence in the respective territory.

[8] We see a similar approach in Romania, where according to the Constitution, the territory consists of communes, towns, cities, and counties. The first three form the first level of local self-government (municipalities); counties are an elected second level. For historical reasons, about 100 large cities have received the name "municipium", which should not be confused with the more general term "municipality" that applies to the entire first level.

The legislator grants municipalities the status of legal entities which, within legally established parameters, independently exercise authority over the administration of their property and financial resources. In accordance with Para 2 of the aforementioned law, the territorial structure of a municipality may consist of one or more cadastral territories.

The constitutional and legal status of municipalities is regulated by Art. 64 of the Basic Law of the Slovak Republic, where municipality is recognized as the fundamental unit of territorial self-government.

The territorial self-government system is structured on two levels: municipal and regional (self-governing region). In accordance with Para 1 of Art. 65 both levels of territorial self-governance are distinguished by legal entity status, granting them the right to independently manage property and financial resources within the bounds of the law [35]. The Slovenian legislator demonstrates the same approach, referring to municipalities and provinces in Articles 139-143 of the Constitution [36].

The analysis of European states' legislation demonstrates that history, national composition, territory size, state population, and other factors decisively influence local government organization. In Spain, municipalities are the basic local entities of the state's territorial structure, which unite into provinces. The provinces themselves can form autonomous communities (regions), while local self-government legislation regulates the formation of administrative-territorial units smaller than municipalities that retain their historical names, are defined by the absence of a distinct legal status, and function within a deconcentrated system of territorial governance [37].

Ukraine's territorial system has become increasingly complex due to the decentralization of power reform and the formation of "territorial community territories". A territorial community territory is an area that emerged from the voluntary union of several territorial communities. In other words, in the decentralization reform, it was not territories that united, but rather the residents of these territories (territorial communities), which resulted in changes (consolidation) to the territorial ground of their residence and activities, and consequently, the territorial basis for local self-governance functioning.[9] As a consequence, the territory became the ground for the functioning of the basic level of local self-governance and acquired the necessary characteristics for the possible organization of separate municipalities within its boundaries. Meanwhile, the previously mentioned

[9] In general, processes of consolidation/transformation of municipalities are observed in many European states (Bulgaria, Portugal, France, etc.). However, proper legislative regulation minimizes negative manifestations and does not worsen the implementation of good governance principles and participatory democracy for local residents.

administrative-territorial units (village, settlement, city), which existed before the process of voluntary amalgamation of territorial communities, lost these characteristics: in particular, they lost the ability of forming their own local self-government bodies. Since the voluntary amalgamation of territorial communities, such bodies are formed as single entities for the entire territorial community. Furthermore, the social foundation and legitimate subject is now considered not the residents of this administrative-territorial unit, but the entire unified territorial community (a kind of "collective mind"). Thus, currently only territorial community territories can be considered as a ground for municipality formation.

Meanwhile, such territory has several disadvantages and issues with legal regulation. First, we observe the absence of constitutional recognition of such territory and its enshrinement in the Basic Law, which does not provide full guarantee of its preservation in national legislation. Second, such territory consists of several administrative-territorial units, each of which still continues to maintain a certain level of legal personality. Third, unlike the experience of foreign countries, such territory is not a subject of municipal property rights and is not endowed with representative functions.

All of the aforementioned factors together create confusion, which does not promote residents' sense of accessibility, proximity, transparency, and understanding of local government. In contrast, there is an increasing perception of local governance detachment and the impossibility of citizens' real effective influence on decision-making processes, resolution of local issues, and so forth.

The domestic experience of local self-government territorial organization shows that representative functions concerning the population are performed not by the municipality (territory) but exclusively by local self-government bodies, while the residents themselves act as the subject of communal property rights.

Another important characteristic that territory acquires as "municipality" is the ability to obtain and exercise powers. This derives from the common definition of municipality as a distinct administrative-territorial unit that has self-governing status and is endowed with powers in its territory in accordance to national or regional legislation.[10] The domestic model of territorial organization of local self-government gives the ability to exercise powers to local self-government bodies. Primarily, Art. 19 of the Constitution

[10] Municipality is a political-administrative unit with its own territory; it bears responsibility for local self-government, which is guaranteed to it by legislation. As local authorities, municipalities are legal entities of public law with their own statute, budget, and employees (translated by author). Retrieved from https://wirtschaftslexikon.gabler.de/definition/gemeinde-34664.

of Ukraine stipulates those public authorities, their officials are obliged to act only based on within the powers and in the manner prescribed by the legislation of Ukraine. Even though the Basic law establishes a system of administrative-territorial units, it does not endow them with powers, rejecting their integration with local self-government bodies into a unified system that could be called a municipality. Furthermore, an administrative-territorial unit can only obtain the ability to exercise powers in case of certain transformation of its legal status from purely territory into another legal status – that of a public authority entity [38, p. 50].[11] Such transformation can be ensured, in particular, through the mechanism of registering such an entity, resulting in it acquiring corresponding powers, including representative ones. In foreign countries, this may involve the territory acquiring the status of a legal entity, which continues to be a matter of debate in the context of the ongoing development of local self-governance in Ukraine.

In most European countries, a municipality has legal personality regulated by public law (for example, Belgium, Czech Republic, Poland) and has the legal entity' status (for example, Bulgaria, France, Germany, Portugal, Romania, Slovenia).

Population of territory as a structural element of municipality

The population of the respective territory plays an important role in municipality formation. Pursuant to Ukrainian legislation, the absence of inhabitants in the respective territory constitutes grounds for liquidation of the corresponding administrative-territorial unit (Part 7 of Art. 5 of the Law of Ukraine "On the Procedure for Resolving Certain Issues of the Administrative-Territorial Structure of Ukraine" [39]). In Ukraine, the social foundation of local self-government is viewed as a certain community. This emphasizes that the realization of local self-governance is a "collective" matter. For this purpose, the concept of "territorial community" has been introduced, which denotes all residents of the relevant territory. The realization of local self-governance is reduced to the functional activity of such a collective subject.

The inclusion of such a subject in the mechanism of local self-government implementation can be assessed ambiguously. On one hand, it indicates the widening of the principle of people's power to the local level and widespread use of democratic processes. In contrast, practical issues arise concerning the existence of the territorial community and its exercise of people's power.

[11] This is all the more justified because the frequently used phrase "local self-government body" is incorrect, as an authority body (council, mayor) cannot be "self-governing". It is the administrative-territorial unit that manages its own affairs through its elected bodies. The level of its self-governance depends on the degree of real decentralization in each individual country.

First, this subject is not permanent or established, as its personal composition constantly changes. This has become particularly evident during the war due to population displacement, with some territorial communities ceasing to exist entirely. Second, membership in a territorial community solely based on residence registration has also proven ineffective. Situations arise where a person is only formally a territorial community' member through registration but does not participate in local affairs due to actually living elsewhere. Third, its legal status is unclear, as it emerges automatically, requires no creation or registration mechanisms, and is not an authority body. Fourth, assigning the ability to implement corresponding forms of participation and resolve issues of local significance specifically to territorial communities is quite dubious, as all territorial community' members never participate in such forms.

Attention should be drawn to the specificity of public perception regarding the idea of registering territorial communities as legal entities. This issue acquired negative connotations in public discourse significantly earlier than the matter of reforming territorial communities' legal personality became actualized at the state policy level. The formation of such negative perception was driven by destructive activities of illegitimate entities that positioned themselves as registrars of territorial communities. In the past decade, a trend toward the spread of the so-called "fake communities' virus" has emerged, representing the phenomenon of self-proclaimed registration of territorial communities without proper legal grounds or authority [40, p. 5].

All this raises the question of whether it is necessary to maintain such an entity as territorial community in national legislation, or simply abandon it by endowing the territory's residents with elements of its legal personality.

It should be noted that the model of territorial community somewhat contradicts the one enshrined in the European Charter of Local Self-Government. It does not contain such a subject. However, it extensively operates with the concepts of "local population" and "citizens".

While positioning local self-government bodies in the foremost place in the mechanism of municipal power implementation, the Charter does not deny the possibility of direct citizen participation in governance. However, it does not make them a specific subject but rather considers each of them as a separate participant in municipal-power relations.

In the aspect of municipality formation, it would be reasonable to discontinue the use of the term "territorial community" and instead introduce "municipality population" or "municipality residents". This would emphasize the social component of the municipality while reducing the

dependence of local affairs resolution on the participation of the collective subject in its entirety.

Local self-government bodies and officials play a central role in managing local affairs in Ukraine. While the residents of the territory play a significant role in the forming of the system of administrative bodies and monitoring their work, they are significantly limited in their ability to independently resolve issues of local importance. The system of participation forms established in legislation and the specifics of implementing these forms in practice indicate their limited application by the population. Therefore, local self-government bodies come to the forefront in exercising municipal power.

As noted, they are dependent on and controlled by the territorial community, as established by the Law of Ukraine "On Local Self-Government in Ukraine" (Art. 75). However, such legislative provisions are somewhat formal, since the bodies themselves act as the subjects responsible for organizing the territorial community and its forms of participation. This indicates that local self-government bodies are not fully integrated with the territorial community (population) and the territory itself.

According to the provisions of the Constitution of Ukraine (Art. 140) and the Law of Ukraine "On Local Self-Government in Ukraine", local self-government bodies manage local affairs rather than the territory itself. Territorial management is secondary; it occurs in one way or another when resolving local issues. However, this approach also does not ensure the integration between the territory and local self-government bodies, which is especially crucial in establishing a municipality.

In Republic of Slovenia, the Czech Republic, legal personality at the local level is held by the municipality itself, rather than by its internal bodies (such as the municipal council, municipal committee, or mayor).[12]

It is noteworthy that the legislator tries in any way to combine local self-government bodies and the population. With this approach, the territorial community is endowed with characteristics that are not inherent to it. In particular, Part 1 of Art. 12 of the Law of Ukraine "On Local Self-Government in Ukraine" establishes that the village, settlement, or city mayor is the chief official of the territorial community. This leads to several concerns. First, if they are the chief official of the territorial community, then there should be others within the structure of the territorial community who are subordinate to them. However, no other official is defined as an official of the territorial community. Second, the territorial community is not a local self-government body and therefore does not have its own organizational

[12] The key attributes of a municipality according to Law No. 128/2000 on municipalities (municipal formation) are the community of citizens, territorial unit, and corresponding property.

structure, which follows from Art. 140 of the Constitution of Ukraine and Art. 1 of the Law of Ukraine "On Local Self-Government in Ukraine", which define the territorial community as residents united by permanent place of residence. Thus, the mayor should be defined as the chief official of the local self-government body. However, this approach would define their relationships specifically with the management system rather than with the population.

In essence, the described approach introduces and legalizes a corporate governance model at the local level in Ukraine, where the territorial community (residents) represents a prototype of a certain corporation or business entity (company, etc.), which has a management system in the form of local self-government bodies (similar to a board of directors or supervisory board of a company) and an adopted statute of the territorial community as the main corporate act. However, such relationships are not characteristic of our legal system, in which local self-government bodies are public authorities that manage public affairs in their respective territories, whose acts are mandatory for implementation, and cannot be reduced to an element in the system of corporate relations.

A significant role in such corporate model is assigned to property. In Ukraine, communal property was formed precisely taking into account such a corporate model (with the population – territorial community – defined as the owner). However, such model is not acceptable for the national legal system, which once again indicates the directions of changes in the process of employing municipalities in Ukraine.

Conclusions

The domestic legislator quite cautiously applies the category of "municipality" and "municipal" to designate the relevant sphere of social relations connected with the functioning of local self-government. It attempts to introduce its own legal categories to designate the institutional-territorial basis for local self-government development, using "hromada" for this purpose and explaining this through its own historical tradition. However, the intersection of etymologically identical but different in content categories – "hromada" and "territorial hromada" – does not facilitate their perception by the population and introduces elements of legal uncertainty into legislation. This requires a review of the existing terminological framework and the implementation of the European countries' model based on municipalities. Consequently, we propose to establish this concept at the constitutional level and detail it at the level of law.

We propose to establish the key elements (components) of the municipality (territory, population and the system of local self-government bodies

operating within the respective territory) and define their interdependence. This will lay the foundation for each municipality, through its population, to choose its own model of municipal power organization in the future (independently determining the name and types of local self-government bodies that the population will form in their territory). This will allow to implement the necessary level of population autonomy in organizing local government, experimenting with relevant institutions, and, finally, to forming the most functional model of managing the respective territory, taking into account its size, population, predominant means of production, sources of local budget revenue, etc.

Meanwhile, only the most crucial issues of organization and functioning of local self-government should be regulated at the level of the special Law of Ukraine "On Local Self-Government in Ukraine". This will allow for the implementation of one of the most important European standards of municipal power organization – where local self-government bodies act at their own discretion within the limits not prohibited by legislation.

It should also be noted that the incorporation of municipality as a threefold category will enhance the population's role in managing local affairs and allow for broader use of local democracy forms, including influencing the activities of local council deputies.

Obviously, implementing the new legal institution of "municipality" will require lengthy and thorough work on amending various legislative acts, as well as a transition period during which special regulation of previously existing legal relations will operate. This requires political and administrative will to implement such a model. However, the effectiveness and appropriateness, along with significant democratic advantages, are also evident - municipalities will have a clear and transparent status, will be capable to independently obtain rights and obligations (powers) and bear responsibility for their implementation before the population. This is substantiated by the analyzed European experience of effective functioning of municipalities, which should be adopted in the future reform of local self-government in Ukraine.

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Oleksii Yu. Lialiuk
Ph.D. in Law, Associate Professor
Head of State Building Department
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: o.yu.lyalyuk@nlu.edu.ua
ORCID 0000-0003-1214-0580

Alla A. Grynchak
Ph.D. in Law, Associate Professor
Associate Professor of State Building Department
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: a.a.grynchak@nlu.edu.ua
ORCID 0000-0003-1246-9968

Nataşa Danelciuc-Colodrovschi
Ph.D. in Public Law, Associate Professor
Vice-director of the Louis Favoreu Institute (GERJC)
Aix Marseille University
13007, 58 Charles-Livon Bd., Marseille, France
e-mail: natasa.colodrovschi-danelciuc@univ-amu.fr
ORCID 0009-0002-7546-8700

Олексій Юрійович Лялюк
кандидат юридичних наук, доцент
завідувач кафедри державного будівництва
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: o.yu.lyalyuk@nlu.edu.ua
ORCID 0000-0003-1214-0580

Алла Анатоліївна Гринчак
кандидатка юридичних наук, доцентка
доцентка кафедри державного будівництва
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: a.a.grynchak@nlu.edu.ua
ORCID 0000-0003-1246-9968

Наташа Данельчук-Колодровскі
кандидатка юридичних наук, доцентка
заступниця директора Інституту Луї Фаворе (GERJC)
Екс-Марсельський університет
13007, 58 Charles-Livon Bd., Марсель, Франція
e-mail: natasa.colodrovschi-danelciuc@univ-amu.fr
ORCID 0009-0002-7546-8700

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Administrative and Legal Safeguards Against Corruption Risks Implementing Defense Procurement during Martial State

Roman V. Shapoval
Yaroslav Mudryi National Law University
Kharkiv, Ukraine

Snieguolė Matulienė
Mykolas Romeris University
Vilnius, Lithuania

Khrystyna V. Solntseva*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: h.v.solnceva@nlu.edu.ua*

Abstract
In the article the concept of corruption risks is examined and typical examples of them in the field of public procurement are provided. The relevance of the research topic is due to the need for effective control and transparency in defense procurement during martial law, when the risk of corruption abuses increases. Administrative and legal safeguards play a key role in ensuring legality, integrity and rational use of budget funds in the defense sector. The purpose of the study is to identify effective administrative and legal mechanisms for preventing corruption risks during defense procurement during martial law, as well as to develop proposals for improving legal regulation and control in this area. To ensure a comprehensive and objective approach to the analysis of the issue, the following methods were used: a comparative legal method for comparing Ukrainian experience with the practice of the Republic of Lithuania in preventing corruption in the defense sector; a system-structural method for studying the relationship between state bodies responsible for procurement control; socio-legal method for assessing the impact of corruption risks on public trust and the security sector, etc. As a result of the study, 7 main categories of corruption risk assessment were identified, including: low level of development of anti-corruption legislation; political instability, economic crisis, etc.

Keywords: *integrity threats; military acquisitions; Ministry of Defence of Ukraine; government purchasing.*

Адміністративно-правові запобіжчики корупційних ризиків при здійсненні оборонних закупівель під час воєнного стану

Роман Володимирович Шаповал
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

Снєгуоле Матульене
Університет Миколаса Ромеріса
Вільнюс, Литва

Христина Володимирівна Солнцева*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: h.v.solnceva@nlu.edu.ua*

Анотація
Актуальність теми дослідження зумовлена необхідністю ефективного контролю та прозорості в оборонних закупівлях під час воєнного стану, коли зростає ризик корупційних зловживань. Адміністративно-правові запобіжники відіграють ключову роль у забезпеченні законності, доброчесності та раціональному використанні бюджетних коштів в оборонному секторі. Метою дослідження є визначення ефективних адміністративно-правових механізмів запобігання корупційним ризикам під час оборонних закупівель в умовах воєнного стану, а також підготовка пропозицій з удосконалення правового регулювання та контролю в цій сфері. Для забезпечення комплексного та об'єктивного підходу до аналізу цього питання було використано такі методи: порівняльно-правовий метод – для порівняння вітчизняного досвіду з практикою Литовської Республіки у запобіганні корупції в оборонному секторі; системно-структурний метод – для вивчення взаємозв'язку між державними органами, відповідальними за контроль закупівель; соціально-правовий метод оцінки впливу корупційних ризиків на довіру громадськості та сектор безпеки тощо. У результаті дослідження було визначено сім основних категорій оцінки корупційних ризиків, зокрема: низький рівень розвитку антикорупційного законодавства, політична нестабільність, економічна криза тощо.

Ключові слова: *корупційні ризики; оборонні закупівлі; Міністерство оборони України; публічні закупівлі.*

Introduction

According to the results of the research, in 2023 Ukraine ranked 104th in the Corruption Perceptions Index, significantly improving its performance compared to previous years. Defense procurement is a very important component of the functioning of any state, because it primarily concerns the preservation of territorial integrity and the ability to retaliate in time in the event of an aggressor attack. The full-scale invasion, which began on February 24, 2022, once again emphasized the need to increase the level of transparency in defense procurement, as well as proper supervision over them due to an increase in revenue.

Although the term "corruption risks" is not explicitly defined in Ukrainian legislation, particularly in the text of existing legal norms, it has nevertheless become a widely used and recognized concept in academic and policy discussions. Its development gained momentum especially after the adoption of the Law of Ukraine "On Prevention of Corruption", which, while not providing a strict legal definition of corruption risks, set the stage for their practical identification and management within anti-corruption strategies. Since then, the term has entered the scientific and professional discourse, where it is interpreted in various ways.

Scholars and practitioners often distinguish between a broad and a narrow understanding of corruption risks. In the broad sense, corruption risks are viewed as potential circumstances or systemic factors that create favorable conditions for corrupt behavior within public administration or decision-making processes. This interpretation includes institutional weaknesses, insufficient transparency, lack of accountability, and legal ambiguities that may enable misuse of authority or public resources. In the narrow sense, corruption risks are more specifically tied to individual processes or decisions that may directly lead to corrupt actions, such as procurement procedures, licensing, or public service delivery.

Literature review

The intersection of administrative law, defense procurement, and anti-corruption policy has become critically important in the context of martial law. Although the concept of corruption risks is not formally defined in Ukrainian legislation, it has gained widespread academic and practical attention, particularly following the adoption of the Law of Ukraine "On Prevention of Corruption" (2014). This law laid the foundation for identifying and managing integrity threats in public administration, even though it lacks explicit provisions regarding wartime procurement [1].

A notable academic interpretation is offered by Yu. Dmytriev (2020), who describes systemic corruption risks as those that arise due to fundamental

shortcomings in the structure and functioning of public administration systems. According to Yu. Dmytriev, these risks are to be analyzed primarily in relation to the level of corruption embedded in the preparation, adoption, and implementation of management decisions. In this view, the focus is not on isolated corrupt acts but on the underlying administrative environment that allows corruption to flourish [2].

N. Kuznietsova and S. Denysov (2021) argue that emergency defense spending demands heightened administrative control mechanisms and legal safeguards to ensure accountability without impeding national security. Contemporary research, including policy papers by the National Agency on Corruption Prevention (NACP, 2022) and Transparency International Ukraine (2023), emphasizes tools such as pre-procurement risk assessment, digital procurement systems (e.g., ProZorro), external audits, and civil society monitoring as key safeguards [3].

A. Melnyk (2022) highlights the potential of "adaptive compliance models" in balancing urgency and legality in wartime procurement [4]. Moreover, international frameworks such as the OECD's Recommendation on Public Integrity (2017) and NATO's Building Integrity Program provide valuable guidance, promoting principles of transparency, internal audit, whistleblower protection, and ethical leadership in defense procurement systems.

Legal scholars note that recent wartime legislative changes in Ukraine, which simplify procurement procedures for defense purposes (e.g., Cabinet of Ministers Resolutions 2022-2023), must be counterbalanced by post-facto audits and clearly defined accountability standards.

It is crucial to understand the various phenomena (such as fraud, corruption and collusion in public procurement) and to establish what methods and practices the academic community has investigated to help identify actors and organizations involved in fraudulent activities in the public procurement process. For example, the introduction of e-procurement processes/methods has increased transparency and competitiveness, as well as reduced bureaucracy associated with procurement processes [5]. However, this area still needs further research.

Paying tribute to the scientific achievements of researchers, it should be noted that the necessity of a nuanced administrative-legal strategy to manage corruption risks in defense procurement under martial law requires clarification and detailing of both individual aspects and the phenomenon as a whole, combining domestic reforms with international best practices to preserve legality, efficiency, and public trust.

Materials and Methods

The purpose of the article is to identify effective administrative and legal mechanisms for preventing corruption risks during defense procurement during martial law, as well as to develop proposals for improving legal regulation and control in this area.

The methodology for studying the issue of the administrative and legal safeguards aimed at mitigating corruption risks in the context of defense procurement during martial law in Ukraine involves the application of general scientific, comparative, and special methods and approaches, which allows achieving the above goal.

The doctrinal (normative) method was used to examine the current legislative and regulatory acts regulating defense procurement and anti-corruption mechanisms in Ukraine. This includes analysis of the Laws of Ukraine "On Prevention of Corruption" (2014) and "On Public Procurement", relevant wartime resolutions of the Cabinet of Ministers, and procedural documents issued by the National Agency on Corruption Prevention (NACP).

The comparative legal method allowed for a contextual comparison of Ukrainian experience with the practice of other countries in preventing corruption in the defense sector. This comparative dimension helps identify gaps and opportunities for harmonization with global anti-corruption standards.

The system-structural method was applied to analyze the interaction between administrative bodies involved in defense procurement, including the Ministry of Defense, procurement agencies, and anti-corruption watchdogs. This helped to understand the operational dynamics and institutional fragmentation that affect the implementation of safeguards.

Additionally, socio-legal method was used for the assessment of the impact of corruption risks on public trust and the security sector, and inductive-deductive method – for formulating general conclusions based on specific facts and legal norms.

Overall, this methodological framework ensured a comprehensive examination of both the legal norms and their practical implementation, allowing the study to assess the effectiveness of existing administrative and legal safeguards and propose data-informed recommendations for policy and legislative improvement.

Results and Discussion

Administrative and legal safeguards against corruption risks in defense procurement under martial law: the case of Ukraine

A multidimensional understanding of corruption risks is important for developing effective preventive measures, including administrative and legal safeguards, institutional reforms and strategic monitoring mechanisms, especially in high-risk sectors, such as defense procurement and extraordinary state expenditures.

One of the key administrative and legal safeguards against corruption risks in the defense sector under martial law is the effective functioning of the financial control system, in particular, electronic declaration. As R. Nehara and other researchers rightly point out, the suspension of declaration mechanisms during martial law "creates favorable conditions for potential abuses by unscrupulous civil servants" and at the same time "impedes the implementation of anti-corruption policy in the country and complicates further verification of information" [6]. This confirms the need for the earliest possible restoration of transparent administrative and legal procedures in the field of public finances, even under martial law.

It is worth paying attention to the experts of the Center for Political and Legal Reforms, who consider corruption risks as legal, organizational and other factors and causes that generate, encourage (stimulate) corruption in the sphere of administrative services and state control and supervision activities. As for other positions, the experts of the Cabinet of Ministers of Ukraine consider the following: corruption risks are a set of legal, organizational and other factors and causes that generate, encourage (stimulate) individuals to commit corruption offenses while performing their state or local functions. The National Agency for the Prevention of Corruption has provided recommendations that corruption risk is the probability that a corruption offense or an offense related to corruption will occur, which will negatively affect the achievement of the specified goals and objectives by a government body. This is a set of legal, organizational and other factors and reasons that generate, encourage (stimulate) individuals to commit corruption offenses while performing their official duties [7, p. 40].

The sphere of public procurement is characterized by a high level of corruption due to the low level of transparency of this process. Since the adoption of the Law of Ukraine "On Public Procurement", some issues have been generalized and systematized, and some factors that could influence the increase in corruption in this direction have been eliminated. For example, the concept of "electronic procurement system" was introduced,

which is interpreted as an information and telecommunications system that ensures the conduct of procurement procedures, the creation, placement, publication and exchange of information and documents in electronic form, which includes the web portal of the authorized body, authorized electronic platforms, between which automatic exchange of information and documents is ensured. Thus, the system of procurement through their electronic format – the Prozorro system [8] was improved.

To understand how to reduce the number of corruption risks, it is important to cover not only the sphere of defense procurement, but also to assess the overall picture that exists in the state. According to S.M. Ivasenko, corruption risks can be assessed in the following categories: 1) low level of development of anti-corruption legislation; 2) political instability in the state, its economic crisis and, as a result, property stratification of the population; 3) many state control bodies and lack of structure in the exercise of powers; 4) uncontrolled growth in the number of organizations of various forms of ownership and countries of origin; 5) inability of law enforcement and tax authorities to quickly and effectively counteract offenses in the field of corruption; 6) lack of a systematic approach to combating economic crime and corruption; 7) lack of norms aimed directly at reducing the level of economic crime and corruption [9, p. 38].

Taking into account the above, the following general corruption risks that may arise during public procurement can be identified: falsification of documents; disclosure by an official of an organization to one of the participants in the procurement procedure of confidential information about the offers of other participants; concealment of a conflict of interest by an employee of the organization who is directly involved in organizing the procurement procedure; collusion between participants in the procurement procedure; publication of incomplete information about the procurement procedure, its assessment and the decision to determine the winner on the official website; acceptance of an offer, promise or receipt of an undue advantage by the chairman and/or member of the tender committee or member of the technical committee from a potential counterparty; abuse during the evaluation of competitive bidding offers of participants in the procurement procedure in order to reject the winner's offer [10].

The introduction of the ProZorro electronic bidding system has become an opportunity to prevent corruption in procurement, increase the level of transparency and create a healthy competitive environment in this area to receive the best offers and attract foreign investment. The website provides all the information regarding the sequence of processes, as well as the importance of involving the public in monitoring the implementation of what the state buys with citizens' taxes. This already speaks of compliance

with the first criterion for preventing corruption - increasing transparency. In public access, on the first page you can find out how to search for information, what useful resources to turn to, why this system exists, etc.

The key principle of Prozorro is *Everyone sees everything*. First, procurement for state funds takes place online, and therefore anyone can virtually visit the auction. In addition, in the case of attempts to hold a tender with a hint of corrupt actions, such an episode immediately receives publicity (for which more attention from the public is needed), and there is also an opportunity to view deleted documents, because the history of edits is saved. However, it is worth noting that the system cannot independently assess either the appropriateness of procurements or their corruption, but only highlights abuses for further investigation.

However, this all concerns the general process of public procurement. What about the defense sector, which is currently the most pressing topic? Since the beginning of the full-scale invasion, the Ministry of Defense of Ukraine has been at the center of scandals several times regarding the purchase of uniforms for the military, food for the Armed Forces of Ukraine, the supply of weapons, etc., which causes considerable indignation among the public and international partners. And even if procurement can be carried out according to all the rules through the ProZorro electronic system, this does not mean that the quality of the goods will also be proper, because it is difficult to control. Of course, this affects the long-term prospects for cooperation with Ukraine in the defense sector in the future. That is why it is necessary to respond quickly enough to such episodes and develop effective safeguards against corruption risks.

The potential benefits of corruption in the defense sector are determined by a number of factors, including: the scale of defense funding under the control of military officials; the level of discretionary power held by these officials; and the degree of openness and accountability of defense procurement processes.

The Ministry of Defense of Ukraine carries out procurement both centrally and decentralized. Most procurement is carried out centrally, which accounts for about 80% of needs. According to the Budget Code of Ukraine, if the subject of procurement does not contain information constituting a state secret, the procurement process is regulated by the Laws of Ukraine "On Public Procurement" and "On Peculiarities of Procurement of Goods, Works and Services for Guaranteed Provision of Defense Needs". These laws regulate the timeliness and efficiency of procurement for the needs of the Armed Forces of Ukraine and other military formations in the conditions of a special period, a state of emergency and a Joint Forces operation.

However, what about the specifics of defense procurement during the martial law legal regime? During the first 7 months of martial law, more than 20 regulatory legal acts were adopted, the main one being the Resolution of the Cabinet of Ministers of Ukraine No. 169 of February 28, 2022 "On Some Issues of Defense and Public Procurement of Goods, Works and Services under Martial Law". This and other documents were regularly amended, which can be summarized as follows: the contract price is determined on the basis of the cost estimate prepared by the executor of the state contract; revision of the agreed contract price is not allowed, except in cases of concluding import contracts; it is prohibited to conclude offset contracts [8]. Later, since June 2022, the government resumed mandatory procurement in the ProZorro system, but with the possibility of conducting some procurement outside the system. This Resolution was very helpful in the first months of the war and was able to establish processes for the need for rapid procurement, but it was replaced by the following one [11].

The provisions of the Law of Ukraine "On Defense Procurement" [12] in the provisions of Art. 30 refer us to the document approved by the Resolution of the Cabinet of Ministers of Ukraine dated November 11, 2022 No. 1275. It is noted that state customers carry out defense procurement of goods and services for defense purposes, other goods and services for guaranteed provision of security and defense needs, the value of which is equal to or exceeds 200 thousand hryvnias, works for defense purposes and works for guaranteed provision of security and defense needs if their value is equal to or exceeds 1.5 million hryvnias (except for procurements determined by law), in the electronic procurement system in one of the following ways: 1) conducting open tenders; 2) conducting simplified procurements; 3) in the procedure for selecting a supplier by requesting suppliers' proposals; 4) by applying a framework agreement in accordance with these features [13].

Later, in 2023, the National Agency for the Prevention of Corruption conducted a comprehensive study "Corruption Risks during Public Procurement under Martial Law" and identified a number of corruption risks. This was due to the particular relevance of anti-corruption reform even under martial law. As a result of the study, the following corruption risks were identified: the possibility of submitting tender offers at a price higher than the expected cost; abuse of procurement through an electronic catalog; use of "artificial barriers" in procurement in favor of a specific participant; corruption through direct contracts; inability to appeal decisions, actions or inaction of customers during simplified procurement procedures, etc. [14].

While monitoring defense procurement in the same year, the NACP identified a list of risks that could contribute to corruption offenses. The most common was the lack of control over the intended use of budget funds received as advance payments by suppliers. To combat corruption in the defense sector, it is necessary to prioritize anti-corruption measures and implement comprehensive strategies. These include creating a reliable legal framework and regulatory mechanisms, ensuring transparency in defense budgeting and procurement processes, promoting accountability and oversight, and encouraging the participation of civil society organizations and independent media in monitoring defense-related activities.

Thus, in 2023, the Department for Prevention and Detection of Corruption was established in the Ministry of Defense of Ukraine, the purpose of which was to spread the principle of zero tolerance for corruption. As of now, it is too early to look at the results of the Department's work, as training is currently being conducted for newly appointed public servants, and experience is also being exchanged with relevant Departments and other bodies. In addition, another institutional change was the creation of the Defense Procurement Agency by order of the Ministry of Defense of Ukraine dated June 17, 2022 No. 159. According to the charter, this state-owned enterprise was to become the only national agency for centralized procurement of goods, works and services in the field of national security and defense at the expense of the state budget and other sources. However, only in 2023 was this issue regulated at the legislative level [15, p. 325].

In June 2024, the first results of the reform were published. The Ministry of Defense of Ukraine transferred the procurement function to specialized structures: the State Operator of the Rear (which is responsible for the acquisition of tangible property, food, body armor and other support) and the Defense Procurement Agency (which carries out the procurement of weapons and military equipment). As the Deputy Minister of Defense of Ukraine noted, over ₴10 billion were saved on rear procurement alone, which is almost 25% of the total amount of budget funds allocated to the State Operator of the Rear for concluded contracts [16].

The table below summarizes the corruption risks that existed before the introduction of martial law in the field of defense procurement in Ukraine, the risks that emerged afterwards, as well as those administrative and legal safeguards that have either already been implemented or may be implemented in the future (Table 1).

Table 1. **Corruption risks in the field of defense procurement during martial law and administrative and legal preventive measures**

Corruption Risk	Administrative and Legal Safeguard
Abuse of simplified procurement procedures allowed since the introduction of martial law	Introduction of stricter sanctions for abuse of simplified procedures and limits on their allowable number
Lack of proper control over the volume and appropriateness of procurements	Implementation of a market price monitoring system for defense products and services; Enhancement of the qualifications of procurement staff; Classification of goods and services for procurement by categories, with separate regulation for construction and repair of roads, housing stock, and other infrastructure objects
Operation of a large number of bodies aimed at controlling defense procurement	Optimization of all bodies related to anti-corruption activities by consolidating them into several independent control authorities; Clear delineation of the powers of control bodies in legislation
Lack of public access to procurement information	Elimination of legislative gaps by detailing necessary procurement procedures such as planning, justification, etc.
Possibility to conduct procurements outside the ProZorro system under martial law conditions	Introduction of strict control over procurements carried out outside the system
Inability of small companies to participate in procurements, creating unequal conditions for participants	Division of large lots into smaller ones; each participant enters the bidding with a catalogue, and upper and lower price limits are set for each item
Adoption of numerous normative legal acts related to defense procurement causing legislative conflicts	Refinement and optimization of existing legislation to eliminate inconsistencies; Analysis of international legislation and its adaptation to Ukrainian realities
Lack of competition in procurement areas considered state secrets	Introduction of restrictions on what information can be disclosed and what cannot (e.g., the fact of procurement or production of specific weapons is not secret, but details about characteristics and procurement locations are concealed)

In addition to all of the above, in June 2024, the Ministry of Defense of Ukraine expressed a desire to change the leadership and reorganize the Main Directorate for the Development and Support of Material Support of the Armed Forces. How? By creating a collegial body for the organization of the development of material support of the Armed Forces to review existing technical documentation and adopt new ones in accordance with NATO standards. This process is part of the procurement reform, which aims

to increase transparency and efficiency in the field of material support. Technical specifications must be adapted to the new realities in which the state finds itself so that local manufacturers can provide quality goods and healthy competition is maintained.

Given the large number of scandalous procurements that took place during 2022–2024, it is also important to understand the state of the legislation related to liability for corruption offenses. This can be distinguished as a separate corruption risk, which also requires due attention. According to Art. 65-1 of the Law of Ukraine "On Prevention of Corruption", in the event of a criminal offense being committed on behalf of and in the interests of a legal entity by its authorized person independently or with the complicity of a legal entity in cases specified by the Criminal Code of Ukraine, criminal law measures shall be applied [17].

If we refer to the note to Art. 45 of the Criminal Code of Ukraine, then corruption-related criminal offenses according to this Code are considered to be criminal offenses provided for in Articles 191, 262, 308, 312, 313, 320, 357, 410, in the case of their commission through abuse of official position, as well as criminal offenses provided for in Articles 210, 354, 364, 364-1, 365-2, 368-369-2 of this Code.

Criminal offenses related to corruption, according to this Code, are considered to be criminal offenses provided for in Articles 366-2, 366-3 of this Code [18].

The doctrine is ambiguous about the system of corruption criminal offenses set out in the current legislation, since Section 17 of the Special Part covers most, but not all, offenses. In addition, not all criminal offenses of this section can be considered corruption. One of the unclear questions remains whether criminal liability measures for corruption criminal offenses will be strengthened by making amendments and additions to the current legislation in wartime conditions [19, p. 77].

Deputies of the Verkhovna Rada of Ukraine have developed two draft laws: "On Amendments to the Criminal Code of Ukraine to Strengthen Criminal Liability for Corruption Offenses Committed in Conditions of Martial Law or a State of Emergency" and "On Amendments to the Criminal Code of Ukraine to Strengthen Liability for Corruption Offenses Committed in Conditions of Martial Law or a State of Emergency". Each of these draft laws has its own inaccuracies and advantages. The first aims to hold accountable for offenses committed in 2022, and the second includes such a type of sanction as life imprisonment for committing offenses. The authors of the draft law indicate that it is also proposed to increase the minimum limit of punishment in the form of restriction of liberty within the framework of

some articles. However, of course, the approach to strengthening liability should be comprehensive and take into account foreign experience, the realities of existing Ukrainian legislation and development prospects [19, p. 77].

In addition, the issue of the division of powers remains unclear. The interaction of law enforcement agencies and the defense sector is rather ambiguous. The National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation and the National Police of Ukraine can investigate various offenses on the basis of one fact, but who deals with the issue of abuses in the defense sector is unclear.

It can be assumed that in order to effectively combat corruption, it is necessary to make changes to the legislation that significantly complicate even the commission of certain corruption offenses, rather than increase criminal liability for such offenses. Perhaps it is useful to work and improve in a completely different direction. In particular, it is necessary to improve personnel selection, ensure integrity checks and continuous training of investigators, prosecutors and judges, eliminate contradictions and other imperfections in the current legislation [19, p. 78].

Within the framework of combating corruption in the territorial defense system, the introduction of administrative and legal control mechanisms, including electronic procurement, auditing, data transparency and anti-corruption expertise, is extremely important. Clear administrative and legal mechanisms, which provide for constant monitoring, auditing and transparent reporting, are the first steps in maintaining defence capability [20]. Thus, the effective implementation of anti-corruption measures in the field of defense procurement involves the synergy of legal regulation, digital solutions and public oversight.

Defense procurement has long been considered to have significant potential for corruption and state capture. As evidenced by research by many scholars, in most European countries the risks of corruption in defense procurement are higher than in public procurement in general. This is explained by the specifics of military contracts, in particular their complexity, high cost, limited range of suppliers and insufficient transparency of procedures. In the context of Ukraine, which is under martial law, adapting the experience of EU countries will contribute to increasing the efficiency and integrity of defense procurement [21].

Corruption risks in defense procurement and administrative and legal preventive measures: the experience of Lithuania

If we turn to the experience of the Republic of Lithuania in the field of defense procurement, as a member of the European Union and NATO,

the country pays considerable attention to the issue of preventing corruption in the defense sector. To minimize corruption risks in defense procurement, Lithuania has created an effective comprehensive regulatory framework, which includes 3 main documents, namely: The Law on the Prevention of Corruption [22], which defines the main principles, goals and objectives of preventing corruption, as well as measures to create an anti-corruption environment; The National Anti-Corruption Program [23], which is a strategic document that unites the efforts of all institutions in the development of anti-corruption activities and implementation of legislation; The Law on Public Procurement in the Field of Defense and Security [24], which regulates procurement procedures in the defense sector, ensuring transparency and accountability.

The Lithuanian example makes it clear that the implementation of EU regulation in the field of defense and security procurement at the readiness stage helps to balance management processes with legal regulation and allows creating the prerequisites for legal procurement in situations of possible direct threats to national security [25].

Based on the regulatory framework in Lithuania, a number of administrative and legal safeguards against corruption risks in defense procurement can be identified: 1) transparency of procurement procedures: the legislation provides for the mandatory publication of information on tenders and contracts, which contributes to increased accountability and reduced opportunities for corruption; 2) assessment of corruption risks: regular analysis and identification of potential corruption risks in the defense procurement process allows for timely preventive measures to be taken; 3) control over confidentiality: taking into account the specifics of defense procurement, Lithuania has developed mechanisms to ensure a balance between the necessary secrecy and transparency, in particular through a clear definition of criteria for classifying information; 4) implementation of electronic procurement systems: the use of electronic platforms for tendering reduces the human factor and increases the objectivity of the selection of suppliers.

The following table is based on an analysis of Lithuania's National Anti-Corruption Program for 2015-2025, as well as OECD and Transparency International reports. It reflects Lithuania's systematic approach to minimizing corruption risks in the defense sector through legislative and institutional reforms (Table 2).

***Table 2*. Corruption risks in the field of defense procurement and administrative and legal preventive measures**

Corruption Risk	Administrative and Legal Safeguard
Abuse of simplified procurement procedures or intra-group transactions	– Establish clear criteria for the use of intra-group transactions to avoid bypassing open tender procedures – Strengthen oversight of simplified procedures through the electronic procurement system
Lack of control over the justification and volume of procurements	– Implement mandatory internal audits and risk management systems within public institutions – Centralize harmonization of internal control and auditing through the Ministry of Finance
Excessive number of agencies overseeing defense procurement	– Consolidate anti-corruption oversight functions under the Special Investigation Service (STT) – Clearly define the division of powers among STT, the Central Electoral Commission, and other relevant bodies
Lack of transparency in procurement information	– Mandatory use of the electronic procurement system for publishing tender information – Set legal requirements for publishing procurement plans and tender results
Possibility to conduct off-system procurements under emergency or wartime conditions	– Define clear conditions and limits for conducting procurements outside the electronic system – Ensure transparency and accountability of such procurements to relevant oversight bodies
Lack of competition in procurement sectors classified as state secrets	– Establish clear criteria for classifying procurements as secret – Ensure maximum possible transparency of non-sensitive aspects of such procurements, while protecting confidential information

Conclusions

Taking into account the Lithuanian experience in preventing corruption risks in defense procurement and the analyzed existing corruption risks and administrative and legal safeguards in Ukraine, the following conclusions can be drawn:

1. Lithuania has implemented a National Anti-Corruption Program (currently valid for 2015-2025), which ensures stability and strategic coherence of anti-corruption policy. Accordingly, it is advisable for Ukraine to adapt a similar long-term program taking into account the state of war and the needs of the defense sector.

2. Lithuanian legislation guarantees the maximum possible openness of defense procurement, while protecting information that constitutes a

state secret. Ukraine should improve the balance between security and transparency, providing for a clear separation between public and classified information.

3. In Lithuania, anti-corruption functions are concentrated in one specialized body, the Special Investigation Service (STT), which ensures effective control and avoids duplication of powers. In Ukraine, it is worth optimizing the functions of relevant regulatory authorities and other structures, ensuring coordination and unification of powers.

4. Lithuania has adopted a special law on defense procurement, which takes into account the specifics of security and efficiency of such procedures. Ukraine should deepen the differentiation of regulatory regulation for defense procurement, in particular under martial law.

Combating corruption in the defense sector requires a comprehensive approach that addresses both systemic issues and individual responsibility. The institutional reforms in public procurement initiated in Ukraine after the Revolution of Dignity provided the basis for effective monitoring and public oversight, which has persisted even in the face of a full-scale invasion. This demonstrates that transparency, accountability, and engagement with civil society are essential components of ensuring integrity and efficiency in defense procurement, especially during martial law [26].

Thus, combating corruption in the defense sector requires a multifaceted approach that addresses both systemic problems and individual responsibility. By promoting integrity, transparency, and accountability in the defense sector, as well as encouraging international cooperation, our state can strengthen national security, restore public trust, and ensure the efficient and rational allocation of resources for the country's defense needs, which is a priority during martial law.

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Roman V. Shapoval
Doctor of Law, Professor
Head of the Department of Administrative Law and Administrative Activity
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: rvshapoval1@gmail.com
ORCID 0000-0002-5716-9291

Snieguolė Matulienė
Doctor of Law, Professor
Institute of Statutory Education of the Public Security Academy
Mykolas Romeris University
LT-08300, 20 Ateities Str., Vilnius, Lithuania
e-mail: m.sniega@mruni.eu
ORCID 0000-0001-5379-4412

Khrystyna V. Solntseva
Doctor of Law, Associate Professor
Department of Administrative Law and Administrative Activities
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: h.v.solnceva@nlu.edu.ua
ORCID 0000-0001-9404-8029

Роман Володимирович Шаповал
доктор юридичних наук, професор
завідувач кафедри адміністративного права та адміністративної діяльності
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: rvshapoval1@gmail.com
ORCID 0000-0002-5716-9291

Снєгуоле Матульене
докторка юридичних наук, професорка
Інститут обов'язкової освіти Академії громадської безпеки
Університет Миколаса Ромеріса
LT-08300, вул. Атейтес, 20, Вільнюс, Литва
e-mail: m.sniega@mruni.eu
ORCID 0000-0001-5379-4412

Христина Володимирівна Солнцева
докторка юридичних наук, доцентка
доцентка кафедри адміністративного права та адміністративної діяльності
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: h.v.solnceva@nlu.edu.ua
ORCID 0000-0001-9404-8029

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Modern Information Systems as Technologies for Optimizing the Investigation of Iatrogenic Crimes

Victor M. Shevchuk*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: shevchuk_viktor@ukr.net*

Mariietta V. Kapustina
Yaroslav Mudryi National Law University
Kharkiv, Ukraine

Abstract
The relevance of this article lies in examining the prospects for implementing and utilizing an information system for recording and analyzing cases of improper medical care, with the aim of optimizing the investigation of iatrogenic crimes. The objective of this research is to demonstrate the necessity of developing and implementing such systems and to determine the practical possibilities of using information technologies to enhance the efficiency of investigating iatrogenic crimes. To achieve this goal, the study analyzed 20 judgments of the European Court of Human Rights concerning adverse outcomes in the provision of medical care; the World Health Organization's report on patient safety incident reporting systems; and the national Concept for the Development of a Strategy to Prevent Defects in the Provision of Medical Care. The research methodology includes the dialectical method, comparative legal method, structural-functional method, as well as sociological, analytical, statistical, and other methods. During the study, the key factors prompting the urgent need for effective mechanisms and innovative technological solutions to improve the investigation of iatrogenic crimes were identified and examined. An analysis of the World Health Organization's report on incident reporting systems related to patient safety has been carried out, the results of which indicate the existence of certain organizational problems in the implementation and use of such systems and proposed ways to address them. The results of this article include: proving the necessity of creating and implementing an information system for recording and analyzing cases of improper medical care; substantiating the position that the development and implementation of such a system in Ukraine will contribute to optimizing the investigation of iatrogenic crimes; arguing that the use of an information system for recording and analyzing cases of improper medical care will assist pre-trial investigation bodies in establishing the mechanism of iatrogenic crimes and its constituent elements; establishing a causal relationship between the actions (or inaction) of

the person providing medical care and the adverse consequences in the form of harm to the patient's health or their death; ensuring the prompt notification of law enforcement agencies about the occurrence of a case of improper medical care; simplifying the procedure for initiating criminal proceedings based on the facts of iatrogenic crimes; preventing obstruction in identifying cases of improper medical care by interested parties; and developing preventive recommendations for avoiding iatrogenic crimes. The issues discussed and conclusions drawn will also be useful for researchers, practicing lawyers, criminalistics experts, attorneys, and judges.

Keywords: *iatrogenic crimes; information system; criminalistics support; forensic examination; criminalistic methodics; special knowledge.*

Сучасні інформаційні системи як технології оптимізації розслідування ятрогенних злочинів

Віктор Михайлович Шевчук*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: shevchuk_viktor@ukr.net*

Маріетта Владиславівна Капустіна
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

Анотація

Актуальність даної статті полягає в дослідженні перспектив запровадження та використання інформаційної системи обліку та аналізу випадків неналежного надання медичної допомоги з метою оптимізації розслідування ятрогенних злочинів. Метою цього дослідження є доведення необхідності створення й впровадження та визначення практичних можливостей використання інформаційних систем з метою оптимізації розслідування ятрогенних злочинів. Для досягнення мети дослідження було проаналізовано 20 рішень Європейського суду з прав людини (ЄСПЛ) у справах щодо настання несприятливих наслідків при наданні медичної допомоги; Звіт Всесвітньої організації охорони здоров'я про системи звітування щодо інцидентів, пов'язаних з безпекою пацієнтів та Концепцію формування стратегії запобігання дефектам надання медичної допомоги у вітчизняній системі охорони здоров'я. Серед методів, за допомогою яких здійснюється дослідження цієї теми можна виділити: діалектичний метод, порівняльно-правовий метод, структурно-функціональний метод, соціологічний, аналітичний, статистичний метод та

інші. У процесі дослідження було визначено та досліджено чинники, які диктують нагальну потребу в пошуку дієвих механізмів, новітніх технологічних рішень для підвищення ефективності розслідування ятрогенних злочинів. Здійснено аналіз звіту Всесвітньої організації охорони здоров'я про системи звітування щодо інцидентів, пов'язаних з безпекою пацієнтів, результати якого свідчать про наявність певних організаційних проблем при запровадженні та використанні таких систем й запропонованих шляхів їх вирішення. Результатами статті являється: доведення необхідності створення й впровадження інформаційної системи обліку та аналізу випадків неналежного надання медичної допомоги; обґрунтування позиції, що розроблення та впровадження на території України системи обліку та аналізу випадків неналежного надання медичної допомоги сприятиме оптимізації розслідування ятрогенних злочинів; аргументування позиції, що використання інформаційної системи обліку та аналізу випадків неналежного надання медичної допомоги сприятиме органам досудового розслідування при встановленні механізму ятрогенних злочинів та його складових елементів; встановленні причинно-наслідкового зв'язку між діями (бездіяльністю) особи, яка надає медичну допомогу, із несприятливими наслідками у вигляді завдання шкоди здоров'ю пацієнта або його смерті; оперативному інформуванні органів правопорядку про наявність випадку неналежного надання медичної допомоги; спрощенні процедури відкриття кримінального провадження за фактами вчинення ятрогенних злочинів; унеможливленні протидії виявленню випадків неналежного надання медичної допомоги з боку заінтересованих осіб; розробленні профілактичних рекомендацій із запобігання ятрогенним злочинам. Розглянуті проблеми та запропоновані висновки будуть також корисні для науковців, практикуючих юристів, експертів, адвокатів та суддів.

Ключові слова: *ятрогенні злочини; інформаційні системи; криміналістичне забезпечення; судова експертиза; криміналістична методика; спеціальні знання.*

Introduction

In the context of scientific and technological progress, the issues of optimizing the investigation process through the use of innovative technological solutions are becoming increasingly relevant, with the aim of accelerating the processes of evidence collection, analysis, and evaluation, which, as a result, contributes to improving the efficiency of law enforcement agencies. Optimization of the investigation process in the conditions of digitalization and informatization of society implies enhancing the effectiveness of criminal justice agencies by applying modern information technologies. One type of such technology is information systems, which are understood as a set of software and technical tools that provide information processes for relevant information resources depending on the target and functional purpose of the system [1]. Information systems,

as noted by V. Zhuravel, serve as the basis for supporting decision-making by the investigator conducting criminal proceedings, activating his intellectual activity in planning, forming hypotheses, choosing optimal systems of investigative (search) and covert investigative (search) actions for their verification [2]. However, despite their significant potential for the investigation of criminal offenses, in dissertations and methodological recommendations when developing and improving criminalistics methods for investigating certain categories of criminal offenses, the issues of obtaining and using data from information systems are practically not addressed [3]. This problem has also affected the methodology of investigating iatrogenic crimes.

The main goal of this study is to demonstrate the necessity of creating and implementing, as well as determining the practical possibilities of using, information systems in order to optimize the investigation of iatrogenic crimes.

Literature review

Recently, issues related to fighting organized crime in its various manifestations have become the subject of scientific research in the works of V.V. Franchuk [4, pp. 9-14], B.M. Gray [5], M.V. Kapustina [6, pp. 208-216], V.M. Shevchuk [7, pp. 320-341], V.A. Zhuravel [8, pp. 2795-2803] et al.

Thus, the issue of combating crime was and remains a pressing one for both scholars and practitioners.

Materials and Methods

To achieve the goal of this study, 20 judgments of the European Court of Human Rights (ECHR) were analyzed in cases concerning adverse outcomes during the provision of medical care. Access to these decisions was obtained through the official websites of the European Court of Human Rights. Additionally, the report of the World Health Organization on incident reporting systems related to patient safety and the Concept for the Development of a Strategy to Prevent Defects in the Provision of Medical Care in the Domestic Healthcare System were reviewed.

To meet the stated objectives, the study employed general scientific and specialized methods, which serve as tools of scientific inquiry. The theoretical foundation of the work is the dialectical method of scientific cognition of socio-legal phenomena, which is used in researching the problems of investigating iatrogenic crimes and identifying and analyzing factors that point to the need for a technological approach in the investigation of iatrogenic crimes. The use of this method in exploring the

current issue creates the preconditions for substantiating new positions and conclusions that have theoretical and practical value and are aimed at developing and implementing an information system for recording and analyzing cases of improper medical care.

Using the comparative legal method, the study analyzed the current state of countering iatrogenic crimes and identified the features of the use and functioning of information reporting systems on adverse outcomes of medical care in foreign countries.

The structural-functional method was applied to identify the advantages and capabilities of the information system for recording and analyzing cases of improper medical care, as well as to formulate proposals for creating and implementing this system in Ukraine.

The formal-logical method was applied to classify the defects in the provision of medical care. The analytical method was used to generalize certain scholarly positions and to formulate original conclusions. The statistical method was applied to illustrate theoretical provisions and conclusions using processed data from global, national, and departmental statistics.

In researching the subject of this study, the authors used scientific works devoted to the criminalistic support of combating criminal offenses, information systems of criminal justice bodies, and specific issues related to the investigation of iatrogenic crimes. The main works used in the preparation of this article include those of the following scholars: V. Birykov [8], V. Bondar [9, pp. 137-141], Y. Chornous [10], V. Franchuk [4, pp. 9-14], B. Gray [5], M. Kapustina [6, pp. 208-216], V. Khakhanovskyi [8], V.Konovalova [11, pp. 289-300], I. Pyrih [12, pp.179-193], V. Shevchuk [7, pp. 320-341], V. Shepitko [13, pp. 179-186], V. Zhuravel [14, pp. 142-154] et al.

Results and Discussion

Practical Justification for the Implementation and Use of Information Systems for the Purpose of Optimizing the Investigation of Iatrogenic Crimes

The practice of combating crime clearly demonstrates that without the effective use of information contained in various information systems, and without its proper analysis and synthesis, effective counteraction to any criminal offenses is impossible [9]. One of the directions for improving the effectiveness of information support tools at the stage of pre-trial investigation is the timely and comprehensive use of modern capabilities and achievements of scientific and technological progress [15].

Therefore, the implementation of modern information systems in pre-trial investigations serves as the foundation for optimizing criminal proceedings [11; 14].

However, in order for information systems to truly contribute to the optimization, effectiveness, and efficiency of investigations, they must be practically justified. This practical justification lies in the fact that the implementation of information systems as technologies for investigation optimization is a kind of response to the emergence of new methods, forms, and mechanisms of criminal activity under the influence of current trends in the development of science, technology, and society [16]. Their implementation, as rightly noted by V.M. Shevchuk, must meet the "social demand" of practice [17].

One of the aspects of the practical justification for the implementation of information systems as technologies for optimizing the investigation of iatrogenic crimes is the set of existing factors that dictate the urgent need to find effective mechanisms and modern technological solutions to improve the efficiency of investigations. Among the range of existing factors related to the category of crimes under study, the most significant are:

1. The discrepancy between the number of cases of improper medical care and the number of criminal proceedings brought to court in this category of crimes. Adverse outcomes arising from medical care are among the top 10 causes of death and disability worldwide. Some researchers rank unintentional harm to patients during the provision of medical care as the third leading cause of death globally [18]. Annually, in inpatient medical institutions of low- and middle-income countries, 134 million adverse events related to medical care occur, resulting in 2.6 million deaths each year [19]. In high-income countries, adverse medical outcomes in the form of harm to health occur in one out of every ten patients. Worldwide, harm to health during primary and outpatient medical care affects four out of ten patients. Moreover, in 80% of cases, the harm could have been prevented. The most serious consequences of improper medical care arise during diagnostics, prescription, and use of medicinal products [20].

The study and analysis of the Concept for the Development of a Strategy to Prevent Defects in the Provision of Medical Care within Ukraine's Healthcare System indicates that approximately 10 million Ukrainian citizens receive inpatient medical care annually, and over 100,000 of them die during the course of such care. More than one-third of these deceased individuals are under retirement age. In recent years, Ukraine has seen a sharp increase

in inpatient and postoperative mortality rates. In some district hospitals, postoperative mortality has risen tenfold. However, preliminary estimates suggest that more than 10,000 of the deaths occurring during inpatient care could have been prevented [18].

The low rate of investigation and solving of iatrogenic crimes, the submission of criminal proceedings (indictments) to the courts, and the attribution of guilt to a specific medical professional are confirmed by the statistical data of the Prosecutor General's Office of Ukraine. These data concern criminal proceedings initiated for improper performance of professional duties by medical or pharmaceutical workers (Art. 140 of the Criminal Code of Ukraine) during the period 2016-2021. The results of the analysis show that from January 2016 to December 2021, 4042 such criminal offenses were registered. At the same time, only 13 (0.32%) cases resulted in medical workers being officially notified of suspicion, and only 9 (0.22%) proceedings were submitted to court with indictments. Moreover, a significant proportion of criminal proceedings (1577 or 39.01%) were subsequently closed by pre-trial investigation bodies, primarily due to insufficient evidence to prove the suspect's guilt in court.

2. The difficulty of establishing a causal relationship between the actions (or inaction) of the medical provider and the adverse outcomes – such as harm to a patient's health or death – is another significant challenge. These difficulties may arise from the presence of not just one but several contributing factors that led to the adverse result, such as death or serious harm. This is explained by the fact that medical care comprises different types (primary and specialized), each of which has distinct stages. At any of these stages, a breach of standards or technologies may occur, potentially resulting in an adverse outcome such as death or severe harm to health. However, a violation of standards or technologies does not always immediately lead to negative consequences.

Legal and medical practice suggests that in most cases, adverse outcomes (defects in medical care) emerge over time. Moreover, the development of such consequences is often latent. These adverse outcomes are dynamic in both time and space. For example, a violation of medical standards may occur in one facility, but the resulting adverse outcome may manifest later elsewhere and be identified in a third location.

The difficulty of establishing a causal link during the investigation of iatrogenic criminal offenses is also due to the fact that different types of medical care defects result in different outcomes that are not always consistent. This means that outcomes such as health damage or death

depend on the nature of the defect, the reasons for its occurrence, and the point in the treatment process at which it happened.

Medical care defects result from violations of medical standards and technologies. Defects related to violations of standards include injuries, bedsores, development of severe complications due to undiagnosed diseases, incorrect diagnoses, and improper treatment. Defects resulting from breaches of technology include: damage to blood vessels, nerve trunks, internal organs; drug poisoning; infections; and dysfunction of vital systems due to malfunctioning medical equipment.

As previously noted, the causes of these defects are violations of standards and technologies typically occurring during the diagnostic and treatment phases. According to data from the Joint Commission, diagnostic-stage errors result in the death or injury of between 40,000 and 80,000 patients annually [5]. According to one study, 12 million patients in the United States became victims of diagnostic-stage errors, and 33% of these errors led to defects such as patient injury [21].

An analysis conducted by researchers shows that the most common diagnostic-stage violations include: insufficient or incomplete general clinical, laboratory, and instrumental testing; underestimation of the clinical picture; disregard for anamnesis data; unjustified clinical diagnoses; and failure to perform indicated additional research and diagnostic procedures [22].

There are many types of violations that can occur during the treatment stage, such as: incorrectly chosen treatment tactics; inadequate level of therapy; and poor selection of treatment methods.

As part of our research, we analyzed European Court of Human Rights (ECHR) case law. This analysis allowed us to identify the following violations occurring at the treatment stage: failure to check for patient tolerance of prescribed medications (allergic reactions, anaphylactic shock) [23; 24]; failure to observe safety rules during injections or blood transfusions [25]; adoption of unjustified decisions regarding the timing of planned medical interventions [26]; incorrectly chosen treatment tactics, such as selecting a wait-and-see approach instead of immediate surgery [27]; and insufficient monitoring and supervision of the patient [28]. All of these are considered tactical-treatment violations.

In addition to these violations, our analysis of ECHR decisions also revealed organizational and deontological violations in the provision of medical care.

Organizational violations identified include: lack of continuity in medical care [29]; lack of coordination between emergency physicians and hospital

administration [27]; inappropriate hospitalization of patients [27]; failure to follow aseptic and antiseptic protocols, disinfection and sterilization procedures [28]; and lack of coordination between emergency physicians and physicians of other departments [28].

Deontological violations identified from ECHR cases include: failure to collect patient medical history and disease details (not interviewing the patient and/or their relatives) [24]; failure to inform the patient (or relatives) about potential treatment risks [24]; failure to obtain informed consent from the patient [24]; violations of patient rights – including the right to information, to choose a doctor, and to choose a medical facility [30]; and violations of donor rights – including the right to information and prior consent (without any exceptions) for organ or tissue removal (from a paired organ, part of an organ, or other anatomical material) [31; 32].

The analysis of ECHR decisions shows that a single medical care defect may be preceded by multiple violations.

For example, in the case of Altug and others v. Turkey [24], the following violations were established: failure to check for tolerance to the prescribed drug; failure to collect patient history and disease information (not interviewing the patient and/or relatives); failure to inform the patient (or relatives) about treatment risks; and failure to obtain the patient's informed consent. As a result of these violations, the defect in medical care was an acute allergic reaction to the administered drug, and the adverse outcome was the patient's death.

The difficulty in establishing a causal link between the actions (or inaction) of medical personnel and adverse outcomes, such as harm to a patient's health or death, is also aggravated by active resistance from medical staff – including those not directly involved in the incident under investigation.

This position is illustrated by excerpts from the ECHR judgment in the case Eugenia Lazăr v. Romania (No. 32146/05). The Court noted two significant deficiencies in the investigation: first, the lack of cooperation between forensic experts and investigative authorities, and second, the insufficient justification provided in the expert conclusions. The prosecution encountered resistance from forensic medical institutions, which refused to respond to their questions, citing a government resolution that, in their view, prevented a repeat forensic examination if a conclusion had already been provided by the highest national forensic authority and/or no new data had emerged [26].

Thus, the cited ECHR decision confirms that during the investigation of iatrogenic crimes, pre-trial investigative authorities encounter problems of corporatism and collusion.

3. The Latency of Cases of Improper Medical Care (Defects in Medical Care). This factor is both subjective and objective in nature. The subjective aspect lies in the fact that medical personnel often attempt to conceal cases of improper medical care (care defects). Moreover, such cases are concealed not only by individuals (medical professionals) whose actions or inactions directly caused the adverse outcomes, but also by those medical personnel who became aware of them. The motivation of the first group is simple: to avoid legal liability (particularly criminal liability). The second group – those indirectly associated with the incident – are motivated by concerns such as damage to professional reputation in case of "reporting", harm to the professional image of the entire department or institution where the defect occurred, a drop in institutional ratings, so-called "moral-ethical" considerations, or strong corporate ties within the medical community [28].

The concealment of a medical care defect may involve not only passive actions (e.g., silence or omission), but also active measures. These active efforts may include open resistance by medical staff to legal (criminal) prosecution of colleagues whose actions or omissions resulted in an adverse outcome (a defect in medical care).

Legal practice shows that investigations into iatrogenic crimes are often preceded by an internal audit conducted by healthcare authorities to review the circumstances and consequences of medical care violations. These audits are typically carried out by individuals who are not impartial and who possess the necessary expertise for such assessments. However, due to professional corporatism, the findings of these audits are often biased and lack objectivity. In most cases, hospital control commissions limit themselves to confirming a causal link between treatment and adverse outcomes without analyzing the quality of care or the relationship between the improper medical care and its consequences. The conclusions submitted to law enforcement agencies typically explain the adverse outcomes as the result of the severity of the disease, classifying them as accidents.

Furthermore, such active resistance from medical professionals is often accompanied by, or leads to, other criminal offenses, such as: abuse of power or official position (Art. 364 of the Criminal Code); official forgery (Art. 366); acceptance of an offer, promise, or receipt of unlawful benefits by an official (Art. 368); and offering or giving unlawful benefits to an official (Art. 369), among others.

The Latency of Improper Medical Care Cases (Medical Care Defects). This factor has both subjective and objective aspects. The subjective nature of this latency is due to attempts by medical workers to conceal such cases.

However, the objective nature of this problem actually gives rise to the subjective one. This is because many countries still lack national systems for reporting medical care defects (incidents).

This issue is also present in Ukraine. For example, in hospitals with similar treatment and diagnostic workloads, postoperative mortality rates differ by a factor of three or more, and regional differences are up to 2.5 times. This indicates problems with the registration of medical care defects. Cases of healthcare-associated infections are also frequently underreported. In Ukrainian hospitals, the best-case scenario is that patient deaths are reviewed and analyzed [18].

This situation is explained by the fact that, to date, there is no nationwide information system in Ukraine for recording medical care defects. Its creation and implementation are still in the planning stage.

The Essence and Advantages of Information Systems for Recording Medical Care Defects: Assessment of International Experience

An analysis of the experience of European Union countries in ensuring the quality and safety of medical care reveals the following advantages and capabilities of systems for registering medical care defects [33; 34].

For example, Denmark has operated a medical incident reporting system since 2004. This system is based on the following principles: all medical personnel are required to report any errors, serious events, or adverse consequences of medical interventions; the reports are confidential; and no punitive measures are applied.

All reports are reviewed first at the local, then at the national level. Experts working with these reports perform the following tasks: they generalize the outcomes of all reports; identify repeated errors and their sources; develop conclusions on best practices; and prepare national methodological guidelines for the prevention and elimination of medical errors.

The benefits of this incident reporting system include: a positive influence on staff attitudes and work practices, and improved vigilance among healthcare professionals regarding patient safety.

In April 2005, the National Association of Accredited Physicians of the Medical Insurance System in Germany launched a medical incident reporting system, marking a significant milestone in the country's healthcare sector. This event gave strong impetus to a shift in attitudes toward medical care defects and significantly improved communication between stakeholders. For example, thanks to this system, any patient can appeal to an arbitration body (court) under the medical chamber, consult with lawyers and doctors, and receive advice.

In the United Kingdom, the National Patient Safety Agency is responsible for operating the national reporting system, which includes the collection, quantitative assessment, and comparative analysis of reports on medical care incidents. In parallel, a Commission for Therapeutic and Preventive Care operates, acting as a form of "policing" body to monitor adherence to medical care standards. Members of this commission are authorized to visit and inspect any healthcare institution.

The advantages of the national incident reporting system for medical care defects include: strengthening patient trust; acknowledgment that medical professionals do indeed make mistakes that lead to adverse outcomes; creating an environment for open discussion of improper or low-quality medical care; and ensuring timely communication of all errors that result in adverse medical outcomes to higher authorities.

In France, several systems exist for reporting defects (incidents) in medical interventions. Some types of reporting are mandatory, such as for defective medical products or severe complications like hospital-acquired infections. These reports are sent to national-level institutions, which then develop recommendations and conclusions regarding optimal prevention and control strategies. Other types of reporting are voluntary but strongly encouraged, as they may be taken into account during the certification of physicians and medical teams.

In addition to the countries mentioned above, incident reporting systems for medical care also operate in Belgium, Finland, Austria, Switzerland, and Norway.

However, our analysis of the World Health Organization (WHO) report on patient safety incident reporting systems reveals that certain organizational challenges hinder the implementation and use of such systems, along with proposed solutions. Researchers and patient safety experts have found that very few healthcare systems worldwide come close to an ideal level of effectiveness in detecting medical care defects (incidents). The majority of experience with incident-based reporting and learning systems has been gathered in hospitals in high-income countries (as demonstrated in the above international examples). Significantly less experience exists in low- and middle-income countries, as well as in primary care and mental health sectors. Most of the data in many medical care defect reporting systems (incident systems) consists of superficial reports. As a result, the root cause of a medical defect (incident) and the learning potential it offers often remain subject to localized, subjective interpretation [35].

To this day, even with over 20 years of research in the field of patient safety, the role of reporting medical care defects (incidents) and adverse

outcomes remains an evolving area. In 2005, the World Alliance for Patient Safety published the WHO Draft Guidelines on Adverse Event Reporting and Learning Systems: From Information to Action [36]. The primary value of this document was that it set out guiding principles. These included: a definition of the purpose and role of incident reporting; descriptions of the system components in use at the time; evaluations of alternative sources of information for patient safety; examples of national reporting systems then in operation; requirements for a national system for reporting and learning from adverse events; and a list of the key features of successful reporting systems – such as confidentiality, independence, expert analysis, timeliness, a focus on systemic causes, and responsiveness. The guidelines also offered specific recommendations for WHO member states on how to develop such systems, including a checklist for system implementation. Since the publication of the draft WHO reporting and learning guidelines, awareness in the field of patient safety has grown steadily over the past 15 years, accompanied by progress in the implementation and use of reporting systems. As a result, reporting systems for medical care defects (incidents) have been established and implemented in various parts of the world. However, some of these systems operate at the level of individual healthcare institutions or organizations, others at the level of national healthcare systems, while some were developed by professional specialist groups (e.g., anesthesiologists) or are limited to specific medical care sectors (e.g., blood transfusion). These systems differ significantly in various aspects, including: whether reporting is mandatory or voluntary; the nature of the data collected; the type of organization collecting and analyzing the data; the level of objectivity and thoroughness of internal investigations; and the extent to which patient safety improvements have been achieved [35].

An analysis of functioning medical care defect registration systems shows that information processes (collection, registration, accumulation, storage, processing, etc.) are carried out in three directions: 1) Event description – patient characteristics; characteristics of the medical care defect (incident) (type, severity, etc.); place where the defect (incident) occurred; 2) Explanation – assumptions about the causes of the medical care defect (incident); contributing factors; mitigating factors that may have reduced the impact of the adverse outcomes; 3) Corrective actions – preventive measures taken in the given situation (review of procedures, organizational changes, etc.).

Opportunities and prospects for taking into account the European experience of using information systems in optimizing the investigation of iatrogenic crimes

The study and analysis of the functioning of incident reporting systems in EU countries, Switzerland, and Norway, as well as the WHO report on patient safety incident systems, support the conclusion that the development and implementation of a system for recording and analyzing cases of improper medical care in Ukraine would facilitate the optimization of iatrogenic crime investigations.

Accordingly, the introduction and use of such an information system would contribute to:

1. Establishing the mechanism of iatrogenic crimes and its components, including: the treatment process conducted by medical staff; violations of medical care standards and technologies; the medical care defect; adverse outcomes such as harm to health or death of a patient; the identity of the medical worker (offender); and the identity of the patient (victim). This is possible because the system would contain information about the patient; the location where the defect was detected; the nature of the defect and its likely causes; the contributing factors; and the actions taken to prevent adverse outcomes. This data would allow for a clear definition of the circumstances requiring proof and enable the formulation of investigative hypotheses. It would also support the planning of investigative (search) and covert investigative actions and other procedural steps aimed at establishing the outlined circumstances and verifying those hypotheses.
2. Establishing a causal link between the actions (or inaction) of the medical professional and the adverse outcomes in the form of harm to the patient or death. Since the system would contain information about the nature and probable causes of the defect (i.e., which violations occurred), it would help pre-trial investigation bodies focus on verifying that information. Based on verification results, forensic medical expertise regarding the quality of care could be initiated.
3. Ensuring timely notification of the appropriate authorities (in this case, law enforcement) about instances of improper or low-quality care that result in death, disability, or other serious consequences. This would relate to the identification of committed iatrogenic criminal offenses.
4. Simplifying, in some cases, the initiation of criminal proceedings for committed iatrogenic crimes. This is because the registered information (facts) about improper or poor-quality care resulting in death, disability, or other serious outcomes could serve as a basis for entering information into the Unified Register of Pre-Trial Investigations.

5. Reducing the possibility of concealing instances of improper or poor-quality medical care that led to serious outcomes. This benefit lies in the fact that, if implemented, such a system would make it mandatory to register all defects in care that result in severe or extremely severe outcomes. Moreover, both passive concealment and active falsification of such information would carry legal consequences for the responsible staff or institutions.
6. Enabling continuous analysis of registered cases of improper or poor-quality medical care, not only at the regional level but also nationally (and, in cases of severe or especially severe consequences, exclusively at the national level), with the aim of developing preventive guidelines and measures to combat iatrogenic crimes.

Conclusions

In the course of this study, the necessity of creating and implementing an information system for recording and analyzing cases of improper medical care was substantiated. The factors underlying this necessity were identified and examined. One such factor is the discrepancy between the number of cases of improper medical care and the number of criminal proceedings submitted to court in this category of crimes. In analyzing this factor, the authors relied on processed data from global, national, and departmental statistics. The results of the statistical analysis demonstrated that there is a significant and growing number of cases of improper medical care (defects in medical care), both globally and within Ukraine, which indicates the presence and rise of iatrogenic crimes. The analysis of statistical data from the Prosecutor General's Office of Ukraine on criminal proceedings concerning iatrogenic crimes revealed a low level of investigation and disclosure of such crimes, the submission of cases to court, and the establishment of guilt of specific medical professionals.

Another factor justifying the practical need for the introduction of such a system is the difficulty in establishing a causal relationship between the actions (or inaction) of a medical professional and adverse outcomes such as harm to the patient's health or death. In studying this factor, the authors analyzed 20 rulings of the European Court of Human Rights related to iatrogenic crimes. The analysis made it possible to group the violations (causes of medical care defects) into categories, namely, violations of a treatment-tactical, deontological, and organizational nature.

A third factor underlying the need to create and implement the proposed information system is the latency of cases of improper medical care. This factor has both subjective and objective elements. The subjective element lies in the fact that medical workers resist the identification of such cases.

This resistance may consist of passive actions – concealing or suppressing the case of improper care (medical care defect) – or of active measures – interfering with the results of internal audits that precede the investigation of iatrogenic offenses. The objective element lies in the fact that defects in medical care are either not recorded at all or are poorly recorded, and that an information system for registering improper care does not function.

During the course of this study, the authors summarized the experiences of EU countries, Switzerland, and Norway regarding the use and functioning of incident reporting systems related to adverse medical outcomes and demonstrated the necessity and feasibility of applying this positive experience in Ukraine. In addition, the analysis of the World Health Organization report on incident reporting systems related to patient safety revealed certain organizational challenges in the implementation and use of such systems and presented proposed solutions. It was substantiated that the development and implementation of a system in Ukraine for recording and analyzing cases of improper medical care would support the optimization of investigations into iatrogenic crimes. It was demonstrated that such support would include the establishment of the mechanism of iatrogenic crimes and their constituent elements, the determination of causal links between the actions (or inaction) of the medical provider and the adverse outcomes, the timely notification of law enforcement bodies regarding cases of improper or low-quality medical care that result in death, disability, or other serious consequences, the simplification of procedures for initiating criminal proceedings regarding iatrogenic crimes, the prevention of obstruction by interested parties in the detection of such cases, and the development of preventive recommendations aimed at preventing iatrogenic crimes.

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Victor M. Shevchuk
Doctor of Law, Professor
Head of Criminalistics Department
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: shevchuk_viktor@ukr.net
ORCID 0000-0001-8058-3071

Mariietta V. Kapustina
Ph.D. in Law, Associate Professor
Associate Professor of Criminalistics Department
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: marietta-k@ukr.net
ORCID 0000-0003-1990-5259

Віктор Михайлович Шевчук
доктор юридичних наук, професор
завідувач кафедри криміналістики
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: shevchuk_viktor@ukr.net
ORCID 0000-0001-8058-3071

Марієтта Владиславівна Капустіна
кандидатка юридичних наук, доцентка
доцентка кафедри криміналістики
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: marietta-k@ukr.net
ORCID 0000-0003-1990-5259

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Genesis and Legal Nature of Decentralized Autonomous Organizations: Personified Purpose and Algorithmic Will

Vladyslav V. Udianskyi*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: v.v.udyanskyy@nlu.edu.ua*

Abstract
The relevance of this article lies in the existence of over 13,000 decentralized autonomous organizations worldwide, with a total capitalization exceeding US $23 billion. Numerous projects exploit this form to circumvent regulatory frameworks. At both the international and Ukrainian levels, a coherent understanding of the phenomenon of decentralized autonomous organizations, their objectives, genesis, and legal nature remains absent. The purpose of this article is to explore the genesis and legal nature of decentralized autonomous organizations – from the inception of the technical idea to their transformation into sui generis legal entities. Applying comparative and formal legal methods to examine the development of the legal understanding of these organizations, and employing case study methodology to assess their implementation in practice, the article investigates the main stages of the formation of the modern concept of decentralized autonomous organizations, their differentiation from adjacent constructs – decentralized applications, autonomous agents, and decentralized organizations – by highlighting criteria of autonomy and decentralization, along with case studies from Bitcoin to The DAO. On the basis of a comparative legal analysis of regulatory models in the United States, Europe, and offshore jurisdictions, a conceptual mismatch is identified between classical corporate forms and the ontology of decentralized autonomous organizations. A two-component qualification test is proposed, alongside a typology dividing them into genuine, hybrid, and quasi forms. The findings of the study, together with the identification of practical challenges faced by such projects, substantiate the possibility of recognizing decentralized autonomous organizations as legal persons under Ukrainian law by means of the doctrinal construct of the "personalized purpose" (Zweckvermögen) developed by A. von Brinz, potentially implemented in the form of a foundation. This approach permits the integration of algorithmic will with legal personality without undermining their decentralized nature. The article provides a foundation for further inquiries into specific legal characteristics of decentralized autonomous organizations, including the "sorites paradox" and the prospects for legislative regulation within the Ukrainian legal order based on the doctrine of personalized purpose.

Keywords: *decentralized autonomous organization; foundation; blockchain; DAO; Web3.*

Генеза та правова природа децентралізованих автономних організацій: персоніфікована мета та алгоритмічна воля

Владислав Владиславович Удянський*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: v.v.udyanskyy@nlu.edu.ua*

Анотація
Актуальність статті зумовлена існуванням понад 13000 децентралізованих автономних організацій у світі із загальною капіталізацією, що перевищує 23 млрд дол. США, значна кількість з яких зловживає такою формою задля обходу регуляторних обмежень. Як у міжнародному, так і в українському правовому просторі відсутнє усталене розуміння феномену децентралізованих автономних організацій, їх цілей, генези та правової природи. Метою статті є дослідження генези та правової природи децентралізованих автономних організацій: від зародження технічної ідеї до трансформації у правові утворення sui generis. Із застосуванням порівняльного та формально-юридичного методів для аналізу розвитку праворозуміння таких організацій, а також методу кейс-стаді для оцінки практичної імплементації відповідної організаційної форми, у статті досліджуються основні етапи формування сучасної концепції децентралізованих автономних організацій, їх відмежування від суміжних конструкцій – децентралізованих застосунків, автономних агентів та децентралізованих організацій – шляхом виокремлення критеріїв автономності й децентралізації, а також на прикладі кейс-стаді від Біткоїна до The DAO. На підставі порівняльно-правового аналізу нормативних моделей США, Європи та офшорних юрисдикцій встановлено концептуальну невідповідність між застосуванням класичних корпоративних форм та онтологією децентралізованих автономних організацій. Запропоновано двоскладовий тест кваліфікації децентралізованих автономних організацій та здійснено їх типологізацію на справжні, гібридні та квазіформи. Висновки дослідження, а також виявлені проблеми, з якими стикаються відповідні проєкти, обґрунтовують можливість надання правосуб'єктності децентралізованим автономним організаціям в українському праві через доктринальну конструкцію «персоніфікованої мети» (Zweckvermögen) А. фон Бринца, яка може бути реалізована у формі установи. Такий підхід дозволяє поєднати алгоритмічну волю з правосуб'єктністю без втрати децентралізованого характеру. Стаття закладає підґрунтя для подальшого вивчення окремих правових ознак децентралізованих автоном-

них організацій, зокрема і задля вирішення «парадокса нагромадження», а також для розробки законодавчих моделей регулювання таких організацій в українському правопорядку на ідеях доктрини персоніфікованої мети.

Ключові слова: *децентралізована автономна організація; установа; блокчейн; ДАО; Веб3.*

Introduction

The emergence of Web 3.0 (hereinafter – Web3), a decentralized form of the Internet, has brought about a paradigm shift in the perception of digital relations. Within this new framework, users were promised pseudonymity, the ability to independently own digital assets, and to manage their interactions without the intermediation of centralized platforms [1].

A key component of Web3 – alongside decentralized finance (DeFi), decentralized applications (DeApp), and others – is the decentralized autonomous organization (hereinafter – DAO): decentralized communities that operate on the blockchain and implement decisions based on pre-established rules [2]. The legal nature of such communities is unique (sui generis), as, by definition, they are associations of individuals formed to achieve a common purpose, yet they lack centralized governance and execute decisions without intermediaries.

The lack of understanding of the history, nature, and purpose of DAOs creates legal challenges, particularly regarding: 1) the definition of their legal status – whether a DAO is a sui generis phenomenon or a type of existing company; 2) legal liability – who bears responsibility in the event of violations of investors' or consumers' rights; 3) regulatory supervision – how states can regulate DAOs without distorting the original ideas of decentralization and autonomy by forcing DAOs to become ordinary companies [3; 4].

There is no unified approach to the understanding of DAOs in international legal systems, which complicates their transnational functioning. On the one hand, jurisdictions such as Switzerland, the Cayman Islands, the British Virgin Islands, etc., apply, mutatis mutandis, the provisions of corporate law to DAOs; on the other hand, jurisdictions including Wyoming (USA) and the Marshall Islands create lex specialis, recognizing DAOs as special forms of legal persons. However, these approaches prima facie do not align with the decentralized nature of DAOs, as they impose existing corporate requirements on a unique structure that exists outside centralized registries. Yet the absence of law enforcement practice also creates risks of abuse of DAOs for the purpose of evading licensing requirements, money laundering, and tax avoidance [5, p. 553].

Ukraine, which actively promotes a policy of digitalization and exports a significant volume of IT services, although possessing the potential to become a legal hub for the blockchain industry, does not regulate DAOs, thereby risking the loss of investments and facing the aforementioned instances of abuse retrospectively. Considering the experience of other countries, there still remains an opportunity to develop a lex ferenda that would not hinder innovation while ensuring legal certainty for business, investors, and the state.

The purpose of this study is to analyze the genesis of DAOs and decentralized organizations more broadly, to identify patterns in the development of these phenomena, scrutinize its legal nature and to examine whether there exists a necessity for the legal regulation of decentralized organizations in Ukraine.

Literature review

Although the history and legal qualification of DAOs, the most well-known form of decentralized collectives, have been relatively well studied internationally, this topic remains underexplored in Ukraine. Among the key international researchers are practitioners such as S. Larimer and V. Buterin, who have been shaping the modern understanding of DAOs and other decentralized collectives [6; 7]. Their works were the foundation for conceptualization of DAOs and their features, emphasizing their autonomous and decentralized governance structures with no necessity to regulate them. However, scientists as S. Hassan, P. de Filippi have contributed significant academic contribution into the technological, legal, and organizational dimensions of DAOs; they view DAOs as extraordinary organizations with internet governance and decentralized decision-making, focusing on the conflict between their autonomous nature and the need for regulation [8].

In Ukraine, most studies of DAOs appear in the economic field, while legal research is still limited. Some exceptions include the works of O. Kulyk, T. Hudima, and A. Soshnykov, who examine how DAOs fit into sanction policy and financial crime prevention [5, c. 553]. D. Allen and J. Potts study how technology and legal norms influence each other during the development of DAOs [1]. S. Sheikh and I. Sifat focus on how sustainable DAOs are, and argue that most of them are built for long-term operation, not fast growth. This has consequences for how they are governed and regulated [3].

In short, international researchers offer different views on DAOs and often combine legal and technological analysis. In contrast, Ukrainian legal scholarship is only starting to explore the topic. This shows the need

for more research that links law, technology, and economics to better understand how DAOs could work in Ukraine and beyond.

Materials and Methods

This research applies a combination of doctrinal legal analysis and technical study of DAOs to explore their legal nature and the extent to which they may be integrated into existing legal frameworks. The primary method used is comparative legal analysis on how jurisdictions grasp DAO concept and try to regulate this phenomenon. The study reviews corporate law doctrines, theories of legal personality, and the law of foundations. Particular attention is given to the German concept of Zweckvermögen (patrimony dedicated to a purpose), which allows for legal personality not in favor of a person, but of a designated objective. To understand the practical operation of DAOs, the study includes three case studies: Bitcoin, DashDAO, The DAO. Each case study focuses on key elements such as governance structure, decision-making mechanisms, level of decentralization. Based on the case studies and technical parameters, the research proposes a typology of DAOs using two main criteria: decentralization and operational autonomy. Historical method is used to understand the evolution of DAO concept.

The study is based on the following materials: legislative acts; court decisions, legal scholarship on organizational theory and digital law, industry reports and analytical reviews.

Research Limitations. The research is theoretical in nature. It does not include interviews or empirical surveys of DAO participants. The focus lies on legal construction and interpretation. Due to the rapid pace of technological and regulatory developments, some findings may become outdated. However, the study provides a foundational framework for future research and possible legislative action, particularly within the Ukrainian legal system.

Results and Discussion

The phenomenon of decentralized organizations is not new and traces its roots to the technology sector. Initially, the concept of DAOs was not associated with blockchain but with the Internet of Things. The term "decentralized autonomous organization" was proposed by Werner Dilger in 1997 to describe a distributed control system for a smart home – a network of autonomous agents in which actuators and sensors interact with each other in a decentralized manner, capable of self-adaptation and evolution, and resistant to external interference [9]. It is from this point that most researchers begin to trace the origins of DAOs [8].

It is likely that this idea was extrapolated to the modern concept of DAOs, which are likewise self-regulating and autonomous through the coordination

of nodes (a computer or server connected to a blockchain network and performing certain functions to support its operation) by smart contracts; they evolve via smart contracts throughout their existence and are resilient to external interference due to the distributed ledger among the nodes. Despite this hypothesis, the study of the genesis of DAOs should be grounded in the ideas of Web3 and the first successfully implemented project – Bitcoin.

The emergence of the modern concept of DAOs

Bitcoin is regarded not only as a successful project but also as the first DAO, since it is a distributed network that eliminates intermediaries, and so-called peer-to-peer electronic cash transactions are conducted autonomously according to pre-established immutable rules.

The main innovation of Bitcoin is the use of blockchain technology – a decentralized, immutable ledger secured by cryptography instead of trust in a central authority. The key ideas lie in the distribution of ledgers, where network nodes receive a copy of the transaction history and independently verify its authenticity [10, p. 1].

Bitcoin can be viewed as an organization (an association of people or social groups based on shared interests, goals, programs of action, etc.), whose participants are functionally divided into clients, nodes, and miners. Clients initiate transactions, nodes verify their compliance with established rules (consensus), and miners compute blocks based on the proof-of-work mechanism [10, p. 3]. Rewards are provided only to miners, as they ensure the operation of the network. Clients, in turn, may engage in speculative activities, earning from fluctuations in the Bitcoin exchange rate.

The next step in the development of DAOs occurred in 2011, when a discussion appeared on the forum bitcointalk.org, which initiated the theoretical development of an autonomous agent. A user under the nickname "julz" proposed the concept of software that could 1) provide services (e.g., data storage), 2) receive payment in bitcoins, 3) independently pay for hosting, and 4) replicate itself when profitable [11].

Bitcoin Core developer Gregory Maxwell expanded on this idea by citing the example of the "StorJ" system (decentralized file storage), where such an agent performs the function of a service operator. In this case, the program becomes an economic entity that autonomously enters into contracts, makes payments, orders services on freelance exchanges, and can even evolve through A/B testing mechanisms (marketing comparison of update conversion rates into agent popularity) and the integration of new modules [11].

From this point onward, there is a rethinking of distributed systems operating according to pre-coded rules without centralized management as a new organizational form of collective activity.

In 2013, Stan Larimer transferred the concept of autonomous software agents into the context of social and economic relations. He proposed considering cryptocurrency systems as a new form of corporate organization – a "distributed autonomous organization". In particular, Larimer reached the following conclusions:

a) Bitcoin (the organized system) is a distributed autonomous corporation, since Bitcoin (the cryptocurrency) can be viewed as a non-voting share that increases in value depending on the corporation's activity;
b) Bitcoin miners act as the corporation's workers, who receive compensation for their services and alone have voting rights regarding changes to the corporation's rules;
c) thus, Bitcoin is a "non-commercial crypto-corporation owned by shareholders and managed by workers" [6].

Characteristics of such "distributed autonomous corporations" include autonomy, distribution, transparency, confidentiality, fiduciary responsibility, self-regulation, immutability, and sovereignty [6].

An interesting aspect of this concept is the possibility of DAOs existing without legal personality due to ***autonomy*** *and* ***decentralization*** *– a fundamental distinction from traditional companies. Also notable is that the actual participants of DAOs are not token holders but only those who directly support the network and DAO activities – nodes, miners, validators, etc.*

Later, in 2014, Buterin developed the first classification of types of decentralized collectives, which outlines the transition from simple smart contracts to DAOs. This classification is based on three key criteria: (1) the degree of human involvement, (2) the level of system autonomy, and (3) the presence of internal digital capital (particularly in the form of tokens). It includes five types of systems that can be placed on a scale from the least to the most autonomous and self-sufficient digital entities:

1) The first type – smart contracts – is the simplest form of automated interaction. These are essentially sets of coded rules that are executed automatically upon the occurrence of a predefined condition, without the need for human intervention. Such contracts do not possess internal capital and do not create an organizational structure;
2) The second type – autonomous agents – are independent programs that function without human input, as described above by Gregory Maxwell. Autonomous agents do not form participant communities,

but they can operate with their own internal capital (e.g., paying for their own hosting);

3) The third type – decentralized applications (hereinafter – DeApp) – are programs such as BitTorrent or Tor. They operate without centralized control due to a system of distributed nodes, but do not make independent decisions, act according to a predefined program, and lack their own capital;
4) The fourth type – decentralized organizations (hereinafter – DO). "[...] a decentralized organization functions as a community of individuals, whose interactions occur in accordance with a protocol embedded in code and implemented via blockchain". Despite the adjective "decentralized", such an organization is seen as a transitional stage between traditional companies and DAOs. Decisions within a DO are made by humans through multi-signature mechanisms or voting on proposals in the network and are executed not automatically, but with human intervention;
5) The fifth type – DAOs – combine the presence of internal capital, usually in the form of tokens, with the minimization of human involvement in the decision-making process and the autonomous execution of such decisions. A DAO may engage external individuals (e.g., to perform certain tasks), but the key aspects of a DAOs existence – protocol updates, resource allocation, strategy changes – are carried out through algorithms embedded at the design stage. Thus, a DAO approximates a sui generis digital person, functioning independently of its founders and, in the future, of its participants. Buterin also considered Bitcoin and Larimers' BitShares as examples of the first DAOs and deemed it possible to create decentralized autonomous corporations capable of paying dividends [7].

This classification demonstrates important distinctions of DAOs, primarily from autonomous agents, DeApps, and DOs. In practice, these concepts are often conflated – both by regulators (most commonly, laws on DAOs equate DOs with DAOs and effectively regulate DOs) and by project founders, who attempt to use the term "DAO" in the hope of circumventing regulation.

A consistent step towards resolving disputes over the authenticity of DAOs is the application of a literal understanding of DAOs, rather than a reactive approach to quasi-DAOs. We propose the following syllogism:

a) since an autonomous agent is not an organization and exists independently, with minimal human intervention;
b) since a DeApp (1) is autonomous and decentralized on the technical level (as it operates through distributed node networks without a single centralized storage or server); (2) its users are merely

consumers of services and have no voting rights or influence over system changes or development; 3) a DeApp is dependent on developers, their decisions, and continuous updates;

c) since a DO (1) is a transitional form from traditional companies, being decentralized only through the existence of binding rules recorded in the protocol, and may depend on majority groups or executive bodies; (2) lacks autonomy, as decisions are made directly by people and their implementation requires human participation.

Then a DAO, in contrast, differs from autonomous agents, DOs, and DeApps both in terms of the level of autonomy and the nature of decentralization. Specifically, (1) unlike a DO, a DAO functions autonomously, since decisions are not only made but also implemented without human involvement thanks to smart contracts; (2) unlike autonomous agents and DeApps, in a DAO, users participate in making key decisions regarding the organization's development to achieve its goal. Moreover, the concept of decentralization is polysemous in the context of DAOs and carries deeper meaning than in DeApps: it refers not merely to the distribution of infrastructure across various nodes without a single data storage center (e.g., Tor), but to the absence of hierarchy specifically in the governance of the organization – the absence of centralized control and domination by majority participants. *As for autonomy, it may be argued that such autonomy in a DAO implies the absence of discretion in the implementation of decisions – all decisions become part of the DAO and are implemented into the protocol; in autonomous agents, such autonomy means complete independent existence and execution of decisions.*

Reasons for the deformation of DAO perception

One of the first projects that consciously employed the concept of DAO was DashDAO, established in 2014-2015, introducing a model of decentralized community governance with autonomous decision execution [12].

DashDAO is an example of a unique hybrid structure due to the inherent ambivalence of DAOs. The problem of DAO ambivalence lies in the decentralization dilemma – sufficient enough to exist outside regulated legal relations (e.g., Bitcoin), yet excessive for adequate participation in civil legal relations (e.g., Bitcoin cannot act as a participant in civil turnover). Therefore, DashDAO relies both on the DAO and on traditional legal entities [13].

DAO manifests itself: (1) in providing peer-to-peer electronic payment network services (like Bitcoin); (2) in the adoption of all decisions directly by DashDAO through masternodes, which are nodes holding a minimum of 1,000 DASH tokens and providing computational resources to support

the infrastructure (unlike Bitcoin, where miners have voting rights without threshold), and each masternode has a voting right on proposals [13].

Anyone can make a proposal: usually, proposals are discussed on the DashDAO forum, after which any token holder with 1 DASH may submit this proposal for voting by the masternodes. If approved, DashDAO allocates the budget necessary for implementing the proposal to the initiator or another team [14].

This article argues that the ability to make proposals and discuss them does not yet make an organization decentralized, as such ability is inherent in any legal entity that, for example, has a forum and a form for complaints and suggestions. In fact, a *decentralized organization is one where such proposals can not only be freely submitted but also brought to a vote or other collective decision-making mechanism without the possibility of being blocked or filtered by a centralized subject*. At the same time, the voting result must be automatically or algorithmically implemented in the organization's activity *without the need for additional approval or confirmation by governing bodies.*

Thus, true decentralization presupposes not only the right to propose but also a guarantee of objective consideration and direct implementation of decisions through pre-established mechanisms that eliminate centralized moderation or control.

Therefore, such a structure allows for a significant degree of decentralization of the project, as de facto the creators of DashDAO have no influence on the project, there is no ultimate beneficial owner, all masternodes are, according to Larimer, workers of this structure and receive up to 80% of the reward for resolved blocks and blockchain support [14]. DashDAO has no executive body; in the event of consensus on a proposal, DashDAO autonomously allocates a budget from the received 20% to the proposal initiators or third-party implementers. Token holders, in turn, receive services, including a peer-to-peer electronic payment system [14].

However, the voting threshold between regular nodes and masternodes may also indicate partial centralization of the project and should be assessed individually in accordance with the principle of substance over form. After all, holding 1,000 DASH is a relatively significant amount, which, in projects smaller than DashDAO, may potentially indicate centralized governance of a DAO. *Therefore, in the analysis, a quantitative criterion of participants and their ability to accumulate the threshold required for participation in decision-making must be taken into account.*

On the other hand, such a decentralized and autonomous structure does not allow for adequate participation in civil turnover, since there is no legal

subject participating in civil legal relations, and the participants of such DAO are not protected by limited liability, which is inherent to legal entities.

To resolve this issue, DashDAO has created a unique hybrid structure of DAO with traditional civil law instruments. In addition to the unincorporated DashDAO, the project includes the following:

1) Dash Core Group, Inc. – a legal entity registered in Delaware, which is used for hiring employees who work exclusively for the benefit of DashDAO, as well as for conducting operational activities on behalf of DashDAO where necessary [13];
2) The Dash DAO Irrevocable Trust – a trust agreement under New Zealand law. According to this agreement, the trustee manages Dash Core Group, Inc. for the benefit of the masternodes, who are the beneficiaries, owns 100% of the shares, has the right, under the instructions of the masternodes, to dismiss directors, etc., and manages intellectual property. The settlor of the trust, however—and importantly, not the beneficiary—is one of the founders of DashDAO, Ryan Taylor [13];
3) The Dash Investment Foundation – an institution registered in the Cayman Islands. Its main activity is investment: to invest in blockchain projects on behalf of DashDAO [13].

Both the establishment of trust agreements and the use of unique legal entities (such as Cayman Islands foundations, which can exist without members and allow for decentralization on a principle similar to trusts) are proper steps for eliminating the founders of a DAO from factual and effective control over such an organization, since in a DAO, unlike DeApp or DO, the founders cannot interfere in the DAOs activities after launch (e.g., Bitcoin).

Accordingly, the following conclusions can be drawn:

1) The existence of pure DAOs at this stage is possible and is confirmed by the projects Bitcoin and DashDAO (network), which provide peer-to-peer electronic payment services;
2) However, if such DAOs wish to participate in civil turnover, engage in investment legal relations, and develop the project beyond technical protocol modifications, such DAOs must implement a hybrid structure using traditional civil law instruments as mediators for achieving their goals (legal entities, civil-law agreements, etc.). The DashDAO project has demonstrated that even with the use of such mediators, it is possible to maintain decentralization principles, as, where algorithmic execution is possible, all decisions are made by masternodes and are executed automatically by DashDAO; where this is not possible, decisions are made by masternodes, implemented by

trustees, and carried out by the operating company or investment fund for the benefit of DashDAO [14];

3) However, a hybrid system does not allow for full autonomy of such organizations (although DashDAO is a DAO in providing peer-to-peer electronic payment services, at the same time it is not a DAO in carrying out investment activities due to the need for the Dash Investment Foundation structure). Therefore, despite the self-designation, such organizations as a whole will likely be classified as DOs according to V. Buterin than as DAOs [7].

A more well-known and notorious example of a DAO is the project "The DAO", created in 2016 on the Ethereum platform with the aim of decentralized investment management. Despite claims of decentralization and autonomy, in practice this self-proclaimed DAO consisted of the unincorporated organization The DAO and the company that created it, Slock.it, a German legal entity. The DAO is a good example of the consequences when a declared decentralized project does not use a hybrid DAO model [15].

The DAO was created by Slock.it with the intention of functioning as a for-profit entrepreneurial organization, which would issue its own crypto tokens, and using the proceeds from their sale, The DAO would invest in other crypto projects. Additionally, token holders had the right to trade tokens on secondary markets. However, after the token issuance and before the beginning of investment activity, The DAO was hacked due to a vulnerability in the code, resulting in the theft of one-third of the tokens, which, however, was restored through a de facto restitution by creating a fork/duplicate of the original project prior to the hack [15].

The founders of The DAO viewed the project as a crowdfunding contract. Token holders had the right to vote and receive rewards. The founder Christoph Jentzsch compared this to shares in traditional companies. Decentralization was achieved by allowing all investors in tokens to vote on the use of the organization's funds, on the investment into recipient projects, etc. Autonomy was achieved by the use of smart contracts in accordance with pre-established rules in the code [15].

This form of "DAO" is qualitatively different from the ideas of Larimer, Buterin, and the projects Bitcoin and DashDAO:

1) By the role of participants: participants of The DAO were equated by its founders to shareholders with voting and reward rights. In contrast, in a DAO according to Larimer, token holders rather resemble clients and workers (such as miners/transaction validators or masternodes), if they support the functioning of the network;

2) By the type of token: The DAO effectively issued an investment token. Meanwhile, BTC and DASH (tickers of the respective cryptocurrencies) function as means of payment;
3) Lastly, the regulator of the United States, the "U.S. Securities and Exchange Commission" (hereinafter – SEC), in its document "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO" established that The DAO lacked features of decentralization, was in fact an unincorporated association, and had issued unregistered securities [15].

Despite its failure, The DAO revived interest in DAOs and led to the emergence of new projects such as "MakerDAO" (2017), "Uniswap" (2018), and others, which remain active to this day. *The DAO was in fact the first to go beyond providing peer-to-peer electronic payment system services, which had previously characterized DAOs, and made the first attempt to create entrepreneurial DAOs for participation in other (e.g., investment) legal relations, which had a direct impact on the modern distortion in the perception of DAOs.*

Regulators' response

The accumulation of $150 million under the management of The DAO, the pseudonymity promised by blockchain technology, and its operation in a regulated sphere without proper authorizations – all these factors attracted the attention of the U.S. regulator. The first official response that changed the perception of DAOs was the aforementioned SEC document, "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act. of 1934: The DAO".

The SEC established that: (1) Slock.it developed The DAOs code, claimed that it was audited by a leading IT company, created The DAO website on which promotional materials addressed to an undefined circle of persons were published, and administered a forum on the website; (2) The DAO issued tokens guaranteeing the right to participate in the governance of the organization, the right to participate in the distribution of its profits, and which freely traded on secondary markets. Proposals for voting could be submitted by any users holding 1 DAO token and making a deposit; however, a condition for publication for voting was the approval of proposals by the organization's "Curators". As established by the SEC, these curators had unlimited rights to decide on the admission of any proposal and could unilaterally change the quorum, thus effectively filtering proposals at their discretion. Lastly, "The DAO" executed user orders concerning token sales [15].

The SEC concluded that The DAO effectively violated several regulatory regimes: (1) it conducted a public offering of securities without SEC

authorization; (2) it acted as an operator of an organized trading platform without a license [15].

Although tokens were a novel sui generis object, the analysis of legal relations must apply the broad philosophical principle of substance over form. Therefore, pursuant to Section 2(a)(1) of the Securities Act, the SEC determined that the sale of tokens by such a DAO constituted an investment contract satisfying the four-prong "Howey Test" according to the case W. J. Howey Co., 328 U.S. 293 (1946) [16].

1) This means that The DAO was, in fact, not decentralized but rather an unincorporated association of natural persons. DAO participants were not direct managers of the DAO but, under the Howey Test, acted as investors in the project, thus fulfilling the first criterion of the test – investment of money;
2) As the project itself stated in marketing materials, investors were promised returns on investments, satisfying the second criterion of a reasonable expectation of profits;
3) Moreover, such profits would originate from the managerial efforts of others, namely the efforts of the Slock.it company, its founders, and The DAO curators. The DAO lacked genuine decentralization: (a) participants had no control over the organization, as only proposals approved by the curators were admitted for voting, which itself was largely symbolic due to the curators' unilateral ability to modify the quorum; (b) The DAOs existence depended on its founders, who developed the platform, addressed the consequences of the hack, and conducted the platform's marketing; (c) participants lacked genuine awareness of the proposals, as these were formulated in an opaque manner and could not be meaningfully discussed; (d) the pseudonymity of the organization precluded participants from effectively coordinating their collective efforts, which indicated the presence of centralized management.

Thus, The DAO cannot be considered an example of a genuine DAO, since the project in fact functioned as an unincorporated association of persons that conducted an unregistered public offering of securities, performed the functions of an operator of a trading venue, and also carried out the functions of a collective investment scheme.

Analogous conclusions may be drawn with regard to subsequent projects that nominally position themselves as DAOs, but do not demonstrate the required level of decentralization. In particular, this concerns bZx DAO, Ooki DAO, LidoDAO [17-19].

It is likely that it was the case of "The DAO" that caused a deformed understanding of the essence and legal nature of DAOs, having set a trend

toward using this term as a veil to evade legal regulation. Indicative in this context is the decision of the U.S. Commodity Futures Trading Commission (CFTC) of June 9, 2023 in the case CFTC v. Ooki DAO, which expressly states: "This decision should serve as a warning to those who believe that they can circumvent the law by creating a DAO in order to shield themselves from law enforcement and, in the end, put the public at risk" [17].

Moreover, in the case of Sarcuni v. bZx DAO, which became the first judicial precedent concerning the qualification of a DAO within tort proceedings, the court concluded that bZx DAO, which was governed through BZRX governance tokens, may be recognized as a general partnership under the corporate law of the State of California. Under such circumstances, persons who held governance tokens during a defined period may be held jointly liable for the actions of the DAO as co-owners of a business operating for the purpose of profit [18].

The court emphasized that the formal refusal to register a legal entity (the so-called "legal wrapper") does not release the DAO and its participants from the effect of ordinary legal rules governing partnerships. In this regard, decentralization as such does not guarantee the absence of legal liability, especially where the governance structure enables token holders to exercise real control and influence over decision-making and asset management [18].

The development of the idea of liability of decentralized autonomous organization participants was continued in the court decision in Samuels v. Lido DAO (N.D. Cal., 2024). In this case, the court of first instance rejected the motion of certain defendants to dismiss the proceedings, having found the plaintiff's allegations sufficient to claim that Lido DAO constitutes a partnership under California law, and that certain major LDO token holders may be jointly and severally liable as general partners. The court applied the doctrine of "meaningful participation" – participation that has an actual impact on the functioning of the DAO, primarily through token-based voting mechanisms and influence on business decisions. This corresponds to Larimer's ideas about worker-managed enterprises (persons supporting the network – meaningful participation), rather than client's (mere token holders) [19].

It is worth noting that the court rejected the argument that a DAO cannot be subject to a lawsuit due to its programmatic nature. Instead, the court explicitly stated that a DAO is a form of organization that is "at least partially constructed with the aim of avoiding legal liability", and therefore requires particular attention to actual governance and participation in its operations [19].

Thus, when combined with the decisions in SEC v. DAO, CFTC v. Ooki DAO (as an unincorporated association), and Sarcuni v. bZx DAO (as a general partnership), the Samuels case forms the following logic: (1) in the absence of sufficient decentralization and autonomy, a DAO may be subject to the application of lex societatis; (2) liability may be imposed not on all token holders, but only on those who effectively manage the DAO; (3) the absence of formal registration (a legal wrapper) does not eliminate the legal subjectivity of a "DAO" if it participates in the regulated relationships and such DAO may be pierced to common partnerships.

Hence, the United States is the first jurisdiction to have developed mechanisms for piercing the veil of decentralization in quasi-DAOs, as well as for holding participants jointly and severally liable not only for violations of investor rights, but also for conducting regulated activities without appropriate licensing.

Legislative initiatives

A combination of factors, including the legal uncertainty regarding the status of DAOs, the scope of liability of their participants, the nature of internal governance, and the abuse of the "grey zone", has highlighted the need to regulate this sphere. However, the primary stimulus for lawmakers was, arguably, the need to increase investment attractiveness by establishing legal certainty.

In 2018, the State of Vermont became the first jurisdiction to introduce a special legal form – the blockchain-based limited liability company (hereinafter – BBLLC). To acquire BBLLC status, a legal entity must include in its operating agreement: (1) a description of its mission or purpose; (2) the degree of decentralization and the type of blockchain used (public or private); (3) decision-making procedures (including the procedure for submitting proposals and the voting subjects – managers or members); (4) mechanisms for responding to security breaches; (5) the procedure for acquiring membership; 6) the rights and obligations of the members [20].

This approach expands the scope of the concept of limited liability companies (hereinafter – LLC), rather than reducing the ideas of DAOs, in particular with regard to autonomy and decentralization. The BBLLC regime creates a legal framework for the legitimate functioning of DAOs under defined legal conditions.

In 2021, the State of Wyoming became the first jurisdiction in the world to adopt special legislation providing for the possibility of registering a DAO in the form of an LLC. The main elements of the legal regime include: (1) the mandatory presence of a registered agent within the State of Wyoming; (2) the requirement to include the designation "DAO", "LAO", or "DAO LLC"

in the legal name; (3) the possibility of DAO governance either by members or through algorithmic management via smart contract; (4) the inclusion of the smart contract into the charter; its modification requires corresponding amendments to the founding documents; (5) automatic dissolution of the DAO in the event of inactivity (no decisions or actions) for one calendar year; (6) no fiduciary duties of members by default (unless otherwise expressly provided in the founding documents); (7) the admissibility of using mutable smart contracts as governance instruments [20].

However, practice has shown that the before mentioned legislation has not achieved its intended goals. Instead of creating unique legal frameworks for DAOs, the law effectively transformed them into classical LLCs that merely use blockchain as a technical solution management tool.

In April 2022, Tennessee amended its existing Limited Liability Company Act to provide for the possibility of functioning of Decentralized Organizations (DO) within the existing corporate structure. The main elements of the legal regime include: (1) the DO is registered in the form of an LLC; (2) the law requires clearly established voting procedures and quorum – decisions may be made only with the presence of at least 50% of active participants; (3) both membership-based and algorithmic (smart contract) governance are permitted; (4) smart contracts may be an integral part of the organizational structure; (5) limited liability of participants [20].

Compared to Wyoming, Tennessee's legislation appears more flexible and pragmatic, as it regulates neutral DOs without attempting to reduce DAOs to a single corporate form.

For a complete overview, it is necessary to compare the evolution of the legal regime of decentralized autonomous organizations in the Republic of the Marshall Islands with Wyoming. In 2021, this jurisdiction was the first to mention DAOs within the framework of nonprofit organizations under the Non-Profit Entities Act §102(dd) [21]. This idea aligned with Dan Larimer's original concept, according to which DAOs are viewed as nonprofit crypto-corporations operating within shared ownership and collective governance (although he envisioned the possibility of profitable models).

However, on November 25, 2022, the Republic adopted a special Law on Decentralized Autonomous Organizations (DAO Act 2022), which departed from the initial concept and introduced the possibility of establishing DAOs as limited liability companies [22]. This was a reaction to competition for regulatory leadership among jurisdictions, particularly to Wyoming's model.

Paradoxically, already on January 7, 2024, by law № SF0050 on Unincorporated Nonprofit DAOs, Wyoming itself undertook a regulatory U-turn, recognizing the limitations of the DAO approach as LLCs [23].

Although on one hand, it provided the minimally necessary legal certainty (legal personality, limited liability, the ability to enter into contracts), on the other hand it created a serious collision between the centralized nature of LLC corporate governance and the decentralized mechanisms inherent to DAOs. Such an approach reduced DAOs to ordinary companies, which presupposes the presence of management bodies, fiduciary duties, and a potential profit-making purpose, which in the case of many DAOs is either unsuitable or directly contradicts their mission – ensuring openness, decentralization, accessibility, and immutability of the code.

Thus, the State of Wyoming introduced a fundamentally new legal construct – a decentralized unincorporated nonprofit association (hereinafter – DUNA).

DUNA is the world's first specialized form of an unincorporated nonprofit entity, designed ex ante specifically for decentralized organizations. This model is based on the following features: (1) nonprofit character – a DAO may engage in economic activity, but its revenues must be used to achieve the common purpose and not distributed among members (see Paras 17-32-104 of Law No. SF0050); (2) decentralized governance – decision-making participation is carried out through consensus algorithms, smart contracts, blockchain voting, etc. (see Paras 17-32-121–122); (3) limited liability – DUNA members bear no personal liability for the organization's actions (see Para 17-32-107), thus eliminating the risk of classifying the DAO as a partnership; (4) legal personality – DUNA can enter into contracts, hold property, appear as a party in legal proceedings, and pay taxes (see Paras 17-32-108, 17-32-110); (5) absence of mandatory centralized administration – a DAO may exist without managers, and administrative functions are delegated by participant decision (see Para 17-32-123); 6) possibility of participant remuneration – compensation for governance participation or services rendered is permitted (see Para 17-32-104(c)) [23].

Thus, the approaches of Vermont and Tennessee are conceptually balanced, as they create favorable conditions for the existence of companies utilizing blockchain in their activities and regulate decentralized organizations (DOs), which is important for legal certainty in blockchain-based corporate governance, legalizing the circulation of financial instruments in the form of tokens, and legitimizing reporting through distributed ledgers, among other things. However, Wyoming's regulatory U-turn may foster a favorable environment for hybrid DAOs. In such a case, it is necessary to distinguish the project as a whole (for example, Dash), which unites both DAO and DO, namely services that constitute the substance of investment, civil, and other legal relations (The Dash Investment Foundation) and require legal structuring for participation therein, from the DAO itself (DashDAO as a peer-to-peer payment service).

Is There a need for DAO regulations?

S. Gassan and De P. Filippi emphasize the legal incompatibility of DAOs with legislative regulation: "The autonomous nature of DAOs is incompatible with the concept of legal personality, since legal personality can only be established where one or more identified persons are responsible for the actions of a certain organization" [8].

Most laws regulating DAOs are rather aimed at DOs than DAOs themselves, since DAOs, due to their decentralization and autonomy, as a general rule, do not create legal relations because of the absence of their elements.

Supporting this, in its consultation papers, Para 60, the European Securities and Markets Authority (hereinafter – ESMA) recognizes the idea that in truly decentralized organizations the stakeholders are validators of nodes, miners, and other persons (ESMA also provides examples of investors and protocol treasuries as stakeholders) [24]. Furthermore, in Para 108, ESMA reiterates Para 22 of the preamble to the EU Regulation 2023/1114 on Markets in Crypto-Assets (hereinafter – MiCA), stating that "where crypto-asset services are provided in a fully decentralized manner without any intermediary, such services fall outside the scope of MiCA" [24].

Thus, ESMA excludes DAOs from regulatory frameworks and establishes a **two-part test for them**: 1) the impossibility of identifying a specific service provider – decentralization, and 2) the absence of intermediaries – autonomy, which are, among other things, characteristics of DAOs.

However, contrary to such an "originalist" approach, proponents of a dynamic understanding of DAOs began adapting the DAO concept to practical realities. Thus, D.M. Grant, E.M. Kirby, and S. Hawkins note that DAOs may be different, such as algorithmic and participant-based. Accordingly, algorithmic DAOs do not require legal personality and are true DAOs existing on the blockchain; whereas participant-based DAOs (with a commercial nature and mutable smart contracts) require legal personality [25].

Nevertheless, from a theoretical perspective, it is difficult to agree with conclusions regarding the existence of participant-based DAOs, since the very name contradicts their characteristics. In such structures, it is difficult to maintain the features of decentralized governance and autonomy in decision-making, which increasingly indicates a DO rather than a DAO.

Moreover, in practice, there arises the difficulty of resolving the sorites paradox: to what extent an organization can relinquish autonomy and decentralization while still remaining a DAO, yet simultaneously becoming obligated to register a legal entity.

Therefore, a more consistent and logically grounded approach is the taxonomy of "decentralized communities" as a general category, within which DOs, DAOs, and DAC's perform the role of distinct types of decentralized collectives depending on the criterion of the establishment of legal relations.

To determine the necessity of regulating specific decentralized communities, a two-part test of decentralization and autonomy should be applied; if at least one of these characteristics is absent, such an organization must be regulated.

Depending on the regulatory necessity, we propose to distinguish: (1) ***genuine DAOs*** *that meet the ESMA two-part test; (2)* ***hybrid DAOs*** *that implement DAO and DO elements for different parts of their services; (3)* ***quasi-DAOs*** *that do not satisfy the two-part test and do not have a genuine DAO component for the provision of certain services.*

Regulation of DAOs in Ukraine

Although the issue of decentralized organizations has had an impact in various countries, demand for them in Ukraine has remained low. Projects containing "DAO" in their name, such as Ukraine DAO, were quasi-DAOs [26]. The consequences of delays in researching and formulating regulatory views on decentralized collectives may result in abuses in capital markets by entities that merely formally declare compliance with the principles of decentralization and autonomy, unjustified investor expectations regarding collective decision-making by token holders, and a lack of legal certainty. Legal uncertainty creates obstacles to the formation of an attractive investment climate, encouraging capital outflow abroad.

At the same time, the absence of regulation in Ukraine may open opportunities for lex ferenda research, taking into account the experience of other countries. Ukraine certainly needs to regulate those decentralized collectives that truly require it: hybrid DAOs and DOs (quasi-DAOs), and other entities implementing blockchain to legitimize reporting, issuance of financial instruments in the form of cryptocurrency, and so forth.

However, Ukraine, as a country of the Romano-Germanic legal system, has the potential to lead the competition for regulatory leadership among jurisdictions by genuinely granting legal personality to true DAOs in accordance with the theory of the origin of legal entities as "personalized purpose" – Zweckvermögen of Alois von Brinz [27, pp. 453-456].

The Civil Code of Ukraine already contains the legal construction of a foundation, which, pursuant to Part 3 of Art. 83 of the Civil Code of Ukraine (hereinafter – CCU), is an organization created by one or several

persons (founders) who do not participate in its management, by pooling (allocating) their property to achieve a purpose defined by the founders, at the expense of such property [28]. Such an approach, firstly, removes the founder's influence over the subsequent activities of the foundation, which is important to ensure the full decentralization characteristic of DAOs, and secondly, creates the possibility to achieve autonomy by delegating binding instructions to the foundation's managers through the protocol itself.

As noted by I.P. Zhygalkin, one of the theoretical models explaining the nature of a foundation is the concept of the "personalized purpose" (theory of purposive or subjectless property), developed by Alois von Brinz. "He arrived at the conclusion that it is inappropriate to search for a human substrate in a legal entity, since in certain cases, law may exist without a subject, and property may belong not to the persons who created the corporation, but to the purpose pursued by the legal entity. Hence, the latter is a continuing state of property management, separated from all other property of the founders – that is, the property itself is this personalized purpose" [29, p. 11].

It is also important that, unlike associations, a foundation does not provide for membership. Participants in a DAO, likewise, do not enter into membership relations with the organization and do not acquire corporate rights (for example, the "workers" of a DAO as per Larimer). This aligns with the doctrinal understanding of a foundation as an organization acting in the interest of destinataries – an indeterminate group of persons for whose benefit the activity is directed.

Within the structure of a foundation, as rightly pointed out by I.P. Zhygalkin, "[...] there is no will-forming body, but there is necessarily a will-expressing (executive) body – the board, through which the will of the foundation is implemented, as the embodied expression of will of its founder(s)" [29, pp. 91-92].

In the case of a DAO, such a "will" will no longer derive from the founder, but will be formed by the decentralized community itself through consensus mechanisms implemented in the protocol. Smart contracts within the DAO will record the outcomes of voting procedures and, in essence, act as instruments expressing the organization's collective will. In this model, decentralization is achieved not only by removing the founders from management, but also by eliminating the human monopoly on will-formation: each node or validator in the system has an equal vote, and the board (as the DAOs body or delegated agent) is obliged to act strictly in accordance with the algorithmically fixed decision – the will of the DAO. Such a decision, being the result of collective "code as law", acquires an

imperative nature – the executive body merely implements it in the external legal environment, without discretion or veto power.

Thus, Ukrainian foundations, as regulated under the special Law of Ukraine "On Foundations" – according to the concept developed by I.P. Zhygalkin – have the potential to fundamentally rethink positivist conceptions of legal personality, bringing the legal order closer to the ontology of Web3. This entails a shift of focus from the subject as bearer of will to the personalized purpose, which is realized autonomously through smart contracts with possible delegation by the DAO of mandatory execution of decisions to the board. Within this vision, a DAO may acquire the status of a legal entity sui generis, which is not derivative of the will of a person or group of persons, but is an autonomous legal subject operating on the basis of transparent, immutable algorithms that reflect its purpose.

Conclusions

1. A definition of a decentralized autonomous organization is proposed, based on the concept of personalized purpose:

"A decentralized autonomous organization" is a digital form of property management organization operating on a public blockchain to achieve a specific, non-commercial purpose for the benefit of an indeterminate circle of destinataries. A DAO is established by founders without the right to exert further influence, possesses its own property, separated from that of the founders, and realizes its purposive will encoded in the protocol. This will may be specified by decisions adopted by participants (nodes, validators) through on-chain consensus mechanisms. The implementation of such decisions is carried out autonomously – without the discretion of any individual subject beyond the algorithmically determined procedure.

2. The genesis of DAOs should be analyzed through the prism of the formation of Web3, as it reveals the techno-social nature of DAOs, distinguishing them from classical associations based on personalized membership and corporate will. The developmental trajectory of ideas is as follows:

- 1997 – Werner Dilger first uses the term "decentralized autonomous organization" to describe a network of governance agents capable of adaptive interaction without centralized control;
- 2011 – the concept of a software agent is formulated, capable of providing services, receiving payment, independently sustaining its existence, and replicating itself;
- 2014–2015 – DashDAO implements a self-governance model with autonomous execution of decisions, while a hybrid model begins to emerge with the incorporation of classical legal structures for investment purposes;

- 2016 – The DAO (Slock.it) on Ethereum initiates mass adoption of the DAO concept, though it proves to be an organization with imagined decentralization and autonomy, engages in regulated legal relations without licenses, and is hacked, marking a starting point for legal reassessment of DAOs;
- 2017 – present – regulatory responses (SEC, CFTC), litigation involving quasi-DAOs, development of a two-pronged test for assessing DAO autonomy and decentralization, imposition of joint liability on significantly involved DAO participants, and distortion of the DAO concept through its conflation with associations in certain jurisdictions.

3. The article proposes a classification of DAOs based on the criteria of autonomy and decentralization:

- True DAOs satisfy both elements: decision-making is decentralized, execution is autonomous, recorded in the DAO protocol;
- Hybrid DAOs combine centralized (DO) and decentralized (true DAO) elements;
- Quasi-DAOs only imitate DAOs externally (in form), while actual management remains centralized (in substance).

4. As a technological phenomenon, a DAO does not require mandatory normative regulation, similarly to peer-to-peer electronic payment systems. However, when a DAO goes beyond the closed scope of the protocol – entering legally significant relations, due to the development of artificial intelligence and its future capacity to interact with the external world, make legally relevant decisions aligned with the purpose and decisions of the protocol, and implement them via smart contracts – a need arises for the legal formalization of DAOs. If Ukraine aspires to regulatory leadership, it is necessary to eliminate conflicts with classical concepts of legal personality in associations, which are tied to personal will.

5. The doctrinal model of purpose-based assets (Zweckvermögen), developed by A. Brinz, allows for a rethinking of the legal entity not as a subject embodying another's will, but as an autonomous person realizing a defined purpose. In this sense, a DAO appears as a sui generis legal subject that functions without personalized participants (pseudonymously), founders, or a corporate body, and is governed by an algorithmically formed and protocol-expressed "will" established at inception and operationalized through its activity.

6. In Ukrainian law, the organizational form closest in construction to a DAO is the foundation – a non-membership legal entity that does not provide for corporate governance, but has a board as its will-expressing body. Within a DAO, such a board may be the protocol itself, with

implementation responsibilities delegated to direct executors as agents, without discretionary powers.

7. The Law of Ukraine "On Foundations", subject to doctrinal reexamination, may become a basis for the innovative regulation of DAOs in national law. Instead of introducing a new legal form, it would suffice to adapt the existing construct of the foundation to meet DAO-specific needs, particularly by normatively recognizing algorithmic will as the source of the board's decisions.

Recommendations

The findings of the study confirm the necessity of revising established doctrinal approaches to legal personality in light of decentralized technological phenomena. In view of this, the following positions are to be considered as recommendations derived from the conducted research:

1. Normative approaches to the legal qualification of decentralized collectives in Ukraine must abandon the reductionist practice of equating DAOs with traditional corporate forms. Instead, it is appropriate to implement a taxonomy distinguishing between DOs, hybrid DAOs, and genuine DAOs based on the dual criteria of decentralization and autonomy, as proposed in the article.
2. For decentralized collectives that engage in legally relevant activity, a hybrid model should be utilized through the adaptation of existing civil law constructs – the legal form of the foundation, trusts, etc. Such a solution would keep the decentralized governance model and eliminate founders from attempt to centralize management.
3. Within the Romano-Germanic legal tradition, Ukraine holds doctrinal capacity to recognize DAOs as legal subjects sui generis by reexamination of the concept of the "personalized purpose" (Zweckvermögen) formulated by A. von Brinz. This construct enables the emergence of legal persons not as emanations of natural will, but as autonomous centers of algorithmic will oriented toward the achievement of a predefined goal.
4. Further academic inquiry should be concentrated on the elaboration of the legal theory of algorithmic will, the doctrinal delimitation of decentralized governance from participant-based discretion, and the resolution of the "sorites paradox" in the legal qualification of decentralized structures. These tasks are essential for the prevention of normative erosion through quasi-DAO formations and the establishment of coherent criteria for legal recognition.

These recommendations directed toward the development of civil law tradition coherent model which will be responsive to the ontological specificities of decentralized phenomenon.

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Vladyslav V. Udianskyi
Ph.D. Student of the Department of Civil Law
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: v.v.udyanskyy@nlu.edu.ua
ORCID 0009-0004-4023-9806

Владислав Владиславович Удянський
аспірант кафедри цивільного права
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: v.v.udyanskyy@nlu.edu.ua
ORCID 0009-0004-4023-9806

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Particular European Standards of Guaranteeing the Right to a Fair Trial in the Context of International Armed Conflict

Iryna O. Krytska*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: i.o.krytska@nlu.edu.ua*

Abstract
The relevance of the research topic is due to at least several factors. Firstly, according to the analysis of the case law of the European Court of Human Rights, as well as annual reports on this issue, improper compliance with the standards of ensuring the right to a fair trial, established in Art. 6 of the European Convention on Human Rights, traditionally belongs to the most common violations by Ukraine as a defendant state and represents a systemic and structural problem. Secondly, the ongoing international armed conflict and the need to investigate and bring to trial an increasing number of criminal offences (including those against national security, war crimes, etc.) with all the challenges that this situation entails, puts an additional burden on the law enforcement and judicial systems and complicates their proper and effective functioning. Thirdly, the introduction of martial law is accompanied by additional restrictions on human rights and freedoms, and a derogation from a number of positive obligations assumed by the state, including in the area of ensuring the right to a fair trial. In view of the above, there is a necessity of scientific reflection on the essential content of the minimum standards for ensuring this right in the light of their implementation in the context of international armed conflict, as well as analysis of the novelties introduced into the national criminal procedure legislation in terms of compliance with the outlined standards in the course of implementation of the relevant regulatory provisions. The comprehensive application of a system of scientific research methods and techniques (in particular, dialectical, formal legal, comparative, systemic and structural, etc.) made it possible to consider the problems of ensuring access to court (including access to the procedures for reviewing criminal proceedings), which may be related to the issue of restoring criminal proceedings lost as a result of hostilities and occupation. The author also clarifies the system of guarantees and prerequisites that must be met in order to ensure the right to defence for suspects and accused persons who are not directly involved in criminal proceedings (i.e., in absentia proceedings). Finally, the author describes the key requirements for ensuring the right to cross-examination (Art. 6 (3)(d) ECHR) in the case of using testimony recorded during the pre-trial investigation by means of video recording.

Keywords: *human rights; right to a fair trial; European standards; criminal proceedings in absentia; derogation; right to cross-examination.*

Окремі європейські стандарти гарантування права на справедливий судовий розгляд в умовах міжнародного збройного конфлікту

Ірина Олександрівна Крицька*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: i.o.krytska@nlu.edu.ua*

Анотація
Актуальність теми дослідження обумовлена принаймні декількома чинниками. По-перше, як свідчить аналіз правозастосовної практики Європейського суду з прав людини, а також щорічних звітів з цього питання, неналежне дотримання стандартів забезпечення права на справедливий суд, що закрпілено у ст. 6 Європейської конвенції з прав людини, традиційно належить до набільш поширених порушень з боку України як держави-відповідача та становить системно-структурну проблему. По-друге, міжнародний збройний конфлікт, що продовжується, й потреба розслідування судового розгляду перманентно зростаючої кількості кримінальних правопорушень (зокрема, проти національної безпеки, воєнних злочинів тощо) з усіма викликами, що такий стан спричиняє, створюють додаткове навантаження на систему органів правопорядку, судову систему та ускладнюють їх належне й ефективне функціонування. По-третє, запровадження воєнного стану супроводжується появою додаткових обмежень прав і свобод людини, відступом від низки позитивних зобов'язань, взятих на себе державою, зокрема і у сфері забезпечення права на справедливий суд. З огляду на зазначене, виникає потреба наукового осмислення сутнісного змісту мінімальних стандартів забезпечення цього права у світлі їх реалізації в умовах міжнародного збройного конфлікту, а також аналізу запроваджених у вітчизняне кримінальне процесуальне законодавство новел з погляду врахування під час реалізації відповідних нормативних приписів окреслених стандартів. Комплексне застосування системи методів і прийомів наукового дослідження (зокрема, діалектичного, формально-юридичного, компаративного, системно-структурного тощо) дозволило розглянути проблеми забезпечення доступу до суду (включно з доступом до процедур перегляду кримінального провадження), що може бути пов'язано з необхідністю відновлення матеріалів кримінального провадження, втрачених внаслідок бойових дій та окупації. Також з'ясовано систему гарантій і передумов, що мають бути дотримані з метою забезпечення права на захист підозрюваному, обвинуваченому, які не беруть безпосередню участь у кримінальному провадженні (тобто коли йдеться

про провадження in absentia). Розкрито ключові вимоги щодо забезпечення дотримання права на перехресний допит (пп. (d) п. 3 ст. 6 ЄКПЛ) у разі використання показань, зафіксованих під час досудового розслідування за допомогою відеозапису.

Ключові слова: *права людини; право на справедливий суд; європейські стандарти; кримінальне провадження in absentia; дерогація; право на перехресний допит.*

Introduction

The issue of observance of fundamental human rights in criminal proceedings has always been relevant to the Ukrainian context. This is evidenced by the fact that Ukraine is permanently included in the so-called 'anti-top' of states against which the European Court of Human Rights (hereinafter – the ECHR or the Court) satisfies the largest number of complaints. Moreover, the most widespread violations traditionally include those aspects directly related to the criminal justice system, in particular, the reasonableness and duration of detention (Art. 5 of the European Convention on Human Rights (hereinafter – ECHR), the use of ill-treatment (Art. 3 of the ECHR) and various aspects of the right to a fair trial, such as the reasonableness of time limits, the right to defence, the enforcement of court decisions, etc. (Art. 6 of the ECHR). The vast majority of these violations are systemic and structural, requiring reform of domestic legislation and/or improvement of administrative practice and its application.

These aspects are further intensified in the context of the global threat, when, on the one hand, the state must respond to new challenges (rapid growth in the number of criminal offences, complications in the possibility of conducting certain procedural actions or pre-trial investigation, court proceedings in general, physical inaccessibility of a large number of potential suspects, etc.) These risks, among other things, necessitate the finding of new solutions, optimisation of mechanisms and procedures for bringing persons to criminal liability. On the other hand, it is obvious that such changes can potentially affect the level of protection of fundamental human rights and freedoms, as they are often associated with the introduction of additional restrictions or a certain derogation from the obligations assumed by the state.

In view of the above, the purpose and objectives of the study are to provide a scientific reflection on the essential content of the minimum standards for ensuring the right to a fair trial in the light of their implementation in the context of international armed conflict, and to analyse the novelties implemented in the national criminal procedure legislation

from the perspective of taking into account the standards outlined in the implementation of the relevant regulatory provisions.

It is clear that with the introduction of martial law and amendments to the criminal procedure legislation, scientific interest in the research of human rights issues, including the right to a fair trial, in the context of global threats has increased. Thus, for example, O. Kaplina, S. Kravtsov and O. Leyba have devoted their attention to the study of approaches to the possible renewal of the military justice system and, in particular, military courts. This aspect was investigated, inter alia, through the prism of the case law of the ECtHR under Art. 6 of the ECHR [1]. The legal challenges facing Ukraine under martial law, in particular, the protection of the right to a fair trial and the enforcement of judgements, were the subject of the scientific publication by Yu. Prytyka, I. Izarova, L. Maliarchuk, O. Terekh [2]. An empirical analysis of the impact of the armed conflict on the guarantees of fair trial in Ukraine was the subject of a scientific research in the work of K. Kowalczewska [3]. R. Kuibida, L. Moroz, & R. Smaliuk in their work focus on the negative impact and ongoing encroachment on the criminal, civil and administrative justice systems of Ukraine, police, prosecution and courts, access to justice for Ukrainian citizens living in the conflict zones in Donetsk and Luhansk regions; long-term consequences of recovery of the Ukrainian justice system in the conflict zones after the invading forces will be pushed out of these territories [4]. Within the framework of the aspect of the standards to be met by criminal proceedings in absentia, the work of O. Kalinnikov, which is dedicated to the comparative analysis of this aspect in the legislation of Ukraine and Germany, may also be useful [5].

Materials and Methods

The methodological basis of the study is a combination of general scientific and special methods of scientific knowledge. The formal legal (legal and technical) method was used to study the rules of law and analyse the peculiarities of legal technique; and the hermeneutic method allowed to identify the legal content of the rules, legislative proposals and defects in legal regulation. The statistical method helped to summarise the case law of the ECHR. The systemic and structural method was applied to build a system of standards for ensuring the right to a fair trial and its individual elements in criminal proceedings.

The empirical basis of the work was the ECtHR judgments on various aspects of the right to a fair trial guaranteed by Art. 6 of the ECHR, as well as analytical reports prepared by the ECtHR Secretariat.

Results and Discussion

A serious burden in terms of guaranteeing fundamental human rights, which falls on state authorities and their representatives in the context of

international armed conflict, is associated with the requirement to maintain the effective functioning of the judicial and law enforcement systems to ensure access to justice and the right to a fair trial. The standards of this right are regulated in Art. 6 of the ECHR and described in a large number of ECtHR case law. However, in the context of martial law, the relevant guarantees may be applied differently, which may be due to the challenges mentioned above.

With this in mind, we will try to highlight those problems of implementation of the European standards of guaranteeing the right to a fair trial that are particularly relevant in the context of international armed conflict:

Subsection 1. Ensuring access to the court (including access to the criminal review procedures)

In light of this, it is appropriate to refer to certain positions formulated by the ECtHR, in particular, in the judgment in the case of Khlebik v. Ukraine (application No. 2945/16) of 25 July 2017, which concerned an attempt to reopen the trial and recover the materials of criminal proceedings that remained in the temporarily occupied territory of the Luhansk region in 2014.

Firstly, as the Court noted in Paras 67-69, Art. 6 of the Convention does not impose an obligation on the state to establish courts of appeal or cassation, but if they have already been established at the national level, access to them must be ensured, and a person before them must benefit from the key guarantees arising from Art. 6 of the ECHR. However, the ECHR, given the non-absolute nature of the right of access to court, allows certain restrictions on this right, taking into account the existence of a certain discretion of the state, especially when changes are related to time, place, needs and resources of society, etc. [6].

Secondly, the case also raises the issue of the possible loss of materials of criminal proceedings due to the armed conflict and occupation of certain territories, which could potentially impede a person's access to court. Obviously, this problem is quite relevant in the current Ukrainian realities. Therefore, on the one hand, we will present the conclusions formulated by the ECHR in this regard, and on the other hand, we will point out the steps taken by the national legislator to partially overcome this problem.

More specifically, based on Paras 79-80, the Court stated that the respondent State "has taken all measures available in the circumstances to organise the work of its judicial system in a manner that would ensure the rights guaranteed by Art. 6". In particular, the ECtHR took into consideration that "the authorities have given due consideration to the possibility of restoring the applicant's case file, the national authorities have

done everything within their competence in the circumstances to resolve the applicant's situation" – namely, they tried to collect evidence in the territories under their control, requested assistance from the International Committee of the Red Cross to assist in the restoration of case files located in the territory beyond their control, and drafted a bill aimed at simplifying the consideration of the case [6].

When reviewing the legislative amendments that were enacted after the introduction of martial law in order to provide for a more flexible response of state agents to certain complications in ensuring the right of access to court, we note the following three main aspects: a) regulation of additional grounds for changing the investigative jurisdiction (Part 5 of Art. 36 of the CPC) and jurisdiction (Part 9 of Art. 615 of the CPC) in cases where the functioning of the relevant pre-trial investigation body or court is impossible for objective reasons; b) introduction of a rule on mandatory preservation of copies of criminal proceedings in electronic form (Part 14 of Art. 615 of the CPC); c) improvement of the procedural order for restoration of lost materials (Art. 615-1 of the CPC).

Undoubtedly, these legislative updates demonstrate the state's desire to create the necessary preconditions for ensuring the right of access to court even in the face of an existential threat. Nevertheless, it is equally important to take concrete actions in each individual case to implement the relevant guarantees and take adequate and appropriate measures that can reasonably be expected from the state in a given situation.

Subsection 2. Ensuring the right to defence for suspects and accused persons who are not directly involved in criminal proceedings (i.e., proceedings in absentia)

To begin with, we would like to emphasise that the ECtHR generally accepts that the so-called "proceedings in absentia" may meet the standards of ensuring the right to a fair trial (Sejdovic v. Italy (No. 56581/00) of March 1, 2006) [7]. Meanwhile, a number of preconditions and guarantees must be met.

Firstly, as follows from the analysis of the Court's case-law, the following key guarantees must be ensured: a) the person's awareness of the criminal proceedings against him/her as a prerequisite for consideration of the case in absentia; b) ensuring the right to effective legal assistance from the chosen or appointed defence counsel; c) guaranteeing the right to re-examination of the case in the person's direct presence.

With regard to awareness, we can draw attention to a number of legal positions of the ECtHR, which will allow us to understand the essence and peculiarities of the implementation of this guarantee. Thus, in Nicol v.

Netherlands (No. 12865/87), the Court noted that the state and its bodies cannot be held liable when the accused fails to take the necessary measures [8]. Similarly, as noted by the ECtHR in the judgment in Demebukov v. Bulgaria (No. 68020/01), the same conclusions also apply to cases where the accused has created a situation that made it impossible for him or her to be informed and participate in criminal proceedings [9]. In addition, in the case of Sanader v. Croatia (No. 66408/12), the Court also emphasised that the gravity and resonance of the case (e.g. war crime) and the person's residence in the territory not controlled by the authorities may justify the conclusion that the trial in absentia would not in itself contravene Art. 6 if the authorities failed to ensure the person's notification and presence [10].

It is also significant that the person himself or herself clearly demonstrates his or her refusal to participate (as stated in the judgement in the case of Petrina v. Croatia' (No. 31379/10) [11]). Particularly, the ECtHR emphasises that cases where a person, although aware of the proceedings, could not actually attend the hearing for objective reasons cannot be considered as a refusal (Hokkeling v. The Netherlands, No. 30749/12) [12].

With regard to the guarantee of a potential new trial, the Court focuses on the fact that the state should not create objective obstacles to such reopening of proceedings, for instance, by requiring mandatory detention of a person, as this would mean that the person is forced to give up the right to liberty guaranteed to him or her (Sanader v. Croatia, No. 66408/12) [10]. A potential new trial must also meet certain requirements, such as: 1) it does not matter in what form it takes (appellate review, new trial at first instance, etc.); 2) an adversarial procedure for examining evidence with the participation of the accused is essential; 3) the right to cross-examination (examination by the defence of persons testifying against the accused) must be guaranteed; 4) all these requirements will not be met if the only available procedure does not allow for a trial. Similar conclusions can be drawn on the basis of the legal approaches set out in M.T.B. v. Turkey, no. 47081/06 [13], Abazi v. Albania, No. 48383/12 [14] and others.

Thus, based on the analysis of the ECtHR case-law, the prerequisites for conducting proceedings in absentia should be the following: 1) the authorities must make reasonable efforts to ensure the participation of the person; 2) the accused must have a real opportunity to participate in the trial (even in the format of a video conference); 3) the refusal to participate in the trial must be clearly demonstrated. We would like to underline that the very existence of the in absentia procedure and its application is important for ensuring a reasonable balance between the right to a fair trial for the accused, on the one hand, and the right to an effective investigation for victims and their relatives (especially when it comes to

crimes that represent all the atrocities of war (in the sense of Arts. 2 and 3 of the ECHR).

Subsection 3. Ensuring that the right to cross-examination (Art. 6 (3) (d) ECHR) in the case of using testimony recorded during the pre-trial investigation by means of video recording

Primarily, it should be mentioned that Part 11 of Art. 615 of the CPC of Ukraine contains only an indication of the existence of martial law – without specifying the objective impossibility of direct interrogation of the person concerned in court. Formally, this indicates that the relevant testimony recorded at the pre-trial investigation stage using video recording may be taken into account by the court when deciding the case on the merits, even without assessing the possibility of questioning the witness or victim during the trial. Given that neither the court nor the prosecution under such regulatory framework is obliged to provide arguments and explanations in favour of the expediency of taking such testimony into account as evidence in making a court decision and confirming the objective impossibility of direct interrogation of the person during the court hearing. This points to the existence of excessive discretionary powers of these authorities in the context of guaranteeing the defence the right to cross-examine prosecution witnesses, as enshrined in Art. 6 (3)(d) ECHR. This circumstance increases the risk of abuse of the relevant procedural powers, which may ultimately have a negative impact on ensuring a fair trial.

In the light of the above, it is worth noting that the ECtHR in its practice has formulated a number of important factors to be taken into account in cases where the court in its judgment on the merits of the case refers to testimony from witnesses (in the autonomous sense of this category of subjects) that the court did not personally listen to during the court hearing.

They were first set out at the level of generalised principles by the Grand Chamber of the ECtHR in its judgment in the case of Al-Khawaja and Tahery v. the United Kingdom (applications No. 26766/05 and 22228/06) in 2011, however, they have also been subsequently confirmed in more recent judgments (Dimović v. Serbia (application No. 24463/11), June 28, 2016, Seton v. the United Kingdom (application No. 55287/10), March 31, 2016, T.K. v. Lithuania (application No. 114000/12), June 12, 2018). In particular, the European Court emphasised the significance of taking into account the following factors: 1) the existence of valid grounds for admitting the testimony of an absent witness, bearing in mind the general rule that witnesses testify during the trial and that the prosecution has made reasonable efforts to ensure the presence of this witness in court; 2)

the interrogation of this witness at the preliminary stage of the proceedings; 3) the accused has an effective opportunity to challenge the relevant testimony against him/her, to verify and dispute the reliability of the testimony given by the witness Nevertheless, this is the basis for the most careful scrutiny of the relevant proceedings in general. The presence of balancing factors, in particular measures that will allow for a fair and proper assessment of the reliability of testimony, will be crucial [15]. For example, such factors may include the availability of a video recording of the interrogation of an absent witness at the investigation stage – this was pointed out by the Grand Chamber of the ECHR in the 2015 case Schatschaschwili v. Germany [GC] (application No. 9154/10) [16].

Furthermore, it is also appropriate to mention the ECHR's approaches to the distribution of the burden of proof in such circumstances. In this regard, the European Court in its judgment in the case of Süleyman v. Turkey (application No. 59453/10) of November 17, 2020 highlighted that the applicant (i.e. the defence) is not obliged to prove the importance of the personal appearance and interrogation of the prosecution witness [17], continuing these considerations in the judgment of Keskin v. the Netherlands (application No. 2205/16) of January 19, 2021, where the ECtHR noted that if the prosecution decides that a certain person is an important source of information and relies on his or her testimony during the trial, and if the testimony of this witness is used by the court to substantiate the conviction, then his or her personal appearance and interrogation is necessary [18].

Based on the abovementioned, we can conclude the following: firstly, the use of the provisions of Part 11 of Art. 615 of the CPC of Ukraine to justify the possibility of the court's reference in the sentence to the video-recorded testimony of a witness who was not present at the trial should be an exception, not a general rule; secondly, the prosecution must argue the impossibility of questioning this witness in court, in particular, indicate the reasons for the witness's non-attendance and the reasonable measures taken to ensure his/her presence at the trial, and the court must motivate this in its decision; thirdly, if the interrogation of the person concerned at the pre-trial investigation stage took place after the notification of suspicion, the defence should be provided with the opportunity to participate in such interrogation, which should be recorded using video; fourthly, the relevant testimony should also be supported by other evidence, and its use as decisive evidence should be a measure of last resort.

Conclusions

The comprehensive application of a system of scientific research methods and techniques (in particular, dialectical, formal legal, comparative,

systemic and structural, etc.) made it possible to consider the problems of ensuring access to court (including access to the procedures for reviewing criminal proceedings), which may be related to the issue of restoring criminal proceedings lost as a result of hostilities and occupation. The author also clarifies the system of guarantees and prerequisites that must be met in order to ensure the right to defence for suspects and accused persons who are not directly involved in criminal proceedings (i.e., in absentia proceedings). Finally, the author describes the key requirements for ensuring the right to cross-examination (Art. 6 (3)(d) ECHR) in the case of using testimony recorded during the pre-trial investigation by means of video recording.

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Iryna O. Krytska
Ph.D. in Law, Associate Professor
Associate Professor at the Department of Criminal Procedure
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: i.o.krytska@nlu.edu.ua
ORCID 0000-0003-3676-4582

Ірина Олександрівна Крицька
кандидатка юридичних наук, доцентка
доцентка кафедри кримінального процесу
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: i.o.krytska@nlu.edu.ua
ORCID 0000-0003-3676-4582

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Modern Genocide: Part of National Aggressive Policies. Undefined Definition

Mykhailo V. Romanov*
Aleksanteri Institute, Helsinki University
Helsinki, Finland
**e-mail: mykhailo.romanov@helsinki.fi*

Abstract
Today, foreign policy often uses such an aggressive violent tool as genocide, which necessitates the study of this phenomenon. This issue is of particular relevance in view of the full-scale invasion of Ukraine by the Russian Federation. Therefore, the purpose of the article is to analyse the existing international normative definition of the concept of 'genocide', its main shortcomings and gaps, and possible ways to address them. For this purpose, the author uses general scientific analytical research methods, as well as the content analysis method. Comparative methods allow us to critically analyse case law and identify certain imperfections and trends inherent in the process of considering genocide cases and making relevant court decisions. This allowed the author to formulate arguments to substantiate that the content of such elements of the concept of genocide as 'extermination' and 'protected group' is incomplete and sometimes even undefined. It is emphasised that the construction of the concept of 'genocide' is inadequate, since it does not actually define the content of this phenomenon through the description of its attributive and stable features, but only lists some forms in which genocide may exist. Under such conditions, this concept remains undefined, which leads to situations when courts and tribunals consider the existence of the crime by substituting the proof of the accused's actions with the interpretation of certain events in terms of their 'similarity' or 'dissimilarity' to genocide. After all, judges do not work with facts, but with interpretations of these facts, which gives rise to a diversity of judicial practice and creates the basis for the politicisation of genocide trials. The author concludes that the phenomenon of genocide needs to be studied with due regard for the experience of legal application of this concept, and that it should be improved, which will allow lawyers to assess facts and acts and establish their compliance with the legal definition of genocide

Keywords: *genocide; concept of genocide; protected group; elements of the crime; intent to commit genocide.*

Сучасний геноцид – частина національних агресивних політик. Невизначене визначення

Михайло Васильович Романов*
Інститут Александері, Гельсінський університет
Гельсінкі, Фінляндія
**e-mail: mykhailo.romanov@helsinki.fi*

Анотація
Сьогодні у зовнішній політиці нерідко використовуються такий агресивний насильницький інструмент, як геноцид, що зумовлює необхідність дослідження зазначеного явища. Це питання набуває особливої актуальності з огляду на повномасштабне вторгненням військ російської федерації в Україну. Тому метою статті є аналіз існуючого міжнародного нормативного визначення поняття «геноцид», його основних недоліків і прогалин та ймовірних шляхів їх усунення. Задля цього використовуються загальнонаукові аналітичні методи дослідження, а також метод контент-аналізу. Порівняльні методи дозволяють критично проаналізувати судову практику й виокремити певні недосконалості та тенденції, притаманні процесу розгляду справ щодо геноциду та прийняття відповідних судових рішень. Це дозволило сформулювати аргументи для обґрунтування того, що зміст таких елементів поняття «геноцид», як «знищення» та «захищена група», є неповними, а подекуди й не визначеними. Наголошено, що конструкція поняття «геноцид» є неналежною, оскільки фактично не визначає зміст цього явища через опис його атрибутивних і стійких ознак, а лише перераховує деякі форми, в яких може існувати геноцид. За таких умов це поняття залишається невизначеним, що тягне за собою під час розгляду судами та трибуналами появу ситуацій підміни доведення наявності в діях обвинуваченого складу цього злочину тлумаченням певних подій у розрізі їх «схожості» або «несхожості» на геноцид. Адже судді працюють не з фактами, а з інтерпретаціями цих фактів, що породжує неоднозначність судової практики й створює підґрунтя для політизації процесів з геноциду. Сформульовано висновок, що феномен геноциду потребує вивчення з урахуванням досвіду юридичного застосування цього поняття, а також його вдосконалення, що дозволить юристам оцінювати факти та діяння й встановлювати їх відповідність правовому визначенню геноциду.

Ключові слова: *геноцид; поняття геноциду; захищена група; елементи складу злочину; умисел на вчинення геноциду.*

Introduction

Disciplined society and genocide. Two polar mass manifestations. It would seem that each is the diametric opposite of the other. Whereas genocide is

the pinnacle of the brutal violation of humanistic values, the disciplinary society is the pinnacle and apotheosis of total control, manageability and, arguably, tolerance.

But reflection and historical experience indicate that there are many similarities between these phenomena. More to the point. I will attempt to outline the close connection between these phenomena and their intersubjectivity. At least I will put it forward as a hypothesis.

If genocide is a kind of chaos generated by ideas of advantages that are supposedly inherent in some and denied to others, then a disciplined society is "chaos" taken to an extreme point. Looking ahead, I mean that the ideas that fuel genocide arise and take shape in mature, stable societies, whose institutions acquire such a fundamental and strong character that they begin to have a "reverse" effect on the members of such a society and on the actors who make large-scale decisions. Genocide, as a phenomenon involving the destruction of entire groups of people, contains at its core the idea of domination, superhumanity. The logical conclusion of this idea is that social life must be purged of "dangerous" elements. It seems that this is precisely where the line that unites the two phenomena in question lies. After all, in fact, this is one of the main aspects of the idea of a disciplined society – the presence of advantages for some (the disciplined) and the absence of these advantages for others (the undisciplined). The undisciplined must be displaced

Why does this essay discuss this and draw some parallels between these two phenomena? Because it can help to realise the essence of genocide and come to a conclusion about its probable existence and the possibility of such events occurring in the future. It is also necessary in order to understand to what extent the existing definition of genocide corresponds to contemporary events that may qualify as genocide. This in turn is important because genocide has very serious implications for people, their groups, for jurisprudence and jurisprudence, for understanding the processes that generate genocide and feed its origins.

Literature Review

The literature on the topic of genocide is vast. Perhaps it can be said that the topic of genocide is one of the most developed. However, the existing difficulties in the application of legal norms related to genocide and the interpretation of this concept only emphasise the need for further study of this phenomenon and the need to clarify the concept of genocide.

The literature on genocide touches upon various branches of knowledge and social sciences. It is about history, sociology, jurisprudence, anthropology,

political sciences etc. In addition, the fiction dealing with this topic is very extensive.

In this paper I have tried to use some of the most authoritative works, as well as works whose authors are pioneers in this field. Of course, I am referring to the accessible works of Raphael Lemkin. There is no single systematised work on genocide in his oeuvre, but it was he who laid the foundations for the recognition of genocide as an international crime.

The fundamental historical essay by Naimark, Norman M, on the history of genocide allows us to trace in historical retrospect how this phenomenon gradually came to its vivid and large-scale manifestations. In his work he demonstrates that genocide has deep roots and has been known to mankind for a long time, but it was in the twentieth century that it acquired such a clear ideological colouring, became aggressive and mass.

British lawyer Philip Sands is known for his participation in a number of interstate disputes in the framework of the procedures of the International Court of Justice (UN Court of Justice), including cases in which the question of prosecution of those responsible for genocide was raised. His book "East West Street. On the Origins of 'genocide' and 'crimes Against Humanity'", although not strictly scientific, contains a great deal of reflection on the nature of genocide.

A well-known and authoritative author who has written about genocide is Anna Arendt. She is considered the founder of the theory of totalitarianism. In her works devoted to this phenomenon, she considered genocide as one of the manifestations of the policy of terror and violence, as one of the instruments of this policy. Moreover, the author believed that it was a fairly typical tool, which to a greater or lesser extent is inherent in all totalitarian politicians. Her illustrative examples were Nazi Germany and the Soviet Union. Both countries used genocide extensively in their domestic policies.

Much material examining genocide as a legal phenomenon contains court documents and judgements in cases where charges of genocide were brought. Since the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, international jurisprudence has known a number of such cases – genocide in Rwanda, genocide in Srebrenica. Some such crimes were not recognised by the courts as genocide for various reasons. These include the Pol Pot regime, the Holodomor in Ukraine in 1939, and the Holocaust.

Many contemporary Ukrainian authors also address the topic of genocide. In Ukraine and a number of other countries, the Holodomor of 1939 is recognised as genocide. This national tragedy is the subject of study by

historians, sociologists and anthropologists. In 2024, a book by Viktoriy Malko was published.

Ukrainian Intellectuals and Genocide: the Struggle for History, Language and Culture in the 1920s and 1930s [1]. The author considers the Holodomor as a key event for the destruction of the self-identity of Ukrainians. It was during that period that a significant number of Ukrainian intellectuals were exterminated. This act caused irreparable damage to the Ukrainian nation and undermined the foundations and possibilities of further formation of Ukrainian statehood. The author analyses how this process took place and what role intellectuals played in Ukrainian society.

As can be seen, the literature on the topic of genocide is very diverse and extensive, which makes it possible to have a broad discussion on genocide.

Materials and Methods

In conducting the presented research, scientific methods most common in social sciences were used. In particular, the following:

Taking into account the specificity of the object of research, data collection was conducted mainly from secondary, including open sources. The data obtained characterise the object of research, as a rule, from a qualitative point of view. The main criterion for selecting sources for their study was their direct relevance to the subject of the research. The use of quantitative (statistical) data is very limited, given that there are few officially recognised cases of genocide.

Data collection was conducted mainly through the study of literature sources and their review. The observation is detailed by methods of content analysis. Studies of scientific literature, collation of information and collected data, open sources – journal articles, publications, reports, reviews, etc. Content analysis focused on those sources that contain information about what genocide is, who the victims of genocide are, how they identify themselves, how the perpetrators of criminal orders understand these orders, how hate speech is formed and how it influences the perpetrators, etc.

The study used materials of jurisprudence of international courts and special tribunals that raised the issue of qualification of certain actions as genocide. The main attention was paid to those court decisions that interpreted specific signs of genocide and those where these signs were critically assessed. Of particular interest was the case of the Srebrenica massacre as an example of the destruction of part of a protected group. It seems that this episode has some common features with the events that are taking place in Ukraine and on which the author relies in the study.

The collected data and information was analysed using the historical method, which made it possible to trace changes and some dynamics in the views on the phenomenon of genocide, its description and definition of the content of this concept. Taking into account that scholars often use the concept of genocide in a broad sense, meaning all cases of mass extermination of people, I tried to focus on the concept of genocide in its legal sense, which is relevant for the establishment of legal facts.

The comparative method was used to analyse the collected material, including in a sense a more special method of comparative jurisprudence. It allowed us to trace the differences in the perception and criminalisation of genocide in different countries and legal systems. It also made it possible to make sure that genocide always has a significant ideological component, which often plays a decisive role in the implementation of genocide and its justification in the eyes of the general public.

The described methods were applied in a complex, which allowed approaching the object of study with different tools and taking into account different points of view on the problem of genocide.

At the same time, I am well aware that the use of all the methods described above does not exclude some bias in the material presented. As mentioned above, the topic of genocide is well researched and has been addressed by specialists from various fields of knowledge. I recognise that the difficulties in defining the concept of genocide discussed in this paper are largely due to the inability to approach this phenomenon with a single measure. Genocide is too multifaceted and brutal, and at the same time its understanding is quite seriously distorted by the speculations that exist both around the concept. As well as around the phenomenon that this concept describes.

All of this leads to the fact that in writing this paper I was aware of the fact that, in order to explore the concept of genocide in even greater depth, I still significantly lacked lively discussions with researchers and lawyers who are currently working with this issue.

Results and Discussion

Challenges of defining genocide

If we turn to the existing definition of genocide, we see that it describes just that. Genocide is the intention to destroy a protected group as such. A protected group can include large groups of people united by different attributes. In particular, the legal definition contained in the text of the Rome Statute (hereinafter – the Statute) recognises such characteristics as nationality, ethnicity, race or religion. It is quite logical to compare the displacement from a certain territory of representatives of a group

belonging, say, to a religious group, and the displacement from a certain territory of those who do not meet the standard of discipline accepted in this territory.

Of course, different methods are used and it is in them, according to the authors of the Charter, that the whole essence of genocide as one of the most serious international crimes lies. However, it seems that the roots of these phenomena have much in common.

Here I would like to point out one, in my opinion, problematic component of genocide as a crime. If we take into account the idea that probably underlies genocide, we can come to the conclusion that genocide is, as stated, a method. In this case, the question arises about the expediency of the existence of genocide as a separate and most dangerous crime. If we use legal terminology, then in fact we are talking about a qualifying feature. Genocide is a kind of special cruelty. if this is true, then we are dealing only with the "degree" of the offence, but not with a separate criminal-legal phenomenon. However, it is obvious that genocide is not just a qualifying feature that may entail more severe liability, but a crime that differs from any other by its essential, attributive features. And here we come to the main question of what are these attributes?

It should be clarified that in this article I have only managed to outline some basic theses that require further study and consideration.

It goes without saying that we must first look to the past. History knows many examples when we can speak about genocide with a high degree of probability. And these events and facts took place not only after genocide was called genocide in the middle of the 20th century and its definition was formulated (obviously, the existence of a phenomenon is possible even without a clear definition).

Examples of genocide from the distant past include the genocide of the indigenous peoples of the Americas, Africa and Asia. Virtually the entire history of the discovery of the "new world" and its further colonisation is littered with acts of genocide. This is not a new statement. Similar thoughts were expressed by Raphael Lemkin, the author of the concept of genocide, and by scholars who have studied the history of colonisation.

This paper is not intended to examine the historical stages of genocide, but to use the historical method as an illustration that can help trace the patterns of this phenomenon and the connections that unite them. Also, historical retrospection will bring us closer to one of our aims, which is to raise the question of the close relationship between certain types of policies, their content and narratives (particularly disciplinary and control mechanisms) that are linked to the emergence of acts of genocide.

In this regard, the genocide that took place in Srebrenica (Bosnia) during the wars in Croatia and the Bosnian War, in the territory of the former Yugoslavia, as well as the recent events in Ukraine, where some lawyers and researchers also see the presence of genocide, is of great interest.

Why genocide in the former Yugoslavia? This episode of recognised genocide is one of the largest war crimes in the history of modern Europe, committed in the recent past at a time when international mechanisms designed to ensure international peace and security were already in place. Until the events in Ukraine, the Srebrenica genocide is perhaps the most serious crime in Europe that has been judicially recognised as such.

Also, this event has a number of peculiarities that give grounds for reflection on the essence of genocide, on its possible causes and factors giving rise to it.

Historical episodes of genocide

So, the historical discourse shows that genocide can be considered as a continuation of the development of policies of civilised, developed countries, which have ambitions of metropolises and empires. This is also pointed out by researchers of the history of genocide: "[…] Meanwhile, the Spanish conquest became the model for policies of later colonial governments, just as opponents of the extirpation of native peoples in Australia and North America often mentioned the writings of Bartolemé de Las Casas, the notable Dominican critic of Spanish brutality in the new world. One of the first observers of linkages between episodes of genocide was Hannah Arendt, who noted the influence of colonial brutality and racism on the development of the genocidal policies of Hitler in Europe. 10 The widespread killing of native peoples in the colonies, French, British, Italian, and especially German, translated in some fashion into mass murder during World War II. 11 A number of historians have noted some continuity in personnel and policies between the German military's attempts to eliminate the Herero and Nama peoples in Southwest Africa (1904-1907), their role as advisers in the Armenian genocide (1915), and the Wehrmacht's role in the Holocaust. 12 Hitler stated to his generals on the eve of his onslaught against Poland and the Poles: 'Who, after all, speaks today about the annihilation of the Armenians?' In the same speech, Hitler also chose to cite the positive example of Genghis Khan as an empire builder. Hitler's message was clear: the German war leadership should not shy away from killing large numbers of Poles and Jews in the attack" [2].

In general, studying the events that have signs of genocide in historical retrospect, there is a strong impression that its origins, as an organised purposeful action aimed at the destruction of "others", lie in the basis

of Christian religious doctrine. If we generalise and, perhaps, simplify somewhat, genocide is ultimately the same crusade, the purpose of which is adjusted depending on the political component, geopolitical claims and the general international situation.

Of course, events similar to genocide occurred before the formation of Christian doctrine, but organised forms and targeted genocidal efforts, which would be accompanied by categorical intolerance, perhaps developed only in the conditions of Christianity's dominance and campaigns to convert indigenous and 'infidel' peoples to the Christian faith.

As Norman M. mentioned: Generally, the Mongols were tolerant of religious differences and, as such, promoted the interaction between the culturally rich communities of faith in Central and South Asia, Europe and the Middle East [Ibid].

It seems that in those times, the issues of total annihilation and assimilation were not so acute. And this circumstance indicates that the conquest of territories and subjugation of peoples is not always connected with the destruction of peoples. At the same time, it does not give grounds to exclude genocide under such conditions.

What can this mean for our study? It may point to one important, even defining feature of such events. Namely, that genocide is a more "intellectual" phenomenon. As I pointed out above, it is based on an idea that rallies around it people who have access to significant resources and enough power to extend that idea to a sufficiently large number of perpetrators. As a hypothesis, I assume that it is a predominantly organised campaign, usually by a more stable, powerful society, which is directed against less stable or less powerful societies or states.

The above conclusion may also give grounds for saying that genocide is always, on the one hand, the eradication of what exists and, on the other hand, the imposition of what the aggressor brings with him. In this case, it is probably not so much the territories and administrative power that are decisive, but the creation of an environment favorable to the aggressor and displacing the victims and their way of life. The creation of such an 'environment' may in the long run lead to the transfer of administrative power and territories under the control of the aggressor.

Ideological roots of genocide

In this regard, it should be pointed out that genocide is not an isolated phenomenon. It does not appear as an end in itself. It is always part of a larger program, or rather a policy. In her work "Origins of totalitarianism" Anna Arendt, describing the actions resorted to by representatives of totalitarian regimes, pointed out that for most of them (Nazi Germany, the

Soviet state of Stalin's time) the practices having all the signs of genocide were often applicable and widely used. In particular, she notes: the Baltic States were directly incorporated into the Soviet Union, and they fared much worse than the satellites: more than half a million people were deported from the three small countries, and "a huge influx of Russian settlers" led to the threat that the local population might become a minority in their own countries [3].

This conclusion seems very significant. It suggests that, in order to establish genocide, the decisive factor is the existence of violent policies that provide a common background for the emergence of genocidal intent and its subsequent realisation. At the same time, as I noted above, the realisation of this intention does not necessarily involve the physical destruction of a protected group. Obviously, destruction is carried out by all possible methods, among which physical destruction is not the only or the main one.

All "modern" events that have been recognised or regarded as genocide (the Armenian genocide by the Ottoman Empire (1915), the German genocide of the Guerreros and German colonists (1904), numerous episodes of genocide of Jews in the first third of the twentieth century and during the Second World War, the Holocaust, etc.) had one thing in common – they were always part of a conscious policy. Genocide was never an end in itself, but always an indispensable component of policies that are generally oriented towards the conquest of new territories, the spread of influence and power, subjugation, etc. This means that genocide was often an "unspoken" goal-appropriation. It belonged to larger agendas. I would venture to argue that genocide "in and of itself" does not exist. We can hardly find a genocide that is committed out of context

This feature is extremely important for understanding that the victim group, or "protected" group as the official definition of genocide calls it, was never targeted with the proviso 'as such'. All members of the "protected" group, who were perceived as the main obstacle, as bearers of some kind of identity that could make it more difficult to seize territories, spread power and influence, were to be destroyed. But it was not necessary to destroy the group completely. It was enough to reduce it to such an extent that it ceased to exist as a 'magnet' of self-identification. In other words, genocide is always a means, not an end.

This conclusion is all the more important because it substantiates the fallacy of the basis of the definition of genocide. This goal, being part of a more global design, cannot stand alone. It cannot be established as the only one that emphasises its focus on the destruction of a group, as such, because, being part of something larger, it is an instrument. Therefore, the

sign of the destruction of the group "as such" is rather optional. Otherwise, we are dealing with obsession, with madness, after all. And this, as we know, is a prerequisite for the establishment of insanity, i.e. the inability to bear responsibility

The events of genocide in the former Yugoslavia also belong to modern genocides. And it, as well as other acts from this time period, is inherent in the presence of an aggressive policy, which is associated with either the seizure of territory or the redistribution of spheres of influence and power.

The Srebrenica massacre is associated with a number of wars in the former Yugoslavia. Of course, the so-called "Balkan nationalism" also played a role. According to some researchers, Balkan nationalism was a peculiar response to the clash of interests of three empires in these territories – Habsburg, Ottoman and Russian. The nationalists' goal was not just the separation and clash with the political ruler – the Ottoman or the Habsburg – but also with the cultural ruler – the Greek or the Hungarian [4, p. 33].

Here, it was under the shadow of nationalist policies that the fruit of genocidal intent matured. Nationalism is probably not the main feature, as history shows diametrically opposite cases when genocide was a kind of reaction to nationalist sentiments. However, in this case too, it involved the "confrontation" of different nations or races or religious ideas.

And yet one feature remains very stable – the presence of a conscious, consistent and organised policy of seizure of territory or distribution of spheres of influence or power.

Here again we come back to the fact that the intent to genocide and its implementation always arises and comes from an organised, civilised, stable and strong "author". Even if this author cannot be called strong (for example, the genocide of the Tutsi people in Rwanda), he is in any case endowed with sufficient resources to realise such a large-scale action as genocide.

This point is important to realise in order to understand the fact that genocide, as mentioned above, is always an instrument, an intermediate goal. And secondly, genocide is most often not endowed with a program, which would describe the successive steps and measures to be taken for its implementation. This does not mean that they cannot exist (for example, the genocide of the Nazis during World War II had such qualities), but it indicates that such program, methodicalness is not an attribute without which genocide cannot be identified and stated

This peculiarity is also important in the context of the above-mentioned parallels between a disciplined society and aggressive politicians, including genocide as their tool. Statistically, in most cases, the idea of genocide

originated with more organised communities, societies and states. Those that had the strength, resources and will to pursue their aggressive policies towards those they chose as their victims. Of course, a less organised and self-identified community has a higher degree of victimhood on the one hand and a lower 'ideological' character on the other.

So, as an example, we have chosen the genocide that took place during the war in Yugoslavia. In particular, we are talking about the episode of mass murder of Muslim men, boys and young men, which took place during the Croatian and Bosnian war in the town of Srebrenica, which at the time of the crime was on the territory of the Republika Srpska. At that time, 8,372 civilians were killed. The event was recognised as genocide by the Special Military Tribunal for the Former Yugoslavia. Many disagreed with that judgement. However, again, one factor was recognised unconditionally, including in Serbia. A study on the events in Srebrenica notes: "[…] the RS president at the time, Dragan Cavic, stated: The Report […] is the beginning of difficult, and probably, for all of us, sometimes the empty road of disclosing of the truth. It is on relevant state bodies and institutions to process these and such results of the Commission's work, and it is on us to continue walking towards the truth. Only this is the way to avoid the situation of having our children hate each other in the future, only because they are Croats, Bosniaks, or Serbs" [5].

As we can see, the political leadership of the country is well aware that all these events, as well as many others during the war, are the result of political processes that can lead to mutual hatred of representatives of different ethnicities and nationalities. At the same time, some representatives of the Serbian authorities believed that the events that took place in Srebrenica were isolated random war crimes, which were committed by the sudden intention of individual initiators [6]. Such statements are very revealing, because they indicate that many see genocide as one element of a well-known and familiar modus operandi, the purpose of which is something even more extensive than genocide. This way must be formulated (not necessarily in the form of a verbal order) and understood by all the perpetrators. In fact, the authors of such statements point out the need for such a criterion of genocide as the existence of an idea embodied in a policy that results in acts of genocide. In this case, genocide, as mentioned above, turns out to be a political tool. Obviously, this approach is understandable and indisputable in its own way. However, this criterion is absent in the normative acts that describe the crime of genocide and establish the criteria for its detection. It seems that my hypothesis about the "non-autonomy" of genocide is confirmed by what can be called the usual thinking of a politician.

It is noteworthy that the resolution on the genocide event in Srebrenica, which was confirmed by the materials of the investigation and trial of the Special Tribunal for the former Yugoslavia, was not supported at the UN level by representatives of countries that have a predilection for nationalist or totalitarian forms of government [7]. These include Russia and China. Interestingly, these countries can be grouped together on the basis that they have a relatively short history of taking over colonies. Perhaps that is why they see such actions as one of the permissible tools of colonisation. By not voting for the resolution, Russia and China leave themselves room for genocidal manoeuvres in the future. And this is not an accident, but a quite natural phenomenon. Those countries that have organised and aggressive politicians with a strong ideological component do not accept the idea of genocide as such. It is too risky for them, because genocide, as we pointed out above, is the result of a consistent, systemic policy that pursues invasive goals. And such countries, as a rule, pursue exactly such policies, and therefore often use genocide as one of the methods of realisation of these policies.

Serbia, as a kind of "heir" to the Yugoslavia case, has similar ambitions. And the roots of these ambitions probably lie not only in the distant historical, but also in the relatively close, Soviet past. Nostalgia for it remains inherent in many Serbs. A striking example of this is Emir Kusturica, the Yugoslav and Serbian film director, who stands out for his active negative stance on the break-up of Yugoslavia and is quite supportive of all contemporary events that have the hallmarks of genocide.

It is also probable that the forceful internal policy of the former Yugoslavia, which concerned most of the social relations in the country, consistently and logically caused the incredible outbreaks of violence during the Yugoslav Wars.

The existence of a methodical and consistent policy is noted in his study by Robert J. Donia. He states: In the summer of 1995, Karadžić was a more experienced executioner than was the party president of 1992 who had first orchestrated widespread mass atrocities. But even though his heart was hardened and his conscience moribund, Karadžić did not order the deeds of July 1995 solely out of contempt for Bosniaks. He took action only after an improbable convergence of Serb battlefield defeats, maneuvers of the international community, bitter rivalry with Mladić, and his realization that little time remained to realize his Serb utopian vision in all of eastern Bosnia. Karadžić was not a victim of circumstance, however; he was the master of it. We will never know if he might have ordered the actions in a different set of circumstances or at a different time, but we do know that he acted with forethought, decisiveness, and calm detachment in the

circumstances in which he found his movement in July 1995. He acted distressingly methodically in pursuing his goals by putting into action a carefully considered plan [8].

Elements of the concept of genocide

Now let us return to the definition of genocide. Genocide is a phenomenon that has been and continues to be defined in different ways. As we mentioned above, Raphael Lemkin included a much larger scope of acts than was eventually accepted. But in any interpretation genocide is regarded as one of the most serious crimes. And it is recognised as such in virtually all legal systems that profess universal human values.

And this is understandable, since the object of its encroachment is entire human communities, their existence as such. The intention to destroy a person reaches a high level of public danger. Especially when the act encroaches on the lives of a large number of people, and this intention is aimed at the complete or partial destruction of such people not because they behave aggressively or commit any acts affecting the rights or interests of other people, conduct military actions, commit serious crimes. None of these are mentioned in the offence of genocide. The very intention to destroy is justified only by the very fact of existence of a certain group of people, who have common features, which often do not have a visible material embodiment, or if they do, then by their very nature cannot affect the rights and interests of other people just by the very fact of their existence

It is precisely the feature of the "unconditionality" of genocide, its non-personalisation, that makes this crime so horrifying and grave.

However, as mentioned above, in my opinion this attribute is unstable. In any case, the intent to commit genocide has a conditionality or motive. If it did not, it would be impossible to imagine the "prevalence" of genocide, its "contagion" to other perpetrators. If it were unconditioned, it is likely that acts of genocide would not be so massive and all-encompassing. Indeed, they would have been limited to individual episodes in which it could be argued that they were individual war crimes. All this suggests that genocide is always part of a larger plot, part of a broad program of extermination.

And yet, considering the objective manifestation of genocide – the seemingly unprovoked destruction of an entire community of people – makes us turn to the distinctive features of the people in such groups. Destruction of whole communities of people only because they have separate differences in religious rites, in appearance, in belonging to ethnic groups and states indicates that the perpetrators of genocide are guided exclusively by bloodthirsty, inhuman motives, believe that some categories of people do not deserve to live, assuming the functions of the creator of the world,

pursuing the goal of cleansing the planet of some representatives of the human race

There is an ongoing debate about the completeness of the concept of genocide and the inclusion of additional groups. Many examples of different content of the concept of genocide are given by William Schabas [9]. In this regard, the definition of genocide in the French Criminal Code is noteworthy – Art. 211-1 "Constitue un génocide le fait, en exécution d'un plan concerté tendant à la destruction totale ou partielle d'un groupe national, ethnique, racial ou religieux, ou d'un groupe déterminé à partir de tout autre critère arbitraire, de commettre ou de faire commettre, à l'encontre de membres de ce groupe, l'un des actes suivants" [10]. Here the legislator allows any criterion for defining a protected group, which certainly expands the possibility of identifying genocide in the actions of the suspect. This, in our opinion, is a very interesting definition, which, on the one hand, removes 'restrictions' from the possible accusation of genocide and allows to establish what actually happened, rather than to go down the path of excluding what cannot be substantiated in the act (positive proof, when certain circumstances and features inherent in the event are proved, and negative proof - when the investigating authorities exclude other options, indirectly establishing this or that corpus delicti), and on the other hand, it actually gives the right to establish the offence of genocide.

The very fact that there are different interpretations and an ongoing debate on the acceptability and sufficiency of the concept of genocide is a clear indication of the imperfection of the international concept of genocide.

The Rome Statute defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

a) The killing of members of such a group;
b) Causing serious bodily or mental harm to members of such a group;
c) The deliberate infliction on a group of living conditions calculated to bring about its physical destruction in whole or in part;
d) Measures calculated to prevent procreation in the environment of such group;
e) Forcibly transferring children from one human group to another.

As we can see, the corpus delicti is formulated in an atypical way, as it includes separate independent corpus delicti offences, which under certain conditions may acquire the characteristics of genocide. That is, these actions are already crimes in themselves. In order for them to acquire the characteristics of genocide, there must be an intention to destroy a certain group of people, and this intention must obviously exist simultaneously

among a large number of people. Otherwise, it would only be an episode, which could be regarded as an accident and would not carry the same degree of public danger.

In fact, the Statute describes genocide as the destruction of a protected group in a certain way. It seems that, from a legal point of view, this construction of the offence is not very reliable. It is enough to change the way in which genocide is realised and the act falls outside the jurisdiction of the genocide rule. For example, intimidating members of a protected group to force them to leave the group, to stop identifying with it. As a result, the group is destroyed and the act cannot be recognised as genocide.

In addition to these features, the existing jurisprudence of international ad hoc tribunals indicates that proving genocide is very difficult, largely due to the presence of signs of repetition and systematic nature of such actions, and also tends to an overly conservative perception of the ways and means of execution of this offence.

Raphael Lemkin's ideas on genocide

This is probably due to the fact that genocide as a criminal offence was formulated in the middle of the twentieth century and received its place in criminal law and legislation with great difficulty. In justifying its necessity and "right to exist", Lemkin had to make considerable efforts and compromises. The latter, incidentally, led to the fact that the accepted notion of genocide had very little in common with what Lemkin had originally understood and justified as one of the most terrible crimes.

What did Lemkin mean by genocide? Unfortunately, he did not leave a definition of genocide in the conventional sense of the word. However, in his short article "Soviet Genocide in Ukraine", describing the actions of the Soviet regime in Ukraine, he actually defined the stages of genocide and highlighted the criteria that form the crime of genocide. Recognising the complexity and unnecessary destruction of all representatives of the protected group (at the time of the Holodomor in Ukraine its population was about 30 million people), Lemkin identified four stages of genocide [11]:

1) extermination of the national elite. It can always be eliminated completely, as it is usually not too large;
2) elimination of the national church. Also not a difficult task for the same reason – the relative small number of clergy;
3) destruction of a significant part of the Ukrainian peasantry, as carriers of folk traditions and ethnic "code" of the nation. This is where the Holodomor was needed;
4) mixing of the Ukrainian people with other nationalities through deportations and resettlement.

Now it is not difficult to formulate the criteria and signs of genocide, which Lemkin considered determinative. It is about the fact that the protected group includes people united by different features and criteria. The main feature is their relatively compact residence, united by a common household and social structure and legal identification. The second point is the cultural basis of genocide. It is perhaps the main one for the survival of the group and includes both the intellectual elite and the clergy. And the third feature is the destruction and dispersal of the 'popular' basis of the protected group. In particular, those who stand at the origins of traditions. And these traditions include both traditions in the conduct of the economy and ethnic and folklore traditions. It is obvious that in the legal definition of genocide there is no trace of the features given by Lemkin. It is also necessary to recognise that Lemkin unambiguously pointed to the presence of genocidal policy on the part of the aggressor.

This understanding, by the way, points to one of the most significant features, in my opinion. Namely, that genocidal policy is always connected with the elimination from the human community of those of its representatives who may violate the course of circumstances or the desired organisation of society desired by the author of such a policy. This circumstance, by the way, complicates the establishment of intent to commit genocide. After all, if it is part of a larger policy, if it is a tool, it is very difficult to claim that the perpetrators have a clearly articulated word 'genocide' in their heads. It simply disappears behind other "words" and goals.

Genocide and a disciplined society

Incidentally, this is where the link to efforts to create a disiciplinary society comes through. A prime example of such an intention, which clearly carried a very dangerous charge, was the events that took place during the COVID pandemic. In many countries, restrictions were imposed that cut out of public life many people who found themselves in opposition to such restrictions and measures.

Of course, I can be reproached for too free and broad interpretation of the content of the concept of genocide. But who is to say that the concept formulated by the Rome Statute is an impeccable one that takes into account all the signs of such an intention? On the contrary, the Rome Statute does not take into account many signs of genocide.

In fact, as F. Sandes notes in his book "East-West Street", the formation of the international legal concept of genocide was precisely on the edge of the "struggle" of conceptual approaches in jurisprudence. One of these approaches gravitated towards the right of a sovereign state to dispose of

the lives and destinies of its citizens or subjects; the other, on the contrary, introduced the idea of individual protection of human rights. A protection that extended also to the actions of the state. The main objections to Lemkin's notion of genocide were precisely due to the fact that the subject of the attack was a group of potential victims, the boundaries of which were undefined [12].

All this points to the uncertainty of the concept of genocide. More precisely, its "compromise" definition, which does not allow the authors of aggressive colonial policies to be prosecuted.

Even more should be said. Genocide should be defined precisely and completely. In my opinion, genocide can exist not only in relation to groups limited by the criteria (race, religion, ethnicity, nationality) that are currently contained in the Rome Statute. Genocide can occur and be realised in relation to groups united by a wide variety of criteria. It is this approach that is most consistent with the protection of the rights of the individual and the principle of individual responsibility.

History knows many cases of genocidal attacks on members of a group united by other criteria. For example, cultural, political, etc. Why such groups will not be protected, but racial or ethnic groups will be? Say, the Nazis during World War II were not very interested in Jews who found themselves in the United States or South American countries. So they didn't exterminate all Jews, but only those who "got in their way". Does this mean that there is no genocide? Or on the contrary, there are examples when representatives of the opposing political force were slaughtered by the thousands. Why would such a group be denied a defence? After all, they were not killed because it is necessary to kill this particular person as a bearer of their individual qualities! They killed because this person (and in principle it does not matter what kind of person he is) belonged to a different political force.

I believe that King Herod's slaughter of the infants in Bethlehem is a classic example of genocide that does not fall at all within the modern concept of genocide in international law. We have a group that includes male infants born in a particular place and that has been destroyed all as such. But this episode would not be recognised as genocide based on the definition of genocide given in the Rome Statute. After all, this group is not united by any of the features that are considered by the legislator as indicating the presence of genocidal intent. So, such a group does not deserve international legal protection. Of course, it can claim protection within the framework of the crime against humanity, but the difference in intent is obvious, and it indicates a greater degree of public danger to the

one who targets people on a certain basis. Using this angle of consideration of the crime of genocide, in my opinion, the question about the reasons for the legislator's choice of such a limited range of features of an act that can be recognised as genocide arises quite logically and is very acute.

The main attributes of an international criminal law should be humanity, comprehensibility and justice. Justice as a moral and ethical category. It is obvious that it is not right to kill a person for his political views, it is not right to kill a person for what cultural traditions he follows and what music he listens to. It is understandable and just. The task of jurisprudence in this part is to follow the obvious and absolutely clear to the common sense and to set legal markers that will allow to detect the presence of intent to destroy "no matter what kind of person just because he is a member of a certain group". The French realised this and wrote it down in their Criminal Code.

Given the current wording of the concept of genocide, it has been largely reduced to a war crime, the peculiarity of which is an increased degree of public danger. The boundary between genocide and a war crime or a crime against humanity is solely a field of interpretation and discussion. This is not a suitable field for defining genocide as an international criminal offence.

A significant number of scholars and jurists argue that it is a difficult task to identify and justify genocide. In my opinion, the main difficulty is not so much with the factual circumstances, but with interpretations. After all, in the majority of cases in which a suspicion of genocide is traced, there are no doubts about the commission of grave crimes, which are of a mass nature and directed against large communities of people. As a rule, difficulties arise where it is necessary to establish the existence of intent to destroy a protected group. But this "difficulty" is not a particular point. There has not been a time, from the very beginning of the formulation of this offence, that proving genocide has not been difficult. This, in turn, may point not only and not so much to the difficulty of proof as to the vagueness of the concept of genocide. In other words, legal scholars have not agreed on what is meant by genocide. And this, as I pointed out above, turns out to be a rather surprising feature. It is a surprising situation when there is an act and it is obvious to everyone, but it is impossible to formulate its concept. This is due, in my deep conviction, to the unwillingness to define genocide clearly and precisely. Thus, the 'problem' of genocide is largely artificial.

Much is explained by modern aggressive geopolitics, which are being realised in the world today. Today, war and genocide have become tools to achieve political goals. Wars of independence and wars of liberation

are a thing of the past. In today's world, where the number of states with unlimited access to weapons can be counted on the fingers, no one else, except these very states, can wage war. In fact, only armed states can defend themselves or attack. All others either enter into agreements and alliances in which they become part of this "division" of the world, or find themselves defenceless. All this accounts for the "reluctance" to formulate the notion of genocide in such a way that it is equally applicable to any actor in international relations. Another side of the coin was that its formulation, as mentioned above, turned out to be very specific. The authors of the concept, and subsequently the judges of international courts, proceeded from the assumption that this intent must ultimately be obvious and publicly manifested. But the realities of the present time indicate that is far from being necessary to express in public space a call for genocide. Especially given the fact that this term, as we pointed out above, representatives of some countries avoid using it. And in this avoidance they are consistent. In the ideological narratives of these states, the word 'genocide' is replaced by another word (liberation, denazification, etc.).

Since the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute, the situation of genocide has changed significantly. The acts that have been recognised as genocide also indicate that today this crime is being perpetrated using other means and methods. At the time of the most heated discussions on the notion of genocide, no one considered the possibility of realising genocidal intent through the use of weapons of mass destruction, mass media broadcasting narratives of total terror and intimidation, systematic devaluation of culture and traditions. The modern world has a completely different arsenal of means to commit this crime. Today genocide may well be realised latently, and its consequence is not the physical destruction of the group's representatives, but their "de-identification" (and thus the destruction of the group). They will consciously or under compulsion "move" to other groups in order to stop being a target for violence of threats and attacks. Incidentally, this has happened before, when Jews during World War II hid their origins. Their ethnicity became their secret or curse. In this connection, by the way, distinguishing so-called "ethnic cleansings" from genocide and not recognising them as acts of genocide looks strained, artificial and even false.

All these facts are evidence that genocide has acquired all the features of not just a legal concept, but a phenomenon. That is, something more than the result of the efforts of lawyers-legislators. This phenomenon needs to be studied, and given that it carries a huge and dangerous aggressive charge, of course it must be absolutely criminalised.

Modernity demonstrates the real possibility of acts of genocide, the purpose of which is the destruction of a protected group. This is especially true for countries that have a significant number of weapons of mass destruction, including nuclear weapons. Such weapons do not always have a specifically defined victim. Such weapons destroy a large predetermined number of people, and for others they create an atmosphere of fear and hopelessness.

Under such circumstances, there is a logical question of revising the standards for defining genocide and revising the description of this offence. It is necessary, based on the realities of the modern world, to approach the qualification of this crime with those measures that are more appropriate to the nature and intensity of the acts of aggression used and the goals they pursue.

Apart from the fact that the forms of realisation of genocidal intent have changed, there are also gaps in the definition of genocide. They lie on the plane of defining genocide not by pointing to its inherent attributes, but by listing other types of crimes that may be genocide if [...] In fact, this is an example of the absence of a definition. More precisely, it is an example of how a definition is given through a list of attributes of other phenomena rather than the one being defined.

Decisions in genocide proceedings are made on the basis of reflection and evaluation, not so much of what happened, but of how it was perceived by both the perpetrator and those against whom it was committed. This does not seem to be a very reliable way of doing things. After all, the victim perceives the situation quite differently from the perpetrator, and the perpetrator will never claim to have committed genocide for defence reasons.

It turns out that the principle of legal certainty does not work in genocide proceedings. This is probably why proving genocide is difficult. The definition of this act has no clear independent features, so it is impossible to qualify this offence in a strictly formal sense. It can, as stated above, be identified through interpretations and reactions to the needs of the current political moment. But in this case the question arises about the existence of the concept of genocide. The concept must contain a definition, and we do not observe such a definition.

At the same time, this does not mean that genocide does not exist. Raphael Lemkin has defined genocide very precisely and comprehensively, noting that the physical destruction of a protected group is not the only defining element of genocide. Groups are numerous and genocidal intent in terms of destroying a group often fails to achieve the result. Trial proceedings which have determined that genocide may also involve a part of a group

have certainly demonstrated that quantification in genocidal offences is of evaluative value and cannot be regarded as a decisive criterion. For example, in Prosecutor v. RadislavKrstic – Appeals Chamber – Judgment – IT-98-33 (2004) ICTY 7 "considered the issue of part of the group" and stated that the part which is the object of the offence must be significant enough to affect the group as a whole. Decision paragraph 12 states: "The intent requirement of genocide under Art. 4 of the Statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the protected group. The determination of when the targeted part is substantial enough to meet this requirement may involve a number of considerations. The numeric size of the targeted part of the group is the necessary and important starting point, though not in all cases the ending point of the inquiry. The number of individuals targeted should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group. In addition to the numeric size of the targeted portion, its prominence within the group can be a useful consideration. If a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Art. 4" [13].

As can be seen, the Court's conclusions are replete with value judgements that a part of the group should be "significant", "significant", "important", "emblematic/symbolic" for the group as a whole. Of course, this approach equally allows any part of the group to be considered both significant and important and not-significant and unimportant.

Lemkin's main emphasis was on habitat destruction for the protected group. And this should be the point of departure for the normative definition of the offence of genocide. He noted that genocide is primarily a co-ordinated plan of various actions aimed at destroying the essential bases of life of national groups with the aim of destroying them. The purpose of such a plan would actually be the destruction of the protected group's environment, which may consist of the eradication of the political and social institutions, culture, language, national feelings, religion and economic existence of national groups, as well as the destruction of the personal security, liberty, health, dignity and even life of persons belonging to such groups.

It is these signs that are decisive, since killings, even mass killings, especially in war, cannot unequivocally indicate the existence of genocide. But a coordinated plan, coming from authoritative and powerful, resource-rich sources, is unequivocal evidence of genocide.

The most important indicators that point to the existence of the crime of genocide are, first and foremost, the context, which should include not

only current but also preceding events and acts, the roots and unfolding of a certain situation over time, the historical background, the resources involved and the efforts expended or to be expended in the future, etc. By taking into account the factors and events listed above, it is possible to build an objective picture of the results achieved by all these efforts. The factual situation and the practice of the International Criminal Court and the tribunals that have tried and are still trying cases in which genocide is suspected indicate that the statutory definition of genocide does not work. To be more precise, it requires constant clarification in each specific case. And it is not the actual circumstances that need clarification, but the definition of genocide. That is, its attributes. And once again: it is not the presence of signs of genocide in this or that act that is clarified, but the signs themselves. What the legislator meant by genocide is always examined. We must admit that this is a strange situation. If we draw a parallel with other crimes, we should try to imagine a judge puzzling over what is murder? And he is not puzzling over the question of whether murder was committed in this case, but over the question of what murder is in general. It is only after realising this that he can move on to the second part of the question, namely, the question of whether a murder has taken place in this case.

Besides this strangeness there is another circumstance. Since, as we have seen, the concept of genocide does not exist, but charges are brought for this offence, we are dealing with a situation that violates a fundamental, basic principle of criminal law – Nulla poena sine lege – there is no offence without the law stating so. So what can we do – there is genocide, but its definitions are not defined?

The existing definition does not allow for determining what a protected group is and who belongs to it, how to define its boundaries, is genocide physical destruction or can it take other forms? At what point is genocide considered to have been carried out? Should the entire protected group be destroyed or only a part of it? If part, which part? What criteria should be used to determine that the living conditions created were indeed designed for the total or partial physical destruction of the protected group and that the creation of such conditions was genocidal? How to establish intent to destroy a protected group, are there objective signs of such intent?

The courts and tribunals have each time clarified these questions on a case-by-case basis through interpretation. And it should be emphasised that it is not a question of the presence or absence of certain signs in the act and the possibility of qualifying the actions on the grounds of genocide! We are talking about the possibility to identify the signs of genocide that are absent in the normative definition of this crime. That is, to identify

something additional, which will indicate the presence of genocide. But if this is so, then we still know what genocide is and where is the boundary beyond which it is certainly present.

This means that there is currently no definition of genocide. Genocide is not defined in terms of content and essence, but only as a hint that such a phenomenon exists and that other crimes may conceal genocide.

Conclusions

But the concept of "genocide" is ultimately a legal concept. Or rather, it should be legal. This view arises from the thought of whether the killing of 100,000,000 people of different ethnicities is morally different from the killing of 100,000,000 people of the same ethnicity? To accept the idea of genocide is to accept the proposition that killing "in whole or in part" a group of people united by a single criterion is somehow worse than killing an equivalent number of random people. Why? Because their language, culture and heritage die with them, and such eradication is deeply offensive to liberal humanism (and to humanity as a whole). But doesn't liberalism affirm, among other things, human rights? But if killing groups is worse than killing equal numbers of individuals, then human rights are in some part denied, or more accurately judged somewhat 'lower' than the right of an ethnicity to exist.

Obviously, that is not the point. Obviously, it is a matter of assessing the severity of the intent to commit the destruction of a group of people as such. And since we are talking about assessment, it is very likely to indicate that we have moved to the plane of judgement and then to condemnation. This is what I mean by pointing out that the term genocide is primarily a legal term.

If it is primarily a legal term, it needs precise and exhaustive criteria that will make it possible to establish the existence of this act in the actions of a person. Otherwise, we will have a situation when we have to establish legally significant facts with the help of a non-legal term. This is always fraught with errors, inaccuracies and speculation and is particularly dangerous in criminal law.

International legal scholars have raised the issue that defining genocide as a crime against a group of people may have the opposite effect. Groups, instead of being protected by having a common identity, may begin to "hate" each other, potentially giving rise to "group" intolerance and clashes. This thesis was born along with the very idea that the crime of genocide exists. However, this argument does not seem very convincing. Firstly, because group intolerance is as much a phenomenon today as genocide itself. Secondly, the notion of the "legal" underlying any rule of law cannot be

overridden by the "risk" that the defence of such a legal may lead to negative consequences. The defence of any protected interest is capable of producing negative consequences. These consequences can be very different – from revenge to negative consequences from the fact of serving a sentence. And there are many such arguments. Therefore, when criminalising genocide, one should not "look back" at possible negative consequences in the form of "intolerance" of groups towards each other.

Today we have examples of Russia waging a war of aggression against Ukraine, in the course of which it is quite probable that genocidal intent has been established. This is all the more likely if we pay attention to the rhetoric of the Russian political elite, as well as the course of events in the occupied territories and in certain regions where hostilities have been or are being waged. An example is the city of Mariupol. In it, between February 24, 2022 and May 20, 2022, events took place that resulted in the complete destruction of the city with a population of almost 450,000 inhabitants, the killing of a large number of civilians, the destruction of civilian and critical infrastructure, the introduction of filtration procedures accompanied by torture, the deportation of children and adults, enforced disappearances, and so on. Moreover, all these events are in no way related to the military objective that was declared by the Russian political leadership at the time of the outbreak of the war. However, despite all this, many lawyers are sceptical about the possibility of qualifying these actions as genocide. And this scepticism is based on the fact that there is no legal concept of genocide today.

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Mykhailo V. Romanov
Ph.D. in Law, Associated professor
Aleksanteri Institute, Helsinki University
FI-00014, Metsätalo, Unioninkatu 40, Helsinki, Finland
e-mail: mykhailo.romanov@helsinki.fi
ORCID 0000-0001-8236-5780

Михайло Васильович Романов
кандидат юридичних наук, доцент
Інститут Алексантері, Гельсінський університет
00014, Metsätalo, Unioninkatu 40, Гельсінкі, Фінляндія
e-mail: mykhailo.romanov@helsinki.fi
ORCID 0000-0001-8236-5780

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Rule of Law in the Context of Ukraine's European Integration: Challenges and Implementation in Criminal Justice

Oleksandr Yu. Dudchenko*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: o.yu.dudchenko@nlu.edu.ua*

Abstract
The relevance of this topic arises from the challenge of ensuring the rule of law, especially in criminal justice, amid Ukraine's candidate status for membership in the European Union. The national legal doctrine still faces uncertainty about the essence of this concept and its role in practical legal relations. The purpose of the article is to ascertain whether the rule of law is a genuine principle underpinning criminal justice or rather a strategic goal pursued by law enforcement and courts in the course of reforms and alignment with European standards. This inquiry was conducted through historical-legal and comparative analyses, examination of legislative acts and their enforcement, as well as a critical review of scholarly works addressing the impact of positivist traditions on understanding the rule of law in Ukraine. The findings reveal that formally recognizing the rule of law in the Constitution and legislation is not matched by its proper implementation. Residual Soviet positivism constrains its perception to a merely declarative norm. Additionally, the lack of a clear distinction between principle and goal hinders effective application in criminal proceedings. Based on the study, to enhance the rule of law in criminal justice, it is proposed to overcome legal formalism, update educational programs, and strengthen the role of natural law in legal practice. These measures will help establish a genuine foundation for the rule of law, making it an integral part of criminal justice and a key element in Ukraine's successful European integration.

Key words: *rule of law; European integration; criminal justice; principles of law; human rights; legal reform; legal positivism; natural law; legal certainty.*

Верховенство права в контексті євроінтеграції України: виклики та імплементація у кримінальному судочинстві

Олександр Юрійович Дудченко*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: o.yu.dudchenko@nlu.edu.ua*

Анотація
Актуальність теми зумовлена проблемою забезпечення верховенства права, особливо в кримінальному судочинстві в контексті набуття Україною статусу кандидата на членство в Європейському Союзі. Вітчизняна правова доктрина досі зіштовхується з невизначеністю щодо сутності цього поняття та його ролі в реальних правовідносинах. Мета статті полягає в тому, щоб дослідити, чи є верховенство права справжнім принципом, що лежить в основі кримінальної юстиції, чи воно залишається радше стратегічною метою, до якої прагнуть органи правопорядку та суди у процесі реформ і зближення з європейськими стандартами. Досягнення окресленої мети стало можливим завдяки використанню історико-правового і порівняльного аналізу, розгляду нормативних актів та практики їх реалізації, а також критичного огляду наукової літератури щодо впливу традицій позитивістського підходу на розуміння верховенства права в Україні. Отримані результати свідчать про те, що формальне визнання верховенства права в Конституції та законодавстві не супроводжується належним утіленням у правозастосуванні. Залишковий вплив радянського позитивізму проявляється в обмеженому сприйнятті верховенства права як суто декларативної норми. Крім того, відсутність чіткого розмежування між принципом і метою ускладнює ефективне використання цієї цінності в кримінальному судочинстві. За результатами проведеного дослідження з метою поглибленого впровадження верховенства права в кримінальну юстицію пропонується подолання правового формалізму, оновлення освітніх програм і посилення ролі природного права у правозастосуванні. Зазначені заходи створять підґрунтя для формування реального фундаменту верховенства права, що має стати невід'ємною частиною практики органів кримінальної юстиції та запорукою успішної євроінтеграції України.

Ключові слова: *верховенство права; європейська інтеграція; кримінальне правосуддя; принципи права; права людини; правова реформа; юридичний позитивізм; природне право; юридична визначеність.*

Introduction

Discussions about legal principles, particularly in the intersection of law and morality, have a long intellectual tradition tracing back to antiquity. Classical thinkers such as Aristotle, in works like Nicomachean Ethics, explored ideas that can be interpreted today as principles of justice, morality, and law [1]. For Aristotle, notions such as "righteousness" and "virtue" served as foundational pillars of an ethical and just society. Likewise, Roman law laid the groundwork for what would later become the principles of modern legal systems. Roman jurists formulated doctrines that deeply influenced the development of both private and public law in Europe, including ideas of justice, legality, and equality before the law [2].

The medieval period and Enlightenment further refined and systematized these ideas. The writings of John Locke, Jean-Jacques Rousseau, and Immanuel Kant were particularly instrumental in shaping the modern conception of legal principles – especially natural rights, popular sovereignty, the separation of powers, and individual liberty.

However, the term "principle" gained broader usage within legal science with the advent of modern jurisprudence. Significant contributions to the development and classification of legal principles were made by theorists such as Hans Kelsen [3], Léon Duguit [4], & Roscoe Pound [5]. Their works helped define principles as foundational doctrines upon which legal norms are both created and applied.

In the contemporary era, amid globalization, technological advancement, and growing societal awareness, legal principles are acquiring new dimensions. Challenges such as digitalization, environmental change, human rights protection, and the expansion of international law necessitate a rethinking – and, arguably, a recalibration – of traditional legal principles. These principles must now serve not only as the foundation for legislative drafting but also as clear interpretive guidelines adaptable to shifting social realities. They are expected to shape legal systems that accommodate cultural diversity while ensuring protection of fundamental human rights and freedoms. This interpretive function is particularly crucial on Ukraine's path toward European integration.

A key instrument in this process is the Treaty of Lisbon [6], which amended the Treaty on European Union and the Treaty establishing the European Community, introducing an explicit value framework for member states. According to this framework, the Union is founded on respect for human dignity, freedom, democracy, equality, the rule of law, and human rights, including minority rights. These values are shared among all member states within a society characterized by pluralism, non-discrimination,

tolerance, justice, solidarity, and gender equality (Art. 3). Additionally, the treaty stipulates that any European state seeking membership must not only respect but also commit to upholding the values enshrined in Art. 2 of the Consolidated Treaty on the European Union [7]. Consequently, the principles of democracy and the rule of law are expected to guide both the internal and external actions of the EU. Through the constitutionalization of shared values, EU political elites sought to unite the peoples of Europe, instill a sense of belonging, and legitimize the Union's purpose, both internally and in global affairs [8].

Following its formal recognition as a candidate for EU membership on June 23, 2022, Ukraine became officially bound to adhere to the core values of the European Union set out in Article 2 of the Consolidated Treaty. Among these, the rule of law occupies a central position as the most vital political ideal of our time. Yet, considerable confusion remains regarding what exactly "the rule of law" entails and how it functions in practice [9]. The experience of the EU's fifth enlargement round revealed that, despite tangible progress in some states, transformation in the sphere of the rule of law proved to be the most complex and protracted aspect of integration – underscoring its centrality as an early-stage accession priority [10].

In light of the above, this article aims to provide a comprehensive analysis of the rule of law in the context of Ukraine's European integration and to examine its actual impact on the criminal justice system. The research seeks to identify the characteristics that influence the practical implementation of this principle within Ukraine's legal framework. To accomplish this, the study explores the evolution of the notion of "principle" in legal science, assesses its contemporary significance, and evaluates the role of EU values – particularly those set forth in the Lisbon Treaty – in guiding Ukraine's legal transformation. Special attention is given to the difficulties Ukraine faces in adapting the rule of law to its domestic criminal justice system and to the risks stemming from the divergence between the formal recognition of this principle and its real-world application. The analysis of legal provisions and enforcement mechanisms is aimed at outlining the necessary steps for enhancing the institutional capacity of the state in ensuring the rule of law. Lastly, the study addresses the crucial question of harmonizing national legal traditions with overarching European standards, striking a balance between regulatory formalism and the effective safeguarding of human rights and freedoms.

Materials and Methods

This study on the rule of law in the context of Ukraine's European integration – and its implementation within the criminal justice system –

adopts a comprehensive methodological framework combining various approaches to legal analysis. The chosen methodology reflects the need to obtain objective scholarly insights while aligning with current trends in legal scholarship.

At the initial stage, a theoretical and legal analysis was conducted to explore the conceptual essence and historical evolution of the rule of law across different legal traditions. Particular attention was paid to the development of this concept within the philosophical-legal doctrines of Aristotle, Locke, Rousseau, Kant, Kelsen, Duguit, and other thinkers whose ideas have significantly shaped contemporary understandings of law. The study examined dominant doctrinal positions that interpret the rule of law either as a principle, a legal value, or a normative goal of the legal system. Special emphasis was placed on the influence of both legal positivism and natural law theory in shaping interpretations of the rule of law within European and Ukrainian legal traditions.

The next phase involved a comparative legal analysis, aimed at identifying similarities and differences in how the rule of law has been implemented in various legal systems. The focus here was on examining the experiences of European Union member states that underwent legal transformations in response to EU standards. Of particular interest were the post-socialist countries of Central and Eastern Europe – namely Poland, the Czech Republic, and Romania – whose legal traditions resemble Ukraine's and which also had to confront and overcome the legacy of Soviet-style legal positivism.

The study also incorporated a normative legal analysis of both international and domestic legal instruments governing the rule of law. This included provisions from the Consolidated Treaty on European Union, the Treaty of Lisbon, and key European standards related to judicial procedures and human rights protection. At the national level, the analysis examined relevant norms from the Constitution of Ukraine, the Criminal Procedure Code of Ukraine, laws on the judiciary and judicial status, and various ministerial acts regulating the operations of criminal justice institutions.

Empirical data reflecting the actual state of the rule of law in Ukraine – and its perception on the international stage – were also utilized. These sources included official reports from the European Commission, rankings from the World Justice Project's Rule of Law Index, and analytical findings published by the Venice Commission. Analysis of these data sets made it possible to identify persistent problems hindering the effective realization of the rule of law within Ukraine's criminal justice system.

Given the significance of public legal consciousness in shaping the practical implementation of the rule of law, the study also employed a socio-legal approach. It examined prevailing public attitudes toward the judiciary and law enforcement, including levels of institutional trust, which substantially influence how the rule of law operates in practice. Relevant sociological surveys were used to assess public perceptions of the fairness and impartiality of judicial decisions.

The integrated approach adopted in this study thus enabled an examination not only of the legal and normative framework, but also of how the rule of law functions in practice – through the lens of enforcement, institutional behavior, and public legitimacy. All findings were synthesized with reference to the interplay between doctrinal, legal, and social factors, allowing for conclusions regarding the actual position of the rule of law within Ukraine's criminal justice system and the identification of pathways for its further development.

Results and Discussion

European Integration Challenges in Interpreting the Rule of Law

Prospective EU member states are required to meet a series of accession criteria. Over the past decades, however, the enlargement process has undergone significant transformation in response to historical shifts. Among the newer accession benchmarks, democracy and human rights have assumed a prominent position within EU policy-making and conditionality frameworks [11, p. III]. And yet, in the specific context of Ukraine's accession efforts, the imperative to strengthen the rule of law – arguably the cornerstone of the entire EU legal order – has not always received sufficient emphasis.

Nevertheless, the structural challenges and urgent need for reform in this domain are evident in empirical data. According to the World Justice Project (WJP), Ukraine ranked 88th out of 142 countries in the 2024 global Rule of Law Index [12]. This placement illustrates the scale of the difficulties Ukraine faces in fortifying its legal system and aligning with European standards. Simultaneously, it highlights the pressing need for coordinated efforts, both domestically and from the international community, to support Ukraine's rule of law reforms.

The WJP's analytical framework evaluates the rule of law through eight core factors, each addressing an essential component of a functioning legal system. These include:

– Constraints on Government Powers – assessing the extent to which state power is bound by law, including the roles of constitutional oversight and independent media (Ukraine scored 0.46);

- Absence of Corruption – examining transparency and integrity across branches of power and in law enforcement and the military (score: 0.34);
- Open Government – evaluating accessibility of public information and civic participation in governance (score: 0.56);
- Fundamental Rights – measuring adherence to human rights as articulated in the Universal Declaration of Human Rights (score: 0.59);
- Order and Security – gauging the effectiveness of the state in ensuring personal and property security (score: 0.62);
- Regulatory Enforcement – analyzing the fairness and effectiveness of law implementation (score: 0.43);
- Civil Justice – assessing access to justice, impartiality, and the efficiency of civil dispute resolution (score: 0.53);
- Criminal Justice – focusing on institutional capacity to prosecute crimes, ensure fair trials, and uphold due process (Ukraine's score here is particularly low: 0.37) [12].

While some commentators caution that such indices prioritize institutional effectiveness over citizen-level perceptions of justice [13], the WJP methodology provides a robust, multidimensional overview of systemic strengths and deficits. Its findings are critical for any informed discussion on Ukraine's integration readiness.

It is important to note that, on the one hand, Ukraine – as a sovereign state – has the prerogative to develop its own vision of the rule of law and establish internal criteria for its evaluation. Yet one must ask: why has Ukraine not yet articulated such a domestic conception? Although laws proclaim the rule of law as a principle derived from natural law, in practice it is often treated as a positivist norm. More fundamentally, Ukraine has voluntarily chosen the European path – a path that entails clear obligations, including respect for the values codified in Art. 2 of the Consolidated Treaty on European Union, notably the rule of law in its natural law conception.

Indeed, there exist multiple frameworks for evaluating the rule of law. The Venice Commission, for instance, identifies six core elements, while the WJP recognizes eight, each with further subcomponents. Further challenges emerge from inconsistent reporting methodologies and weak monitoring mechanisms. As Laurent Pech observes, the coherence and efficacy of EU rule-of-law tools are often undermined by inadequate accountability and oversight structures [14, pp. 10-11].

This is a valid critique – and worth extending. Even within the EU, member states diverge in how they interpret and implement the rule of law. Some,

particularly those with strong positivist traditions, do not fully embrace its natural law dimensions. Yet when viewed collectively, the EU affirms a shared understanding of the rule of law rooted in inherent values and principles rather than formal compliance alone.

Thus, while multiple assessment criteria exist, the underlying normative vision remains largely unified.

Implementation Challenges in Criminal Justice

For a considerable period, discussions on the rule of law have disproportionately focused on the judiciary. This emphasis is understandable, given that the most acute rule-of-law crises within the EU often relate to member states' backsliding on judicial independence [15, pp. 3-4]. Yet the concept of the rule of law cannot be reduced solely to the state of the judiciary. The principle must extend to the entire apparatus of state authority. In the Ukrainian context – especially in light of European integration processes – it is the criminal justice system that stands at the epicenter of rule-of-law discourse and demands critical scrutiny.

The eighth factor of the World Justice Project's Rule of Law Index, which directly evaluates the criminal justice system, is predicated on the notion that effective criminal justice is a foundational prerequisite for the rule of law. This includes not only the prosecution and punishment of criminal offenses but also the restoration of justice and the protection of the rights of victims. Alarmingly, among all evaluated components, Ukraine's score in this area remains one of the lowest, underscoring the urgent need for structural reform.

Any analysis of Ukraine's criminal justice system must adopt a comprehensive approach – one that goes beyond individual institutions and assesses their interaction as a whole. This includes the National Police, Security Service of Ukraine, State Bureau of Investigation, National Anti-Corruption Bureau, Bureau of Economic Security, as well as defense lawyers, the prosecutorial service, the judiciary, and penal institutions. Evaluation must extend beyond the formal existence of norms to include their practical application, consistency, and coherence with European standards.

Therefore, aligning Ukraine's criminal justice institutions with European rule-of-law standards requires an integrative methodology – one that bridges legal theory, institutional analysis, and empirical review of reform outcomes. It is not enough to adopt EU-compliant legislation; the rule of law must be internalized by the actors operating within the system and reflected in routine legal practice. Only through such an interdisciplinary and outcome-oriented approach can Ukraine move toward substantive convergence with the European legal space.

Deficit in Legal Understanding: International and Domestic Dimensions

Efforts to entrench the rule of law in Ukraine continue to encounter a host of conceptual and practical challenges – many of which have been observed not only by domestic scholars but also by European legal experts. Ana Knežević Bojović and Vesna Ćorić identify several systemic obstacles, including:

(a) conceptual ambiguity – uncertainty about what precisely the rule of law entails and where its boundaries lie;
(b) deficiencies in monitoring and accountability – EU mechanisms for assessing compliance often lack methodological rigor;
(c) imbalance in incentives and sanctions – reward and penalty systems meant to promote adherence are sometimes inconsistently applied;
(d) incoherence in policy and tools – there is a noticeable disconnect between the EU's internal and external approaches to promoting the rule of law [16].

On the domestic front, Serhii Holovatyi has highlighted four specific impediments undermining the operationalization of the rule of law in Ukraine:

(a) the current state of national legislation;
(b) the prevailing official legal doctrine;
(c) the quality of Ukrainian translations of European Court of Human Rights judgments; and
(d) the limitations of the contemporary legal academic discourse [17, p. 46].

It is worth emphasizing that, despite its status as a foundational concept of international legal order, the rule of law has in recent years become increasingly contested and fragmented in both theory and application [18, p. 3].

In the Ukrainian context, while the principle of the rule of law is formally enshrined in all key normative acts governing the criminal justice system – including the Constitution and the Criminal Procedure Code – none of these documents offers a clear, operational definition. The result is a legal landscape in which the rule of law is proclaimed as a guiding principle yet remains doctrinally and practically underdeveloped. This gap contributes to a lack of uniformity in interpretation and enforcement, often leading to confusion or even neglect of the principle in actual practice.

Some attempts at clarification have been made. Article 8 of the Criminal Procedure Code states that criminal proceedings must adhere to the rule

of law, which it defines as the recognition of the individual, their rights and freedoms, as the highest social value that determines the content and direction of state activity. However, this approach risks narrowing the principle to a vague affirmation of human rights, thereby neglecting its structural and institutional dimensions.

A similar issue emerges in the Constitutional Court of Ukraine's interpretation of Art. 8 of the Constitution. In its decision No. 15-рп/2004, the Court – drawing on a legal positivist methodology – described the rule of law as "the supremacy of law in society". While rhetorically appealing, this formulation is conceptually limited. It fails to capture the natural law underpinnings of the rule of law and instead collapses the principle into a general endorsement of legality – a problematic reduction, especially given the rule of law's function as a normative constraint on state authority [19, p. 40].

Notably, this ambiguity is not unique to Ukraine. International legal instruments – including those of the European Union – often invoke the rule of law without defining it in precise terms. Scholars have argued that the concept is inherently dynamic and, as such, resists codification in a single definition. Rather, it functions as a "living principle" embedded in constitutional traditions, judicial interpretations, and evolving standards of democratic governance [10, p. 2].

This raises a broader philosophical question: must the rule of law be strictly defined at all? In Ukraine, as elsewhere, the English idiom "rule of law" has been variously translated as *«верховенство права», «правовладдя», or «панування права»,* among other formulations. The proliferation of competing terms has sparked considerable debate. But does nomenclature determine value? One might well ask: does a painting's name define its cultural or artistic significance? Whether we call it Mona Lisa, La Gioconda, or Portrait of Lisa Gherardini, its substance remains unchanged. Why then should terminological differences undermine the normative power of the rule of law?

To its credit, the Venice Commission has made considerable strides in clarifying the concept. At its 86th plenary session in 2011, the Commission adopted its landmark Report on the Rule of Law, which acknowledged the interpretive difficulties surrounding the principle while affirming its foundational role in safeguarding rights, democracy, and legal order across Council of Europe member states. The report identified six key elements of the rule of law:

(a) legality, including transparent, accountable, and democratic lawmaking;

(b) legal certainty;
(c) prohibition of arbitrariness;
(d) access to justice before independent and impartial courts, including judicial review of administrative acts;
(e) respect for human rights; and
(f) non-discrimination and equality before the law [20].

This work was further expanded in 2016 with the adoption of the Rule of Law Checklist, developed at the 106th plenary session of the Venice Commission [21]. Designed as a practical tool for legislatures, governments, civil society actors, and international organizations, the checklist provides a nuanced and context-sensitive framework for evaluating rule-of-law compliance. Crucially, it cautions against over-formalized or mechanical application of its criteria, urging instead a holistic and flexible approach to assessment.

Theoretical and Practical Contradictions in the Understanding of the Rule of Law

Despite significant developments in the interpretation of the rule of law – both in Ukraine and internationally – deep conceptual inconsistencies remain. These divergences persist not only across legal scholarship and political discourse, but also within legislative and judicial practice. In his work "The Rule of Law Does Not Work", Serhii Holovatyi offers a detailed critique of Ukrainian approaches to this concept, arguing that they are still burdened by the remnants of Soviet-era legal positivism. To overcome this barrier, he calls for a return to first principles, emphasizing that meaningful legal education in Ukraine cannot continue without a thorough engagement with A.V. Dicey's classical work on the rule of law. Without a grounding in Dicey's conceptual framework, he suggests, Ukrainian legal science and judicial practice will remain structurally incapable of realizing the rule of law as a living norm [22, pp. 163-164].

This view is both compelling and timely. Indeed, while Dicey's doctrine was forged in the context of British constitutionalism, its influence has permeated modern European legal thought and underlies one of the Union's fundamental values. Yet there remains a blind spot in Ukrainian legal discourse – one that even proponents of natural law seem to overlook: the question of what kind of category the rule of law actually is. Is it a value? A doctrine? A principle? An idiom? Or something else entirely?

In Ukraine, scholarly and legislative attention has overwhelmingly focused on attempts to define the rule of law. Paradoxically, this is something the broader European legal community has largely refrained from doing. Many academic works highlight the conceptual ambiguity of the term,

noting divergent interpretations among key institutions. For example, in its decision No. 15-рп/2004, the Constitutional Court of Ukraine offered a formal definition. Meanwhile, the European Court of Human Rights has consistently avoided committing to a single authoritative interpretation, favoring instead a case-by-case elaboration. The Venice Commission, although refraining from issuing a definitive definition in its 2011 Report, has made substantial contributions to clarifying the conceptual landscape.

But perhaps the more fundamental issue lies not in definitional ambiguity, but in categorical confusion. Since the Ukrainian Constitution explicitly designates the rule of law as a principle, legal scholars often treat it exclusively as such – without exploring whether it might also function as a value, an idea, or even a constitutional doctrine. This formal classification, while legally binding, should not preclude deeper theoretical inquiry.

What, after all, is a principle? In its broadest sense, a principle is a foundational idea – a normative compass that guides systems of knowledge, conduct, or governance. In legal science, principles serve as structural anchors: they direct interpretation, shape institutional behavior, and set normative baselines. In this respect, they can act both as filters – standards for evaluating the legitimacy of laws – and as conduits, bridging the abstract with the practical.

Yet can we truly say that the rule of law in Ukraine functions in this way? Is it the starting point for every procedural decision made by investigators, prosecutors, and judges? Viktor Nazarov has observed that, in criminal proceedings, the principle of the rule of law remains largely unrecognized, uninternalized, and unused in the day-to-day work of investigative authorities [23, p. 137]. This diagnosis, though stark, captures the disjunction between legal aspiration and institutional reality.

One particularly telling symptom of this conceptual deficit is the recurring tendency to juxtapose the rule of law with the principle of legality, as though they were commensurable. This comparison – which is common in academic and legislative texts – equates the rule of law with one of its own subcomponents. It places it on the same level as more technical procedural guarantees (e.g. the requirement to record court hearings or specify the language of proceedings). The result is a flattening of the conceptual hierarchy: a failure to recognize that legality is but one element within a much broader and richer framework.

The Venice Commission, in its 2011 Report, explicitly stated that legality is one of several constituent elements of the rule of law. In this sense, to compare the two as equals is akin to comparing a single brushstroke to an entire painting. The rule of law is the composite picture; legality, one of the

pigments. As things stand, Ukraine treats the rule of law more as a goal to be reached than as a foundation from which to begin.

Interestingly, concerns about conflating the rule of law with ordinary legal principles were raised in European legal discourse long before the Venice Commission's formal intervention. Already in 2002, Päivi Leino insightfully noted that the rule of law should not be seen as an isolated principle, but as a "umbrella principle" – a normative structure encompassing other foundational norms [29].

And yet, the integrative approach to interpretation – prevalent in Ukraine – does not appear to engage with the categorical status of the rule of law. Under this approach, scholars attempt to synthesize the terms law and rule (or supremacy) into a single interpretive framework. But they often stop short of questioning the designation of the rule of law as a "principle", even when the logic of their own analysis points to a broader conceptual function [30, p. 28].

Conclusion

In my view, the core problem lies in how the rule of law is perceived – not as a foundation from which the criminal justice system operates, but as a distant goal toward which it aspires. This misperception has two primary roots. First is formalism, or a kind of normative templating, whereby laws are drafted according to entrenched formulas that reflexively include a list of "general provisions" and "principles" – not necessarily because these are substantively integrated into the legal order, but simply because that's how it's always done. Principles appear in the law not as anchors of legal reasoning, but as ornamental prefatory clauses.

Second, and more profoundly, is the enduring influence of Soviet legal positivism on Ukraine's legal science. Within this framework, once something is codified – once the law declares that the rule of law is a principle – then that declaration itself becomes the starting and ending point for scholarly interpretation. The principle is treated as such, but rarely examined as such.

A review of contemporary academic literature reveals a consistent pattern. Most scholarly works address either the practical challenges of implementing the rule of law in particular legal fields, or the urgent need to define the term itself – typically presenting it as a fundamental principle upon which the legal system should be built. These studies often conclude that Ukraine lacks meaningful implementation of the rule of law, and their definitional efforts, while well-intentioned, tend to narrow the conceptual space rather than expand it. Scholars are united by a shared desire for the rule of law to "function" effectively. Yet there is comparatively little attention

given to the methodological precondition for that functioning: namely, the creation of the rule of law as a lived and institutionalized value.

Over the more than thirty years since Ukraine gained independence, legal discourse has largely bypassed this formative dimension. What is needed is not only the identification of existing gaps, but the development of a strategic framework – a legal and institutional roadmap – for cultivating the rule of law as a foundational ideal. Such a strategy would need to encompass legislative reform, the strengthening of judicial independence, and, crucially, the cultivation of legal consciousness among both legal professionals and the general public.

The debate on the rule of law in Ukraine must therefore expand its analytical horizon. It must move beyond positivist legacies and embrace the natural law tradition at the heart of European legal culture. More importantly, the focus must shift – from defining the rule of law, or lamenting its absence, to laying the groundwork for its sustained existence. Without such a foundation, efforts to "construct a skyscraper" of justice, democracy, and accountability will remain structurally unsound – no matter how polished the legal facade.

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Oleksandr Yu. Dudchenko
Ph.D. in Law, Associate Professor
Associate Professor of the Department of Criminal Procedure
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: o.yu.dudchenko@nlu.edu.ua
ORCID 0000-0002-4733-2139

Олександр Юрійович Дудченко
кандидат юридичних наук, доцент
доцент кафедри кримінального процесу
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: o.yu.dudchenko@nlu.edu.ua
ORCID 0000-0002-4733-2139

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Legal Integration of Ukraine into a United Europe and its Impact on the Legal Culture of the Legislator

Victoria S. Lomaka*
Yaroslav Mudryi National Law University
Kharkiv, Ukraine
**e-mail: lomviktoriya@gmail.com*

Abstract
The legal integration of Ukraine into the legal order of the European Union affects the quality of the legal culture of civil servants engaged in regulatory and interpretative legal activities, scientists and Ukrainian society as a whole. The purpose of the study is to analyze and synthesize information related to the formation of the theory and practice of adapting Ukrainian legislation to the EU acquis communautaire; determine its impact on the modernization of the legal system of Ukraine and, in particular, the legal culture of legislators. The research logic necessitated the application of a comprehensive set of approaches and methods, including: the formal-legal method, which enabled the formulation of fundamental terms, concepts, characteristics, constructions, and classifications; the historical method, which proved instrumental in analyzing the process of formation and development of Ukrainian legislative adaptation to EU law; and the comparative-legal method, employed when comparing domestic approaches with those of Eastern European countries regarding legal integration processes. The article demonstrates that EU law represents a product of regional legal integration emerging from the convergence of elements from continental and Anglo-Saxon legal families. Convergence leads to the creation of universal legal norms and the development of rules for overcoming contradictions contained in the national legislation of EU member states, while expanding the spectrum of legal sources that existed in national legal systems prior to convergence initiation. Convergence influences the modernization process not only of EU member states but also candidate countries during the implementation of European Union membership criteria. The research results confirm that adaptation of national legislation to EU law constitutes a multifactorial process that involves not merely transposition of norms but also modernization of legal culture, primarily of legislators. The research findings will contribute to enhancing the efficiency of legislative adaptation, ensuring Ukraine's legal integration into the European legal space, and forming the foundation for further legislative reforms.

Keywords: *legal integration; legislative adaptation; acquis communautaire; legal culture; legal technique; legislative process; EU; Ukraine.*

Правова інтеграція України до об'єднаної Європи та її вплив на правову культуру законодавця

Вікторія Сергіївна Ломака*
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна
**e-mail: lomviktoriya@gmail.com*

Анотація
Правова інтеграція України до правопорядку Європейського Союзу впливає на якість правової культури державних службовців, які займаються нормативно-правовою та інтерпретаційною правовою діяльністю, науковців та українського суспільства в цілому. Мета дослідження полягає у проведенні аналізу та синтезу інформації, пов'язаної з формуванням теорії та практики адаптації законодавства України до acquis communautaire ЄС; визначення його впливу на модернізацію правової системи України та, зокрема, правову культуру законодавців. Логіка дослідження вимагала застосування комплексу підходів та методів, зокрема: формально-правового методу, який дозволив сформулювати фундаментальні терміни, поняття, характеристики, конструкції та класифікації; історичного методу, який виявився важливим для аналізу процесу формування та розвитку адаптації українського законодавства до права ЄС; та порівняльно-правового методу, який застосовувався під час порівняння вітчизняних підходів з підходами країн Східної Європи щодо процесів правової інтеграції. У статті показано, що право ЄС є продуктом регіональної правової інтеграції, що виникає в результаті конвергенції елементів континентальної та англосаксонської правових сімей. Конвергенція приводить до створення універсальних правових норм та розробки правил подолання суперечностей, що містяться в національному законодавстві держав-членів ЄС, одночасно розширюючи спектр правових джерел, що існували в національних правових системах до початку конвергенції. Конвергенція впливає на процес модернізації не лише держав-членів ЄС, а й країн-кандидатів під час дотримання критеріїв членства в ЄС. Результати дослідження підтверджують, що адаптація національного законодавства до права ЄС є багатофакторним процесом, який включає не лише транспозицію норм, а й модернізацію правової культури, насамперед законодавців. Результати дослідження сприятимуть підвищенню ефективності законодавчої адаптації, забезпеченню правової інтеграції України в європейський правовий простір та формуванню основи для подальших законодавчих реформ.

Ключові слова: *правова інтеграція; адаптація законодавства; acquis communautaire; правова культура; юридична техніка; законотворчий процес; ЄС, Україна.*

Introduction

Research into the process of European integration, primarily its economic and political components, is an undisputed priority for international scholarship and, since Ukraine gained independence, for domestic academia as well. Particular attention has been devoted to the legal aspect of the integration process. This is attributable to the fact that by the 1960s, it became evident that the law created by the European Communities, both in terms of its adoption procedure and its scope of application, was rapidly approaching the characteristics of a national legal system, a feature not typical of legal systems established by international organizations [1]. Simultaneously, as noted by M.R. Madsen et al., although legal scholarship generally concurs on the importance of these processes, insufficient consensus has been achieved regarding the meaning of the term "European legal integration". A review of literature in both law and social sciences reveals that this term encompasses a broad spectrum of research subjects, ranging from the analysis of the EU's institutional system and its competence to the influence of the European Union's legal order and its law-making on the development of national legal systems of member states, as well as candidate countries. The situation is further complicated by the fact that European legal integration largely remains a political process, wherein the distinction between scientific analysis and the political agenda of European integration is not particularly clear [2, p. 15-20; 3].

The complexity of identifying the phenomenon of European legal integration is also linked to the fact that although the EU is not a state in its traditional sense [4; 5], a united Europe can be conceptualized, according to J. Strayer, as a modern interpretation of a "law-state" – a political order constructed through the gradual expansion of its judicial institutions' influence on the development of the EU legal order [6, p. 61]. Similar assessments can be found in the works of other authors (A.M. Burley, W. Mattli [7], D.S. Martinsen [8], A.S. Sweet, T.L. Brunell [9], D. Wincott [10]). In this context, it is important to remember that the European Union is building its law-state not on a tabula rasa, but within an institutional space where national legal systems, belonging to various legal families, had until recently successfully functioned [11, p. 358; 12]. A key role in this process has been assigned to the Court of Justice of the European Communities, which, at a doctrinal level, substantiated the existence of the principles of supremacy and direct effect of EU law, references to which are absent in the founding treaties (the quasi-constitution of the EU) (for a detailed analysis, see: [13; 14]).

The adaptation of Ukrainian legislation to the acquis communautaire of the European Union is one of the key elements of legal integration. This process is not merely a technical necessity but also an evident cultural

challenge for legislative, law-enforcement, and interpretative-legal activities. This is associated with the introduction of European legal standards into the legal system of Ukraine, which necessitates a rethinking of traditional approaches, primarily to law-making activities, the improvement of legal technique, and the modernization of the legal culture of society, especially among civil servants, academics, and academic-pedagogical staff of higher legal education institutions, who are tasked with fostering the legal consciousness and legal culture of a new generation of Ukrainian lawyers.

The need for this research is driven by a number of problems that arise during the adaptation of Ukrainian legislation to the EU acquis. The adaptation of legislation requires not only the formal reproduction of the norms of relevant EU regulations and directives but also consideration of the principles of EU law supremacy and its direct effect, subsidiarity and proportionality, non-discrimination, and other fundamental principles underlying the EU legal order, as well as the legal positions of the EU Court of Justice. An orientation towards the pan-European system of values and principles of EU law has, unfortunately, not yet become an integral component of the societal legal culture, which creates certain difficulties for Ukraine's legal integration.

Although Ukraine's legal system has adopted many EU legal standards over the years of independence, the process of adapting its legislation to EU legislation is not yet complete. Therefore, the task of bringing Ukrainian legislation closer to EU legislation to a level that would enable Ukraine to effectively fulfill the obligations required of an EU candidate state remains relevant. Technical aspects of legislative adaptation also require attention, particularly ensuring the transparency of the law-making process, improving legal technique, and ensuring high-quality translation of EU legislation, among others.

The success of adapting Ukrainian legislation to EU legislation also significantly depends on modernizing the legal culture of academic and scientific-pedagogical personnel who train and retrain legal professionals. Legal science has a considerable influence on law-making and interpretative-legal activities and thus acts as one of the factors in the development of the national legal system. In the process of researching these issues, it is worthwhile to focus on theoretical developments that are directly or indirectly related to the general principles of adapting Ukrainian legislation to EU legislation.

Literature review

Researching the process of Ukraine's legal integration into the EU legal field without considering the context of transforming national legal culture

leads some Ukrainian authors to erroneous judgments and conclusions. In domestic publications, one can encounter the substitution of concepts related to Ukraine's legal integration, which do not correspond to the current legislation in the sphere of European integration. This problem emerged in the 1990s and early 2000s in the academic works of academics of branch legal sciences (for example, V. Andreitsev [15], O. Laba [16], K. Iashchenko [17]). The terminological confusion observed both in academic works and in subordinate legislation [18; 19] was linked, according to I. Yakoviyk, to the poor quality of translation of international legal acts into Ukrainian [20, p. 21-22]. It should be noted that this problem has not been fully resolved to this day.[1] This refers to the practice of using the concept of "harmonization" instead of "adaptation" while simultaneously referring to legislative acts that specifically use the term "adaptation" (for example, O. Budiachenko [24], L. Valko [25], V. Muraviov, N. Mushak [26; 27], N. Parkhomenko [28], K. Trykhlib [29] and many others). These and other authors mistakenly equate the harmonization processes occurring between EU member states in the formation and development of EU law with adaptation, which is a unilateral process by a candidate country to bring its own national legislation into conformity with the EU acquis communautaire.In this regard, the works of O. Tarasov [30] and I. Yakoviyk [20] are extremely important, as they reveal the relationship between the concepts of adaptation, harmonization, implementation, approximation, and reception, and emphasize the need for the correct use of relevant terms both in academic publications and in current legislation.

The works of R. Petrov and P. Kalinichenko, who dedicated their research to the phenomenon of Europeanization of judicial systems in candidate countries and EU neighboring countries (third countries), are significant for the development of Ukraine's legal system. The author convincingly argues that EU foreign policy objectives, EU "soft" law, technical and financial assistance from the EU, and favorable interpretation of EU law by the European Court of Justice regarding citizens of third countries contribute to forming a conviction within the judicial bodies of third countries about the expediency of applying the EU acquis in their judgments. This conclusion also applies to Ukraine, where the perception of the EU acquis as a persuasive source of law is gradually forming. However, problems

[1] Ukrainian civil society organizations have developed draft legislation and conceptual frameworks over the past decade aimed at harmonizing respective sectors of Ukrainian legislation with EU law. Notable examples include: the draft Law of Ukraine on harmonizing the Criminal Code with provisions of international law [21]; the draft Concept for harmonizing Ukraine's land legislation with EU law and other advanced practices in legal regulation of land relations [22]. In 2024, the Ministry of Foreign Affairs of Ukraine conducted a roundtable discussion entitled "Harmonization of Ukrainian Legislation with European Standards in Combating Discrimination and Ensuring Diversity" [23].

related to independence, efficiency, and combating corruption reduce, in the researcher's opinion, the effectiveness of the judicial system's Europeanization process in Ukraine [31]. In another article, R. Petrov examines the progress made in the implementation and application of the Association Agreement, which gave a powerful impetus not only to political and economic but also to legal reforms in Ukraine. The author focuses on the constitutional challenges that Ukraine faced during the implementation of the Association Agreement into its legal system. R. Petrov addresses two issues: the first relates to the effectiveness of implementation and application of the Association Agreement with the Constitution of Ukraine from the perspective of upholding the principle of the rule of law. The issue of adapting Ukrainian legislation to the EU acquis communautaire is considered by the researcher as one of our state's obligations arising from the implementation of the Association Agreement into national legislation, and simultaneously as an instrument that allows for ensuring the principle of the rule of law and the compatibility of the Agreement with the Constitution of Ukraine [32].

V. Ternavska raises questions about the role of legal doctrine in the process of adapting Ukrainian legislation to the EU acquis communautaire. According to the researcher, historical experience convincingly demonstrates that constitutional-legal doctrine is assigned an important role in the process of convergence of national legal systems. This is because the process of internationalization of law begins precisely at the level of national constitutional legislation. Accordingly, Ukrainian legal doctrine plays an important role both in law-making, contributing to the approximation of Ukrainian legislation to EU legislation in both public and private law [33].

In turn, O. Kozhykhar [34] and I. Yakoviyk [35; 36] emphasize that success in building a democratic, social, law-based state in Ukraine directly depends on the acceptance of the EU's system of values, compliance with which is one of the membership criteria. Developing the idea of the role of legal culture in state-legal development, the authors emphasize that its level depends on guaranteeing the entire complex of human rights and freedoms, the level of legal consciousness, the implementation of the principle of the rule of law, the perfection of national legislation, ensuring legality and legal order, and the state of development of legal science. The qualitative state of the legal culture of society directly affects the effectiveness of legal norms and the stability of the legal order as a whole.

V. Lomaka et al. consider the process of Europeanization of state-legal institutions as an important tool for transforming the legal systems of EU candidate countries. The scholars note that the perception by the Ukrainian legislator and legal community of the system of European legal values,

primarily the supremacy of EU law, contributes to accelerating the process of transforming the national legal system [37].

V. Ryndiuk and O. Kuchynska emphasize the importance of using the positive experience of EU candidate countries from Eastern and Southern Europe in the process of adapting Ukrainian legislation to EU legislation. The authors stress that coordinating the actions of law-making authorities and considering both the positive and negative lessons of other countries are key to accelerating Ukraine's legal integration into the EU legal space [38].

Despite the significant volume of research dedicated to legislative adaptation, the question of the influence of the legal culture of society and specific groups, particularly legislators, on the process of modernizing Ukraine's legal system remains insufficiently explored.

Materials and Methods

The aim of the study is to determine the influence of the adaptation of Ukrainian legislation to EU legislation on the modernization of the legal culture of legislators, enhancing their professional level, and improving legal technique. To achieve this aim, the following main objectives were defined: to identify and explore the problems hindering the process of adapting national legislation to EU legislation; to assess the impact of European legal standards on the legal technique, structure, and logic of the Ukrainian legislative process; to determine the role of legal culture in increasing the effectiveness of the legislative adaptation process.

The achievement of the research objectives was facilitated by the application of an interdisciplinary approach, which ensured a comprehensive elucidation of the chosen problematic. The method of legal modeling was used to predict the consequences of the Europeanization of Ukraine's legal system. The study of the strategic and organizational aspects of adaptation was carried out through structural analysis, which included examining the interaction between key law-making bodies of Ukraine on the one hand, and EU institutions on the other. The use of a combination of analytical and synthesis methods allowed for a comprehensive coverage of the process of adapting Ukrainian legislation to the EU acquis communautaire, to identify key problems of legal integration, and to develop practical recommendations for their resolution, which ultimately should ensure the formation of a modern legal culture for legislators, oriented towards European values.

The historical-legal method contributed to revealing the conditions for the emergence and development of such a legal phenomenon as the transformation of legislators' legal culture within the framework of Ukraine's legal integration process; determining the historical sequence of transition from one stage to another, as well as researching the evolution of the

Ukrainian parliament's approaches to legal regulation in the sphere of legislative adaptation, and outlining the future vector of its development.

The systemic-functional method became an important source of knowledge about the structural features of the legal culture of society, primarily of individuals involved in legislative activity, in the process of Ukraine's legal integration. That is, legal culture was considered as a set of individual elements, the integrity of which reveals specific properties of this legal phenomenon. In view of this, the systemic-functional method was used for: determining the content of the EU acquis communautaire, to which the legislation of Ukraine must be brought into conformity; familiarization with the structure and powers of special bodies created to implement Ukraine's obligations within the framework of the legislative adaptation process; analysis of the principles of conducting law-making activities in the conditions of legal integration.

The case study method contributed to the study of the dynamics of adapting Ukrainian legislation to EU legislation within the legal integration process, as well as the analysis of factors that consider the political decisions of national governments, related to the state's aspiration to gain membership in a united Europe, as potential causes for the transformation of the national legal system, primarily its legal culture.

Linguistic methods were also used in the research process. The application of these methods is substantiated by the fact that EU law terminology is quite specific and differs from the terminology of the national legislation of EU candidate countries. Although discussions about the structure of this method continue, most authors agree that it includes historical-comparative, contrastive-comparative, sociolinguistic, descriptive, stylistic, contextual, textual-interpretive, and internal reconstruction. Their variation is determined by the specifics of studying particular legal phenomena and processes (legal integration, harmonization and adaptation of legislation, implementation, etc.), as well as by the specific tasks of the research (e.g., to clarify the substantive content of the concepts "legal integration", "harmonization of legislation", "adaptation of legislation", "EU acquis communautaire"; to reveal the relationship of legal integration with the processes of harmonization and adaptation of legislation; to investigate the directions of transformation of the legislator's legal culture as a result of the modernization of Ukraine's legal system under the influence of the adaptation of its legislation to EU legislation).

A broad source base was utilized in writing this article, namely: EU and Ukrainian legislation, precedential decisions of the EU Court of Justice, reports and methodological recommendations, as well as academic

works by foreign and domestic authors. A comprehensive study of these sources allowed for the identification of main gaps and shortcomings in the adaptation process, an assessment of the impact of European legal standards on legal technique, the structure and logic of law-making in Ukraine, and the formulation of practical recommendations.

Among the main sources of Ukrainian legislation, the Treaty on European Union [39] and the Treaty on the Functioning of the EU [40], the Association Agreement between Ukraine and the EU [41], the Law of Ukraine "On the National Program for Adaptation of Ukrainian Legislation to the Legislation of the EU" [42], and the Law of Ukraine "On Law-Making Activity" [43] were analyzed. This helped to define the basic principles, mechanisms, and institutional frameworks for carrying out the adaptation of national legislation to EU legislation, revealed the specifics of this process in certain branches of Ukrainian legislation, and determined the role of Ukrainian scientific institutions in this process.

The research also included an analysis of decisions by the EU Court of Justice, as the ability to apply provisions of EU case law and interpret EU law norms in light of Court of Justice decisions is also an element of legal culture for both legislators and judges. Case 26/62 Van Gend en Loos v Nederlandse Administratie der Belastingen of 05.02.1963 [44] and Case 6/64 Costa v ENEL of 15.07.1964 [45] were subjects of careful analysis, in which the EU Court consistently substantiated that EU law is a unique legal system based on international law, yet substantially different from it, as well as the principle of EU law supremacy.

Recommendations from the European Commission, including the document "Guidelines for Ukrainian Governmental Administration on Approximation with EU Law" [46], which defines methodological approaches to legislative adaptation, were also analyzed.

In the process of studying legal technique, the structure and logic of law-making in Ukraine in the context of legal integration, a number of subordinate normative-legal acts were processed, which reveal the content of legislative adaptation and its forms [47].

Results and Discussion

Legal integration of Ukraine as a condition for joining a united Europe

The adaptation of Ukrainian legislation to the EU acquis communautaire is a complex process, encompassing both general conceptual foundations and specific mechanisms for implementing European Union law norms. In essence, it involves the systematic approximation of national legislation to

EU legislation with the aim of Ukraine's gradual entry into the European Union's legal space.

I. Yakoviyk emphasizes that the success of adapting Ukrainian legislation to EU legislation largely depends on the streamlining of domestic legal terminology. Only a stable system of legal concepts and terms can ensure legislative approximation, its uniform interpretation, and the correct application of legal norms [20]. A similar view of the problem can be found in the works of foreign authors (e.g., Ł. Biel [48], P. Sandrini [49]).

The fact is that the implementation of Ukraine's strategic course towards integration into the European Union, which began with the entry into force of the Partnership and Cooperation Agreement between Ukraine and the EU (1998) [50], gave paramount importance to the problem of ensuring the "equivalence" of terms in the legal translation of EU acts into Ukrainian. This created complex problems for the Ukrainian legal language, as the terminology used in EU law (it is known that the EU legal order is an autonomous legal system that combines elements of both Romano-Germanic and Anglo-Saxon legal families) differs from Ukrainian legal terminology. With the intensification of interaction between the parties, Ukrainian legal terminology is undergoing significant transformation, as the adaptation of Ukrainian legislation to EU legislation involves the introduction of many pan-European legal concepts, doctrines, and principles, and their adaptation for application within the local legal culture. Therefore, a need arose for a systematic study of pan-European legal terms to avoid confusion between similar terms and to shed light on the general trends of the legal integration process. The situation was complicated by the fact that for a long time, there was no formulated national strategy for translating legal terms from English into Ukrainian. Only in 2005 did the Ministry of Justice of Ukraine approve the Procedure for translating acts of the EU acquis communautaire into Ukrainian [51].

A normative definition of the content of legislative adaptation was provided in 2003 in the Methodological Recommendations of the State Tax Administration: "Adaptation is the process of developing and adopting normative-legal acts and creating conditions for their proper implementation and application with the aim of gradually achieving full compliance of Ukrainian legislation with EU legislation" [47].

To determine the consequences of adapting Ukrainian legislation to EU legislation, it is not enough to provide its definition – it is equally important to obtain answers to the following questions: (a) what is subject to adaptation, and (b) to which specific EU law norms is adaptation carried out. Answering the first question, it should be noted that the content of

the concept "legislation" is not normatively defined in Ukraine. Therefore, the Constitutional Court was compelled to fill this gap. In its Decision No. 12-rp/98 of July 9, 1998, the Court stated that the term "legislation" should be understood as laws of Ukraine; current international treaties, the binding nature of which has been approved by the Verkhovna Rada; parliamentary resolutions; presidential decrees; government decrees and resolutions adopted within their powers and in accordance with the Constitution and laws of Ukraine [52]. Thus, the Constitutional Court applied an expanded interpretation when defining the content of the concept "legislation", thanks to which the content of the legal norm turned out to be broader than the literal text of the corresponding legal norm.

Regarding the second question, the following should be noted: an analysis of Ukrainian legislation shows that in different periods of the state's independence, this denominator was defined as either "Community (European Union) legislation"; or "EU legislation", or "EU legislation and norms", or "European legal system", or "European legal standards", or "EU law norms"; or "EU norms and standards", or "EU requirements", or "EU normative field", or "acquis communautaire". According to the vast majority of researchers, with whose position we agree, it is precisely the concept "acquis communautaire" that most accurately defines the body of EU law norms to which Ukrainian legislation must be adapted.

The European Union itself defines the content of "acquis communautaire" as follows – it is the body of common rights and obligations that constitute the EU's laws and are incorporated into the legal systems of the EU member states. Thus, the content of the acquis is generally understood to include: the content, principles, and political objectives of the EU founding treaties; legislation adopted for the application of these treaties; case law developed by the EU Court of Justice; declarations and resolutions adopted by the EU (EU soft law); acts in the field of common foreign and security policy, as well as justice and internal affairs; international agreements concluded by the EU, and agreements concluded between the member states themselves regarding EU activities [53]. It should be emphasized that the acquis communautaire is a dynamic legal formation and therefore is in a process of constant development [53]. The volume of the acquis today already exceeds 20,000 acts.

The answer to possible forms of policy implementation in the sphere of legal adaptation[2] can be found in the Methodological Recommendations of the State Tax Administration of Ukraine [47]:

[2] It should be noted that the content of these forms concerning legal integration among member states differs somewhat from the content of these forms implemented by candidate countries that adapt their legislation to EU law.

a) transposition, which is understood as the adoption, amendment, or repeal of legal norms to achieve identical legal consequences with the relevant acts of EU legislation. It may consist either in copying and transferring provisions of an EU legislative act verbatim into Ukrainian legislation or involve referencing an internationally used provision in national legislation;[3]
b) approximation, i.e., the process of adopting, amending, or repealing legal norms in order to bring the provisions of national legislation of Ukraine closer to the provisions of EU legislative acts to create appropriate conditions for the implementation of the European Union's legal order;[4]
c) coordination, i.e., the process of harmonizing that part of Ukrainian legislation and the practice of its application, within which approximation or transposition is impossible or unnecessary;
d) implementation, i.e., the process of transposing EU legislative acts, including the creation of an order and procedures for their introduction (implementation in a narrow sense); this process also includes interpretation, application practice, ensuring compliance with and enforcement of norms that correspond to European law by state authorities (implementation in a broad sense).[5]

Features of legal regulation of adaptation of Ukrainian legislation to the EU acquis communautaire

In Ukraine, the beginning of the legislative adaptation process was linked to the ratification of the Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States (1998) [50], which for the first time enshrined Ukraine's obligation to adapt its

[3] Regarding EU member states, transposition refers to the process of incorporating EU directives into the national laws of member states. Unlike regulations and decisions, directives do not apply directly across all member states but require national legislation to incorporate their provisions into domestic legal frameworks [54].

[4] It should be noted that concerning EU member states, the content of this concept differs somewhat, as it relates to EU Directives and signifies the harmonization of certain concepts across all EU member states' legislations. The approximation of certain concepts involves the gradual elimination of discrepancies existing in national legislations. This relates to the ultimate objective of legal integration—to create a foundation for "maximum" harmonization/approximation at a later stage or simply to bring closer the meaning of certain terms or methods of resolving specific situations in EU member states' legislation (minimum harmonisation/approximation). In terms of maximum harmonisation, the formulation of "legislative approximation" approaches that of a Regulation, whereby member states are obligated to transpose the formulations into their national legislation [55].

[5] Implementation undertaken by EU member states means that national governments must adopt measures to comply with the requirements of EU legal acts. This concept is primarily associated with EU directives, whose content must be brought into effect through national regulations [56].

national legislation to the acquis communautaire. The initial stage of adaptation, associated with the Agreement, laid down the basic principles of cooperation; however, due to the absence of strict legal obligations, adaptation activities were of a "soft" nature. Subsequent stages, initiated by the implementation of the provisions of the Law of Ukraine "On the National Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union" (2004) [42], and which were further linked to the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014) [41] and Ukraine's acquisition of candidate country status (June 23, 2022), defined specific mechanisms that streamlined the process and ensured its evolution.

The success of the adaptation process significantly depends on the level of legal culture of individuals engaged in law-making activities, primarily parliamentarians. In the context of legal integration, the legal culture of parliamentarians should be understood as a system of values, norms, principles, and practices that determine both the specific content of the national legal system being modernized within the framework of legal integration, and the peculiarities of the legislative process, as well as the effectiveness of the Verkhovna Rada as the legislative body of Ukraine. A high level of legal culture among parliamentarians is evidenced not only by the acceptance of the principle of the rule of law, enshrined in the Constitution of Ukraine (Art. 8), but also by an understanding of the content of the principle of the supremacy of EU law.

The EU is an autonomous legal order: this is a very early doctrine, established by the Court of Justice of the EU. In its judgment in Case 26/62 Van Gend en Loos v Nederlandse Administratie der Belastingen (1963), the Court stated that "EU law constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals" [44]. In 1964 in the famous Costa v. E.N.E.L case, the Court stated: "By contrast with ordinary international treaties, the EEC Treaty has created its own legal system, which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply" [45]. Gradually, EU law as an autonomous legal order was also recognized by the constitutional/ supreme courts of the EU member states, which became an important step towards the Europeanization of their legal culture.

EU law as an autonomous legal order is based on the principles of the supremacy of EU law and its direct effect. The autonomy of the EU legal order is manifested in its independence from national legal systems, its binding nature for member states, and its ability to create rights and

obligations for individuals and legal entities. The dynamism of EU law signifies its constant updating in accordance with the needs of legal regulation of social relations. This requires candidate countries, including Ukraine, to be flexible and proactive in adapting their legislation.

The effectiveness of legislative adaptation depends on several factors, including: a clear definition of responsible institutions and mechanisms for their coordination; an assessment of the institutional capacity and staffing of state bodies responsible for fulfilling Ukraine's obligations in the sphere of European integration [57]; the approval of legislative adaptation plans (e.g., the Plan for adapting national legislation on public procurement to EU legislation [58; 59]); financial provision for the adaptation process; monitoring the fulfillment of obligations and assessing the impact of normative changes; ensuring high-quality translation of EU legislation and terminology into Ukrainian, preparation of manuals on EU legislation translation [60; 61], etc.

It would be erroneous to assert that the legal regulation of legislative adaptation is predominantly general and declarative in nature. As early as the beginning of the 2000s, a practice was initiated at the level of individual state bodies to adopt methodological recommendations for bringing draft normative-legal acts into conformity with EU legislation and the requirements of GATT-WTO agreements (for example, methodological recommendations approved by the State Tax Administration on December 26, 2003, No. 631 [62] and on September 28, 2004, No. 561 [63]). A positive practice within the framework of legislative adaptation during that period should also be considered the involvement by central state authorities, primarily the Ministry of Justice of Ukraine, of academics to conduct comprehensive comparative-legal studies on the conformity of Ukrainian legislation with the EU acquis communautaire [64]. The Ministry of Justice of Ukraine continues this activity today: the Ministry's website hosts materials from nearly 40 comparative-legal studies on various aspects of the conformity of Ukrainian legislation with the acquis communautaire [65].

With the aim of ensuring Ukraine's strategic course towards EU integration and assisting law-making bodies in the gradual approximation of Ukrainian legislation to the norms and standards of EU law, the Center for Comparative Law was established under the Ministry of Justice back in 2000 [66]. It existed until 2004. The Center conducted comparative analysis of international and European law with Ukrainian law; offered recommendations regarding the adaptation of Ukrainian legislation to EU legislation; conducted legal expertise of draft normative-legal acts; worked on creating an informational legal database of EU legislation; promoted the development of legal education for civil servants in the field of EU law; and

disseminated legal information in the specified sphere. An analysis of these tasks allows for the conclusion that the Center's activities were aimed at both facilitating the adaptation of Ukrainian legislation to EU legislation and modernizing the legal culture of a wide range of civil servants and lawyers in general. In 2004, the State Department for Legislative Adaptation was established, which existed until 2011. The Department's activities were generally carried out in areas similar to the tasks of the Center [67].

This activity continues in our time. Thus, within the EU Project "Support to the Implementation of the EU-Ukraine Association Agreement" (Association4U), in cooperation with the Government Office for European and Euro-Atlantic Integration and the European Commission's Support Group for Ukraine, a number of documents have been developed aimed at assisting civil servants practically involved in adapting Ukrainian legislation to the EU acquis communautaire. Firstly, a Methodology for verifying compliance with EU legislation and compiling correspondence tables has been developed, designed to help law-making bodies develop legislative acts compliant with EU law, compile and use correspondence tables, and conduct compliance verification [68]. Secondly, Recommendations for Ukrainian public administration bodies on approximating Ukrainian legislation to EU law have been prepared, which are intended to assist civil servants in implementing the Association Agreement between Ukraine and the EU, particularly its parts dedicated to adapting Ukrainian legislation to the EU Acquis communautaire [69]. Thirdly, an "Overview of the case law of the Court of Justice of the European Union in spheres regulated by the Association Agreement between Ukraine and the EU" has been prepared [70]. The importance of the Overview lies in the fact that it is usually in the case law of the EU Court of Justice that basic legal categories are interpreted, the content of which is not disclosed in the EU legislation referred to in the Association Agreement or its annexes. The Overview plays an important role in modernizing the legal culture of judges and civil servants involved in legislative adaptation, educators who train professional legal personnel, as well as legal scholars involved in shaping domestic legal doctrine.

The translation of legal-linguistic phenomena is an act of intercultural communication between different legal systems. It significantly influences the state and development of legal culture, primarily of lawyers, and indirectly, the state of legal culture of the society in the country adapting its legislation to EU legislation. Therefore, the problem of translating legislative acts into a foreign language is traditionally given significant importance. This is explained by the fact that the effectiveness of the adaptation process largely depends on the correct translation into Ukrainian of EU

acquis communautaire acts and into English of Ukrainian legislative acts related to the fulfillment of Ukraine's obligations in the sphere of European integration. To streamline this activity and give it a planned character, the Ministry of Justice approved the Procedure for translating acquis communautaire acts into Ukrainian back in 2005 [51]. In 2009, the Ministry approved a new Procedure [71]. In 2023, the Cabinet of Ministers of Ukraine, in turn, approved the Procedure for translating European Union acquis communautaire acts into Ukrainian and Ukrainian legislative acts related to the fulfillment of Ukraine's obligations in the sphere of European integration into English [72].

Conceptual proposals regarding changes to the legislative process in Ukraine [73] (2021), which contain a review of modern approaches to understanding the effectiveness of the legislative process, defining its efficiency criteria, and identifying key problems of the current legislative process, are of positive significance for legislative adaptation.

The process of legislative adaptation also requires the improvement of legal technique, the entire law-making activity, as well as mechanisms for the implementation of normative-legal acts. In this regard, the adoption by the Verkhovna Rada of the Law of Ukraine "On Law-Making Activity" [43] should be positively assessed, as it regulates a wide range of issues related to the adaptation of Ukrainian legislation. The Law, in particular, stipulates that a draft normative-legal act aimed at legislative adaptation is submitted with information about its compliance with Ukraine's obligations in the sphere of European integration (Para 4 of Art. 43). The parliament's legislative work plan provides that the government annually, by November 1, must submit to the Verkhovna Rada a list of issues that require legislative regulation during the following year. The list of governmental legislative initiatives is submitted with an indication of whether they are aimed at adapting legislation to the provisions of the EU acquis (Para 2 of Art. 19^1). The development of a draft normative-legal act also involves an assessment of the draft normative-legal act's compliance with obligations in the sphere of adaptation (Para 2 of Art. 29), and also requires mandatory expertise for compliance with the EU acquis (Para 1 of Art. 44). State registration of a subordinate act also involves conducting its legal expertise for its compliance with the EU acquis (Para 1 of Art. 53) [43].

Increasing the level of legal culture of civil servants as a determining factor for the success of adapting Ukrainian legislation to the EU acquis

To enhance the level of legal culture, in accordance with the recommendations of academics, the practice of creating specialized units within the structure of central executive authorities in Ukraine has been

initiated, which deal with issues of legislative adaptation in relevant areas of legal regulation (for example, European and Euro-Atlantic integration, or international cooperation and European integration, or strategic planning and European integration) [74]. The implementation of this goal, in terms of increasing the awareness of civil servants and lawyers on EU law issues, is facilitated by the introduction of specialized training programs and advanced qualification programs. For instance, the National Agency of Ukraine for Civil Service offers civil servants free access to the General Professional (Certificate) Program "The European Union and Ukraine: Competent Public Servant" [75]. Utilizing the tools of this Program will contribute to raising the level of professional competence of civil servants on issues of Ukraine's European integration, deepening their understanding of the trajectory of the European integration process, the EU's organizational structure, and its policies. Civil servants can also utilize the General Short-Term Program "European and Euro-Atlantic Integration" [76]. This Program helps to deepen theoretical and practical knowledge of European and Euro-Atlantic integration, to understand the essence of European and Euro-Atlantic integration, as well as the nature of their impact on the implementation of national policy. Furthermore, the free project Eng4PublicService enhances the language capabilities of public servants, as stipulated by the provisions of the Law of Ukraine "On Civil Service" [77]. On the *StudyiЯ* Platform, civil servants can undergo training in 16 online courses on European integration, developed within the Natolin Capacity Building project. It should be noted that Ukrainian civil servants also have opportunities to study European integration issues in foreign educational institutions.

A positive phenomenon from the perspective of transforming the legal consciousness and legal culture in general of Ukrainian civil servants is the internship programs organized by the European Commission and the EU Delegation to Ukraine. For instance, in 2023, the EU Delegation to Ukraine announced a 6-month internship for 2024 for individuals holding a bachelor's or master's degree in international relations, political science, legal sociology, economics, or a related field. The aim was to familiarize them with how the EU Delegation represents EU interests and values in Ukraine, and provide exposure to the EU activities in Ukraine, and be provided with a unique occasion to understand from inside the work of an EU Delegation in a third country [78]. In February 2025, the Government of Ukraine and the European Commission signed an Administrative Arrangement on the secondment of Ukrainian civil servants to the European Commission. Internships within the National Experts in Professional Training Programme and Seconded National Experts program are aimed at gaining experience, practical skills,

familiarization with the Commission's working methods and policies, and mechanisms for strengthening dialogue and cooperation between Ukraine and the EU [79].

Russian aggression against Ukraine has impacted the efficiency of the Verkhovna Rada of Ukraine – as of November 2024, the parliament had voted for 89 ratifications, adopted 810 laws and 1125 resolutions, including over 400 legislative acts aimed at countering the armed aggression of the Russian Federation [80]. Such dynamics demonstrate the Ukrainian parliament's capacity to respond promptly to the needs of legal regulation under martial law.

The high pace of the legislative process necessitates the intensification of activities to adapt Ukrainian legislation to the EU acquis. Among the most significant legislative acts are: the Law "On Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for Selecting Candidates for the Position of Judge of the Constitutional Court of Ukraine on a Competitive Basis" [81], which contributes to the implementation of judicial reform in Ukraine; the Law "On Media" [82], the provisions of which are important for establishing the principles of a democratic, law-based state. Also noteworthy is the Law "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Conclusion of an Agreement between Ukraine and the European Union on Mutual Recognition of Qualified Electronic Trust Services and Implementation of European Union Legislation in the Field of Electronic Identification" [83], which promotes the adaptation of legislation in the relevant areas of legal regulation.

On October 12, 2022, the European Commission adopted the Communication on EU Enlargement Policy [84]. The report assessed the progress achieved by candidate countries and potential candidates for accession to the European Union in implementing reforms aimed at meeting the Copenhagen EU membership criteria. The Report identified the main challenges these countries face and formulated recommendations for further measures to ensure their integration into a united Europe.

The EU is a key ally of Ukraine in strengthening the rule of law. Thanks to its support, particularly participation in the PRAVO Police Programme, Ukraine from 2017 to 2022 achieved certain progress on the path to bringing its law enforcement system into line with advanced European and international practices. As a result, the rule of law sector in Ukraine became more effective [85].

Adapting Ukrainian legislation to the EU acquis communautaire requires not only the technical adaptation of normative acts but also changes in the legal culture of the legislator. This process demands a profound rethinking

of methods, values, and approaches to law-making, taking into account advanced European legal standards and practices.

To enhance the effectiveness of adaptation, progress must be made in several key areas of improving legal culture. The primary condition for successful adaptation is the introduction of a systematic approach to legal education and retraining of civil servants involved in the development and adoption of normative-legal acts. The Acquis communautaire is a vast and complex body of law, requiring legislators to possess specialized knowledge about the specifics of the European legal order. It is necessary to develop and implement special educational programs for legislators, their assistants, parliamentary staff, as well as judges and staff of the Constitutional Court of Ukraine, which would provide knowledge about EU law, skills for working with it, and the specifics of its implementation. An important task is the development of training sessions focusing on issues related to the system of EU law sources, the technique of legislative translation, and the ability to apply precedents of the EU Court of Justice.

The effectiveness of legislative adaptation depends on conducting periodic, impartial monitoring of the results of this process. The report within the 2024 EU Enlargement Package [86] contains, among other things, an assessment of Ukraine's annual progress in carrying out reforms on the path to EU membership across all negotiation chapters. In the Report, the European Commission confirmed Ukraine's commitment to reforms and the achievement of systemic transformations, as well as progress in sectoral integration. The presented Report is of a more technical nature, and the main documents assessing the level of adaptation of Ukrainian legislation are screening reports published following bilateral Ukraine-EU meetings within the negotiation process for EU accession [87].

In 2023, Ukraine completed the I and II stages of the initial assessment of the state of implementation of EU law acts (self-screening). During the II stage, state authorities processed about 28,000 EU law acts; 34 reports were prepared and sent to the government of Ukraine by ministries with the participation of other state authorities. Based on their results, reports were prepared for the substantive content of the National Program for the Normative-Legal Approximation of Ukrainian Legislation to EU Law Acts. After processing the reports, the following steps will be implemented: formation of an up-to-date list of the acquis; generalization of the list of already adopted Ukrainian legislation that complies with the acquis; analysis of discrepancies between the state of acquis implementation under the Association Agreement and current EU law; development of a National Program for the adaptation of legislation to EU law and an acquis implementation plan; development of draft laws to be adopted within the

negotiation process; adoption of relevant draft laws; implementation of current legislation; monitoring of draft laws for compliance with Ukraine's European obligations; development of approaches to forming negotiation positions; providing assistance to the European Commission in preparing the screening based on the results of 2024 [88].

Discussion

The adaptation of legislation to the EU acquis communautaire plays a pivotal role not only in Ukraine's integration into the European legal space but also in transforming the legal culture of the legislator. This process entails, firstly, the enhancement of legal education concerning knowledge of the European Union's institutional mechanism, decision-making processes, the specifics of the EU legal order, its structure, and its system of sources; secondly, the improvement of Ukrainian legal technique; and thirdly, mastering the principles of EU law and enhancing the professional competencies of individuals involved in the legislative process and judicial activities. The experience of EU candidate countries demonstrates that legislative adaptation contributes to strengthening democratic institutions and increasing the efficiency and transparency of the legislative process, notably through raising the legal culture of civil servants working in authorities engaged in law-making activities.

Adherence to the principle of the rule of law in both legislative and law enforcement activities is an indispensable condition for aligning the Ukrainian legal system with EU law. In this context, ensuring the transparency of the legislative process is another crucial condition for successful legislative adaptation.

Flexibility in the legislative process is an important characteristic of adaptation. This was particularly emphasized by participants in the round table on "Adaptation of Ukrainian Labor Legislation to EU Law Provisions: Status and Prospects", held on April 12, 2024, at the Verkhovna Rada Committee on Social Policy and Protection of Veterans' Rights. The round table participants noted that, considering the martial law in Ukraine, the process of legislative adaptation objectively requires a transitional period and adherence to flexibility to ensure the protection of vulnerable population groups [89]. Therefore, legislative adaptation also necessitates consideration of the economic and social factors of the state's functioning under conditions of martial law and post-war reconstruction of Ukraine.

The adaptation of Ukrainian legislation to the EU acquis communautaire significantly influences the transformation of the Ukrainian legislator's legal culture, and also experiences a reciprocal impact. This conclusion is corroborated by the findings of the research conducted. It is through

legislative activity that the legal foundation of the state is laid, and the most important societal relations are regulated. An indicator of the level of legal culture of subjects involved in legislative activity will be their adherence to the principles of democratism, humanism, legality, substantiation, openness, scientific rigor, and connection with practice. In the process of implementation, these principles may encounter various obstacles, which negatively affect the quality of law-making. That is why the implementation of principles must be accompanied by various forms of control, conducting independent internal and external expert examinations of draft laws, proper justification of the timeliness and necessity of adopting a law, implementation of pilot projects and sociological research, increasing the professionalism of participants in legislative activity, and utilizing broad public discussion of socially significant draft laws. These requirements are generally considered in the Law of Ukraine "On Law-Making Activity".

Conclusions

One of the peculiarities of legal development in the context of globalization and regional integration is the convergence of national legal systems, which often exhibit more differences than commonalities, especially if these systems belong to different legal families. EU law is a product of regional legal integration, which emerged as a result of the convergence of elements from the continental and Anglo-Saxon legal families. The phenomenon of convergence among different legal systems implies that their approximation generates competition between sources of law, terminology, legal technique, and procedures that have developed throughout historical evolution and are specific to various member states. Ultimately, convergence leads to the creation of universal norms of law and the development of rules for overcoming contradictions contained in the national legislation of EU member states, as well as the expansion of the spectrum of legal sources that existed in national legal systems prior to the onset of convergence [90].

A legal system always reflects the distinctiveness of a particular state; it is closely intertwined with phenomena and processes occurring in the spheres of national economy, politics, ideology, and culture. Consequently, the national legal system invariably interacts with other systems, including economic, political, social, and others. Therefore, not only does the legal system influence the relationships established in the spheres of politics, economy, science, culture, education, and ideology, but it also experiences a reciprocal influence from these societal domains. This implies, inter alia, that the mere volition of the state's political leadership is insufficient for the successful realization of its integration course if this process does not receive support from the majority of society [91]. It is for this reason that

the adaptation of Ukraine's national legislation to EU law, which represents an autonomous legal order formed as a consequence of the convergence of national legal systems of EU member states, is a complex and lengthy process.

Ukraine's legal integration demands a systemic approach to legislative reform, as it affects other elements of the national legal system, including legal culture, legal policy, legal practice, and legal relations. Within the research, the main challenges of the legislative adaptation process were identified, related to understanding the specifics of EU law and its sources; the use of legal technique; the complexity of translating EU legislation; adherence to the principles of law-making, and the role of legal culture in ensuring the effectiveness of this process was analyzed.

European legal standards significantly influence all components of the Ukrainian legislative process. The implementation of recommendations provided by the European Commission and the Venice Commission allows for the elimination of existing shortcomings, particularly excessive detail and duplication of norms in legislative acts, ensures greater transparency in the law-making process, and enhances the effectiveness of legal regulation. Concurrently, the consideration of EU Court of Justice case law in the law-making process in Ukraine remains a serious problem for Ukrainian courts, as well as for legal science and education. This creates certain difficulties in the full-fledged implementation of the EU acquis.

In the course of the conducted research, it was established that Ukraine has, overall, created the legal basis for the successful adaptation of its legislation to EU legislation. As relations with the European Union deepen, this legal basis is gradually improving. Ukraine has adopted the Law "On Law-Making Activity" which considers the main needs for improving law-making activity and aligning it with the needs of the state's legal integration. The preparation of the "Overview of the case law of the Court of Justice of the European Union in spheres regulated by the Association Agreement between Ukraine and the EU", as well as the development of methodological recommendations for bringing draft normative-legal acts in certain spheres of legal regulation into conformity with European Union legislation, has had a positive impact on enhancing the efficiency of the legislative adaptation process. For improving the legal culture of civil servants, particularly those working in the sphere of legislative adaptation, the introduction by the National Agency of Ukraine for Civil Service and other state bodies of certified free programs for civil servants on the issues of European integration and adaptation of Ukrainian legislation to EU legislation has become significantly important.

Further research should expediently focus on analyzing successful practices of legislative adaptation in other countries of Eastern and Southern Europe, as well as on developing recommendations for improving the process of adapting Ukrainian legislation to the EU acquis. It is also important to conduct research on adaptation in specific areas of legal regulation, taking into account the specifics of Ukrainian society, as well as the conditions of martial law and the post-war recovery of the state. The research results confirmed the assumption of a significant degree of Ukraine's legal integration, which is evidence of the coordinated work of all branches of government, international support, and the active participation of civil society.

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Victoria S. Lomaka
Ph.D. in Law
Doctoral Student of the European Union Law Department
Yaroslav Mudryi National Law University
61024, 77 Hryhoriia Skovorody Str., Kharkiv, Ukraine
e-mail: lomviktoriya@gmail.com
ORCID 0000-0003-4443-8963

Вікторія Сергіївна Ломака
кандидатка юридичних наук
докторантка кафедри права Європейського Союзу
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: lomviktoriya@gmail.com
ORCID 0000-0003-4443-8963

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Україна, 61024, м. Харків, вул. Григорія Сковороди, 77, к. 518
тел. (057) 757-76-16
e-mail: http://tlaw.nlu.edu.ua/

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