Міністерство освіти і науки України
Національний юридичний університет імені Ярослава Мудрого
YAROSLAV MUDRIY NATIONAL LAW UNIVERSITY

ISSN: 2225-6555 (Online)

ТЕОРІЯ І ПРАКТИКА ПРАВОЗНАВСТВА

THEORY AND PRACTICE OF JURISPRUDENCE

2(28)/2025

Електронне рецензоване фахове видання

Electronic Peer-reviewed Edition

ISSN 2225-6555 (Online)

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Електронний фаховий журнал

Випуск 2 (28)

THEORY AND PRACTICE OF JURISPRUDENCE

Electronic Peer-Reviewed Edition

Issue 2 (28)

Харків
2025

УДК 340 (06) **ISSN 2225-6555 (Online)**

DOI: 10.21564

Засновник і видавець:
Національний юридичний університет імені Ярослава Мудрого

Заснований у 2011 р. Виходить двічі на рік

Мови видання – українська, англійська

Ідентифікатор медіа: R40-06697

Тематика згідно з галуззю науки «12.00.00 – Правознавство»
відповідно до чинного переліку галузей наук

Журнал включено до категорії «Б» Переліку наукових фахових видань України з юридичних наук (спеціальності 081, 293) – наказ Міністерства освіти і науки України № 358 від 15.03.2019 р.

Рекомендовано до поширення через мережу «Інтернет» вченою радою Національного юридичного університету імені Ярослава Мудрого (протокол № 6 від 18.12.2025 р.)

Теорія і практика правознавства : електронний фаховий журнал / відп. ред. Д. В. Лученко. – Харків : Нац. юрид. ун-т імені Ярослава Мудрого, 2025. – Вип. 2 (28). – 168 с.

У виданні вміщено наукові статті, присвячені актуальним проблемам правознавства: теорії та історії держави і права, конституційного й державного будівництва, цивільного, трудового, фінансового, господарського, адміністративного, митного, екологічного, кримінального права, кримінального й цивільного процесів, криміналістики, питанням боротьби зі злочинністю.

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Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, Харків, Україна
e-mail: tlaw@nlu.edu.ua

UDC 340(06) **ISSN 2225-6555 (Online)**

DOI: 10.21564

Founder and Publisher:
Yaroslav Mudryi National Law University

Founded in 2011. Published twice a year

Languages of the Publication – Ukrainian, English

Media ID: R40-06697

The subject of the journal corresponds to the field of science "12.00.00 – Law" according to the current list of branches of science

Journal is included to the Catecory "B" of the List of Refereed Scientific Edition of Ukraine in the legal sciences (specialties 081, 293) – Order of the Ministry of Education and Science of Ukraine dated March 15, 2019, No. 358

Recommended for publishing and distribution on the Internet by the Academic Council of Yaroslav Mudryi National Law University (Protocol No. 6 dated December 18, 2025)

Theory and Practice of Jurisprudence: Electronic Peer-Reviewed Journal / editor in chief D. Luchenko. Kharkiv: Yaroslav Mudryi National Law University, 2025. Issue 2 (28). – 168 p.

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DOI: 10.21564/2225-6555.2025.28.346828

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Abstract
The article examines the specifics of the compulsory seizure of property, namely vehicles. The relevance of the study is driven by the need to define clear procedural boundaries for restricting citizens' rights under martial law in Ukraine, as well as to ensure a well-balanced correlation between public and private interests on these issues. The purpose of the work is to analyze questions of jurisdiction over disputes concerning the compulsory seizure of vehicles. The research employs various scientific methods, including induction and deduction, the systemic method, the comparative-legal method, and the case study method. These relations are analyzed in light of the current complex conditions of martial law. In such circumstances, the compulsory seizure of property requires a well-ordered procedure for the actions of public authorities and their coordination with the powers of local self-government bodies. The regime of compulsory seizure under these conditions embodies several fundamental features. First, the coordination of powers between local self-government bodies and military units that directly carry out such a seizure. Second, the clear documentary formalization of all elements that must be recorded in the relevant act. Third, the consideration of territorial factors (whether the area is an active combat zone or not) where the seizure takes place. Fourth, the proper determination of the circle of subjects, particularly in cases where the owner of the vehicle delegates representative functions concerning the purchase and delivery of the vehicle to a freight forwarder

who performs corresponding agency functions. The subject of such a dispute involves challenging acts related to the compulsory alienation of the plaintiffs' immovable property. The dispute between the parties concerns the property rights of the plaintiffs, despite arising within the sphere of public interest. Moreover, declaring unlawful the decisions, actions, or omissions of a state authority, an authority of the Autonomous Republic of Crimea, or a local self-government body, as well as their officials, may serve as a means of protecting civil rights and interests and may be adjudicated within the framework of civil proceedings.

Keywords: *jurisdiction of administrative courts; compulsory seizure of a vehicle; dynamics of a legal relationship; representation in public law; subject of authority powers.*

Примусове вилучення транспортного засобу: проблема юрисдикцій

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Анотація

У статті розглянуто особливості примусового вилучення майна, а саме транспортних засобів. Актуальність дослідження зумовлюється необхідністю визначення чітких процедурних рамок обмеження прав громадян в умовах воєнного стану в Україні та вивіреного балансу публічного та приватного інтересу з відповідних питань. Мета роботи полягає в аналізі питань юрисдикційної належності спорів щодо примусового вилучення транспортних засобів. В основу проведеного дослідження покладено такі методи наукового дослідження, як індукція та дедукція, системний метод, порівняльно-правовий метод та метод «кейс стаді». Ці відносини аналізуються з урахуванням сьогоденних складних умов воєнного стану. Приму-

сове вилучення майна в таких умовах передбачає чітке впорядкування дій суб'єкта владних повноважень та їх узгодження з реалізацією повноважень органів місцевого самоврядування. Режим примусового вилучення в таких умовах уособлює декілька принципових особливостей. По-перше, узгодження повноважень органів місцевого самоврядування та військових частин, які безпосередньо здійснюють таке вилучення. По-друге, чітке документальне оформлення всього, що має бути закріплено у відповідному акті. По-третє, врахування територіальності (зона активних бойових дій або ні), де здійснюється таке вилучення. По-четверте, принципове з'ясування кола суб'єктів, особливо у випадку коли власник транспортного засобу передає представницькі функції щодо придбання та доставки такого транспортного засобу експедиторам, які виконують відповідні агентські функції. Предметом подібного спору є оскарження актів щодо примусового відчуження нерухомого майна позивачів. Спір, що виник між сторонами, стосується майнових прав позивачів, незважаючи на те, що виник у площині публічного інтересу. Більш того, визнання незаконними рішення, дії чи бездіяльність органу державної влади, органу влади Автономної Республіки Крим або органу місцевого самоврядування, їхніх посадових і службових осіб може бути способом захисту цивільних прав та інтересів і здійснюватися в режимі цивільного судочинства.

***Ключові слова**: юрисдикція адміністративних судів; примусове вилучення транспортного засобу; динаміка правовідношення; представництво в публічному праві; суб'єкт владних повноважень.*

Introduction

The analysis of property relations and the transfer of assets from one owner to another can hardly be unequivocally classified as falling under public-law regulation. Generally, these are traditional private-law relationships, and the resolution of disputes arising under such conditions falls within the jurisdiction of civil courts.

At the same time, the expansion of the range of subjects and the participation of a public authority introduce a certain inconsistency in approaches and regimes for dispute resolution. The general view that if a party to a dispute is a public authority, the dispute must be considered by administrative courts is not always accurate or absolute [1, pp. 87-93]. Indeed, the participation of a public authority, acting as a representative of the state, prescribes a certain protective procedure against potential arbitrariness by that authority – a procedure that can be guaranteed by the principles of administrative justice. Nevertheless, this conclusion may be superficial. In such cases, it is essential to consider not only the parties involved but also the character and purpose of the legal relationship. Considering this combination of factors makes the task of identifying the jurisdictional basis for resolving such disputes especially relevant.

Issues related to the confiscation of citizens' property by the state are complex under German administrative law and require a differentiated approach. On the one hand, it is necessary to determine whether the object (a vehicle) should be temporarily removed from the owner's possession or permanently expropriated. On the other hand, the possibilities for legal protection available to the citizen must be considered. There are different options here. First and foremost, does the citizen contest the confiscation itself and demand the return of the item (provided it is still in possession of the authorities)? Does the citizen seek compensation from the authorities due to the permanent loss of the item? Or is the citizen attempting to reclaim the item from a third party who purchased it from a state authority or otherwise came into possession of it? Accordingly, the issue of vehicle confiscation does not fall within a single, clear-cut dimension; rather, it has several facets that depend on the specific factual circumstances.

The basis of the present study comprises the national legislation of Ukraine and Germany, as well as relevant case law.

Under martial law, this issue has become exceptionally relevant. The topic has been studied by Ye. Pylypenko and Yu. Atamanenko [2], D. Pryimachenko [3], R. Opatskyi [4], M. Verbitska [5], among others. The primary issue with current research in this area is its superficiality and the lack of a systematic examination of the jurisdictional aspect. If the issue is considered solely in terms of regulatory provisions, the results of such research will be largely descriptive rather than systematically analytical.

This scholarly article is intended to address these research gaps and introduce a comparative element.

At the same time, a crucial and fundamental aspect of this study is that, from the German perspective, the issue is examined independently of the legal framework associated with martial law, whereas the Ukrainian perspective is both formally and practically linked to the conditions of martial law.

Materials and Methods

In preparing this scholarly article, a wide range of both general and specialized research methods was employed.

Insufficient attention is often paid to the methodology of scientific inquiry when conducting research. In practice, this means that a scientific study is first carried out, and only afterwards, post factum, do researchers outline the set of scientific methods that were applied. However, this is neither a sound nor a consistent approach. The methodology of scientific cognition is not merely a collection of tools that a researcher may choose to apply;

rather, it is, so to speak, a coherent system of coordinates along which the research must proceed in order to ensure genuine, rather than illusory, achievement of its objectives.

Accordingly, the scientific methods were selected to complement one another and ensure a balance between the need for generalizations and the requirement for subject-specific precision when examining particular aspects. The balance between general scientific methods of cognition and specialized scientific methods is crucial in the research process. Their strict structural separation is not advisable, since special methods are, by and large, derived from general scientific methods. At the same time, the description of the methodology applied should always begin in a top-down manner: from general to specific methods.

We first propose to examine the general methods of scientific inquiry used in the course of this study. By applying the logical method, the principal terms and concepts that define the substance of the research were analysed. The systemic method was utilized in forming the system of immanent features of property seizure under martial law and in deriving specific legal constructs. Logical methods such as induction (from the particular to the general) and deduction (from the general to the particular) made it possible to generalize the characteristics of property-seizure procedures and thereby construct an overall model of such procedures under martial law (induction), as well as to determine the features of specific mechanisms of property seizure based on general theoretical conceptions of compulsory property taking (deduction).

We now proceed to describe the specialized legal research methods utilized in this study. The comparative-legal method enabled the juxtaposition of foreign approaches, specifically the German approach to property seizure, with national regulatory approaches to the relevant legal phenomenon. The historical-legal method facilitated the examination of the historical background and prerequisites for the emergence of the phenomenon under investigation, as well as the tracing of the genesis of judicial doctrines concerning disputes between private and public actors regarding the compulsory seizure of motor vehicles. Through the formal-legal method, the provisions of current legislation were analysed, and approaches to the consistent application and interpretation of the relevant legal norms were identified. This method was applied directly in interpreting and analysing the normative provisions governing procedures for the seizure of private property under martial law. In identifying the relevant judicial doctrines and early case law concerning the first disputes over the compulsory seizure of vehicles, the study utilized the modern research method of case study.

The proper and consistent application of various methods of scientific inquiry made it possible to achieve all the study's objectives and enabled an examination of both the substantive and procedural dimensions of the issue under analysis. In turn, the combination of classical scientific inquiry methods with modern methodological approaches ensured the accuracy and reliability of the research findings.

Results and Discussion

Legal Nature of Conflict Relations Arising from Compulsory Seizure of Vehicles During Martial Law

A certain form of conflict relationship has arisen with the onset of Russia's military aggression, particularly regarding the compulsory seizure of property, including vehicles, in its specific form. Cities located at customs border crossings of Ukraine are no exception to the application of such measures. Naturally, in these cases, an Act of Compulsory Alienation or Seizure of Property is drawn up.

The problematic nature of these relationships is further compounded by the fact that, frequently, the person who brings in the vehicle is acting under a Transport Forwarding Services Agreement exclusively as a forwarder. In this context, we are effectively dealing with the implementation of certain agent or representative functions. Representation relationships are inherent in both public-law [6, pp. 188-197] and private-law regulation. The representative's role in protecting the owner's interests enables them to act on the owner's behalf and at the owner's expense.

Of course, ownership of the vehicle is not transferred to this person. At the same time, the vehicle's owner is the person who purchased it at an auction organized by a foreign company outside of Ukraine, and who transferred funds to the company acting as the seller of the lot and, at the same time, as the sender and carrier of the vehicle to its destination. Such relationships are documented by a freight invoice (commercial invoice), which is provided by the seller to the buyer and serves as a primary accounting document and confirmation of the customs value of the goods.

If there are no special legal provisions, the analogous application of civil law norms governing safekeeping agreements (§§ 688 German Civil Code) applies when addressing such disputes in Germany [7].

In brief, whether and under what conditions an item may be confiscated by the authorities or otherwise taken into safekeeping is determined exclusively by public law. In Germany, if a citizen directly contests the confiscation, it is, as a rule, a public-law dispute, which fundamentally establishes the jurisdiction of administrative courts in cases of legal

dispute. However, civil law norms apply to the manner in which the item is kept and the corresponding duty of care. Although these relationships are also influenced by public law, in Germany, civil courts have jurisdiction over damage claims, for example, if the item was damaged or lost while in the possession of the authorities, or if it was actually sold to a third party [8; 9].

However, without a special legislative provision allocating jurisdiction to the civil courts, administrative courts would undoubtedly have competence over damage disputes, because this would be a public-law dispute. From a legal policy perspective, transfer to administrative courts appears more appropriate for fundamental reasons (the greater relevancy of their jurisdiction, greater procedural convenience for citizens in light of different procedural regimes, particularly the application of the principle of inquiry in administrative procedure).

Ukrainian Regulatory Framework and Procedural Models of Compulsory Expropriation

Let us return to the Ukrainian perspective. In accordance with Para 8 of Part 1 of Art. 8 of the Law of Ukraine «On the Legal Regime of Martial Law», the military command, within its powers, issues orders and directives that are mandatory for execution on matters of ensuring defense, public safety, and order, and implementing measures under the legal regime of martial law.

In Ukraine or in certain localities where martial law has been declared, the military command, together with military administrations (if established), may, independently or in conjunction with executive authorities and local self-government bodies, implement compulsory expropriation of property that is in private or communal ownership [10].

The act of compulsory expropriation or seizure of property in such cases must contain information about the person who carried out the appraisal of the property (the state body, local government, surname, first name, and patronymic of the person acting on behalf of the legal entity), the name of the document that contains the conclusion on the value of the property, and the date of the appraisal.

A key consideration in this context is the event's territorial location. This results in a differentiation between such actions taken in a territory where combat operations are ongoing and a territory that is not classified as a zone of active hostilities. It is essential to consider, in such circumstances, whether combat operations are underway in a particular area, which grants the right to expropriate or seize property without approval from the relevant authorities. By Order of the Ministry for Reintegration of the Temporarily

Occupied Territories of Ukraine No. 75 dated 25 April 2022, a List of Territorial Communities located in the area of ongoing military (combat) operations or that are temporarily occupied, surrounded, or blockaded was approved. The subordinate legal act that specifies the list of such territories is the Regulations on the Information System of the List of Territories Where Combat Operations Are (or Have Been) Conducted, or That Are Temporarily Occupied by the Russian Federation [11].

Overall, at present, three possible procedures for the requisition of motor vehicles for defense needs can be distinguished in Ukraine:

(a) Requisition of a vehicle within the framework of fulfilling military-transport obligations (without transfer of ownership);
(b) alienation with the transfer of ownership of such property;
(c) confiscation of a vehicle due to driving under the influence of alcohol, with subsequent transfer of the vehicle for defense needs (the most controversial method).

Regarding the criterion of compensation, the following options for the alienation of vehicles with the transfer of ownership can be distinguished:

(a) with prior full compensation of its value;
(b) compensation of the vehicle's value after the end of the legal regime of martial law;
(c) complete gratuitous requisition of the vehicle.

In the realm of public-law procedures, it is crucial to strike a balance between public and private interests [12, p. 126]. By representing the interests of society in various spheres of life, the state shapes corresponding policies – economic, social, and legal. One of the instruments of interaction between the object and the subject in achieving the goals of state regulation is the combination of socio-economic processes [13, p. 167] with well-calibrated normative regulation. Procedures for the seizure of property, especially under martial law, require such a balance and careful adjustment.

Legal Facts, Ownership Protection, and Grounds for Contesting Acts of Expropriation

Regarding the forced expropriation of property in German administrative and legal regulation, norms governing the confiscation procedure apply. At the same time, confiscation is usually regulated by special legislation. A common case is the seizure of physical evidence in criminal proceedings or the confiscation of items by tax authorities. Similar to the confiscation of objects by authorities, such as household items located in a building at risk of collapse and damaged by bombing during the war, this establishes

a legitimate relationship of safekeeping under public law. Since the authorities take possession of someone else's property when they confiscate it and secure it, thereby removing the authorized person from control over it to perform a public task, a public-law relationship of custody arises automatically, that is, without the need for a contract.

The basis that gives rise to a dispute, the legal fact that initiates, modifies, or terminates such legal relationships, is also significant for the resolution of such disputes. In this case, it involves a combination of certain circumstances or events that require an appropriate legal response. The complexity of legal facts, as well as their factual composition, reflects a combination of two manifestations of will and interest [6, p. 453]. On the one hand, it is the will of the state that specifies a particular legal fact as the basis for the dynamics of legal relationships. On the other hand, it is the will of the participants in legal relationships that must organize their activity and conduct in conformity with the prescriptions defined in a particular legal provision.

The existence of a set of legal facts in the form of a complex factual composition is determined by the nature of the relations regulated on the basis of such facts. It is precisely the combination of these facts, understood as a coherent system of elements that generate the dynamics of the legal relationship, that is associated with a complex factual composition. Such compositions may encompass both actions and events that relate not only to different sectoral legal institutions but also to different branches of law. It is therefore essential to distinguish between a factual composition, which is a set of independent life circumstances, and a complex legal fact. In the first case, the reference is to a set of independent, self-contained legal facts, whereas the integrity of a complex legal fact derives solely from the combination of its elements, none of which have legal relevance or produce legal consequences on their own.

Thus, the factual composition forming the basis for the emergence of the legal relationship concerning the compulsory seizure of a vehicle must combine at least several circumstances:

(a) the existence of the vehicle;
(b) it's proper valuation;
(c) approval by the executive body of the relevant local council.

Failure to comply with the procedure for compulsory seizure of a vehicle, or incorrect identification of the vehicle owner, provides grounds for the claimant to file a lawsuit seeking recognition of the relevant order and its annulment as unlawful. Typically, the claim seeks to invalidate acts concerning the compulsory alienation of property.

Another example of compulsory alienation under German law is the temporary confiscation of a vehicle, or even an obligation imposed on the driver to provide his or her vehicle in emergency situations - for instance, for transport services – if the state lacks a sufficient number of available vehicles (the so-called towing or requisitioned transport services). If a public authority sells the item to a third party, the third party will generally have effectively acquired ownership of it. Therefore, a civil-law claim for restitution is likely to be excluded in relations between private individuals. A different outcome would appear possible only if the confiscation was manifestly arbitrary or grossly unlawful. This, however, is a question specific to the individual case and cannot be answered in general terms.

A statement of claim may be filed for the purpose of protecting the claimant's right of ownership to the property and seeking the return of the vehicle. The right of ownership is an individual's right to a thing (property), exercised in accordance with the law at their own discretion and independently of the will of others. Under conditions of martial law or a state of emergency, property may be compulsorily alienated from its owner with subsequent full compensation of its value.

At the same time, it is necessary to distinguish between:

(a) The purpose for which the claimant insists on the return of the vehicle, and
(b) The purpose for which the claimant seeks to protect the violated right through the correction of information contained in the Act on compulsory alienation or seizure of property.

This distinction arises from the fact that, in practice, such acts often list as the «owner» a person who provides forwarding (or other) services relating to the delivery of the vehicle to the actual owner. This results in a violation of the rights of the person who provided the funds for the property purchase and subsequently prevents that person from obtaining reimbursement for the incurred expenses. The reason is that the right to compensation for the value of the property belongs solely to the owner indicated in the Act of compulsory alienation or seizure.

Claimants perceive the violation of their rights in the consequences arising from the decision, action, or omission of a public authority, specifically in the infringement of their right to compensation for the value of the property, since the documents contain information identifying an incorrect owner (a freight forwarder, etc.) instead of the proper owner - the actual purchaser of the vehicle. Such actions are not only unlawful but also have produced legal consequences related to the emergence, alteration, or termination of civil legal relations. These relations are exclusively proprietary in nature

or are connected to the realization of an individual's proprietary interests. Accordingly, the recognition of such decisions as unlawful constitutes a means of protecting civil rights and interests.

For Ukraine, as a country fighting against the armed aggression of the Russian Federation, the effectiveness of mechanisms for protecting the rights and interests of citizens is of particular importance. In this context, it is not only the existence of such mechanisms that matters, but also ensuring their effectiveness [14].

Jurisdictional Determination and Judicial Practice

A fundamentally important aspect in this situation is the clear determination of the subject-matter jurisdiction for disputes of this type, which concern the property rights of the claimant and are of a private-law nature. It is difficult to classify the resolution of such a dispute under administrative jurisdiction. A dispute between a public authority and an individual, in which the actions of the public authority pertain to the emergence, modification, or termination of the individual's civil rights, is not a public-law dispute. Although a public-law entity is involved in the dispute, the dispute exhibits all the characteristics of a civil-law matter. The contested legal relations between the parties arose as a result of a decision to forcibly alienate property, which may necessitate the protection of the claimant's civil rights. Considering that the dispute is effectively connected with the exercise of the claimant's civil rights, the competent court to resolve the dispute is a court of civil jurisdiction.

It can be concluded, based on the principles of administrative court jurisdiction concerning cases in public-law disputes – specifically, disputes between individuals or legal entities and public authorities, challenging their decisions, actions, or omissions – that such a dispute should be examined under administrative proceedings. However, a public-law dispute subject to administrative court jurisdiction is a dispute between participants in public-law relations and relates directly to those relations. The mere presence of a public authority as one of the parties does not automatically classify the case as a dispute of this nature. Considering the purpose of resolving the dispute - namely, the violation of a private right of a specific party that requires protection under private law - allows one to conclude that the dispute is of a private-law nature.

The deliberate and continuous expropriation of property and its transfer to a third party (the state or a private individual), that is, the seizure of all lawful property by the state (total expropriation), constitutes a classical form of expropriation. If this is carried out not directly by law (legislative expropriation), but by a public authority acting within the scope of the

law, it is referred to as administrative expropriation. The Constitution itself clearly regulates that expropriation entails an obligation to pay compensation. Typically, the responsibility for compensation lies with the direct beneficiary of the expropriation: either the sovereign undertaking the intervention or a private individual in whose favor the expropriation was carried out. Given the amount of compensation, which must be determined through a fair balancing of the interests of the general public and the affected parties, legal recourse to civil courts is available. This also constitutes a special provision regarding judicial access, which is directly enshrined in the Constitution, because, as explained above, this is a public-law dispute for which, without this special regulation (so-called special allocation or displacement), the administrative courts would have jurisdiction. Previous attempts to reform the system to transfer disputes arising from public-law guardianship relations and expropriation compensation to administrative courts, rather than civil courts, have so far been unsuccessful.

A dispute has a private-law character if it is related to the violation or potential violation of the private right or interest of an individual. The protection of such rights and interests must be carried out in accordance with the procedures established by the applicable legislation governing private-law relations. In this situation, it is not necessary to assume that the violation of a private right or interest was caused by the administrative actions of public authorities. A certain analogy may be drawn from the positions of the Grand Chamber of the Supreme Court [15], which has repeatedly emphasized that a dispute should be considered under civil or commercial procedure (depending on the composition of the parties) if, as a result of a decision, a person acquires or loses a property right to an immovable object.

For this reason, courts logically conclude that the legal relations between the claimant and the defendant do not pertain to the protection of the claimant's rights, freedoms, and interests within the sphere of public-law relations, but are aimed at protecting their property rights. Therefore, such a dispute does not fall within the jurisdiction of administrative courts and should be resolved under civil procedure. The subject matter of the dispute is the challenge of acts concerning the forced alienation of the claimants' real estate. Consequently, the dispute between the parties concerns the property rights of the claimants, despite arising in the context of public interest. Moreover, recognizing as unlawful the decisions, actions, or inactions of a state authority, the Autonomous Republic of Crimea, or local government bodies, as well as their officials, may serve as a means of protecting civil rights and interests.

The quintessence of the courts' legal position regarding the characterization of disputes concerning the compulsory seizure of property was formulated in the Resolution of the Supreme Court, composed of judges of the United Chamber of the Cassation Commercial Court, dated 16 February 2024 (case No. 910/10009/22):

> *«Thus, regardless of the composition of the parties to this dispute, in view of the subject matter of the dispute – the Order and Act concerning the compulsory alienation/seizure of the Claimant's vehicles – as well as the grounds for its occurrence, the dispute between the parties in this case concerns the property rights of the Claimant (their protection and restoration) and has a private-law nature»* [16].

We consider that the classical judicial procedure for resolving this category of disputes remains the most optimal. Undoubtedly, alternative methods for resolving public-law disputes are emerging, particularly in the form of mediation procedures. Mediation is generally defined as a negotiation process conducted with the participation of a mediator, aimed at resolving a dispute (or disputes) between the parties by reaching a mutually acceptable solution. The parties themselves determine the method of resolving the conflict, while the mediator's role is to organize the negotiation process [17, p. 80]. However, for disputes related to the requisition of vehicles under martial law conditions, mediation procedures are unlikely to be effective due to the nature of the subject matter and the absolute nature of the parties' interests in this category of cases.

Overall, the issue of vehicle seizure under conditions of martial law is associated with a heightened degree of conflict within these legal relationships. This is understandable, as it involves restricting an individual's property rights, while questions of compensation often have a deferred character. In public-law relations, the duty-bearing subject is increasingly viewed as a person entitled to receive certain benefits from the performance of their obligations [18, p. 2]. It is also undeniable that in more developed countries the level of evasion of public obligations is lower compared to less developed countries [19, p. 9]. This is primarily related to the degree of stability that developed countries are able to provide, as well as the consistent fulfillment of citizens' expectations. However, this does not negate the fact that public procedures must be implemented effectively in all countries, regardless of their level of economic development.

Conclusions

Thus, the issue under study has a complex nature and fundamental importance for ensuring the consistent achievement of defense objectives. The authors have drawn the following conclusions:

1. The compulsory seizure or expropriation of property, particularly vehicles, has become a significant legal issue in Ukraine following Russia's military aggression. Such measures are applied in areas under martial law.

2. Complex ownership and representation relationships arise when vehicles are imported by individuals acting under forwarding agreements. Although these persons perform representative functions, ownership remains with the actual purchaser, underscoring the importance of accurately identifying the rightful owner in legal documents.

3. In Ukraine, three main procedures for vehicle requisition exist: (a) requisition without transfer of ownership for military-transport obligations, (b) alienation with ownership transfer, and (c) confiscation due to driving under the influence.

4. Compensation mechanisms are a key factor in maintaining fairness, ranging from full prior compensation to deferred or gratuitous requisition, depending on the legal regime and nature of the expropriation.

5. Legal disputes arising from such seizures are primarily private-law in nature because they involve the violation of individual property rights and the right to compensation. The mere participation of a public authority does not transform these disputes into matters of public law. The objective is the protection and restoration of property rights rather than public-law enforcement.

6. Effective mechanisms for protecting property rights under martial law are not only a legal requirement but a key factor in maintaining public trust, ensuring fairness, and balancing state authority with individual rights during armed conflict.

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Suggested Citation: Kucheriavenko, M.P., Brocker, L., & Broiakov, S.V. (2025). Compulsory Seizure of a Vehicle: Jurisdictional Issue. *Theory and Practice of Jurisprudence, 2*(28), 6-21. https://doi.org/10.21564/2225-6555.2025.28.346828.

Submitted: 03.10.2025
Revised: 22.11.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.347612

Review of Court Judgements on Newly Discovered Circumstances and Access to Court

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Abstract
The article addresses the issue of identifying the persons entitled to initiate reviews of court decisions on newly discovered circumstances, as it has emerged in the Supreme Court practice. The author employs methods of analysis and synthesis, as well as systemic-structural and logical-legal methods, in addition to teleological and evolutionary interpretations of the European Convention on Human Rights (ECHR) practice. The article is structured in two parts. The first part analyzes the approaches developed in the practice of the European Court of Human Rights regarding the content of the right of access to court (Article 6, paragraph 1 of the ECHR). It concludes that this right is not absolute and may be subject to restrictions that comply with the principle of proportionality. This right encompasses not only the right to lodge a claim, but also the ability to initiate a review of a court decision. The ECHR recognizes appeal review as the minimum standard, while other types of review (cassation, review of court decisions on newly discovered or exceptional circumstances) are extraordinary, and therefore may be subject to more stringent restrictions. Legitimate restrictions include, for example, time limits for appeals, requirements for the content and form of such appeals, and a limited scope of individuals who are entitled to initiate the relevant type of review. The second part of the article examines the legitimacy of restricting access to court within the review of court decisions on newly discovered circumstances for persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court. It is argued that excluding these individuals from those who can initiate the relevant review is proportionate. However, where such persons have joined the proceedings at the appeal or cassation stage, acquiring participant status in the case, they should also be granted the right to initiate a review based on newly discovered circumstances.

Keywords: *access to court; right to a fair trial; European Convention on Human Rights; European Court of Human Rights; review of court decisions on newly discovered circumstances; civil proceedings.*

Перегляд судових рішень за нововиявленими обставинами та доступ до суду

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Анотація
Стаття присвячена проблемі визначення суб'єктного складу осіб, які мають право ініціювати перегляд судових рішень за нововиявленими обставинами, що виникла у практиці Верховного Суду. Використано методи аналізу та синтезу, системно-структурний та логіко-юридичний методи, а також методи телеологічного та еволюційного тлумачення практики ЄСПЛ. Структурно стаття складається з двох частин. У першій частині здійснено аналіз підходів, які склалися у практиці ЄСПЛ щодо змісту права на доступ до суду (п. 1 ст. 6 ЄКПЛ). Сформульовано висновок, що право на доступ до суду не є абсолютним, а може підлягати обмеженням, що мають відповідати принципу пропорційності. Це право охоплює не лише право на звернення до суду, але й можливість ініціювати перегляд судових рішень. Мінімальним стандартом у цьому випадку ЄСПЛ визнається апеляційний перегляд, водночас інші види перегляду (касаційний, перегляд судових рішень за нововиявленими або виключними обставинами) є екстраординарними, тому до них можуть встановлюватися більш суворі обмеження. До легітимних обмежень, зокрема, належать встановлені в законі строки оскарження, вимоги до змісту та форми апеляційної або касаційної скарги, обмежене коло осіб, які можуть ініціювати відповідний вид перегляду. У другій частині розглядається питання легітимності обмеження права на доступ до суду під час перегляду судових рішень за нововиявленими обставинами для осіб, які не брали участь у справі, однак суд вирішив питання про їх права, свободи, інтереси або обов'язки. Доводиться, що виключення зазначених осіб із кола суб'єктів, які можуть ініціювати відповідний вид перегляду, є пропорційним. Проте у випадках, коли такі особи вступили у провадження на стадії апеляційного або касаційного перегляду, набувши статус учасника справи, їм має надаватися також право ініціювати перегляд за нововиявленими обставинами.

Ключові слова: *доступ до суду; право на справедливий судовий розгляд; Європейська конвенція про захист прав людини і основоположних свобод, Європейський суд з прав людини; перегляд судових рішень за нововиявленими обставинами; цивільне судочинство.*

Introduction

A review of a court decision on newly discovered or exceptional circumstances is an extraordinary type of review of decisions that have become res *judicata*. Applications for a review of a court decision on newly discovered circumstances, as defined in paragraphs 1-3 of Part 1 of Art. 424 of the Civil Procedure Code of Ukraine (hereafter – CPC) may only be submitted by the participants of the case. According to Art. 42 of the CPC participants of the case as a group of persons, who have some interest (substantive and/or procedural one) in civil proceedings, include parties, third parties, authorities, and persons granted by law the right to apply to the court in the interests of other persons (e.g. the prosecutor, the ombudsman, state authorities, etc.). Therefore, a strict interpretation of Part 1 of Art. 424 of the CPC suggests that the group of persons who can apply for a review of a court decision on newly discovered circumstances is more limited than those who can file appeals and cassation complaints. The latter group includes not only the parties of the case but also persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court (Part 1 of Art. 352 and Part 1 of Art. 389 of the CPC).

At the same time, according to Part 3 of the Art. 352 and Part 4 of the Art. 389 of the CPC after the opening of appeal/cassation proceedings on the basis of an appeal/cassation complaint filed by a person who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, such person shall enjoy the procedural rights and bear the procedural obligations of a participant of the case. This provision of the procedural legislation has given rise to inconsistent interpretations in the Supreme Court's case law. On the one hand, persons who did not participate in the case but whose rights, freedoms, interests, and/or obligations were determined by the court, are not included among those entitled to seek review on newly discovered circumstances (Part 1 of Art. 424 of the CPC). On the other hand, once such persons enter the proceedings at the appellate or cassation stage, they acquire procedural rights and bear duties of a participant of the case (Part 3 of Art. 352 and Part 4 of Art. 389 of the CPC), and one of such rights is to submit an application for a review of court decisions on newly discovered circumstances.

It is important to acknowledge that there has been some discussion in the scientific literature on this issue. Authors such as O. Zeldina [1], V. Lavrov [2], D. Menyuk [3], R. Kolesnik [1], M. Oprysko [4], O. Rudenko [5], S. Stepanov [6], S. Senik [4] and others have contributed to this discussion.

An analysis of the literature reveals at least three approaches to the problem. According to the first approach, persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, have the right to file a corresponding application only if they have joined the proceedings during the appeal or cassation stage [3, pp. 128-131]. Consequently, V. Lavrov's interpretation is that individuals who have participated in appeal or cassation review should be granted the right to file an application for review of court decisions on newly discovered circumstances. The reason for this is that granting the rights and obligations of a participant of the case to this group of persons also results in their being granted the status of a participant of the case [2, p. 162].

According to the second approach, advocated by some authors, the persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, should be given the opportunity to file such an application regardless of whether they participated in the appeal or cassation proceedings [1, p. 94; 6, pp. 52-53; 4, p. 24].

The third approach advocates limiting the circle of persons who can file applications for review of court decisions on newly discovered circumstances to the participants of the case. Thus, O. Rudenko concludes that it is inappropriate to expand the circle of persons who have the right to file an application for review on newly discovered circumstances, emphasizing that it should be limited exclusively to the participants of the case [5, p. 56].

Despite the attention devoted to these issues in the literature, the problem remains unresolved at the level of the Civil Cassation Court's practice within the Supreme Court. Accordingly, the prevailing jurisprudence of the Supreme Court, granting persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, the rights and obligations of a participant of the case do not mean recognizing them as participants of the case in terms of Part 1 of Art. 424 of the CPC. Consequently, such individuals should be precluded from filing applications for the review of court decisions on newly discovered circumstances, even if they have become involved in the proceedings at the appeal or cassation level [7]. The matter has been referred to the Joint Chamber of the Civil Cassation Court within the Supreme Court [8], thus prompting a re-examination of the subject and the presentation of further arguments.

Materials and Methods

From a theoretical point of view, the question of whether certain persons should be granted the right to lodge a claim to the court or the right to initiate ordinary or extraordinary types of review of court decisions lies within the scope of international standards of the right of access to a court in terms of Paragraph 1 of the Art. 6 of the ECHR. Therefore, the teleological and evolutionary methods of interpretation employed by the ECtHR in its case law are key to this study, as the ECtHR has extended the guarantees of the right of access to court not only to first-instance courts but also to procedures for reviewing court decisions.

The systemic-structural method enabled the author to analyze and categorize the scientific views available in the literature on procedural law regarding the possibility of exercising the right to file an application for review of a court decision on newly discovered circumstances by persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court. The method of analysis and synthesis was employed to consolidate the Supreme Court's jurisprudence, as well as to categorize the precedents of the ECtHR concerning access to court. The logical-legal method was employed in interpreting the provisions of national procedural law that govern the procedure for reviewing court decisions on newly discovered circumstances. This article is also based on the scientific and advisory opinion of the author as a member of the Scientific Advisory Council to the Supreme Court in the case No. 205/5860/21 [8].

The article is divided into two parts. In the first part, the author conducts an analysis of the approaches developed in the practice of the ECHR regarding the content and limitations of the right of access to court (Paragraph 1 of the Art. 6 of the ECHR), with a particular focus on the possibility of initiating ordinary and extraordinary types of review of court decisions, including review on newly discovered circumstances. In the second part of the article, the author puts forward the argument that the exclusion of persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, from the circle of persons, who may initiate the review of court decisions on newly discovered circumstances, pursues a legitimate aim and is proportionate. Further arguments are proffered in support of the position that the entry of such persons into the proceedings at the appeal or cassation stage should also grant them the derivative right to initiate a review on newly discovered circumstances. The legitimacy of this position is predicated on three factors. Firstly, it is necessary to consider the status of the relevant persons at the stage of appeal or cassation review. Secondly,

it is essential to examine the powers of the court in cases where the court determines that the relevant persons have no interest in the consideration of the case. Thirdly, it is crucial to ensure the principle of equality of arms and the adversarial principle for such persons in comparison with other participants of the case.

Results and Discussion

The right of access to court and its legitimate restrictions in the review of court judgments on newly discovered circumstances

Pursuant to Paragraph 1 of Art. 6 of the ECHR, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of their civil rights and obligations or of any criminal charge against them. An inherent component of the right to a fair trial is the right of access to a court, as repeatedly affirmed by the ECtHR. As early as *Golder v. the United Kingdom*, where the ECHR derived the right of access to a court from Art. 6 of the ECHR, it stressed that *"it would be inconceivable, in the opinion of the Court, that Article 6 para 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public, and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings"* [9].

In its subsequent case-law, the ECtHR, when elaborating on the content of the right of access to a court, has observed that it encompasses not only the possibility of instituting proceedings before a competent court, but also – where provided for under the procedural law of the respondent State – the possibility of seeking review of court decisions [10]. Such provisions should also be interpreted in a broader sense of the access to justice approach [11–13].

An analysis of the ECHR's case-law further suggests that appellate review is often treated as a minimum standard of review of court decisions that should be ensured under domestic law, whereas cassation review, review on the newly discovered or exceptional circumstances, and comparable remedies, where they exist in national legal systems, are extraordinary forms of review, access to which may be subject to stricter limitations in light of their specific nature. A key issue in this context concerns the legitimacy of restricting access to specific forms of review in light of the principle of proportionality. In its classic formulation, the proportionality test for restrictions on access to a court involves examining: (a) whether the restriction is prescribed by law; (b) the aim pursued by the restriction; (c) whether there is a reasonable relationship of proportionality between

the means employed and the aim pursued; and (d) whether alternative avenues for exercising the right of access to a court remain available notwithstanding the restriction [14]. At the same time, when assessing restrictions on access to a court in court review procedures, the ECtHR has developed some additional criteria. In particular, in *Zubac v. Croatia*, in the context of access to cassation proceedings, the ECtHR held that, beyond the classic proportionality assessment, it is also necessary to take into account: (a) the foreseeability of the restriction; (b) who should bear the adverse consequences of errors committed in the course of the proceedings – state or the parties of the case; and (c) the avoidance of "excessive formalism" [10].

In its case law, the ECtHR has accepted as legitimate, inter alia, the imposition of time limits for lodging appeals and cassation complaints, as well as formal and content requirements governing appeals and cassation complaints, rules of territorial jurisdiction [15; 16], etc. In its judgement *Industrial Financial Consortium Investment Metallurgical Union v. Ukraine* the ECtHR found a violation of Paragraph 1 of Art. 6 of the ECHR because the domestic courts reopened the proceedings on newly discovered circumstances at the request of a person who had not participated in the case, even though Ukrainian law allowed such applications to be lodged exclusively by participants of the case. It follows that, for the purposes of Paragraph 1 of Art. 6 of the ECHR, the national legislature may impose more strict restrictions on access to review mechanisms, particularly in the context of extraordinary ones. Accordingly, the mere fact of limiting the circle of eligible applicants cannot, as such, be regarded as a violation of the right of access to a court [17; 18].

Persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court as applicants for review of a court decision on newly discovered circumstances

As noted above, pursuant to Part 3 of Art. 352 of the CPC, once appellate proceedings are opened on the basis of an appeal lodged by a person who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, that person acquires the procedural rights and assumes the procedural duties of a participant of the case.

A systematic interpretation of the CPC suggests that, at the stage of the opening of appellate proceedings, the appellate court's powers are limited. Once the court receives an appeal from a person who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, at the stage of deciding whether to open

appellate proceedings the court should not examine whether the decision in fact infringed that person's rights, freedoms or interests, i.e. whether the person has a legal interest in the case. If the appeal is duly drafted and lodged in compliance with the legislative requirements, the appellate court must open appellate proceedings. In our view, it is from that moment that a person whose rights, freedoms, interests, and/or obligations were determined by the court, acquires the capacity to exercise the procedural rights and assume the procedural duties of a participant in the case. Prior to the opening of appellate proceedings, such a person cannot, in practice, perform procedural acts or invoke the procedural rights of a participant of a case. If, after appellate proceedings have been opened, the appellate court finds that the impugned decision did not affect the rights, freedoms, or interests of such a person, it must close the appellate proceedings pursuant to Paragraph 3 of Part 1 of Art. 362 of the CPC. If, conversely, the court of first instance delivered a decision determining the rights, freedoms, interests, and/or obligations of such a person, this constitutes grounds for setting aside the decision of the court of first instance and adopting a new decision by the court of appeal under Para 4 of Part 3 of Art. 376 of the CPC.

A systematic interpretation of Part 3 of Art. 352, Para 3 of Part 1 of Art. 362, and Para 4 of Part 3 of Art. 376 of the CPC suggests that, taking into account Ukraine's mixed model of appeal, where an appeal is lodged by a persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, the appellate court is limited to two courses of action: a) to close the appellate proceedings if it is established that the judgement did not affect that person’s rights, freedoms, or interests (Para 3 of Part 1 of Art. 362 of the CPC); or b) to set aside the judgement of the court of first instance and deliver a new decision if the court of first instance determined that person's rights, freedoms, interests and/or obligations (Para 4 of Part 3 of Art. 376 of the CPC).

At the same time, in a case referred to the Joint Chamber of the Civil Cassation Court within the Supreme Court, the court of appeal, after reviewing the court judgement on the merits, upheld the judgement of the court of first instance [8]. In our view, this approach should be criticized. Once the appellate court had established that the judgement of the first instance court did not affect the rights, freedoms, or interests of the appellant, it was required to close the appellate proceedings, rather than to review the first-instance judgment and leave it unchanged.

In such circumstances, the persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, may exercise the procedural rights of a participant of the case

only from the moment the appeal is lodged until the appellate proceedings are closed. Those procedural rights should not have effect after the appellate proceedings are closed; they must be exhausted at the appellate level.

Moreover, in case where the court of appeal upholds the judgement of the court of first instance, the person in fact lodge an application on newly discovered circumstances against the judgement of the court of first instance. Accordingly, persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, should not be entitled to seek review of the first-instance court judgement on newly discovered circumstances, because they were not participants of the case at the court of first instance. The court should not permit a review on newly discovered circumstances merely because the applicant temporarily exercised the rights and duties of a participant of the case during the appellate stage, where the appellate court ultimately upheld the first-instance decision and thus confirmed the absence of any legal interest of the applicant.

At the same time, in our view, such a person is entitled only to seek review of the appellate court's decision on newly discovered circumstances. If the court of first instance delivered a judgement determining the rights, freedoms, interests and/or obligations of a person who did not participate in the case, and – following that person's appeal – the appellate court set aside the first-instance court judgement and adopted a new decision, that person should subsequently be entitled to apply for review of the appellate court's decision on newly discovered circumstances. Pursuant to Part 2 of Art. 425 of the CPC, such a review must be conducted by the appellate court itself. Any contrary approach would result in disproportionate restrictions of the procedural rights of such persons, whose legal interest was effectively confirmed by the appellate court through its appellate review and the adoption of a new decision in the case.

Limiting the circle of eligible applicants in this manner is justified, as it helps prevent situations in which non-parties – who merely assert that a judgment has affected their rights, freedoms, or interests – file an appeal in order to obtain procedural standing and thereby create an additional avenue for extraordinary review, including with the aim of delaying proceedings. Such strategic behaviour is incompatible with the principle of legal certainty and with the case-law of the ECtHR, which treats review on newly discovered circumstances as an exceptional type of review.

Conclusions

This article has examined the interplay between the extraordinary nature of review on newly discovered circumstances and the right of access to a

court under Paragraph 1 of the Article 6 of the ECHR, with a particular focus on the question of standing for persons who did not participate in the case but whose rights, freedoms, interests and/or obligations were determined by the court. The analysis demonstrates the CPC narrows the circle of applicants entitled to initiate the review on the newly discovered circumstances. This approach is generally consistent with the case law of the ECtHR on access to extraordinary types of review. At the same time, in our opinion, the list of persons who can lodge an application for review of a court decision on newly discovered circumstances should still be expanded to include persons who did not participate in the case, but whose rights, freedoms, interests, and/or obligations were determined by the court, if such persons entered to the proceedings at the appeal or cassation stage. This approach will ensure that the rights of such persons are respected, assuming that they have a genuine interest in the outcome of the case, and will also guarantee them the right to a fair trial within the meaning of Article 6(1) of the ECHR.

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Suggested Citation: Tsuvina, T.A. (2025). Review of Court Judgements on Newly Discovered Circumstances and Access to Court. *Theory and Practice of Jurisprudence, 2*(28), 22-32. https://doi.org/10.21564/2225-6555.2025.28.347612.

Submitted: 21.10.2025
Revised: 27.11.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.346815

Innovation Policy as a Component of State Economic Policy in Modern Economic Conditions

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Abstract
The article is devoted to the theoretical and legal analysis of innovation policy as an integral and priority component of the state's economic policy in the context of contemporary transformations in the national and global economy. The relevance of the study is determined by the intensification of global technological competition, the need to ensure Ukraine's economic and defence stability, as well as institutional changes in national legislation, in particular, the repeal of the Economic Code of Ukraine, which for a long time performed a systematising function in the field of state regulation of economic activity. The methodological basis of the article consists of systemic, formal-logical, and formal-legal methods, which enabled the study of the relationship between the legal architecture of economic policy and the effectiveness of innovation processes. The work emphasises that the absence of a coherent codified core of economic policy and the definitive uncertainty of innovation policy create a significant institutional vacuum, which complicates the coordination of state regulation, weakens horizontal coordination between authorities, and hinders strategic technological development. Based on an analysis of the Constitution of Ukraine, current laws, subordinate legislation, and doctrinal approaches, the fragmentation of the legal framework for both economic and innovation policy has been identified, which negatively affects the state's ability to ensure the structural modernisation of the economy, stimulate innovation, and support high-tech sectors, in particular the defence-industrial complex. As a result, several proposals were formulated regarding the institutionalization of innovation policy at the legislative level, specifically: the need to establish a comprehensive definition of innovation policy, to incorporate it as a component of state economic policy, and to enhance mechanisms for interdepartmental coordination. It is argued that the institutionalisation of innovation policy is a key prerequisite for economic recovery, ensuring competitiveness, reducing transaction costs, and forming a comprehensive model of the national economic order.

Keywords: *innovation policy; state economic policy; economic and legal order; state regulation.*

Інноваційна політика як складова економічної політики держави в сучасних умовах господарювання

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Анотація
Статтю присвячено теоретико-правовому аналізу інноваційної політики як невід'ємної та пріоритетної складової економічної політики держави в умовах сучасних трансформацій національної й світової економіки. Актуальність дослідження зумовлена посиленням глобальної технологічної конкуренції, необхідністю забезпечення економічної та оборонної стійкості України, а також у зв'язку з інституційними змінами в національному законодавстві, зокрема скасуванням Господарського кодексу України, який тривалий час виконував систематизуючу функцію у сфері державного регулювання господарської діяльності. Методологічну основу роботи складають системні, формально-логічні та формально-правові методи, що дозволило дослідити взаємозв'язок між правовою архітектурою економічної політики та ефективністю інноваційних процесів. У роботі акцентовано увагу на тому, що відсутність цілісного кодифікованого ядра економічної політики та дефінітивна невизначеність інноваційної політики створюють суттєвий інституційний вакуум, що ускладнює узгодженість державного регулювання, послаблює горизонтальну координацію між органами влади та перешкоджає стратегічному технологічному розвитку. На підставі аналізу Конституції України, чинних законів, підзаконних актів і доктринальних підходів виявлено фрагментарність правового забезпечення як економічної, так і інноваційної політики, що негативно впливає на можливості держави забезпечувати структурну модернізацію економіки, стимулювати інновації та підтримувати високотехнологічні сектори, зокрема оборонно-промисловий комплекс. У результаті сформульовано низку пропозицій щодо інституціоналізації інноваційної політики на рівні законодавства, зокрема, щодо необхідності встановлення її комплексної дефініції, закріплення її як складової державної економічної політики, вдосконалення механізмів міжвідомчої координації. Обґрунтовано, що інституціоналізація інноваційної політики є ключовою передумовою відбудови економіки, забезпечення конкурентоспроможності, зменшення трансакційних витрат та формування цілісної моделі національного господарського порядку.

Ключові слова: *інноваційна політика; економічна політика держави; господарсько-правовий порядок; державне регулювання.*

Introduction

The current stage of global economic development is characterized by an unprecedented intensification of competition, which is increasingly shifting towards high-tech industrial goods and, most critically, the defense industry. In the context of the global technological race, where knowledge and innovative advantage are key resources, ensuring national economic stability and technological sovereignty is impossible without a radical transition to an innovation-oriented development model. For Ukraine, with its pressing security needs and the need for deep structural modernisation of the economy, effective innovation policy is becoming a strategic and even existential necessity [1].

The effectiveness of this strategic transition is determined not only by the volume of investment but also, above all, by the state's ability to formulate and implement a comprehensive economic policy that serves as a catalyst for innovation processes. It is a comprehensive economic policy that provides the institutional framework for integrating scientific and technical priorities into fiscal, investment, and structural-sectoral mechanisms. At the same time, at the institutional and legal level in Ukraine, there is a crisis of systematisation, which poses serious risks to the integrity of public administration.

On the one hand, national economic legislation is gradually losing its unifying centre: the decision to repeal the Economic Code of Ukraine (ECU) [2], which came into force in August 2025, effectively means that there is no single codified mechanism for summarising the main directions of state economic policy, as defined in Art. 10 of the ECU. This step leaves key regulatory functions and definitions scattered across a multitude of sectoral laws. This jeopardises the methodological basis for coordinating strategic decisions, as it removes the conceptual core around which the logic of state influence on economic processes was built.

On the other hand, innovation policy, despite its undeniable strategic importance for post-conflict recovery and defence capability enhancement, is still only fragmentarily represented in legislation. It lacks a clear, comprehensive definition at the national regulatory level, which makes it difficult to perceive it as a primary and mandatory function of the state, rather than merely an auxiliary mechanism for investment or scientific and technical activities.

The lack of a systematic legal basis for economic policy, in general, and the definitive uncertainty of innovation policy, in particular, create a significant institutional vacuum that complicates horizontal coordination between agencies and hinders the full integration of innovation priorities

into fiscal, investment, and structural and sectoral policies. Thus, the economy remains sensitive to market changes and is unable to ensure the sustainable technological renewal necessary to defend national interests in the defense sector [3, p. 44].

The aim of this study is to provide a theoretical and legal justification for the need to institutionalise innovation policy as an integral and priority component of the state's economic policy in the context of contemporary geopolitical and institutional challenges, and to develop practical recommendations for doing so. The establishment of innovation policy as a full-fledged, institutionalised function of the state and a key mechanism of public-state regulation is a critically necessary condition for ensuring the competitiveness of the economy and technological superiority in the defence sector.

Literature review

The problem of institutionalisation and effectiveness of public policy, especially innovative policy, is at the centre of legal and economic doctrine. In the scientific literature, state economic policy is traditionally viewed as a system of targeted measures implemented by all branches of government and state administrative bodies that have a significant influence on the economic development of society [4, p. 336]. However, the focus of research has shifted significantly from describing economic instruments to analysing the legal and institutional prerequisites for their implementation.

A critical approach to the legal framework for economic order is reflected in the works of D.V. Zadykhal. He rightly emphasises the significant role of the Economic Code of Ukraine (ECU) in the formation of the modern economic order, stressing that it was thanks to the initiatives of the ECU developers that issues of the constitutional foundations of the economic order, state economic policy, its forms and directions were raised at the legislative level. This position is justified by the fact that the establishment of such legal foundations created the basis for the formation of a comprehensive mechanism for implementing the state's economic policy, oriented towards the development of the national economy. In this context, the abolition of the Civil Code is viewed as a departure from the consistent evolution of economic law, which poses a threat to the integrity of the national economy's legal framework [5].

Regarding innovation policy (IP), scholars are unanimous in their criticism of its fragmented legal foundation. Yu.V. Georgievsky proposes to understand state innovation policy as the activities of the state aimed at creating socio-economic, organisational, and legal conditions for the effective reproduction, development, and use of scientific and technical

potential, ensuring the introduction of modern, environmentally friendly, safe, energy and resource-saving technologies, and the production and sale of new types of competitive products [6]. O.V. Kuzmin defines IP more broadly than the legislative framework, as "a system of measures at the state, corporate and regional levels aimed at creating a favourable environment for the development of innovations, their commercialisation and transfer". V. Heyets emphasises that innovation policy is "an integral part of the state's economic policy, which ensures the technological modernisation of production and increases the competitiveness of the national economy". N.M. Kraus also considers IP to be «a mechanism of state influence on innovation processes, combining economic, legal and organisational instruments to stimulate innovative development».

Common to these scientific approaches is the conclusion that the legislative approach is "descriptive and declarative" [7], as it defines only individual elements (forms, functions) but does not reveal the mechanisms for implementing, coordinating, and controlling IP as a separate, priority function. This regulatory deviation indicates institutional indecision or unwillingness to elevate IP to the status of a mandatory, primary state policy, treating it rather as an auxiliary legal mechanism for specific economic actions (investment or scientific and technical activities).

V. Lagutin proposes a model for the formation and implementation of state economic policy, emphasising its inextricable link with the legislative framework. He notes that it is precisely in the shortcomings of normative acts that mistakes in economic policy are often made. This underscores the need for preventive legal regulation and the development of a balanced economic strategy that prevents a shift to populist policies during times of crisis [8, p. 14].

Thus, a review of the literature clearly reveals two systemic problems: 1) the loss of the codified core of economic policy due to the abolition of the Civil Code; 2) the lack of proper institutionalisation and definitive clarity of innovation policy in the current legislation. This creates an urgent need to develop a comprehensive legal framework that would integrate IP into the overall architecture of state economic management.

Materials and Methods

The methodological basis of the article consists of systemic, formal-logical, and formal-legal methods, which enabled the study of the relationship between the legal architecture of economic policy and the effectiveness of innovation processes. The paper provides a critical review of scientific approaches to defining innovation policy, which showed that, contrary to established doctrinal positions, Ukrainian legislation does not contain a

comprehensive functional definition of innovation policy, but regulates it only through individual elements of innovation activity. All methods were applied in conjunction with one another, ensuring a seamless transition from a critical analysis of the existing legal framework to the development of specific recommendations for updating the regulatory and legal field, and institutionalizing innovation policy as an integral element of the state's economic and legal policy.

Results and Discussion

Fragmentation of the regulatory framework for economic and innovation policy in Ukraine

Economic policy has a multi-level structure that includes goals, functions, instruments, subjects, and objects of its implementation. The combination of these elements should ensure the effective functioning of the economic system and achieve specific strategic objectives. At the same time, the implementation of these components is impossible without proper legal regulation, which is the basis for the integrity and consistency of state economic policy. In this regard, it is advisable to study the regulatory and legal consolidation of these elements. Economic policy in Ukraine lacks a single, comprehensive definition enshrined in a single regulatory act. Instead, its essence, forms, implementation mechanisms, and subjects are distributed among a hierarchical system of legislative and subordinate acts.

The fundamental definition of the essence of economic policy is established by the Constitution of Ukraine, which enshrines Ukraine as a socially oriented market economy. Constitutional norms, particularly Articles 13 and 41, define the general legal limits within which the state can exercise regulatory authority. Article 41, which guarantees the right to private property, establishes the principle of non-interference by the state in the exercise of the rights of economic entities, except in cases expressly provided for by law. This means that the Constitution defines the legal boundaries beyond which state regulation may not extend.

Until recently, the Commercial Code of Ukraine (CCU) played a leading role in the legal regulation and systematisation of the main areas of state influence on economic activity. Article 10 of the CCU contained a normative list of key areas of economic policy, including structural and sectoral, investment, depreciation, institutional transformation, pricing, antitrust and competition, budgetary, tax, monetary and credit, currency, and foreign economic policy. This provision effectively served as the systemic core around which the logic of state influence on economic processes was built.

In scientific literature, the position of D.V. Zadykhal, who emphasises the significant role of the Commercial Code in the formation of the modern

legal economic order, seems reasonable. Thanks to its developers, the legal foundations of the constitutional economic order and state economic policy were laid, which is being transformed into a system of economic and legal policy measures [7]. However, the abolition of the Commercial Code was a departure from the consistent evolution of commercial law as a science and practice, which contradicts the needs of modern society and the requirements of national economic security. Ignoring this achievement poses a threat to the integrity of the national economy's legal framework, weakens the possibilities for forming a systematic economic and legal policy, and complicates the balanced development of the domestic economy.

The key framework act defining the essence of the strategic and programmatic aspects of economic policy is the Law of Ukraine «On State Forecasting and Development of Economic and Social Development Programmes of Ukraine» [9]. According to Art. 1, the essence of the policy is mediated through state forecasting, which involves predicting the possible state of the economy in the future and exploring alternative ways to achieve the necessary parameters.

This Law establishes the time frames for policy: short-term (1 year) and medium-term (2 years following the forecast). In turn, the Budget Code of Ukraine specifies the mechanism for implementing economic policy through budgetary policy, considering it a key instrument of state regulation of the redistribution of financial resources. At the same time, the Tax Code of Ukraine defines tax policy as a component of economic policy aimed at stimulating development, supporting investment activity, and ensuring stable budget revenues.

An economic policy actor is an active bearer of will and initiative who shapes and implements targeted economic management activities. The legislative definition of the system of economic policy actors is also characterised by fragmentation:

(1) The Verkhovna Rada of Ukraine defines the principles of domestic and foreign policy, approves national development programmes and forms the legal basis (Articles 85, 92 of the Constitution of Ukraine);
(2) The President of Ukraine acts as a guarantor, defining the main directions (Articles 102, 106 of the Constitution), which are implemented through decrees and the approval of strategies (e.g., economic security strategies);
(3) The Cabinet of Ministers of Ukraine is the main implementing body, responsible for financial, pricing, investment, tax, structural, industrial, agricultural, social and foreign economic policy (Art. 116 of the Constitution of Ukraine);

(4) The National Bank of Ukraine (NBU) performs a separate key function of macroeconomic regulation, ensuring monetary policy and the stability of the national currency (Articles 99-100 of the Constitution);
(5) Local authorities implement regional economic and social development programmes in their respective territories (Articles 143-144 of the Constitution). Thus, Ukraine's regulatory framework establishes a multi-level system of economic policy actors; however, there is no single, codified act that comprehensively describes their functions, interactions, and limits of competence.

The state's innovation policy (IP) is a key instrument for implementing the innovation function, representing a system of measures aimed at creating favourable conditions for the development of an innovative environment, the commercialisation of scientific developments, and, as a result, increasing the competitiveness of the national economy.

Generally, state regulation of innovation activities is implemented through several key mechanisms. First, the state determines and supports priority areas of innovation development, as enshrined in the Law "On Priority Areas of Innovation Activity" and the Law "On Priority Areas of Science and Technology Development". These priorities aim to meet the needs of society for high-tech products and services, covering strategic and medium-term areas at the national, sectoral, and regional levels. Secondly, regulation includes the formation and implementation of state, sectoral, and regional innovation programmes, which are carried out in accordance with the mechanisms defined by legislation on state forecasting and innovation activity. The implementation of programmes is mostly carried out on a competitive basis. Thirdly, an important area is the creation of regulatory, legal, and economic instruments to support innovation, as well as the protection of the rights of innovation actors. Legislation guarantees them support for innovative projects, infrastructure development, intellectual property rights protection, and access to information. Fourthly, the state provides financial support for innovative projects, offering interest-free loans, partial financing, and interest compensation on loans in accordance with the Law of Ukraine "On Innovative Activity". Fifthly, it stimulates lending to innovative projects. The state partially compensates banks for interest rates on long-term loans (1-3 years) granted in national currency to entities engaged in innovative activities. The procedure for the competitive selection of such projects is defined by Resolution of the Cabinet of Ministers of Ukraine No. 101, dated January 29, 2002. Sixth, tax incentives. Under paragraph 158.2 of Art. According to Art. 158 of the Tax Code of Ukraine, 50% of the profits received from the implementation and realization of energy efficiency measures and projects by enterprises

included in the relevant state register are exempt from taxation. Seventh, support for innovative infrastructure. According to Part 9 of Art. 1 of the Law of Ukraine "On Innovative Activity", innovative infrastructure is a set of organisations that provide innovative activities (financial, consulting, information, legal, etc.). Its main task is to create conditions for the resource and organisational support of the innovation process [6, pp. 83-87].

Despite the significant importance of innovative development in the state's economic policy, Ukrainian legislation is characterized by unsystematic regulatory regulation of this sphere and the absence of a holistic, functionally defined concept of innovation policy.

Even in the Commercial Code of Ukraine, which remains in force until 2025, innovation policy was not singled out as a separate area; its essence was reflected only in related areas, including structural and investment, scientific and technical, and industrial. In particular, Articles 325–331 of the Commercial Code stipulate that innovation activity is a type of investment activity, and the state supports it through financing, the creation of special economic zones of an innovative nature, and the provision of tax incentives. Instead, Chapter 34 of the Civil Code, "Legal Regulation of Innovative Activity", focused primarily on defining the object and subject of legal regulation of innovative activity as a process rather than a policy.

A similar approach is also evident in the Law of Ukraine "On Innovative Activity" [10]. The legislator defines the organisational and economic foundations of this activity, but avoids normative consolidation of the concept and content of innovation policy as a separate direction of the state's economic policy. According to Art. 4 of this Law, state innovation policy is only a component of state economic policy aimed at creating conditions for the formation of an innovative model of Ukraine's economic development. Articles 5-7 define its functions and forms of implementation, including the formation and implementation of state and regional innovation programs, the creation of a regulatory and legal framework for innovation activities, the stimulation of investment in innovation, and support for priority areas of scientific and technical development.

The Law of Ukraine "On the Fundamentals of the State's Domestic and Foreign Policy" [11] in Art. 7, dedicated to the principles of domestic policy in the economic sphere, establishes as one of its principles the need to intensify investment and innovation activities, in particular by attracting funds from enterprises and the population, establishing an effective system of investment risk insurance, stimulating the direction of citizens' savings towards investment in the economy, and ensuring the innovative component of investments. It follows from the provisions of these regulatory acts that

innovation is only a means by which the results envisaged by the state's economic policy are achieved. However, it is more appropriate to consider innovation policy as one of the directions of the state's economic policy.

Scientists critically assess this approach as "fragmentary" and clearly insufficient for the effective functioning of the national innovation system [7]. Such regulatory evasion suggests institutional indecision or a reluctance to elevate innovation policy to the status of a mandatory, primary state policy, treating it instead as an auxiliary legal mechanism for specific economic actions.

Recent legislative initiatives only confirm this trend. Thus, Draft Law of Ukraine No. 13715 "On Support and Development of Innovative Activity" (2025) [12] attempts to define innovation policy, but again limits this definition to the level of "state policy in the field of innovative activity".

At the same time, the Law of Ukraine «On Innovative Activity» employs the category of «state innovation policy», defining its goals and principles, but does not provide a definition of the concept itself. State innovation policy is the activity of the state aimed at creating socio-economic, organisational, and legal conditions for the effective creation, development, and use of scientific and technical potential, ensuring the introduction of modern, environmentally friendly, safe, energy- and resource-saving technologies, and the production and sale of new types of competitive products [6, p. 60]. In fact, the identification of the objectives and principles of state innovation policy enables its recognition.

At the same time, the Law of Ukraine "On Scientific and Scientific and Technical Activity" (2015) specifies the institutional component of innovation policy, establishing the legal status of entities involved in its formation (central executive bodies, scientific institutions, the National Council of Ukraine for Science and Technology Development). Article 3 of this law stipulates that the state shall create conditions for the integration of science, education, and production, thereby forming a holistic innovation environment. Certain aspects of innovation policy are also covered in: the Law of Ukraine "On Technology Transfer" (2006), which defines the legal mechanism for the transfer of the results of scientific and technical activity; the Law of Ukraine "On the Special Regime for Innovative Activities of Technology Parks" (1999), which establishes forms of state support for innovation clusters; the Law of Ukraine "On Priority Areas of Innovation Activity in Ukraine" (2012), which details the strategic guidelines for state policy in this area.

Innovation infrastructure entities form a specific sector of participants in innovation relations, whose activities are primarily aimed at providing

organisational, resource, and consulting support for the innovation process and creating conditions for its implementation. In Ukraine, such infrastructure is still in the process of formation: only some of its elements are actually functioning, while the missing links are partially replaced by the activities of universal institutions.

In scientific literature, the issue of forming and implementing state innovation policy is considered through the prism of the powers of various public authorities. According to some researchers, the Verkhovna Rada of Ukraine, which is responsible for forming a unified state policy in this area, plays a key role in determining the strategic foundations of innovative development. It is the parliament that provides the regulatory basis for the functioning of the innovation system, sets the priority areas for innovative development, and determines the amount of budgetary funding for relevant programmes and projects. Thus, the legislative level of state influence shapes the framework conditions for realizing the country's innovation potential.

The executive branch, represented by the Cabinet of Ministers of Ukraine, ensures the practical implementation of innovation policy. Researchers emphasise that the government performs both managerial and coordinating functions: it submits proposals to parliament on strategic directions for innovative development, approves medium-term priorities for innovative activity at the national and sectoral levels, and creates conditions for the development of innovative infrastructure. The government's powers also include approving the procedure for state registration of innovation projects, maintaining the relevant state register, and forming a network of specialised state innovation financial and credit institutions necessary to provide financial support for innovation programmes.

A separate set of powers in the field of innovation is vested in central executive bodies. Their competence is differentiated according to the nature of their functions. The bodies responsible for shaping state policy in the field of innovation ensure the development of conceptual foundations and regulatory and legal regulation, coordinate the activities of other executive bodies, initiate the creation of innovative financial and credit institutions, and prepare state innovation programmes. In turn, the bodies that implement policy in the field of scientific, technical and innovation activities focus on the practical implementation of the innovation process: conducting forecasting and analytical research, registering innovative projects, organising competitive selection processes, participating in scientific and technical expertise, formulating proposals for financing innovative programmes, and promoting the professional development of specialists in the field of innovation.

In addition, researchers draw attention to the sectoral dimension of innovation policy, within which central executive bodies develop mechanisms for introducing innovations in relevant sectors of the economy, prepare proposals on sectoral priorities, and interact with specialised financial and credit institutions to support innovative projects.

A special place in the system of innovation policy actors is given to the authorities of the Autonomous Republic of Crimea and local self-government bodies. At the regional level, they are responsible for setting medium-term priorities for innovation activities, approving regional innovation programmes, and determining the mechanisms for their financing. Local councils can establish municipal innovative financial and credit institutions responsible for supporting local innovative projects using budget funds. Regional and local executive authorities ensure the preparation of innovative program projects, organize their implementation, and involve enterprises, institutions, and organizations in addressing issues of innovative development in the relevant territories [6].

Thus, the system of state innovation policy actors in Ukraine operates on a multi-level basis, covering legislative, executive, sectoral, and local levels of government. According to the researcher, this multi-layered structure is designed to ensure the comprehensive nature of innovation development, where each level of government plays its own role - from forming a strategic vision to the practical implementation of innovation projects at the national, sectoral, and regional levels.

An analysis of current legislation suggests that the main features of innovation policy are defined in sectoral acts; however, there is no single, codified system of legal regulation that integrates all elements, from strategic planning to the legal regime governing the innovative activities of economic entities.

In contrast to the situation in the regulatory and legal sphere, in scientific literature, the concept of innovation policy is viewed as a system of interrelated elements, including: goals (ensuring technological modernisation), functions (programming, financing, stimulation, control), forms (clusters, partnerships), subjects, and instruments (tax incentives, grants). Ukrainian legislation lacks such a systematic approach: there is no single definition of the concept, its structure, principles of formation, and mechanisms for coordination with the state's economic policy.

Innovation is a key factor in a country's global competitiveness

The relevance of improving the legislative framework for economic policy, particularly innovation policy, is driven by global competition, primarily in the fields of high technology and the defence industry. This requires the

state's military-industrial policy to be geared towards creating a high-tech, innovative, and competitive defence-industrial complex.

The strategy for the development of Ukraine's defence-industrial complex, approved by presidential decree in 2021, defines priority areas that are purely innovative: technical re-equipment of the scientific and production base, introduction of the latest technologies, creation of rocket and space technology, high-precision weapons, and electronic warfare systems. Innovative activity in the defence-industrial complex should focus on upgrading the production base and transitioning to new types of specialisation and production organisation [7].

In this context, modern interdisciplinary research is particularly valuable. Thus, A. Kazi argues that a state's competitiveness in the context of the Fourth Industrial Revolution is inseparable from its risk profile. It is the combination of political, economic, and financial risks that shapes the limits of economic development. The analysis of competitiveness through the lens of risk science enables the identification of critical "nodal points", including innovative potential, the quality of institutions, and the state of financial and monetary systems. According to the researcher, effective management of the interdependencies between risks and competitiveness factors should form the basis of state policy for sustainable development [13].

At the same time, research on modern financial markets indicates that a country's competitiveness is reflected not only in its internal institutional stability, but also in its ability to create a high-quality market environment that extends beyond its own jurisdiction. A high level of competitiveness contributes to increased liquidity in international financial markets and reduces information asymmetry, confirming the systemic impact of national institutional characteristics on global financial flows [14].

The concept of innovation proposed by Otto Chui-Chau Lin in the context of Laozi's philosophy allows us to rethink the nature of a country's competitiveness in the global economy. It is based on the interaction of the real and virtual dimensions – You and Wu – where material resources determine the limits of technology, and intangible resources (such as knowledge, design, and intellectual capabilities) shape their usefulness and potential for innovative breakthroughs. This approach is consistent with contemporary views of competitiveness as a synthesis of institutional qualities, technological capacity, and the state's ability to create a favourable environment for the development of intellectual potential [15].

At the same time, J. Souto emphasises that the key competitive advantages of a state are formed through innovative business models and conceptual

approaches to value creation, while technological innovations themselves are often subject to rapid copying. This highlights the need for state policy aimed at developing an institutional environment that supports new models of interaction, management, and commercialisation of knowledge [16].

Recent studies on innovative development (G. Weiss et al., 2021) suggest that the effectiveness of innovation policy is influenced by a complex interplay of institutional, managerial, and social mechanisms of innovation governance. Innovation depends on the involvement of various stakeholders, social innovation, partnerships, and the integration of sustainable development and bioeconomy policies. This broadens the understanding of innovation policy as a complex system of coordination of business, political, and public interests [17].

In the digital economy, the transformation of the classic R&D model into «neo-open innovation» is gaining particular attention, as exemplified by Amazon's practices. User-oriented innovations, continuous experimentation, an expanded understanding of R&D, and the functioning of digital platforms as innovative ecosystems are shaping new requirements for state innovation policy, which must adapt to openness, network interaction, and accelerated knowledge circulation [18]. Empirical studies of regional innovation clusters suggest that effective state innovation policy necessitates a multi-level model of interaction, grounded in cooperation among businesses, universities, and government (Triple Helix). Cluster policy contributes to the transformation of regional innovation systems into a tool for increasing the competitiveness of SMEs and strengthening the national economic system [19].

In conclusion, innovation policy should be defined as a purposeful, scientifically sound, and coordinated activity of public authorities in cooperation with civil society institutions, aimed at creating legal, financial, and institutional conditions for the comprehensive development of innovation. Such a policy entails the development and implementation of regulatory and legal measures, the establishment of an effective law enforcement mechanism in the field of intellectual property, and ensuring the training of specialists.

Its strategic goal is to provide legal support for the comprehensive innovative development of the state through a coordinated system of legislative initiatives, strategic programmes, and concepts. The legal regulation of innovation processes is proactive in nature, as it aims to shape future social relations and stimulate intellectual activity in all spheres of life [20, p. 204].

An effective innovation policy for Ukraine in the post-war period should be based on a comprehensive approach to forming an investment strategy

that takes into account regional potential, the economy's structure, and modern global standards for innovation development management. The key elements of such a strategy should be: a clear vision of goals and directions; reliance on empirical data and analysis of market failures; effective coordination between all levels of government; determination of time frames for implementation; establishment of benchmark targets and development of a specific action plan; and ongoing evaluation of the effectiveness of the measures implemented. The investment strategy for economic recovery should become the primary strategic document of the state, defining the vision, goals, and mechanisms for implementing an innovation policy, ensuring a transition to a model of sustainable development based on knowledge, technology, and innovation [21, p. 6].

Conclusions

1. State economic policy in Ukraine does not have a single codified definition. Its legal framework is scattered between the Constitution, framework, and specialised acts. The repeal of the Economic Code of Ukraine, which served as the systemic core that summarised the directions of state economic policy, led to the creation of a legal gap and increased the fragmentation of the economic and legal order.

2. Despite its strategic importance, innovation policy has only fragmented regulatory support. Current legislation primarily treats it as a component of investment or scientific and technical activity, thereby avoiding its status as an independent, primary function of state management. This definitional vacuum complicates horizontal coordination.

3. The system of economic policy actors, which includes the Verkhovna Rada, the President, the Cabinet of Ministers, the NBU, and local authorities, is multi-vector but insufficiently coordinated due to the absence of a single framework act that would define their interaction and limits of competence in the field of economic regulation. Thus, to ensure technological sovereignty and the successful reconstruction and development of Ukraine's defense-industrial complex, it is crucial to institutionalize an innovation policy. It is proposed to: (1) develop and adopt the Law of Ukraine "On the Fundamentals of State Economic Policy and Its Directions", which would restore the systematising function lost after the abolition of the Civil Code of Ukraine and clearly establish innovation policy as an independent, priority direction of state economic policy, defining its goals, structure, principles of formation and mechanisms of coordination with other sectoral policies; (2) At the level of the law, provide a clear, systematic definition of innovation policy as a purposeful and coordinated activity aimed at providing legal support for the comprehensive innovative

development of the state. This recommendation is crucial for eliminating the institutional vacuum and enhancing the effectiveness of state management of innovation processes. Only by creating such a proactive, systemic legal framework can balanced, innovation-oriented development of the national economy, particularly the defense industry, be ensured.

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Suggested Citation: Vrublevska-Misiuna, K.M. (2025). Innovation Policy as a Component of State Economic Policy in Modern Economic Conditions. *Theory and Practice of Jurisprudence, 2*(28), 33-49. https://doi.org/10.21564/2225-6555.2025.28.346815.

Submitted: 02.09.2025
Revised: 24.10.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.346818

Earnings Management in Corporate Accounting as a Legal Problem: a Conceptual Framework

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Abstract
The relevance of this paper lies in the interplay between accounting policies and legal ethics, which remains at the forefront of contemporary discretionary accounting practices and the attendant earnings management. The paper's quest for understanding the legal consequences is relevant for corporate managers and investors, as it provides insight into the consequences of exceeding the boundaries of allowed accounting discretion, which brings regulatory oversight to the illegality of deceitful management of corporate earnings. Accordingly, the purpose of this paper is to analyse the legal repercussions of corporate engagement in earnings management. It also aims to investigate the causative factors of managerial engagement in earnings management and to develop a framework for the phenomenon. The methodological approach focused on critical reviews and the application of doctrinal and comparative research methods to analyze related documents, including those from regulatory bodies, associated cases, and published journal articles, employing a thematic framework. The results show, on the one hand, that earnings management beyond policy limits may result in financial fraud and/or filing deceits, and that such actions could attract various legal enforcement consequences, including fines, penalties, job loss, company closures, and imprisonment, among others. On the other hand, the results also suggest that corporate management may be inclined to engage in illegal earnings management primarily to enhance the company's financial outlook and serve management's economic interests. The paper presents some promising avenues for further research. Such a future could explore the different levels of legal consequences when management exploits accounting policy loopholes, primarily to deceive investors into believing that the company is financially stable, versus the legal repercussions when such exploitation is primarily for management's own financial gain, such as in earnings management and tunneling engagements. A comparison of regional differences in earnings management and differences in legal consequences could offer investors insights into which regions have more substantial legal repercussions and, therefore, stronger deterrents for managers to engage in earnings management.

Keywords: *earnings management; legal consequences; accounting policies; illegal earnings management; discretionary accruals; Securities and Exchange Commission; accounting and ethics.*

Управління прибутком у корпоративному обліку як проблема законності: концептуальна основа

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Анотація
Актуальність статті зумовлена взаємозв'язком між обліковою політикою та правовою етикою, що залишається в центрі сучасних дискреційних практик бухгалтерського обліку та супровідного управління прибутком. Прагнення автора до розуміння юридичних наслідків має значення для корпоративних менеджерів й інвесторів, оскільки надає уявлення про наслідки перевищення меж допустимої облікової дискреції, що викликає регуляторний контроль через незаконність маніпулятивного управління корпоративними прибутками. З огляду на це метою статті є аналіз правових наслідків залучення корпорацій до управління прибутком. Також робиться спроба визначити чинники, що зумовлюють управлінську участь у такому процесі, а також розробити концептуальну модель цього явища. Методологічно дослідження базується на критичному аналізі та застосуванні доктринального й порівняльного підходів для аналізу документів регуляторних органів, судових справ і наукових публікацій за тематичним принципом. Результати дослідження засвідчують, що управління прибутком за межами політичних обмежень може призвести до фінансового шахрайства або подання неправдивих даних, що тягне за собою правові санкції: штрафи, пеню, втрату роботи, ліквідацію компанії, позбавлення волі тощо. Водночас виявлено, що менеджери можуть бути схильні до незаконного управління прибутком з метою покращення фінансового іміджу компанії або отримання особистої вигоди. Автор пропонує напрями для подальших досліджень, зокрема порівняння рівнів юридичних наслідків у випадках, коли маніпуляції використовуються для введення інвесторів в оману, а також коли такі дії переслідують виключно особисті фінансові інтереси менеджменту. Визнано доцільним регіональне порівняння законодавчих наслідків для інвесторів, зокрема: які юрисдикції мають сильніші правові санкції та, відповідно, сильніші стримувальні механізми.

Ключові слова: *управління прибутком; правові наслідки; облікова політика; незаконне управління прибутком; дискреційні нарахування; Комісія з цінних паперів та бірж; бухгалтерський облік і етика.*

Introduction

The need to demonstrate strong financial performance and the strain on financial management are increased by worsening economic conditions and a pessimistic outlook. Positive Accounting Theory posits that the phenomenon of earnings management is associated with an increased risk of bankruptcy. Throughout a company's life cycle, variations in bankruptcy risk, reported profit quality, and other aspects of financial performance are observed [1].

A controversial area at the nexus of ethics, law, accounting, and finance has long been occupied by earnings management [2]. In its broadest sense, it refers to the intentional manipulation of financial reporting procedures to achieve desired earnings results, often to meet market expectations, reduce income volatility, or influence stakeholder perceptions. While some types of earnings management fall within the parameters of accounting discretion allowed by financial reporting standards, others cross into the territory of fraud or deception, raising serious legal and regulatory issues. The scrutiny of corporate reporting practices, as well as the legal responsibility of those who prepare and approve them, has increased in tandem with the ongoing complexity of global financial markets [3; 4].

It is often difficult to distinguish between legal earnings management and illegal financial fraud [5]. In areas such as asset valuation, revenue recognition, and expense timing, accounting standards like Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS) naturally permit managerial judgment. However, such actions may violate securities law, corporate governance principles, and fiduciary duties if managerial discretion is used with the intention of misleading investors or distorting the firm's actual financial situation. Therefore, a careful analysis of intent and effect, that is, whether the practice in question was intended to inform or to deceive, is necessary to determine whether earnings management is legal [5].

Earnings management can have significant legal ramifications. In governments like the U.S., aggressive earnings manipulation has been classified as a type of securities fraud by the Securities and Exchange Commission (SEC) and the Financial Conduct Authority (FCA). In the UK and countries around the world, serious consequences are often the outcome of enforcement actions, such as corporate fines, the disgorgement of illicit gains, and, in extreme cases, the criminal prosecution of executives. Prominent

corporate scandals, such as those involving Enron, WorldCom, and, more recently, Wirecard, demonstrate how unchecked earnings management practices can lead to widespread legal ramifications and corporate collapse [6]. Legislative changes, as well as increased attention from investors, regulators, and auditors, have been prompted by these cases.

In addition to legal and regulatory penalties, earnings management exposes companies and their executives to civil liability. Legal action may be taken by creditors, shareholders, and other interested parties on the grounds of negligence, breach of fiduciary duty, or deception. Additionally, the reputational harm caused by alleged financial reporting dishonesty may have long-term economic and operational repercussions, undermining investor confidence and lowering market value. From a governance standpoint, boards of directors are under increasing pressure to ensure strong internal controls, transparent financial oversight, and ethical corporate cultures that deter dishonest reporting [6].

The legal environment of earnings management in this situation is both preventive and punitive. To identify and discourage manipulation before it turns into fraud, legal frameworks are placing an increasing emphasis on corporate compliance, internal auditing, and whistleblower protections. The line separating legal discretion from illegal deception will continue to be tested as corporate reporting becomes more digitalized and subject to real-time analysis. Therefore, it is crucial for corporate executives, compliance officers, policymakers, investors, and academics seeking to strike a balance between managerial flexibility and the requirements of accountability, transparency, and market integrity to understand the legal implications of corporate engagement in earnings management.

Accordingly, the objective of this paper is to use a doctrinal and comparative research approach to analyse the legal repercussions of corporate engagement in earnings management. The paper also aims to explore the causative factors of managerial engagement in earnings management and to develop a framework on the phenomenon.

Literature Review

The incentive impact of a CEO's personal legal liability is examined by [7]. Taking advantage of a special Chinese law that holds a company's attorney personally liable for the unlawful actions of the company. According to [7], when the CEO also serves as the company's attorney, earnings management tends to decline. According to their further analysis, the impact of a CEO's legal liability on earnings management is more noticeable when the CEO is hired from outside, has no family ties, and the company is at high risk of litigation. Their conclusions hold up well against endogeneity, and

when the CEOs' attributes are taken into consideration [7]. According to [8], abnormal accounting accruals are abnormally high around stock offers, particularly for companies whose offers later result in legal action. Compared to companies that are not sued, companies that are sued experience more noticeable reversals, and their stock returns are lower. [8] discovered that abnormal accruals surrounding the offer are significantly positively correlated with the frequency of lawsuits involving stock offers and settlement amounts, while post-offer stock returns are significantly negatively correlated. According to [8], their findings lend support to the theory that certain businesses manipulate earnings upward before issuing stock, making them susceptible to legal action.

To characterize the behavior of businesses at various stages of the corporate life cycle [1], the authors investigated the effects of bankruptcy and the corporate life cycle on earnings management. They used a hierarchical mixed model with a random time and industry effect, which was deemed suitable since it permits the examination of non-independent multilevel data. The financial metrics of over 33000 Central European businesses from 2015 to 2019 were included in their sample. They used three accrual earnings management models, company age, and the non-sequential Dickinson model as variable proxies for the business life cycle and the quality of reported profit. Following their analysis [1], a U-shaped relationship between earnings management and bankruptcy risk was discovered, suggesting that financially distressed companies cut reported accounting profits at the introduction, decline, and to a lesser extent, Growth stages.

The authors in the paper [9] examined how earnings management strategies were affected by the COVID-19 pandemic. Their study employed three discretionary accrual metrics as a proxy for earnings models and focused on a sample of 2031 companies listed in 15 European nations. To compare earnings management during the pre-pandemic period (2017q1-2019q4) and the pandemic period (2020q1-2020q4), ordinary least squares (OLS) regressions were applied by [9]. Their findings show that, in comparison to the previous period, the sample firms tended to manage earnings during the pandemic. This result suggests that the financial reports during the COVID-19 pandemic were less reliable. Additional investigation reveals substantial earnings management that increased income in 2020. Hence, according to the findings by [9], companies manage earnings upward by reducing the amount of reported losses to restore stakeholder and investor confidence, which is necessary to support the economic recovery.

In another related study on earnings management research [10], the authors examined the connection between accounting report quality,

particularly in relation to earnings management (EM), and corporate social responsibility (CSR). They found a negative correlation between EM and corporate social responsibility (CSR). Additionally, the year of sample selection, cultural differences, and CSR measurement all moderate this effect.

Due to their superior monitoring skills, previous research generally indicates that the presence of female directors on corporate boards tends to improve the quality of earnings [11]. They suggest that it is unclear, nevertheless, which traits and competencies of female directors contribute to these abilities. Their study focused on the financial backgrounds of female directors, a research niche that has received little attention in the literature. Hence, the findings by [11] indicate that the involvement of female directors with relevant financial backgrounds enhances the quality of earnings more than that of female directors without such backgrounds. Furthermore, according to their findings, only female directors with relevant financial backgrounds and fewer outside directorships can mitigate earnings management. As a result, overcommitting knowledgeable female directors with more outside directorships would reduce their ability to monitor.

The study by [12] tests hypotheses using a two-step system, generalized method of moments (GMM) estimation, and fixed effects. Implementing corporate governance decreases corporate earnings misconduct, according to the analysis findings. The size and independence of audit committees, as well as several board committees and joint audits, are all very successful in reducing earnings management. The overall corporate governance metric indicates that internationalization is significantly moderated negatively. To prevent de-legitimization in the eyes of host countries, internationalization enhances the quality of the corporate governance mechanism, thereby decreasing earnings manipulation.

Using a natural experiment within the framework of China's delisting system reform [13] investigates how new delisting regulations affect the selection of corporate earnings management tools. The findings show that while real earnings management among listed companies has increased, accrual-based earnings management has decreased due to the new delisting regulations.

Materials and Methods

This paper employed the descriptive genre of doctrinal and comparative research design to analyze the legal consequences of earnings management conduct within corporate entities. The examination comprised the use of secondary material sources, which include legislation (such as the Securities

and Exchange Act of 1934 [14] and the Companies Act of 2006, as well as the Corporate Act of 2001). Other materials include related case law on earnings management, such as [16], as well as regulatory guidelines from the Securities and Exchange Commission. Other materials included those from the FRC and the ASIC. The various secondary materials examined in this paper include peer-reviewed articles published in reputable journals, academic books, and reports from international accounting bodies, such as the IFRS Foundation. The article data were sourced from databases that spanned both academic and legal bases, including LexisNexis, Westlaw, and JSTOR. Following the application of the descriptive doctrinal research technique, along with comparative approaches, to the legal frameworks of the US, Australia, the UK, Japan, and Africa, findings were obtained. To determine legal liabilities, governance implications, and enforcement trends, findings were synthesized thematically. Although the lack of empirical field data is acknowledged as a limitation, the paper retains analytical rigor by relying on reliable academic and legal sources. A brief overview of the convergence of doctrinal research between accounting and law is presented below to situate and justify the materials and methods.

Before the more modern scientific method became the standard for research, doctrinal research had a long history. Roman legal doctrine predates the contemporary era, and different authoritative structures employed doctrinal approaches to direct people's behavior during the Middle Ages [17]. From the standpoint of accounting, one of the best examples of such historical doctrinal writings is Luca Pacioli's work, in which he recognized and clarified the double-entry approach as the foundation of accounting [Ibid]. However, contemporary doctrinal research now tends to focus on interpreting and assessing the concepts, rules, and principles developed in practice rather than on directing practice [Ibid]. This shift in doctrinal research, as argued by [Ibid], may be due to the development of doctrines used in professional fields like law and accounting. Therefore, one could say that evaluating the suitability of doctrines (concepts, principles, and rules) developed in practice is a crucial role of doctrinal research [Ibid]. In doctrinal research, theory is incorporated differently. Research in any given field is usually grounded in theories either created within the field or imported from related fields. However, doctrinal research adopts a different viewpoint. The ideas, precepts, and guidelines that have been developed in practice are not thought of as theory in and of themselves.

According to [18]. The traditional hermeneutical approach is also employed in doctrinal research within the legal discipline to establish what he refers to as positive law, making it clear that such positive law creates legal certainty. In a similar vein, positive accounting or a positive accounting

theory is established through the conventional hermeneutical approach [19]. Hermeneutics is therefore used to identify current knowledge under the descriptive approach rather than to suggest what knowledge ought to be. Thus, in the context of accounting, the standard-setters' financial reporting guidelines are the first source of certainty.

Results and Discussions

In corporate law and financial regulation, earnings management has been subject to intense scrutiny. It entails the purposeful falsification of accounting data to satisfy internal goals or market demands. Although some types of earnings management fall within the acceptable bounds of accounting standards, the practice often raises moral and legal concerns, particularly when it distorts a company's accurate financial picture [20; 8].

Accounting Mechanisms and Concepts of Earnings Management

The use of accounting strategies to manipulate reported earnings without necessarily breaking accounting regulations is known as earnings management [21]. Typical mechanisms are as follows:

- Modifying when revenue or expenses are recognized.
- Changing reserves and provisions.
- Modifying asset valuation assumptions or depreciation techniques.
- Using big bath accounting, also known as income smoothing.

These practices may violate the substance over form principle, as outlined in both Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS), even though they may be technically permissible [22].

The legal structure

Securities and Exchange Rules. Financial statements must give a true and fair picture of a company's financial situation in accordance with securities laws.

- In the U.S., deceptive or fraudulent statements in relation to securities trading are forbidden by Rule 10b-5 and Section 10(b) of the Securities Exchange Act of 1934.
- The Sarbanes-Oxley Act of 2002 established criminal penalties for false financial reporting and enhanced corporate accountability [23].
- In the UK, directors must make sure financial statements present a true and fair picture in accordance with Sections 393-414 of the Companies Act 2006.
- Accurate financial disclosures are also required by the Australian Corporations Act of 2001 [24].

Governments like the U.S. (SEC), the Australian Securities and Investments Commission (ASIC), the Securities and Exchange Commission (SEC), and the Financial Reporting Council (FRC) in the UK have the authority to investigate and punish deceptive reporting [25].

Corporate Governance and Fiduciary Duties

Directors are obligated by their fiduciary duties to act honestly and in the best interests of the company. A breach of fiduciary duty may occur when earnings are manipulated to deceive shareholders or investors [26]. In cases where directors failed to stop or reveal accounting irregularities that misrepresented the company's actual financial situation, courts have held them personally accountable.

Compliance with Accounting Standards

Both GAAP and IFRS place a strong emphasis on equitable presentation and faithful representation. According to corporate and securities law, earnings management that violates these principles may be considered fraudulent financial reporting or statutory misrepresentation [27].

Legal Consequences

Civil responsibility. Businesses and executives may face civil lawsuits from investors and shareholders because of earnings management.

Shareholder Litigation. When financial restatements take place investors may file a lawsuit alleging deception or careless disclosure.

Class Actions. Within the United States, financial restatements following the discovery of manipulation frequently result in Rule 10b-5 class actions [28].

Criminal responsibility. Manipulation that includes intentional falsification is considered fraud and may be prosecuted. Executives may be fined, imprisoned, or prohibited from holding a corporate office.

Sanctions under regulations. The following may be enforced by regulatory bodies:

- Penalties, both administrative and financial.
- Securities delisting or suspension.
- Disqualification of directors.
- Required enhancements to internal controls.

Consequences for the market and reputation

Aggressive earnings management can undermine investor confidence, harm a brand's reputation, and have a negative impact on stock valuation and credit ratings, even in the absence of formal legal violations [29].

Cases that Stood Out

- Enron Corporation (U.S., 2002): Inflated profits and concealed debt through off-balance-sheet partnerships. The Sarbanes–Oxley Act of 2002 was passed as a result of the scandal, which also caused the company's failure 16].
- WorldCom (US, 2002): Overstated profits by capitalizing operating expenses as assets. For securities fraud, executives were charged with crimes [15].
- Toshiba Corporation [30]: inflated profits which resulted in executive resignations and regulatory fines [31].

These precedents highlight the potential for civil regulatory and criminal repercussions when earnings management is employed dishonestly.

Reducing the risk of legal action

Companies should do the following to avoid legal liability and uphold moral principles:

- Make internal controls and audit committee supervision stronger [32]. Strong corporate governance structures should be implemented.
- Protect and promote whistleblowers.
- Conduct frequent training sessions on ethical financial reporting and compliance. Assure transparency and independence in external audits.

Summary of Findings on Regulatory and Civil Repercussions

From shareholder litigation and regulatory enforcement actions (which may result in hefty fines) to possible criminal penalties for individuals, including incarceration, engaging in corporate earnings management can have a wide range of serious legal repercussions:

- *Shareholder Litigation:* Companies that manipulate earnings to deceive investors run the risk of being sued by shareholders who want to recoup losses from poorly advised investment choices. Such lawsuits may be more likely, depending on the type of earnings management, such as accelerating revenue recognition.
- *Regulatory Enforcement Actions:* In the United States, agencies such as the Securities and Exchange Commission (SEC). S. (or comparable authorities in other jurisdictions) have the authority to initiate inquiries and charge the business and those accountable for financial misrepresentations with heavy administrative penalties and fines.
- *Reputational Damage and Loss of Investor Trust:* Although there is no direct legal penalty, the company's and management's reputation is badly harmed by the discovery of unethical accounting practices.

This results in a decline in support from investors and stakeholders, heightened regulatory scrutiny, and trouble securing future funding.
- *Contractual Penalties:* Companies that manipulate earnings to steer clear of debt covenant violations may still be subject to stricter loan conditions (e.g., higher interest rates, additional limitations) if the manipulation is uncovered or suffer the initial repercussions of the covenant violation. Criminal repercussions.
- *Fines:* If earnings management is determined to be intentional financial fraud, the company and the involved individuals may be subject to hefty fines. Those found guilty of wilfully or egregiously negligently breaking financial reporting laws, especially in cases of outright fraud (e., accounting officers or directors), face imprisonment. A. can be subject to severe jail time, possibly for several years, as demonstrated in scandals such as Enron and WorldCom.
- *Job Loss and Career Ruin:* Managers who engage in these kinds of behaviours frequently lose their jobs right away and suffer long-term repercussions for their careers, such as being disqualified from holding specific roles in publicly traded corporations.

The extent of the manipulation, whether it involved outright fraud or aggressive but legal accounting choices (within the flexibility of GAAP/IFRS), and the legal framework of the jurisdiction all influence the severity of the consequences.

Conceptual Model

Based on the analysis of scientific literature, the author identifies three interrelated directions:

- *Motivational factors of earnings management* – the desire to influence stakeholders' decisions, increase personal compensation, or enhance the company's image (for example, before an IPO, merger, or stock issuance).
- *The essence of earnings management* – the actual use of accounting methods that lead to the distortion of financial indicators.
- *Legal consequences* – when manipulations exceed acceptable limits, they become unlawful and result in fines, dismissal, or criminal prosecution.

These three components form a logical framework (see Figure 1), illustrating the cause-and-effect relationship between the motivation, practice, and consequences of earnings management.

The foregoing findings and discussions in this paper culminate in the formulation of a conceptual framework (Figure 1) that contributes to

the understanding of both practical and conceptual aspects of earnings management.

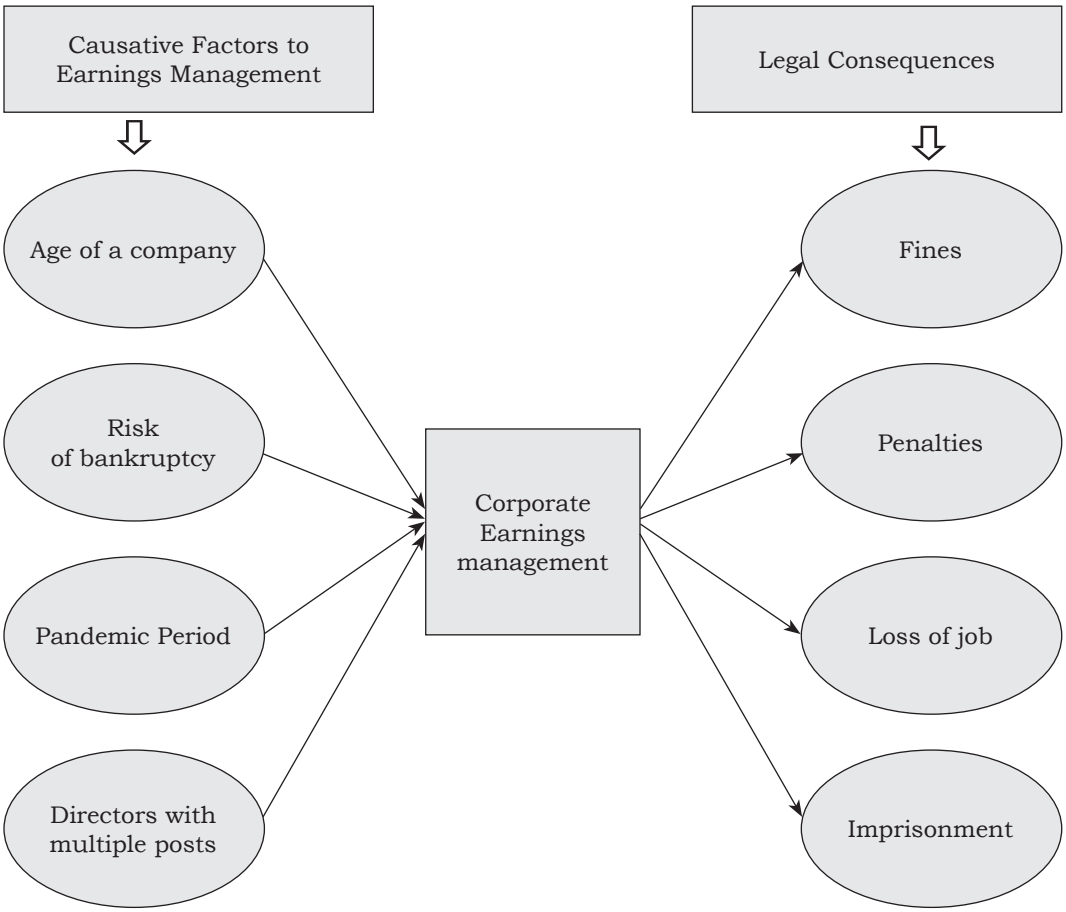

Figure 1. Conceptual Framework of Legal Consequences of Corporate Earnings Management

Source: Author's diagram based on the results.

The scientific literature reviewed in this paper provides evidence of the prevalence of corporate earnings management, which, among other factors, may be catalyzed by accounting discretionary accruals. Therefore, based on a review of the literature and attendant doctrinal and comparative analysis, the paper identifies three interconnected branches of focus, which are: the factors that catalyze earnings management motivation by corporate management, as depicted on the left side of the conceptual framework loop. For several reasons, managers are driven to manipulate earnings, with the primary ones being to influence stakeholder decisions, further

their own interests, and ensure the business appears financially secure. These incentives fall into three categories: *contractual duties, capital market incentives, and regulatory motivations*.

Meeting or exceeding financial analysts' earnings projections is a primary incentive for engaging in earnings management, as failing to do so may result in a sharp decline in the stock price and harm the company's reputation. Additionally, managers may manipulate earnings to boost the company's stock price, particularly in the lead-up to significant events such as *mergers and acquisitions, seasoned equity offerings, or initial public offerings (IPOs)*. Additionally, projecting a favourable financial image attracts new lenders and investors, which facilitates and may lower the cost of obtaining funding or securing favourable loan terms. To maintain the appearance of a successful business, earnings management can also be used to conceal underlying financial difficulties or the outcomes of unsuccessful investments. Since *bonuses, stock options, and other performance-related compensation* are frequently directly linked to reported earnings and financial metrics, personally motivating managers to raise their own compensation is also crucial.

The centre stage of the framework depicts the core earnings management, which is the aftermath of causative factors. The existence and practice of earnings management may result in some *legal consequences* if the practice is abused and hence becomes illegal. Accordingly, when earnings management and the multifaceted accounting treatments that cause it overshoot accounting policy and legal limits, the practice becomes unlawful and is subject to regulatory enforcement with attendant consequences. These consequences may include, among others, *fines, penalties, loss of employment,* and *imprisonment*. These appear at the right-side loop in the conceptual framework (see Figure 1).

Conclusion

There is a spectrum of acceptable discretion to outright fraud in earnings management. Any practice that deceives investors or hides financial truth is against both ethical standards and legal principles, even though minor forms may be allowed under accounting regulations. The significance of transparent financial reporting as a basis for investor confidence and market integrity is highlighted by the development of corporate reporting laws, which significant cases and regulatory reforms have strengthened.

The study's conclusions have significant ramifications for investors, fund providers, regulators, and standards setters. During pandemic times, businesses appear to conceal their actual financial circumstances, so lenders and investors should exercise greater caution. This provides a

more comprehensive understanding of the accuracy of accounting data in assessing a company's creditworthiness. Regulators and standards-setters may find the results helpful in understanding how pandemic crises might impact financial reporting quality. In fact, businesses are motivated to draw in new investors by increasing their profits. Standards-setters are aware that a set of independent accounting standards is insufficient to prevent financial information misrepresentation due to earnings management, given the existence of such behavior.

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Suggested Citation: Ngwakwe, C.C. (2025). Earnings Management in Corporate Accounting as Legality Problem: a Conceptual Framework. *Theory and Practice of Jurisprudence, 2*(28), 50-65. https://doi.org/10.21564/2225-6555.2025.28.346818.

Submitted: 01.11.2025
Revised: 14.11.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.346098

From Concept to Reality: UJICS as the Next Stage in the Development of E-Justice in Ukraine

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Abstract
The article focuses on the current stage of e-justice development in Ukraine, specifically in the context of transitioning from the Unified Judicial Information and Telecommunication System (UJITS) to the new Unified Judicial Information and Communication System (UJICS). The relevance of the research is determined by the need to modernize Ukraine's judicial system in accordance with European standards of digital justice, as well as to overcome existing organizational, technical, and regulatory shortcomings in its functioning. The work emphasizes that e-justice is not only a technological phenomenon but also a tool for ensuring the procedural rights of parties and providing accessible, transparent, and efficient judicial proceedings. The purpose of this study is to examine the evolution of e-justice in Ukraine, analyze the legal, technical, and organizational features of the UJICS Concept, and identify the prospects and risks associated with its implementation. The methodological framework combines dialectical, systemic-structural, comparative-legal, historical-legal, and formal-logical methods, which enable a comprehensive assessment of the development of e-justice. The research findings indicate that UJITS has become the foundation of digital justice in Ukraine, ensuring the basic digitalization of judicial processes; however, its architecture remains fragmented and technologically limited. Meanwhile, the UJICS Concept is proposed as a centralized, integrated ecosystem designed to unify all judicial processes, introduce artificial intelligence, big data analytics, and modern cybersecurity tools. At the same time, key risks have been identified – insufficient funding, technical challenges, regulatory uncertainty, and the impact of martial law. It is concluded that the successful implementation of the UJICS Concept requires stable financing, involvement of international partners, legislative modernization, and strengthening of cybersecurity. Under current economic and political conditions, the UJITS continues to serve as the

practical foundation of e-justice, while the UJICS remains a strategic goal for the further digital transformation of Ukraine's judiciary.

Keywords: *e-justice; UJITS; UJICS; digitalization of justice; judiciary of Ukraine.*

Від концепції до реальності: ЄСІКС як новий етап розвитку електронного правосуддя

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Анотація

Статтю присвячено аналізу сучасного етапу розвитку електронного правосуддя в Україні в контексті переходу від Єдиної судової інформаційно-телекомунікаційної системи (ЄСІТС) до нової концептуальної моделі – Єдиної судової інформаційно-комунікаційної системи (ЄСІКС). Актуальність дослідження визначається потребою модернізації судової системи України відповідно до європейських стандартів цифрового правосуддя, а також подолання наявних організаційних, технічних і нормативних недоліків її функціонування. У роботі наголошено, що електронне правосуддя є не лише технологічним явищем, а й інструментом реалізації процесуальних прав учасників справи та забезпечення доступного, прозорого та ефективного судочинства. Метою дослідження є аналіз еволюції електронного правосуддя в Україні, правової природи, технічних та організаційних особливостей ЄСІКС, а також визначення перспектив і ризиків її впровадження. Методологічну основу становлять діалектичний, системно-структурний, порівняльно-правовий, історико-правовий і формально-логічний методи, що дозволило комплексно оцінити розвиток електронного судочинства. У результаті дослідження встановлено, що ЄСІТС стала фундаментом цифрового правосуддя в Україні та забезпечила базову цифровізацію судових процесів, однак її архітектура залишається фрагментарною, а технічні можливості – обмеженими. Запропонована Концепція ЄСІКС є централізованою, інтегрованою екосистемою, що поєднує всі судові процеси, впровадить використання штучного інтелекту, аналітики великих даних і сучасних інструментів кіберзахисту. Водночас виявлено ключові ризики її реалізації – брак фінансування, технічні

виклики, нормативну невизначеність та вплив воєнного стану. Зроблено висновок, що успішна реалізація Концепції ЄСІКС потребує стабільного фінансування, залучення міжнародних партнерів, оновлення законодавства та посилення кіберзахисту. У сучасних економічних і політичних умовах саме ЄСІТС продовжує виконувати роль практичного фундаменту електронного правосуддя, тоді як ЄСІКС виступає лише стратегічною метою подальшої цифрової трансформації судової системи України.

Ключові слова: *електронне правосуддя; ЄСІТС; ЄСІКС; цифровізація судочинства; судова система України.*

Introduction

The modern world is undergoing an era of profound change and transformation, in which information and communication technologies have become an integral part of all spheres of social life. Due to digital progress, judicial systems in many countries are actively transitioning from traditional paper-based procedures to e-justice, with the aim of enhancing the accessibility, speed, and efficiency of judicial proceedings. E-justice is not merely the implementation of advanced technologies, but a key instrument for modernizing judicial systems.

In contemporary academic literature on e-justice, the implementation of digital technologies is often viewed through a functional paradigm, as a tool for improving the efficiency, transparency, and accessibility of justice [1; 2]. As noted by scholars, the introduction of digital technologies in the organization of court operations has generally pursued two main objectives: first, administrative and managerial optimization aimed at enhancing efficiency and reducing costs; and second, strengthening public access to justice [3]. This approach aligns with the European concept of *digital justice*, where technological solutions are considered integral to the realization of the rule of law, rather than merely a means of technical modernization of judicial institutions.

Ukraine has not remained on the sidelines of this global trend and is actively modernizing its judicial system by integrating information and communication technologies into the administration of justice. According to Ukrainian researchers, e-justice in Ukraine is currently in an active phase of development, as evidenced by the growing number of users, the judiciary's openness to innovation, and the commitment to ensuring transparency and accessibility of judicial procedures [4].

The first major step towards the digitalization of justice in Ukraine was the introduction of the Unified Judicial Information and Telecommunication System (UJITS) and its key subsystem, the *Electronic Court*, which has been officially operational since 2021. This system enabled the automation

of several procedural actions, including the submission and exchange of documents, case tracking, online payment of court fees, and participation in hearings via video conference. The implementation of the UJITS can be characterized as an evolutionary and necessary step towards integrating information technologies into judicial procedures [5].

At the same time, despite the launch of the basic elements of the UJITS and the functioning of the *Electronic Court*, other envisaged components (subsystems) of UJITS have not yet been implemented. The results of the technical and functional audits conducted by the High Council of Justice, the State Judicial Administration of Ukraine, and the Ministry of Digital Transformation in 2023-2024 confirmed the system's technological obsolescence, architectural incapacity, and functional limitations. These findings suggest that the current UJITS model has been implemented only partially and requires further improvement at the technical, regulatory, and organizational levels.

In response to these challenges, the Concept of the Unified Judicial Information and Communication System (UJICS) was developed and approved by Order No. 179 of the State Judicial Administration of Ukraine, dated April 30, 2025. The concept envisions the creation of a fundamentally new, integrated ecosystem of e-justice, designed to unite all judicial processes within a single digital environment.

Thus, the relevance of this study lies in the need to modernize Ukraine's judicial system in accordance with European standards of digital justice, as well as to overcome existing organizational, technical, and regulatory shortcomings in its functioning. The purpose of this article is to examine the new model of e-justice in Ukraine, to assess its potential and the challenges of implementation, and to outline prospects for further development. To achieve this aim, the article sets the following objectives:

(1) to characterize the legal nature, structure, and functional capabilities of the UJITS as the current instrument of e-justice in Ukraine;
(2) to analyze the evolution of e-justice development in Ukraine from the UJITS model to the UJICS Concept;
(3) to identify the legal, technical, and organizational features of the new UJICS model;
(4) to determine the main risks associated with the implementation of the UJICS-2025 Concept; (5) to outline the prospects for the future development of e-justice in Ukraine.

Materials and Methods

The study of e-justice evolution in Ukraine, from the functioning of the Unified Judicial Information and Telecommunication System (UJITS) to

the development of the Unified Judicial Information and Communication System (UJICS) concept, was conducted using a comprehensive methodological approach that combines general scientific and specialized legal methods. This approach enabled the exploration of the legal, organizational, and technological aspects of implementing digital solutions in the justice sector.

The research analyzed the current legal and regulatory framework of Ukraine, including the procedural codes, the Law of Ukraine *"On the Judiciary and the Status of Judges",* the *Regulation on the Procedure for the Functioning of Certain Subsystems (Modules) of the UJITS* approved by Decision No. 1845/0/15-21 of the High Council of Justice dated August 17, 2021, as well as the *Concept for the Development of the Unified Judicial Information and Communication System* approved by Order No. 179 of the State Judicial Administration of Ukraine dated April 30, 2025.

The empirical basis of the study includes the results of the technical and functional audits of UJITS conducted by the High Council of Justice, the State Judicial Administration of Ukraine, and the Ministry of Digital Transformation in 2023-2024, as well as official data provided by state authorities. These materials made it possible to assess the actual state of system performance and identify practical problems in its operation.

To ensure the scientific validity of the conclusions, an analysis of scholarly works published in peer-reviewed journals indexed in Scopus and Web of Science, as well as Ukrainian research on the digitalization of the judicial system, was conducted.

The *dialectical method* served as the fundamental methodological basis of this study. It allowed the author to view e-justice as a dynamic phenomenon evolving under the influence of socio-political, economic, and technological factors. Through this method, it became possible to trace the stages of digital transformation of the judiciary and to identify the patterns of transition from the UJITS model to the new UJICS Concept.

The *system-structural method* was used to analyze the internal architecture of UJITS and UJICS as complex multi-level information systems. This method enabled the systems to be examined not only as sets of independent subsystems but as unified functional complexes.

The *comparative-legal method* was applied to compare the two models of e-justice - the existing UJITS and the proposed UJICS. Its use made it possible to compare their legal nature, structural organization, technical foundations, and functional purposes. Based on this comparison, key distinctions were identified: while UJITS has a modular and phased design that allowed for relatively autonomous functioning of individual subsystems

(such as the *Electronic Court*, *Electronic Cabinet*, and video conferencing), UJICS is built on a centralized architecture with integrated information flows covering the entire judiciary.

The *historical-legal method* was employed to identify the stages of e-justice development in Ukraine, from the initial practical attempts at digitalization in 2021 to the approval of the UJICS-2025 Concept. This made it possible to trace the evolution of legal approaches to judicial activity in a digital environment, identify key trends in e-justice development, and outline the transition patterns from the UJITS model to the new UJICS Concept.

The *formal-logical method* was applied to systematize and generalize legal provisions regulating the functioning of e-justice in Ukraine, ensuring conceptual clarity and constructing logically consistent conclusions based on the analyzed data.

Finally, the *forecasting method* enabled the assessment of future prospects for implementing the UJICS Concept, considering the challenges posed by martial law, funding shortages, and technological limitations.

Results and Discussion

UJITS as the Foundation of Digital Justice in Ukraine

The Unified Judicial Information and Telecommunication System (UJITS) has become a key milestone in the digital transformation of justice in Ukraine, as its subsystems – the *Electronic Court*, the *Electronic Cabinet*, and the *Videoconferencing System* – currently ensure the practical functioning of e-justice and create the necessary prerequisites for the implementation of the principles of accessibility and transparency of justice.

According to Ukrainian legislation, the UJITS is defined as a set of information and telecommunication subsystems (modules) that automate legally prescribed processes within the judiciary, including document management, automated case distribution, electronic document exchange between courts and participants in proceedings, recording of court hearings and remote participation through videoconferencing, preparation of operational and analytical reports, providing informational assistance to judges, and automating financial, property, organizational, staffing, and IT-related processes required for the functioning of judicial bodies [6].

From a procedural law perspective, the UJITS serves not only as a technical instrument for automating judicial procedures but also as a means of ensuring the procedural rights of participants in legal proceedings. Its operation enables the practical implementation of fundamental principles of justice, including accessibility, an adversarial process, procedural economy, and equality of the parties.

In this context, B. Zaplotynskyi rightly notes that the transition from outdated documentary-based proceedings to electronic justice is intended to enhance efficiency, predictability, and convenience in the interaction between courts and participants, thereby contributing to greater transparency and reduced corruption within the judiciary [7]. Similarly, M. Hetmantsev emphasizes that the full-scale operation of UJITS will allow the unification of all electronic systems, tools, and services in Ukraine into a single information and communication framework. This will enable judges and system users to access data from all state registers and electronic databases with a single click, thereby simplifying the preparation of legal claims and laying the groundwork for the broader use of electronic evidence in court proceedings [8].

To better understand the system's essence, its key features can be outlined as follows:

- it is a complex system comprising a set of information and telecommunication subsystems (modules);
- Its subsystems (modules) are implemented gradually and in stages;
- UJITS automates judicial processes defined by law;
- Its scope covers document management, automated case distribution, electronic document exchange, hearing recording and videoconferencing, analytical and operational reporting, informational support for judges, and automation of financial, organizational, and staffing processes.

Thus, the UJITS represents a comprehensive system composed of interconnected information and telecommunication modules introduced in stages to ensure the automation of a wide range of judicial processes. In other words, it enables the transition of most judicial procedures into electronic form through the use of modern digital technologies.

The primary goal of implementing UJITS is to enhance the quality and efficiency of justice, ensure maximum transparency and openness in the judicial system, and partially transition traditional judicial procedures into an electronic format, consistent with European principles of e-justice.

An analysis of Ukraine's procedural legislation demonstrates that the UJITS currently performs the following e-justice functions:

(1) submission and registration of procedural documents in electronic form;
(2) automated case distribution;
(3) electronic exchange of documents between courts and parties;
(4) recording of court proceedings and participation of parties via videoconference;

(5) delivery of electronic copies of court decisions and documents;
(6) submission of electronic evidence and other procedural actions via the *Electronic Cabinet*;
(7) access to case materials in electronic form; (8) electronic delivery of court summons;
(9) issuance of enforcement documents in electronic form;
(10) reduction of court fees for electronic submissions;
(11) remote access to information within the system in accordance with differentiated access rights, among other legally defined functions.

Hence, UJITS has become the practical embodiment of the e-justice concept in Ukraine, ensuring an evolutionary transition from paper-based to digital document management. Today, thousands of users can submit procedural documents, participate in hearings via videoconference, access case files online, and perform other procedural actions remotely. It is difficult to overestimate the importance of this service for Ukrainian citizens, especially in the context of martial law, when a significant number of Ukrainians are forced to stay in other countries. As noted by Ukrainian researchers, *"It will also give an opportunity to significantly save money, contribute to the openness of the court process, reduce the number of delayed cases due to the non-appearance of participants, save their time, etc."* [9].

Nevertheless, despite its fundamental role in establishing e-justice, the UJITS still faces several challenges. One of its main drawbacks lies in its modular, phased design: while this approach allowed for gradual integration of digital tools into judicial practice, it also resulted in system fragmentation, limited interoperability among subsystems, and technological obsolescence of certain components. Some technological elements and approaches within UJITS still reflect frameworks established in the late 1990s, leading to inefficiencies and deficiencies noted by both domestic users and international partners.

These issues have been repeatedly highlighted by internal users and external observers. For instance, in March 2024, the Verkhovna Rada Committee on Legal Policy, while reviewing the results of the 2023 technical audit, acknowledged architectural shortcomings and poor performance of certain UJITS services. In July of the same year, the National Bar Association of Ukraine reported numerous user complaints regarding malfunctions of the *Electronic Court* subsystem, which restricted access to electronic accounts and hindered timely procedural actions [10].

The results of functional and technical audits conducted in 2023-2024, with the participation of the State Judicial Administration, the High Council of Justice, and the Ministry of Digital Transformation, confirmed the existence

of systemic deficiencies and led to an official conclusion emphasizing the need for a comprehensive modernization of UJITS.

Thus, despite its undeniable role in shaping e-justice, UJITS has largely exhausted its developmental potential within its current architectural framework. It has served as a transitional stage between traditional and digital models of justice, demonstrating the practical feasibility of electronic tools. However, its technical structure and design no longer meet the modern requirements of integration, cybersecurity, and analytical capacity necessary for the further advancement of Ukraine's judicial system in the digital era.

UJICS as a New Stage in the Development of E-Justice

The identified shortcomings in the Unified Judicial Information and Telecommunication System (UJITS) have necessitated a transition to a qualitatively new level of judicial digitalization. In response to these challenges, in 2025, the *Concept of the Unified Judicial Information and Communication System (UJICS)* was adopted, marking the next stage in the evolution of e-justice in Ukraine.

The UJICS is expected to become one of the most complex and comprehensive information systems in the country, designed to introduce centralized automatic case allocation, enable extraterritorial consideration of cases, ensure that all judicial procedures can be conducted online, and incorporate artificial intelligence (AI) into specific judicial processes.

From a legal standpoint, UJICS should be viewed not merely as a technical upgrade but as a conceptual transformation of the e-justice model. Its goal is to strengthen public trust in the judiciary, ensure the effective implementation of procedural guarantees, and reinforce the principles of openness and accountability of judicial procedures. In this context, technologies serve not merely as automation tools but as mechanisms for ensuring effective, fair, and transparent justice.

Scholarly literature rightly emphasizes that e-justice has a dual dimension: it functions both as a technical instrument of modernization and as a mechanism for realizing the right of access to justice [11; 12].

When comparing UJITS and UJICS, it becomes clear that while UJITS focuses primarily on automating individual judicial processes, UJICS aims to create a unified digital environment for the judiciary in which all processes are interconnected.

Structurally, UJICS differs fundamentally from the current UJITS model. Whereas the latter has a modular, phased design – often with isolated functioning of subsystems, such as the Electronic Court, Electronic Cabinet,

and Videoconferencing System - the UJICS envisions a unified, centralized architecture that integrates both existing and new subsystems, along with all information flows of the judiciary, into a single digital ecosystem.

Importantly, the new system is oriented toward the use of innovative technologies – artificial intelligence, big data analytics, modern cybersecurity instruments, and predictive analytics services. This approach fully aligns with the European principles of interoperability and unification, enshrined in numerous Council of Europe and European Commission documents aimed at ensuring system compatibility, procedural continuity, and a high level of data protection [13; 14].

According to the approved structure, the UJICS will comprise ten core functional subsystems, including:

(1) Electronic Court Document Management;
(2) Videoconferencing System;
(3) Judicial Web Portal;
(4) Unified State Register of Court Decisions;
(5) Unified Register of Enforcement Documents;
(6) Court Personnel and Financial Management System;
(7) Judicial Dossier; (8) Judicial Training Management System;
(9) Digest and Commentary Module;
(10) Whistleblower Reporting Subsystem.

A key component of the new system will be the *Electronic Court Document Management* subsystem, designed to facilitate electronic recordkeeping within courts, judicial bodies, and institutions, as well as electronic document exchange between courts, public authorities, legal entities, and private individuals.

The implementation of the Concept is planned to occur through 2028 and will be executed in two stages (2025-2026 and 2026-2028). The first phase involves launching core subsystems, while the second focuses on integrating innovative solutions based on big data and AI technologies.

Both internal and external users are expected to benefit significantly from UJICS. For external users, it will create a unified personal digital workspace, allowing them to monitor procedural deadlines, receive notifications about procedural actions, and thus ensure effective access to justice. Additional features will include remote work capabilities, collaborative document editing tools, analytical dashboards, reporting templates, offline functionality, intelligent document scanning and content analysis, shared calendars, task management, and internal messaging with audio and video conferencing.

For judges and court staff, UJICS will enable structured case management and visualization of facts to be proven, related evidence, and relevant materials. The system will enable the planning and booking of courtrooms and resources, as well as the generation of draft documents and automatic error checking, all of which will enhance the overall quality of judicial decisions.

Particular attention is given to the integration of *artificial intelligence*, particularly in the automatic generation of draft procedural documents, the identification of optimal case-handling models, and the detection of deviations from established judicial practice. In the long term, AI could significantly simplify routine work for judges and court personnel, minimize human error in the preparation of standard documents, and enhance the efficiency of case analysis.

However, the deployment of such technologies requires a balanced legal approach, as the use of AI in the judicial sphere raises ethical and legal concerns – ensuring data confidentiality, preventing algorithmic bias, and preserving the judge's ultimate decision-making authority. Within the European Union, active work is underway to establish a legal framework for the use of AI in the justice sector. The *Artificial Intelligence Act* classifies the use of AI in judicial decision-making as a «high-risk activity», requiring strict regulation and oversight [15].

Therefore, in agreement with Ukrainian scholars, AI can become an important tool to assist judges and legal professionals; however, its application must remain strictly regulated, human-supervised, and aligned with the fundamental principles of justice, legality, and equality before the law [16].

In summary, UJICS encompasses not only procedural aspects of e-justice (electronic courts and case management) but also related areas such as judicial registries, internal court administration, judicial training, and public communication. This comprehensive integration aims to establish a unified digital ecosystem of justice – a particularly relevant goal for Ukraine as it strives to strengthen the rule of law and align its judicial standards with European benchmarks, despite ongoing challenges.

Nevertheless, the implementation of the UJICS-2025 Concept faces several *significant risks*.

The most critical challenge is securing adequate *financing* for this large-scale project. Preliminary estimates suggest that the development and integration of UJICS will require approximately USD 24-25 million (over UAH 1 billion). The U.S. Agency for International Development (USAID) had previously provided major donor support for Ukraine's judicial IT infrastructure. However, in 2025, USAID officially suspended all funding

programs in Ukraine, leaving the initiative without external resources. The High Council of Justice is currently seeking new donors and partners to continue the project.

The lack of guaranteed funding jeopardizes the implementation timeline. Although the launch is scheduled for 2028, without sufficient financial support, this deadline may be indefinitely postponed. Consequently, financial risk is a key factor that could render the Concept a declarative document if a stable funding base is not secured for its realization.

Additionally, implementation occurs under martial law, which significantly complicates the digital transformation process. Ukraine's full-scale war necessitates the mobilization of all available resources toward defense and military support. As a result, the majority of the national budget is allocated to defense spending, reducing the capacity for state investment in large-scale judicial digitalization projects.

Moreover, Ukraine faces substantial external debt and must rely on loans from international financial institutions to maintain macroeconomic stability. This creates strict fiscal constraints and prioritization of spending. Under such conditions, the development of UJICS, despite its strategic importance, cannot compete with essential state priorities such as defense, social support, or infrastructure recovery.

Technical and cybersecurity risks must also be considered. During wartime, Ukraine's cyberspace is a constant target of attacks, and the judiciary's IT infrastructure must be secured at the highest level. Any data breach or system compromise would undermine public trust in e-justice. Therefore, implementing UJICS requires simultaneous deployment of advanced cybersecurity measures, backup systems, regular software updates, and security audits – all of which demand additional funding, again linking back to the issue of financial sustainability.

Another significant challenge is *legal inconsistency* between current procedural legislation and the actual state of judicial digital infrastructure.

Although Ukrainian procedural law already defines the *Unified Judicial Information and Communication System (UJICS)* as the legal basis for e-justice, in practice the functioning system remains the *Unified Judicial Information and Telecommunication System (UJITS)*, regulated by the *Regulation on the Functioning of Certain Subsystems (Modules) of UJITS* approved by Decision No. 1845/0/15-21 of the High Council of Justice dated August 17, 2021.

This creates a legal conflict between the norms governing e-justice operations, resulting in regulatory uncertainty with both practical and doctrinal implications. From the standpoint of the principle of legal certainty,

which forms part of the rule of law, such a situation is unacceptable. According to the well-established jurisprudence of the European Court of Human Rights (e.g., *Sunday Times v. The United Kingdom* [17]), legal norms must be sufficiently clear to allow individuals to foresee the legal consequences of their actions.

The absence of a clear distinction between UJITS and UJICS not only poses risks for participants in judicial proceedings but also undermines the uniformity of judicial practice, as courts of different jurisdictions may interpret the relationship between the systems differently. This contradicts the principle of consistency in judicial practice enshrined in Ukrainian law.

In conclusion, the implementation of the UJICS-2025 Concept occurs amid complex organizational, financial, and regulatory challenges. During martial law, digitalization of justice, while remaining strategically significant, inevitably takes a secondary position compared to the state's immediate needs for defense, social support, and infrastructure restoration. Under these conditions, there remains a real risk that UJICS may persist as a conceptual vision rather than a fully implemented system, while UJITS continues to bear the practical burden of ensuring Ukraine's e-justice operations.

Conclusions

It can be concluded that, from an architectural, technical, and functional standpoint, the UJICS model represents a more advanced and comprehensive system than its predecessor, the UJITS. It is designed to ensure the unity of the judiciary's digital environment, enhance data exchange efficiency, and improve transparency and user convenience. The transition from UJITS to UJICS should therefore be viewed not as a rejection of the former system, but as its evolutionary modernization, aimed at addressing accumulated shortcomings and aligning Ukraine's e-justice infrastructure with European standards.

At the same time, the successful implementation of the new system depends on a combination of critical factors – primarily, adequate and stable funding, an improved security environment, legislative modernization, and comprehensive preparation of all participants in the judicial process for operating within a new digital framework. In the absence of any of these elements, there is a substantial risk that the UJICS will remain merely a declarative concept without practical realization.

To minimize these risks, it is essential to develop a clear roadmap for the system's implementation, secure financial support through international donor engagement, conduct phased testing in pilot courts, and prepare both personnel and the general public for the transition to digital justice. Only a systemic and consistent approach can transform the UJICS from a conceptual initiative into a fully operational instrument of e-justice.

Nevertheless, under the current conditions of martial law and financial constraints, the UJITS continues to play a pivotal role in ensuring the stability of Ukraine's judicial system. Today, it remains the operational foundation of e-justice, having demonstrated its resilience even under crisis conditions. Consequently, UJITS serves as the practical foundation, while UJICS functions as the strategic objective of Ukraine's ongoing digital judicial transformation.

Ultimately, the balance between practical functionality and strategic vision will determine the success of Ukraine's digital judicial reform in the years to come.

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Suggested Citation: Luchenko, D.V., & Piatyhora, K.V. (2024). From Concept to Reality: UJICS as the Next Stage in the Development of E-Justice in Ukraine. *Theory and Practice of Jurisprudence, 2*(28), 66-81. https://doi.org/10.21564/2225-6555.2025.28.346098.

Submitted: 17.10.2025
Revised: 28.11.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.347034

Administrative and Legal Regulation of Rural Tourism: Poland's Experience and its Implementation in Ukraine

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Abstract
The relevance of the study is determined by the anticipated development of rural tourism in Ukraine and the need to improve the administrative and legal regulation of rural tourism as a promising branch of the tourism sector in the context of post-war reconstruction, when the development of rural areas and the support of the rural population will be of particular importance. The paper aims to clarify the effectiveness of administrative and legal mechanisms for regulating rural tourism in Poland and to identify the possibilities of adapting them in Ukraine. The study applies dialectical, formal-legal, comparative-legal, analytical, and prognostic methods. This made it possible to trace the evolution of legal norms, compare the Ukrainian and Polish regulatory models, identify practical elements of law enforcement practice, and assess the prospects for their implementation in the domestic legal system. The study results indicate that the Polish model is characterized by a comprehensive approach to developing rural tourism, which incorporates state support programs, local self-government, and financial instruments. In Ukraine, legal regulation remains fragmented and insufficiently focused on supporting the rural population and encouraging entrepreneurial activity. The prospects for further research lie in developing practical recommendations for enhancing administrative and legal mechanisms for regulating rural tourism in Ukraine, taking into account European standards and the country's specific socio-economic conditions.

Keywords: *legal regulation; rural areas; tourism policy; entrepreneurial activity; socio-economic development.*

Адміністративно-правове регулювання сільського туризму: досвід Польщі та його імплементація в Україні

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Анотація
Актуальність дослідження зумовлена очікуваним розвитком сільського туризму в Україні та потребою вдосконалення адміністративно-правового регулювання сільського туризму – перспективної туристичної галузі в умовах повоєнної відбудови, коли розвиток сільських територій і підтримка сільського населення матимуть особливе значення. Мета роботи полягає у з'ясуванні змісту ефективності адміністративно-правових механізмів регулювання сільського туризму в Польщі та визначенні можливостей їх адаптації в Україні. У дослідженні застосовано діалектичний, формально-юридичний, порівняльно-правовий, аналітичний і прогностичний методи. Це дозволило простежити еволюцію правових норм, здійснити порівняння української та польської моделей регулювання, виявити ефективні елементи правозастосовної практики, а також оцінити перспективи їх імплементації у вітчизняну правову систему. Результати роботи свідчать, що польська модель характеризується комплексним підходом до розвитку сільського туризму через поєднання державних програм підтримки, місцевого самоврядування та фінансових інструментів. В Україні правове регулювання залишається фрагментарним і недостатньо орієнтованим на підтримку сільського населення та стимулювання підприємницької активності. Перспективи подальших досліджень полягають у розробленні практичних рекомендацій щодо удосконалення адміністративно-правових механізмів регулювання сільського туризму в Україні, з урахуванням європейських стандартів і специфіки вітчизняних соціально-економічних умов.

***Ключові слова**: правове регулювання; сільські території; туристична політика; підприємницька діяльність; соціально-економічний розвиток.*

Introduction

As an integral part of national tourism policy, rural tourism plays an important role in ensuring sustainable territorial development, diversifying

the economy of rural regions, and preserving cultural heritage. At the present stage, it is viewed not only as a form of recreation but also as a socio-economic instrument for increasing employment, fostering entrepreneurship, and activating local communities [1-3]. Rural tourism is becoming increasingly relevant in the context of globalization and the growing demand for environmentally friendly recreation, necessitating proper administrative and legal regulation.

The particular relevance of this issue is determined by the need for Ukraine's post-war reconstruction. Rural tourism may become a crucial factor in revitalizing the economies of affected territories, promoting the employment of internally displaced persons, generating additional sources of income for local communities, and supporting the preservation of rural cultural identity. In the long term, the restoration of tourism infrastructure in rural regions has the potential to enhance the social resilience of communities and become a crucial component of regional development policy.

As noted in the Strategy for Demographic Development of Ukraine until 2040, according to the Ptoukha Institute for Demography and Social Studies of the National Academy of Sciences of Ukraine, the demographic situation in Ukraine is characterized by a sharp decline in population. As of January 1, 2022, approximately 42 million people lived in Ukraine, while by July 2024, their number had decreased to 35.8 million, of whom only 31.1 million resided in territories where state authorities exercised their powers in full [4].

Particularly vulnerable in this context is the rural population, which faces double pressure: on the one hand, general depopulation and migration processes, and on the other, the devastating consequences of hostilities that have led to the destruction of infrastructure, restricted access to social services, and loss of jobs. At the same time, rural areas remain a key resource for economic recovery, as they can foster small business development, including in rural tourism, thereby creating additional sources of income for local residents.

The experience of European Union countries, particularly Poland, demonstrates that rural tourism can become a key driver of territorial development, provided there is effective cooperation between state authorities, local self-government, and civil society organizations [5]. Poland, with similar historical and socio-economic conditions to Ukraine, has established a comprehensive legal and institutional support system for this sector, including a multi-level organizational model, a system of state support programs, and mechanisms to stimulate entrepreneurial activity in rural regions.

Several problems characterize the current state of rural tourism regulation in Ukraine: the absence of a unified legal definition of "rural tourism", the complexity of registration procedures for tourism activities, a low level of state support, and the lack of systematic tax incentives. Against this background, comparing Ukrainian and Polish experiences makes it possible to identify gaps and propose concrete ways to overcome them.

This article aims to analyze the administrative and legal foundations of rural tourism regulation in Poland and develop recommendations for implementing the Polish experience in Ukraine.

To achieve this goal, the authors set the following objectives:

1) to examine the administrative and legal mechanisms for regulating rural tourism in Poland;
2) to describe the organizational institutions and state programs that support the development of this sector;
3) to conduct a comparative analysis of Ukrainian and Polish legislation in the field of rural tourism;
4) to identify gaps in legal regulation in Ukraine;
5) to formulate proposals for improving the national legal system, considering Polish experience.

Thus, the topic's relevance lies in identifying effective administrative and legal mechanisms for developing rural tourism in Ukraine, based on proven European practices and aimed at promoting the sustainable development of rural areas. The scientific novelty of this study lies in its combination of comparative legal analysis with practical proposals for enhancing the legislative regulation of the national tourism sector.

Literature Review

The issue of administrative and legal regulation of rural tourism, in its general form, has attracted the attention of both Ukrainian and foreign researchers. In the Ukrainian academic tradition, the questions of sustainable tourism development and its legal framework are often considered in connection with economic and social aspects. In particular, I. Solovii, O. Adamovskyi, and I. Dubovych note that rural tourism is a promising direction for stimulating the economy of rural areas; however, they emphasize the need to establish effective state regulation and support mechanisms in this field [6]. Similar conclusions are drawn by T. Teslenko, V. Voronkova, and M. Hakova, who emphasize the connection between the environmental safety of agricultural production and the development of a competitive rural tourism model [7].

A significant academic foundation for understanding the administrative and legal mechanisms of tourism regulation in Ukraine has been established

through the dissertation research of Ukrainian scholars. In particular, V. Chornenkyi, in his work, focuses on the specifics of state governance in the tourism sector, analyzes the system of subjects of administrative and legal relations, and points out the problems of delineating powers between executive authorities and local self-government [8]. The researcher argues that the effectiveness of tourism development largely depends on adequate normative and legal support, as well as the transparency of management procedures.

In turn, Yu. Vyshnevska focuses specifically on rural tourism, identifying administrative and legal measures to promote its development [9]. The author emphasizes the importance of introducing state support mechanisms for rural tourism actors, developing unified service standards, and monitoring compliance. Special attention is given to the interaction between state authorities and local communities in regulating and stimulating the growth of this segment of the tourism sector.

In the Polish academic discourse, the issue of rural tourism has a deeper tradition. As early as the beginning of the 2000s, M. Durydivka defined agritourism as a type of hotel service, emphasizing its legal status and regulatory specifics [10]. More recent studies, including those by A. Siedlecka and K. Zelnik, are based on empirical analysis of tourists' expectations and needs, making it possible to understand better the factors shaping the development of agritourism services in Poland's regions [11].

A significant contribution to the study of the legal foundations of tourism was made by Polish scholars D. Borek and M. Migdal, who analyzed the current state of Poland's tourism legislation and outlined directions for its reform, considering European practices [12]. At the same time, W. Idziak highlights the importance of financial support programs for rural tourism within the European rural development policy [13]. These approaches demonstrate the close interconnection between administrative and legal regulation and the financial and economic instruments supporting the sector.

Thus, the analysis of academic sources indicates that the Polish rural tourism model combines precise legal regulation, institutional support, and financial incentives. In contrast, in Ukraine, the study of this issue remains at the stage of searching for an optimal administrative and legal provision model. This highlights the need for comparative research and systematic analysis to develop practical proposals for implementing the Polish experience in the Ukrainian context.

Materials and Methods

The object of this study is the administrative and legal regulation of rural tourism in Ukraine and Poland, as well as the mechanisms for

implementing European experience into the domestic legal system. To ensure a comprehensive examination of the issue, a wide range of materials was used, including the normative legal acts of Poland and Ukraine in the field of tourism, European Union documents on rural development and entrepreneurship support, academic works of domestic and foreign authors, statistical data from official bodies, as well as analytical materials of international and national institutions. The choice of these sources is determined by the need for formal legal analysis and the necessity to study the practical aspects of implementing state support policies for rural tourism.

The methodological basis of the study combines general scientific and specialized legal methods, which enable an interdisciplinary exploration of the subject. Applying the dialectical method enabled the tracing of the evolution of legal regulation of rural tourism in Poland and its gradual institutionalization as one of the areas of regional policy. The formal legal method was applied to interpret the content of relevant legal norms, establish their logical connections, and identify gaps in current Ukrainian legislation. The methods of analysis and synthesis allowed the systematization of scientific approaches to understanding the essence of rural tourism, outlining its socio-economic and legal aspects, and integrating these findings into the authors' conceptual framework.

Special attention was paid to the comparative legal method, which enabled the juxtaposition of the Ukrainian and Polish models of rural tourism regulation. Based on a comparison of legal definitions, organizational and institutional mechanisms, financial support programs, and administrative procedures, both the positive elements of the Polish experience and the aspects requiring adaptation to Ukrainian realities were identified. Within the framework of the prognostic approach, an assessment was carried out of the potential for implementing the Polish model under martial law and during post-war reconstruction, considering demographic challenges and the need to revive Ukraine's rural areas.

A crucial stage of the research involved processing statistical data that reflected current trends in tourism development, the size and dynamics of the rural population, and the outcomes of state programs supporting small entrepreneurship. This provided an empirical basis for the analysis, linking the legal dimension with economic and social parameters to form a comprehensive understanding of the phenomenon under study.

The results became possible through normative legal analysis, logical reflection on scientific sources, and empirical examination of statistical and programmatic materials. Such an approach ensured the comprehensiveness

of the study. It made it possible to develop practical recommendations for improving the legal regulation of rural tourism in Ukraine, which align with the article's aim and objectives.

Results and Discussion

Theoretical and legal foundations of rural tourism and its characteristics as an object of legal regulation

Rural tourism in modern conditions is regarded as a multifaceted phenomenon that combines recreation, preservation of cultural heritage, support for local entrepreneurship, and the development of rural areas [6]. Its specificity lies in the close connection with natural resources and the traditional way of life of rural communities, which necessitates a special approach to legal regulation [7]. Considering rural tourism as an object of administrative and legal relations enables the determination of the range of actors, their rights and obligations, and the instruments of state influence in this field.

Rural tourism is generally understood as travel, leisure, and residence in rural areas or localities distant from urban settlements, characterized by their inherent low noise levels, slower pace of life, and other social processes. In fact, the purpose of rural tourism is not limited to sightseeing or passive leisure by the sea, but also includes the enjoyment of relative solitude in a natural environment, fresh air, healthy organic food (which is why rural tourism is often referred to as ecotourism), picturesque landscapes, and maximum distancing from the negative aspects of urban civilization.

In recent years, interest in rural tourism has been increasing both in Ukraine and globally. Scholarly sources suggest that two forms of rural tourism can be distinguished: tourism in rural and forest areas, and agritourism. Agritourism is associated with functioning farms, where rural households organize tourists' stays within their own agricultural holdings [10].

However, this definition does not entirely clarify by which criteria the two aforementioned forms of rural tourism may be distinguished. Other researchers propose a more detailed approach to defining these concepts. They believe agritourism is a form of leisure in rural settings, organized within farm households. It represents a form of non-agricultural economic activity, which includes accommodation, meals, participation in agricultural work, and workshops. These all aim to provide tourists with a satisfactory recreational experience [14].

In this article, the term 'rural tourism' is used as the broadest category, encompassing various forms such as agritourism and tourism in rural

areas, as it most adequately reflects the scope of the phenomenon under study.

The primary forms of rural tourism can be distinguished as follows:

1) active tourism – hiking and trekking in the mountains, various river rafting activities, and similar pursuits;
2) cultural and ethnic excursions;
3) visits to nature reserves and parks;
4) fishing and hunting.

At the same time, rural tourism is associated with small-scale entrepreneurial activity in the tourism sector, typically observed in rural areas. This type of economic activity has become widespread in rural regions of Poland, which should be regarded as a very positive phenomenon. The intensification of entrepreneurship in this sphere contributes to overcoming the decline of many rural areas in the country, as part of the population finds employment opportunities, gains a stable income, effectively utilizes their own housing and other facilities, and leverages the advantages of their region of residence.

Recognizing these and other opportunities, as well as the potential for local economic development through rural tourism and related economic activity, active efforts have been undertaken at higher levels of governance in Poland to promote and support its development.

The development of agritourism primarily depends on local conditions, including the location of the gmina (municipality), the activities of local self-government bodies, and the state of technical and social infrastructure [11]. It is worth noting that rural tourism does not develop uniformly everywhere. The majority of agritourism farms are located in regions rich in natural resources. These include, in particular, the Bieszczady Mountains, Roztocze, the Lublin region, Podlasie, Masuria, Kashubia, and the Krakow-Czestochowa Upland [14].

According to the data of the Central Statistical Office of Poland, as of July 31, 2022:

"There were 15 tourist accommodation establishments per 1,000 km^2 of rural areas, which is one fewer than in 2015 (in cities – 238 establishments, 12 fewer; in Poland overall – 31 establishments, one fewer). The highest number of tourist accommodation establishments per 1,000 km^2 was recorded in the voivodeships of Małopolskie (39), Pomorskie (36), and Zachodniopomorskie (34), while the lowest was in Mazowieckie (6). At the subregional level, the highest values of this indicator were observed in the Nowotarski subregion of the Małopolskie voivodeship (140), the Gdański

subregion of the Pomorskie voivodeship (95), and the Koszaliński subregion of the Zachodniopomorskie voivodeship (93), while the lowest was in the Ciechanowski subregion of the Mazowieckie voivodeship (2).

In 2022, there were 20 bed places in tourist accommodation establishments per 1,000 persons of the rural population (in cities and Poland overall – 21). Compared to 2015, the number of bed places per 1,000 persons of the rural population increased by 2 (while in cities and in Poland overall, by 3). It is worth noting the significant territorial differentiation of this indicator: from 7 in the Mazowieckie and Opolskie voivodeships to 141 in the Zachodniopomorskie voivodeship, and at the subregional level – from 2 in the Rybnicki subregion of the Śląskie voivodeship to 330 in the Koszaliński subregion of the Zachodniopomorskie voivodeship" [15, p. 139].

The System of Organizational and Legal Support for Tourism in Poland

The specific features of administrative and legal regulation in rural tourism are most clearly reflected in the state's combination of control and support mechanisms for this activity. A vivid example is the Polish model, within which the legal foundations for the commencement, conduct, and termination of business activities, as well as the definition of the rights and obligations of entrepreneurs and the competences of public authorities, are established in the Act of March 6, 2018 – Law on Entrepreneurs. At the same time, the provisions of this Act do not apply to activities in the field of rural tourism, in particular to the provision by farmers of rooms for vacationers, the sale of homemade food products, or other services organized within a peasant household [16].

This means that activities in the form of rural tourism carried out based on a personal farm are not considered entrepreneurship in the traditional sense and, accordingly, are not subject to mandatory registration in the Central Register and Information on Economic Activity (CEIDG) or in the National Court Register (KRS). Instead, such accommodation services are subject to entry in a special register of establishments providing lodging services maintained by local self-government bodies (the village head, mayor, or city president).

Tax incentives represent an equally important component of administrative and legal regulation. In Poland, income derived from renting rooms in residential houses located in rural areas and from providing meals to tourists is exempt from taxation, provided the number of rooms does not exceed five. If this threshold is exceeded, general tax rules apply. Thus, the organization of rural tourism requires consideration of the scale of services, as it determines the legal and tax consequences for the host.

Incorporating these circumstances into the administrative and legal regulation analysis is appropriate, as it demonstrates the balance between minimizing bureaucratic procedures and ensuring proper oversight. On the one hand, the state stimulates the development of small-scale rural tourism through tax benefits and simplified administrative requirements; conversely, it maintains the ability to monitor through registration and supervisory mechanisms. Such an approach may be helpful in Ukraine, which is currently seeking optimal legal instruments to support rural tourism.

The analysis of administrative and legal regulation in the field of tourism should appropriately begin with a description of the central executive authorities, whose activities are based on the provisions of the Act of the Republic of Poland of September 4, 1997, on Government Administration Departments. According to this Act, each government administration department is headed by a responsible minister. In the case of tourism, the Minister of Sport and Tourism plays a key role, exercising state management in this area, including defining directions for the development of rural tourism and influencing the mechanisms of its legal regulation [17].

The Minister's competence is determined by several laws that constitute the foundation of Polish tourism law. These include: the Act of August 29, 1997, on Hotel Services and Services of Tourist Guides and Leaders [18], the Act of June 25, 1999, on the Polish Tourist Organization [19], and the Act of November 24, 2017, on Tourist Events and Related Tourist Services [20]. These normative acts not only shape the legal framework for the functioning of the tourism market but also establish the powers of the Minister in financing, supervising, and coordinating tourism activities, which indirectly concern rural tourism as well.

In particular, the Minister's competence includes managing the Tourist Compensation Fund, the Tourist Assistance Fund, and the system of tourist vouchers. His tasks also include participation in international cooperation, developing strategies and tourism development plans, allocating budgetary resources, involvement in statistical research and educational programs, recognizing qualifications in regulated professions (e.g., mountain guides), performing representative functions, and participating in the legislative process. An important area of competence also includes the incorporation of qualifications into the Integrated Qualifications System, as well as the consideration of appeals against administrative decisions in the tourism sector.

The scientific significance of such an administrative and legal regulation organization lies in the creation of a coherent system of tourism

management, within which rural tourism is integrated as one of the priority directions. In response to the growing demand for ecological recreation and authentic cultural experiences, a specialized ministerial body ensures strategic planning and quality control of tourism services. For Ukraine, this experience is particularly valuable: unlike Poland, where competencies are clearly concentrated within a specialized authority, in our country, the functions related to tourism development are dispersed among several institutions, which complicates the implementation of a unified state policy. Therefore, adopting the Polish approach could contribute to developing a more effective model of state management for rural tourism, one that is oriented toward the sustainable development of regions.

One of the key principles of effective administrative and legal regulation of rural tourism is publicity, which presupposes the active involvement of local communities, professional associations, and stakeholders in the development, adoption, and implementation of management decisions [21]. The Polish experience demonstrates that the development of institutional channels of interaction with citizens and tourism stakeholders enables a more accurate identification of the needs of rural areas and consideration of the interests of both the population and businesses in shaping the legal framework. This reduces the risks of conflicts between public authorities and local communities, increases trust, and contributes to the effective implementation of socio-economic policy in tourism [22, p. 11].

An important element of the administrative and legal regulation of tourism in Poland, alongside the activities of central executive authorities, consists of specialized institutions tasked with implementing state policy in this field. Through their work, the interaction between state bodies, local self-government, and the business environment becomes evident, creating conditions for the comprehensive development of the tourism sector. In this context, it is appropriate to analyze the activities of the Polish Tourist Organization as a key institution responsible for coordinating and promoting the tourism sector.

The Polish Tourist Organization was established to foster cooperation among government structures, local self-government authorities, professional associations, and business entities in the tourism sector. It has become an important institutional link, designed to promote Poland as a competitive tourist destination both domestically and internationally.

The main tasks of the Polish Tourist Organization include:

1) promoting Poland as an attractive tourist destination;
2) ensuring the functioning and development of the national tourist information system in the country and abroad;

3) initiating, supporting, and evaluating projects aimed at the development and modernization of tourism infrastructure;
4) carrying out tasks entrusted by local self-government authorities or business organizations on a contractual basis;
5) implementing tasks defined in cooperation with the Minister responsible for physical culture, in particular through the use of sports events and the achievements of Polish athletes to promote the country;
6) initiating the creation of regional and local tourist organizations and coordinating their activities;
7) determining the right to receive a Polish tourist voucher and exercising control over its use;
8) promoting and providing organizational support for mechanisms related to the functioning of tourist vouchers [19].

From a scientific perspective, the activities of the Polish Tourist Organization serve as an example of the institutionalization of administrative and legal regulatory mechanisms in the tourism sector. Its work goes beyond purely administrative functions and includes strategic planning, information policy, infrastructure development, and communication with key tourism market participants. This indicates a transition from formal state control to an integrated governance model combining public, private, and civil society sectors.

Poland's experience in involving local self-government and business in tourism development is particularly valuable for Ukraine. In the context of rural tourism, such cooperation enables consideration of regional characteristics, cultural traditions, and the needs of local communities, while also ensuring adequate administrative and legal support at the national level. In the long run, this approach could serve as the basis for creating an effective system of rural tourism management in Ukraine, focused on state-community partnership.

The preliminary analysis of the Polish Tourist Organization's activities reveals that the effectiveness of administrative and legal regulation of tourism largely depends on the complexity of the institutional structure. At the same time, the mere existence of a separate institution does not guarantee sustainable development of the sector, as a system integrating central, regional, and local levels of governance is required. Poland introduced this model while reforming its tourism sector in the context of approximation to European Union standards.

The change in the organizational system of tourism, and consequently the transformation of approaches to its legal regulation, was directly connected

with Poland's aspiration to integrate into the European Union. Drawing on the experience of developed countries in 1994, the Plan for the Development of the National Tourist Product was adopted, followed by the Strategy for the Development of the National Tourist Product (1995-2004). These documents served as the basis for the creation in 1997 of a new three-tier organizational tourism system [12, pp. 13-15].

Its key element was the Polish Tourist Organization (PTO), which was established following the model of national tourist organizations in EU countries. On this basis, regional tourist organizations (RTOs) and local tourist organizations (LTOs) gradually began to form. They were intended to serve as platforms for cooperation between local self-government, the business environment, and civic associations. Notably, the creation of these institutions was enshrined in governmental strategies and programs of all voivodeships, which gave the process a systemic character.

In Poland's state model of tourism regulation, the Sejm and Senate establish the legislative framework. At the same time, the Council of Ministers is responsible for formulating and implementing state policy in the tourism economy. The Minister responsible for tourism (currently the Minister of Sport and Tourism) is tasked with carrying out this policy, with a specialized Department of Tourism operating within the ministry. To perform operational tasks, particularly promotion, information support, and the development of tourism infrastructure, the Polish Tourist Organization was created.

Legislation stipulates that the Minister supervises the activities of the PTO, which, like RTOs and LTOs, has the status of a separate legal entity. Importantly, no hierarchical subordination exists between these institutions: they are connected by contractual relations and the joint implementation of programs. As a rule, the PTO concludes agreements with regional organizations, bringing together local structures based on membership and cooperation. This system forms a network-based rather than vertical governance model.

Special attention should also be given to the activities of nationwide sectoral organizations, particularly chambers of tourism, representing economic self-government. They ensure interaction with all levels of the tourism organizational system. Equally important is the role of universities and scientific-educational centers, which provide the human resources and academic foundation for developing tourism, including rural tourism.

From a scholarly perspective, the three-tier system of tourism organization in Poland represents an innovative administrative and legal model based on decentralization and partnership. It ensures the effective functioning

of the sector not through a strict hierarchy, but through cooperation and contractual mechanisms. This approach is crucial in rural tourism, as local organizations are best positioned to understand the needs of local communities and the unique features of their tourism potential.

For Ukraine, this experience is of exceptional value: our country's organizational tourism system has not yet developed such a clearly structured multi-level framework. Implementing the Polish model would enable the harmonization of relations among central authorities, local self-government, and businesses, which is a necessary precondition for the sustainable development of rural tourism.

Program Support Mechanisms for Tourism in Poland's System of Administrative and Legal Regulation

When examining support programs for rural tourism development, it is appropriate to begin with the Rural Development Programme 2014-2020 (RDP 2014-2020). Within its objectives for supporting the economic development of rural areas, RDP 2014-2020 also provided measures in the field of tourism. In particular, under Measure 6, "Development of farms and business activities", and Submeasure 3, "Support for starting non-agricultural activities in rural areas (start-up aid for non-agricultural activities)", financial assistance was envisioned. The grant amounted to PLN 100,000 and was paid in two installments: the first covered 80% of the aid, and the second covered 20%. Beneficiaries of this support could include farmers, their spouses, household members, and participants of the program "Payments for farmers transferring small farms". A. The key condition for eligibility was the preparation of a business plan, and in the event of receiving aid, a mandatory transition from the KRUS system (Farmers' Social Insurance Fund) to ZUS (Social Insurance Institution) was required [13].

Special attention should also be given to the Tourism Support Programme – Edition 2024, which aims to improve the quality of tourism services in Poland and support the national tourism sector. It encompasses financial and non-financial support measures, as well as the development and digitalization of services, improvements in communication, promotion, and professional training. The program identifies four priority areas under which authorized entities may submit proposals for the implementation of state policy objectives in the tourism sector [23]:

1) development and promotion of regional tourism;
2) popularization, support, and facilitation of access to active forms of tourism;
3) digital transformation in tourism and training in support of it;
4) enhancing the level of tourist safety in Poland.

These program examples demonstrate that in Poland, rural tourism development is integrated into a broader state strategy for supporting rural areas, combining economic, social, and cultural dimensions. This is particularly significant for Ukraine, as national legislation has yet to establish a systemic model for programmatic support of rural tourism. The Ukrainian experience remains limited to local initiatives and isolated state incentives, lacking a comprehensive policy. The introduction of similar support programs, adapted to local conditions, could become a crucial tool for stimulating entrepreneurial activity in rural areas, creating jobs, enhancing the investment attractiveness of regions, and integrating Ukraine into the European tourism market.

Problems and Prospects of Adapting the Polish Model in Ukraine

The legal regulation of tourism in Ukraine and Poland has standard features, but the differences in approaches to rural tourism are significant. Poland has a well-developed administrative and legal support system for the tourism sector, in which central government bodies, regional, and local tourism organizations play a key role. A distinctive feature of Polish legislation is the establishment of a simplified regime for rural households providing leisure services: such activities are not subject to registration as business activities and benefit from a range of tax exemptions. In Ukraine, on the contrary, the provision of similar services generally falls under the regime of entrepreneurial activity, which complicates market entry for small operators.

An analysis of Ukraine's current legislation indicates the absence of a clear definition of "rural tourism" as a distinct object of administrative and legal regulation. The sector is regulated in a fragmented manner, through the Laws "On Tourism", "On Personal Peasant Farming", "On Entrepreneurship", and tax legislation. This creates legal uncertainty, particularly regarding licensing, certification, taxation, and the liability of rural tourism operators. The lack of special benefits and simplified procedures results in a significant portion of activity in this sector being conducted informally, without proper state oversight or statistical accounting.

The Polish experience demonstrates that rural tourism development is possible only by creating a flexible and favorable legal environment. Based on this, Ukraine should consider the following directions for improving legislation:

– simplified registration procedures – introduction of a separate status for rural tourism operators who do not require complete business registration, provided that services are offered within a personal peasant household;

- tax incentives – establishment of preferential taxation for income earned from renting out rooms in rural areas and providing related services (meals, leisure), following the Polish model;
- quality standards and certification – introduction of minimum safety and comfort standards for rural tourism services and a voluntary certification system to enhance competitiveness in domestic and international markets.

Thus, adapting the Polish model to Ukrainian realities may become a crucial factor in stimulating rural tourism development, promoting the legalization of activities in this sector, and laying the groundwork for enhancing the quality of services provided and integrating Ukraine into the European tourism space.

Conclusions

The research has established that the administrative and legal regulation of Poland's rural tourism represents a systematic state policy, combining legal frameworks, institutional mechanisms, and financial and economic support instruments. The Polish model for supporting and operating rural tourism is based on a multi-level organizational system (PTO, ROT, LOT), which integrates EU programs with national legislation and targets funding programs to develop small enterprises in rural regions.

In comparison with Ukraine, several differences have been identified. Specifically, Ukrainian legislation still lacks a comprehensive regulatory framework for rural tourism, with no precise state support mechanisms, service quality standards, or an effective interaction system between national and local institutions. At the same time, the Ukrainian context, particularly under martial law and in the context of post-war reconstruction, underscores the need to develop rural tourism as a means of socio-economic revitalization for rural areas and preserving their demographic potential.

The study proposes directions for enhancing legal regulation in Ukraine, including simplifying registration procedures for rural tourism operators, introducing tax incentives, adopting European quality standards, and promoting institutional cooperation at both the national and local levels. Building on the Polish experience, while considering Ukrainian specifics, will contribute to creating an effective system for supporting rural tourism, positively impacting the economy, social integration, and the revitalization of rural areas in Ukraine.

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Suggested Citation: Yaroshenko, A.S., & Dudek, M.Ł. (2025). Administrative and Legal Regulation of Rural Tourism: Poland's Experience and its Implementation in Ukraine. *Theory and Practice of Jurisprudence, 2*(28), 82-100. https://doi.org/10.21564/2225-6555.2025.28.347034.

Submitted: 25.08.2025
Revised: 08.10.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.347037

"Non-Alternative" Detention in the Legislation and Judicial Practice of Ukraine

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Abstract
The article examines problematic aspects of ensuring the right to liberty and personal inviolability under martial law in Ukraine. The topic's relevance is determined by legislative changes that provide for the de facto "non-alternative" application of detention for specific categories of criminal offenses, as well as the need to assess their compliance with constitutional guarantees of human rights. The article aims to determine the consistency between the provisions of Parts 6 and 8 of Art. 176 of the Criminal Procedure Code of Ukraine and the constitutional guarantees of the right to liberty and personal inviolability. The study employs dialectical, formal-legal, formal-logical, analytical, and synthetic methods, which enable a comprehensive assessment of legislative approaches, the position of the Constitutional Court of Ukraine, and law enforcement practice. The study's results demonstrated that the formal existence of an alternative in the form of bail does not eliminate the judicial tendency to perceive detention as the only possible preventive measure for the category of proceedings specified in Parts 6 and 8 of Art. 176 of the CPC. While recognizing that the legislative approach reflected in these provisions may be considered permissible from the standpoint of conventional standards and justified by the need for effective counteraction to armed aggression, the authors conclude that the current norms of the CPC are inconsistent with those constitutional guarantees that cannot be restricted even under martial law (Art. 29 of the Constitution of Ukraine). It seems promising to explore the development of an optimal model for striking a balance between public interest and the observance of fundamental rights in emergency legal regimes in the future.

Keywords: *preventive measures; criminal proceedings under martial law; judicial control; principles of criminal proceedings.*

«Безальтернативне» тримання під вартою у законодавстві та судовій практиці України

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Анотація
У статті досліджуються проблемні аспекти забезпечення права на свободу та особисту недоторканність в умовах воєнного стану в Україні. Актуальність теми обумовлена законодавчими змінами, що передбачають фактичне «безальтернативне» застосування тримання під вартою до окремих категорій кримінальних правопорушень, а також потребою оцінки їх відповідності конституційним гарантіям прав людини. Метою статті є визначення міри узгодженості положень частин 6 і 8 ст. 176 КПК України із конституційними гарантіями права на свободу та особисту недоторканність. У дослідженні використано діалектичний, формально-юридичний, формально-логічний, аналітичний і синтетичний методи, що дозволило комплексно оцінити законодавчі підходи, позиції Конституційного Суду України і правозастосовну практику. Результати дослідження продемонстрували, що формальна наявність альтернативи у вигляді застави не усуває тенденції у судовій практиці до сприйняття тримання під вартою як єдиного можливого запобіжного заходу щодо категорії проваджень, вказаної у частинах 6 і 8 ст. 176 КПК. Одночасно із визнанням законодавчого підходу, відображеного у частинах 6 і 8 ст. 176 КПК, допустимим з точки зору конвенційних стандартів та виправданим – з точки необхідності ефективної протидії збройній агресії, автори роблять висновок про неузгодженість чинних норм КПК тим конституційним гарантіям, які не можуть бути обмежені навіть в умовах воєнного стану (ст. 29 Конституції України). Перспективним у подальшому видається пошук оптимальної моделі забезпечення балансу між публічним інтересом і дотриманням фундаментальних прав у надзвичайних правових режимах.

Ключові слова: *запобіжні заходи; кримінальне провадження в умовах воєнного стану; судовий контроль; засади кримінального провадження.*

Introduction

As it is well known, criminal procedure is a branch of law in which fundamental human rights and freedoms may be subject to significant and prolonged restrictions. One of the tasks of criminal proceedings at the national level is to ensure that no person is subjected to unjustified procedural coercion and that each participant is afforded proper legal procedure (Part 1, Art. 2 of the CPC). For this reason, in such a highly sensitive area of law from the standpoint of protecting rights and fundamental freedoms, maintaining a reasonable balance between the interests of society in combating crime and the guarantees of private participants in criminal proceedings becomes particularly important. Ensuring this balance should be a cross-cutting objective not only within the framework of legislative activity but also in the sphere of law enforcement. Therefore, analyzing certain procedural institutions may serve as a "litmus test" of how successfully legislators and practitioners maintain this balance.

The introduction of martial law in Ukraine has shifted priorities in nearly all spheres of state and legal reality, and criminal justice has been no exception. In particular, for the duration of martial law, the legislator decided to return to the previously existing model of "non-alternative" detention for specific categories of criminal offenses – namely, crimes against the foundations of national and public security, as well as military criminal offenses – by introducing corresponding amendments, in particular to Parts 6 and 8 of Art. 176 of the CPC. This rather decisive step by the lawmaker, aimed at strengthening criminal procedural measures against such offenses, significantly shifts the balance between public and private interests in favor of the former (public interests). At the same time, restrictions on rights and freedoms, even under extreme conditions, must not undermine the very essence of the right itself. Therefore, the issue of ensuring the guarantees of the right to liberty and personal inviolability becomes especially relevant.

The scientific understanding of the observance of the right to freedom and personal integrity in Ukraine was engaged in, in particular, by: V. Pcholkin, O. Fedosova, L. Kotova, & V. Merkulova [1], O. Kaplina [2], A. Tumanyants, H. Hetman, V. Babanina & R. Dovbash [3], G. Sobko, A. Svintsytskyi, O. Pushkar, V. Butynskyi, & Y. Shvets [4]. In turn, the issue of the permissible framework for restricting human rights and freedoms in Ukraine, in particular, under martial law, was raised in their works by I. Hloviuk, V. Zavtur, I. Zinkovskyy, & L. Pavlyk [5], O. Babikov, O. Omelchenko, I. Fedorenko, D. Hurina, & O. Babikova [6], V. Krykun, I. Hanenko, & I. Bykov [7], S. Ablamskyi, V. Galagan,

I. Basysta, & Z. Udovenko [8], V. Zavhorodnii, O. Orel, G. Muliar, O. Kotlyar, & V. Zarosylo [9], H. Teteriatnyk [10]. However, despite the disclosure in scientific works of key aspects of the raised issues (observance of the right to liberty and personal integrity and ensuring the balance of rights and freedoms under martial law), there is currently no comprehensive work devoted to understanding the relevance of the restriction of the right to liberty and personal integrity introduced by the legislator in the form of "non-alternative" detention in a synthetic perspective, taking into account both norm-setting and law enforcement trends.

Therefore, the article aims to study the compliance of the amendments introduced by the legislator to Parts 6 and 8 of Art. 176 of the CPC with the guarantees of the right to liberty and personal integrity. To achieve this goal, the following research tasks must be consistently solved:

1) analysis of the criminal procedural law regarding the definition of "non-alternative" detention (in retrospect and in the current version);
2) identification of key arguments of the logic of the constitutional control body in terms of the analysis of the constitutionality of the previously introduced and currently valid amendments;
3) assessment of the state of enforcement of detention in relation to criminal offenses provided for in Parts 6 and 8 of Art. 176 of the CPC;
4) preliminary assessment of compliance with the guarantees of the right to liberty and personal integrity during the application of "non-alternative" detention under Parts 6 and 8 of Art. 176 of the CPC.

Materials and Methods

The method of scientific research serves as a tool that, on the one hand, allows for a highly reliable examination of the subject of scientific inquiry, and on the other hand, demonstrates the researcher's level of scientific competence. Considering that modern phenomena of state and legal reality are of a complex nature – being shaped not only by legal but also by political, social, and other factors – a comprehensive use of scientific methodology is a necessary precondition for the qualitative scholarly understanding of the issue under study.

The following research methods will serve as "assistants" in the study of legislation and judicial practice:

– the dialectical method, which makes it possible to comprehend the problems of ensuring the guarantees of the right to liberty and personal inviolability in their integrity and interconnection with public interests;
– the formal-legal method, which will serve as a means of understanding the content of the categories enshrined in legislation, the logic of

argumentation developed by the constitutional control body, and the formation of conclusions regarding the conformity of the degree of restriction to established guarantees of rights and freedoms;
- the formal-logical method, which will allow for a critical understanding of the arguments expressed by the constitutional control body and national judicial authorities to identify the most well-founded answers to the issues under study;
- the analytical method, which will serve as an applied tool for distinguishing the key arguments of the positions expressed by the Constitutional Court of Ukraine (hereinafter referred to as CCU) and by national courts of general jurisdiction;
- the synthetic method, through which it will be possible to formulate a preliminary assessment of the compliance of the legislative approach to "non-alternative" detention with the current guarantees of human rights and freedoms.

The first stage of the study involves identifying the object and subject of the research, formulating problem questions, and selecting appropriate theoretical and empirical materials.

At the second stage, the collected materials will be analyzed using the methods listed above to form a comprehensive understanding of the legislative approach to "non-alternative" detention in both the legislative and law enforcement dimensions.

The third stage of the research involves systematizing the processed materials to formulate conclusions and outline promising directions for further study.

Results and Discussion

The CPC establishes a list of preventive measures applied by an investigating judge or a court (personal obligation, personal surety, bail, house arrest, detention – Part 1 of Art. 176 of the CPC), classifying detention as an exceptional preventive measure that may be applied only if the prosecutor proves that none of the milder preventive measures can prevent the risks specified in Art. 177 of the CPC, except in the cases provided for in Parts 6 and 8 of Art. 176 of the CPC.

At the same time, beginning in April 2022, several amendments were made to the CPC of Ukraine, according to which detention was established as the "default" preventive measure for certain criminal proceedings. Thus, pursuant to Part 6 of Art. 176 of the CPC, during the period of martial law, persons suspected or accused of committing crimes under Articles 109–114-2, 258–258-6, 260, 261, 437–442-1 of the CCU, and where the risks specified in Art. 177 of this Code are present, are subject to the

preventive measure specified in Para. 5 of Part 1 of this Art. 177 (detention). Furthermore, according to Part 8 of the same Article, during the period of martial law, military personnel suspected or accused of committing crimes under Articles 402–405, 407, 408, 429 of the CCU are subject exclusively to the preventive measure specified in Para. 5 of Part 1 of this Article (detention). Both provisions, as indicated by the phrase "during the period of martial law", are temporary and connected to the operation of an extraordinary legal regime – the legal regime of martial law. The exceptional nature of this regime and the urgent need for the state to enhance the effectiveness of all forms of its activities, including law enforcement, have justified the reintroduction of detention as the "default" preventive measure. This model was previously in effect under Part 5 of Art. 176 of the CPC from October 7, 2014, to June 25, 2019.

The purpose of introducing the exception established in Part 6 of Art. 176 of the CPC, as indicated by the legislator, is "the protection of Ukraine's national interests, the protection of Ukrainian statehood from crimes against national and public security, and the prevention of offenders evading criminal punishment for committing crimes of the specified category, as well as crimes against peace, the security of humanity, and the international legal order, and the *prevention of unfounded or unmotivated court decisions in selecting a preventive measure for this category of persons that does not involve detention*" [11]. In turn, the purpose of introducing the exception for military personnel is "to make it impossible to apply any preventive measures other than detention to military personnel who have committed certain military crimes during the period of martial law", since "a military crime committed by a serviceman during the operation of the martial law regime *indicates the highest degree of socially dangerous conduct*, and therefore the *only preventive measure that may be applied to such a serviceman is detention*" [12].

The above-mentioned objectives for adopting the respective amendments to the procedural law reflect at least two normative intentions that are particularly important for the scope of our study: a) both exceptions contain a penitentiary component, which is not inherent to the nature of preventive measures; b) both exceptions emphasize the social dangerousness of the act allegedly committed by the suspect, which likely diverts attention from other important factors relevant to the application of a preventive measure (such as the individual characteristics of the person, etc.)[1].

[1] It is worth noting that, in this context, Part 6 of Art. 176 of the CPC differs from Part 8 of the same Article: the former uses the formulation "in the presence of the risks specified in Art. 177 of this Code". However, this distinction is neutralized by the overall orientation of both provisions, which, at both the legislative and law enforcement levels, are perceived as rules establishing detention as the "default" preventive measure.

It is worth noting that the approach of legislatively limiting the choice of preventive measures had already been reflected in the procedural law: from October 7, 2014, to June 25, 2019, Part 5 of Art. 176 of the CPC was in effect, which provided that preventive measures in the form of personal obligation, personal surety, house arrest, or bail could not be applied to persons suspected or accused of committing crimes under Articles 109–114-1, 258–258-5, 260, 261 of the CPC. This provision was declared unconstitutional by the CCU in the case concerning the constitutional complaints of M.A. Kovtun, N.V. Savchenko, I.D. Kostohlodov, and V.I. Chornobuk regarding the compliance of Part 5 of Art. 176 of the CPC of Ukraine with the Constitution of Ukraine (Constitutional Court decision No. 7-r/2019 of June 25, 2019) [13].

An analysis of the reasoning part of the mentioned decision allows us to assert that the following arguments served as the grounds for its adoption:

(a) "By establishing in the contested provision of the Code that detention is the only preventive measure for the relevant category of persons, the legislator deprived the investigating judge and the court of the possibility to apply a milder preventive measure to such persons"; "the investigating judge or the court, after weighing the relevant risks and the circumstances of a particular case, cannot apply to the specified persons any preventive measure milder than detention, as a result of which the judge and the court are deprived of the opportunity to issue a well-reasoned judicial decision and to provide proper justification for detention, which is inconsistent with international practice";
(b) "Detention by a reasoned decision of the investigating judge or court, within the meaning of Part 2 of Art. 29 of the Constitution of Ukraine, complies with the principle of the rule of law and minimizes the risk of arbitrariness – a result that cannot be achieved by considering only the gravity of the offense without assessing the specific circumstances of the case or the real reasons justifying the need for detention and the impossibility of applying other, milder, preventive measures";
(c) "The contested provision justifies detention by the gravity of the offense, which does not ensure a balance between the purpose of its application in criminal proceedings and the individual's right to freedom and personal inviolability" [13].

Based on the considerations set out above, the body of constitutional review reached an unequivocal conclusion that "the provisions of Part 5 of Art. 176 of the Code contradict Part 2 of Art. 3, Parts 1 and 2 of Art. 8, and Parts 1 and 2 of Art. 29 of the Constitution of Ukraine, as they violate the principle

of the rule of law and restrict an individual's right to freedom and personal inviolability" [13].

A detailed analysis of the reasoning underlying the finding that the legislative approach to restricting the choice of preventive measures is inconsistent with the Constitution of Ukraine shows that a legal provision which precludes adapting the choice of an appropriate preventive measure to the specific circumstances of the proceedings (the presence of risks, the characteristics of the person) does not comply with the constitutional provisions and guarantees provided within the framework of the right to liberty and personal inviolability.

However, unlike the previously established approach in the procedural law (mandatory detention – Part 5 of Art. 176 of the Criminal Procedure Code in the version before its provisions were declared unconstitutional), the current procedural law does not formally allow detention to be considered mandatory. Thus, Para. 8 of Part 4 of Art. 183 of the CPC grants the investigating judge or the court, during martial law, the right, when issuing a ruling on the application of a preventive measure in the form of detention, taking into account the grounds and circumstances provided for in Articles 177 and 178 of this Code, not to determine the amount of bail in criminal proceedings concerning crimes provided for in Articles 109–114-2, 258–258-6, 260, 261, 402–405, 407, 408, 429, 437–442-1 of the CPC. Taking into account the overlapping lists of criminal offenses for which the rule of "mandatory detention" applies, as well as their everyday normative basis (since identical legislative acts introduced the amendments to the CPC[2]), it can be asserted that the rule granting the right not to determine bail correlates with the rule on "mandatory detention".

Thus, in the aforementioned criminal proceedings during martial law, the investigating judge or the court can apply a preventive measure to the suspect or the accused:

(a) detention with bail determined;
(b) detention without bail determined. In addition, according to part 6 of Art. 176 of the CPC, another possible outcome of considering a motion for the application of a preventive measure in the form of

[2] This refers to the Law of Ukraine "On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine to Improve Liability for Collaboration Activities and the Specifics of Applying Preventive Measures for Crimes Against the Foundations of National and Public Security" No. 2198-IX of April 14, 2022, which supplemented Art. 176 of the CPC with part six, as well as the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine Regarding the Selection of Preventive Measures for Military Personnel Who Committed Military Crimes During Martial Law" No. 2531-IX of August 16, 2022, which provided for the addition of part eight to Art. 176.

detention is the refusal to grant it, as emphasized by representatives of the academic community [14].

An alternative in the form of bail served as the basis for the constitutional oversight body to recognize the provisions of Part 6 of Art. 176 of the CPC as consistent with the Constitution of Ukraine (constitutional). Thus, in the decision of the Constitutional Court of Ukraine in the case based on the constitutional complaints of S.A. Bychkov and A.A. Bai regarding the constitutionality of part six of Art. 176 of the Criminal Procedure Code of Ukraine, dated June 19, 2024, No. 7-r(II)/2024, the updated legislative approach was found to comply with the Constitution of Ukraine (constitutional) based on the following arguments:

(a) the purpose "for which the legislator supplemented Art. 176 of the Code with part six is legitimate, as the legislator intended to strengthen the protection of the sovereignty, territorial integrity, inviolability, defense capability, and the state, economic, and information security of Ukraine by establishing, through the mentioned provision of the Code, a *temporary (for the duration of martial law)* special procedure for applying a preventive measure in the form of detention to persons suspected or accused of committing crimes that, by their gravity and nature, are extremely dangerous under the conditions of martial law" (Para. 6.1 of the reasoning part);

(b) "the application, under part six of Art. 176 of the Code, during martial law, of a preventive measure in the form of detention to a person suspected or accused of committing crimes against the foundations of national security of Ukraine, public safety, peace, security of humankind, and international legal order, where risks defined in Art. 177 of the Code are present, is a necessary means to ensure the effectiveness of the investigation of such crimes and the fulfillment of the tasks of criminal proceedings under martial law, which is determined by the need for enhanced protection of the sovereignty, territorial integrity, inviolability, defense capability, and the state, economic, and information security of Ukraine" (Para. 6.2 of the reasoning part);

(c) "under part six of Art. 176 of the Code, the preventive measure in the form of detention is not defined as an exclusive, non-alternative preventive measure". Therefore, "part six of Art. 176 of the Code does not contradict Articles 3 and 8, Parts 1 and 2 of Art. 29, Part 1 of Art. 55, Part 1 of Art. 62, or Part 1 of Art. 64 of the Constitution of Ukraine, since this provision of the Code ensures enhanced guarantees for the protection of the constitutional right to liberty and personal inviolability of the individual against arbitrary interference,

as defined by Part two of Art. 29 of the Constitution of Ukraine" (Paras. 6.3, 7 of the reasoning part of the decision) [15].

Thus, the body of constitutional jurisdiction has recognized the current version of Part 6 of Art. 176 of the CPC as consistent with the Constitution of Ukraine. However, does this allow us to assert the constitutionality of the legislative approach to the normative restriction of the choice of preventive measures depending on the category of the criminal offense being investigated or considered? We shall attempt to clarify this further.

Despite the formal existence of an alternative to detention, law enforcement practice demonstrates a prevailing perception of this preventive measure as mandatory. This is illustrated by examples from case law, where detention was treated as the sole option in criminal proceedings falling under the lists provided in Parts 6 or 8 of Art. 176 of the CPC. For instance, in the ruling of the investigating judge of the Ordzhonikidzevskyi District Court of Kharkiv dated October 24, 2024 (case No. 644/8120/23), it is stated: "In accordance with Part 6 of Art. 176 of the CPC of Ukraine, during martial law, for persons suspected or accused of committing crimes under Articles 109–114-2, 258–258-6, 260, 261, 437–442 of the Criminal Code of Ukraine, and in the presence of the risks specified in Art. 177 of this Code, the preventive measure provided for in Para. 5 of part one of this Article applies, i.e., exclusively detention, which currently excludes the possibility of changing the preventive measure to 24-hour house arrest or bail" [16]. In case law, other examples can also be found where a similar legal interpretation is applied: prohibiting preventive measures other than detention [17; 18; 19; 20]. In contrast, a substantial body of judicial decisions reflects a different interpretation, where detention with the possibility of posting bail is considered a possible and permissible option under Parts 6 and 8 of Art. 176 of the CPC [see: 21-23].

Moreover, both representatives of the academic community [3, pp. 166-167] and the legal profession in Ukraine [24] have highlighted specific concerns regarding the respect for legal guarantees when applying the legislative approach to restricting the choice of preventive measures. For instance, academic community members noted, "The approach outlined in Parts 6 and 7 of Art. 176 of the CPC of Ukraine essentially does not take into account the idea of individualizing the application of preventive measures, as it eliminates the possibility of choosing any milder preventive measure, in particular in the case when the risks (escape, obstructing the investigation, etc.) are significantly reduced, taking into account the individual characteristics of the suspect or the accused. Suspicion in itself, the accusation of committing even a grave crime without taking into

account the identity of the suspect or the accused, the way the crime was committed, the evidence confirming his guilt, and other circumstances cannot be the basis for 'automatic' detention of the suspect or accused" [3, pp. 166-167].

At the same time, within the academic discussion, there are also positive assessments of the legislative approach to restricting the choice of preventive measures [14; 3, pp. 170-171]. Based on the arguments and positions reviewed above, it is entirely reasonable to offer an authorial perspective on the essence of the issue under study. In our view, the legislative approach to the normative restriction of the choice of preventive measures, while justified under martial law conditions, still leaves room for discussion regarding its consistency with the provisions of the Constitution, for the following reasons.

Firstly, the provisions introduced in Parts 6 and 8 of Art. 176 of the CPC restrict the right to liberty and personal inviolability, as they reduce the range of preventive measures that can be applied and, consequently, the degree of reasoning in the court's decision. Undoubtedly, such a restriction on a right that is not absolute is permissible under conventional standards, especially during extraordinary circumstances, as researchers of this issue have rightly emphasized [3, p. 164; 25; 26]. However, permissibility under conventional standards does not automatically imply compliance with constitutional standards, as will be discussed further.

Secondly, introducing the martial law regime in Ukraine, under the Constitution of Ukraine, can serve as a basis for limiting not all legal guarantees. According to Part 2 of Art. 64 of the Constitution of Ukraine, in conditions of martial law or a state of emergency, the rights and freedoms set out in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, and 63 of the Constitution cannot be restricted. The right to liberty and personal inviolability (Art. 29 of the Constitution of Ukraine) belongs to those rights whose restrictions, even partial, are impermissible under martial law or a state of emergency. In this context, it is also noteworthy that Art. 29 of the Constitution was not mentioned in Para. 3 of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" No. 64/2022 of February 24, 2022, among the list of constitutional rights and freedoms that may be temporarily restricted during the period of martial law [27].

Conclusions

The above allows us to conclude:

– *On one hand*, there is a debatable issue regarding the compliance of the provisions introduced in the procedural law during the period of martial

law – restricting the choice of preventive measures for specific categories of criminal proceedings – with constitutional standards for the protection of the right to liberty and personal inviolability (the restriction of which is not permitted under martial law);

– *On the other hand,* such a deviation is permissible under conventional standards (pursuant to Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms) and can be considered appropriate from the perspective of the state-legal reality in conditions of threats to territorial integrity and sovereignty.

Thus, the scholarly pursuit of a solution capable of ensuring a constitutionally defined balance between the public interest and protecting the right to liberty and personal inviolability under extraordinary conditions, associated with threats to Ukraine's territorial integrity and sovereignty, remains relevant. We hope the above considerations will serve as a helpful starting point for a professional discussion on this issue, to prevent the restriction of fundamental constitutional provisions even in extreme circumstances, in order to preserve civilizational values.

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Suggested Citation: Skrypnyk, A.V., & Titko, I.A. (2025). "Non-Alternative" Detention in the Legislation and Judicial Practice of Ukraine. *Theory and Practice of Jurisprudence, 2*(28), 101-115. https://doi.org/10.21564/2225-6555.2025.28.347037.

Submitted: 16.10.2025
Revised: 27.11.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.346912

Theoretical and Methodological Problems of National Legal Implementation of Ukraine's International Obligations

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Abstract
The relevance lies in the fact that a faithful fulfilment of international obligations is a defining feature of the modern state, especially given the undermining of the common international order by acts of Russian aggression against Ukraine. Despite more than a century of scholarly research into the relationship between international and domestic law, no key theoretical issues or conceptual and categorical framework have been agreed upon, which complicates legal practice and teaching. The purpose of this article is to identify the main theoretical and methodological problems of the relationship between international and domestic law, to apply the latest legal methodologies to investigate their nature, and to harmonise the conceptual and categorical framework as it pertains to the methods of national legal implementation of Ukraine's international obligations. The methods of analysis are based on an interdisciplinary approach, incorporating the methodologies of legal systemology, morphology, axiology, anthropology, and temporology, which enable us to transcend the traditional normological methodology. The findings reveal that the numerous terms used to describe implementation mechanisms can be categorized into two main categories: transformation and reference. Transformation can take the form of repetition (verbatim reproduction), optimisation, or distortion. It is established that reference ensures synchrony with international law, while transformation always leads to a temporal lag in the national legal system. It is proposed to move beyond the dichotomy of monism and dualism by developing a synergistic legal perspective on the world that recognizes the unity of the legal system while acknowledging the relative independence of its components. Prospects for further research lie in the development of monographic foundations for a synergistic legal worldview, which would open up new theoretical and methodological horizons. It is necessary to initiate a substantive nationwide discussion on the

harmonization of the terminological and methodological issues related to the implementation of the law.

Keywords: *implementation law; international obligations; transformation; reference; synergistic legal worldview; legal axiology.*

Теоретико-методологічні проблеми національно-правової імплементації міжнародних зобов'язань України

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Анотація
Актуальність статті полягає в тому, що сумлінне виконання міжнародних зобов'язань є визначальною ознакою сучасної держави, особливо на тлі підриву універсального міжнародного правопорядку внаслідок російської агресії проти України. Незважаючи на більш ніж століття еволюції наукових досліджень проблеми співвідношення міжнародного та національного права, наразі все ще не узгоджено її ключові теоретичні питання та понятійно-категоріальний апарат, що ускладнює юридичну практику та викладання. Мета статті полягає у виявленні основних теоретико-методологічних проблем співвідношення міжнародного і національного права, застосуванні новітніх юридичних методологій для дослідження їхньої природи та узгодженні понятійно-категоріального апарату щодо способів національно-правової імплементації міжнародних зобов'язань України. Методи аналізу ґрунтуються на міждисциплінарному підході, включаючи методологію правової системології, морфології, аксіології, антропології та темпорології, які дозволяють вийти за межі традиційної нормологічної методології. Отримані результати демонструють, що численні терміни, які використовуються для опису механізмів імплементації, слід класифікувати на два основні способи: трансформацію та відсилання. Трансформація може відбуватися у формі репетиції (дослівного відтворення), оптимізації чи дисторсії (викривлення). Встановлено, що відсилання забезпечує синхронну дію міжнародного права, тоді як трансформація завжди призводить до темпорального відставання національного правопорядку. Пропонується вихід за межі дихотомії монізму і дуалізму шляхом розробки

синергетичної правової картини світу, що визнає єдність правопорядку при відносній самостійності його складових. Перспективи подальших досліджень полягають у монографічній розробці наукових засад синергетичної правової картини світу для відкриття нових теоретико-методологічних горизонтів. Необхідно ініціювати предметну загальнодержавну дискусію щодо узгодження термінологічних та методологічних проблем імплементаційного права.

Ключові слова: *імплементаційне право; міжнародні зобов'язання; трансформація; відсилання; синергетична правова картина світу; правова аксіологія.*

Introduction

A key feature of the modern state as a trustworthy subject of international law is the faithful fulfillment of its international legal obligations. A decentralised international legal system can only function effectively if every participant adheres to commonly accepted principles and norms, and if any violation thereof results in a swift application of the norms of international legal responsibility to the offender. This problem has become particularly relevant with the start of Russia's aggression against Ukraine, which has destroyed the system of collective international security, called into question the existence of a common international legal system, and thus potentially threatens the entire human civilisation.

One of the guarantees of a state's fulfilment of its international obligations is its national legal mechanism for implementing international law. Under the principle of non-intervention in the internal affairs of states, international law does not specify concrete mechanisms for its implementation into national legal systems. This is an area of exclusively national jurisdiction. Given that there are currently approximately 200 states and state-like entities, such a number of national legal mechanisms for implementing international law results not only in diverse legal practices but also in multiple doctrinal views on fundamental issues of the relationship between legal systems. Over the course of more than a century of scholarly research, starting with the classical works of Heinrich Triepel [1; 2] and Hans Kelsen [3], thousands of authors [4; 5] have written extensively on this issue. However, there is still no consensus, either globally or nationally, on some fundamental theoretical issues of the relationship between international and domestic law; indeed, there is not even a single conceptual and categorical framework, which leads to serious problems in legal practice, creates significant difficulties in teaching academic disciplines related to the implementation of Ukrainian legislation, and hinders mutual understanding among scholars.

The purpose of this article is to identify the central theoretical and methodological problems of the relationship between international (including European) and domestic law, apply the newest legal methodologies to study the nature, content, and functions, as well as harmonise the conceptual and categorical framework regarding the methods of national legal implementation of Ukraine's international obligations.

Literature review

An analysis of world literature, in particular, K. Aksamitowska [6], D.H.A. Alfathimy & R.P. Ardes, [7], M. Allcock [8], M.P.V. Alstine [9], A.R. Amandha, R. Arifin, C.A. Rahmayani, D.Purnomo and N.D. Nte [10], O.Ammann [11], J.M. Angstadt [12], O. Awawda [13], J.S. Ayetey & B.T. Erinosho [14], M. Baaz [15], G. Bartolini [16], E.B. Beenakker [17], E. Benvenisti & A. Harel [18], H. Birkenkötter [19], E. Bjorge [20], D.T. Björgvinsson [21], A. Blankenagel [22], A.V. Bogdandy [23], C.A. Bradle & L.R. Helfer [24], T.H. Brandes & N.R. Davidson [25], Th. Buergenthal [26], B. Bugarič [27], S.N. Bui & M.De Visser [28], A. Buser [29], S. Butt, Bisariyadi & F. Siregar [30], B. Çalı [31], A. Cassese [32], U. Ćemalović [33], Y.-J. Chen [34], W. A. Dewanto [35], S. Farber, N. Benichou, & R. Amer [36], M. Gillis [37], M. Glavina [38], E. Gonzalez-Ocantos & W. Sandholtz [39], J. Hohnerlein [40], S. Kaavi & T. Paloniitty [41], J. Kahn [42], M. Kanetake [43], S. Katuoka & G. Valantiejus [44], R. Kunz [45], R. Kusniati, P. Aekaputra & N. Pitpiboonpreeya [46], M. Leloup [47], M. Loja [48], L. Maret [49], M. Mendez [50], C. I. Nagy [51], A. Nollkaemper [52], B. J. Ong [53], H.D. Phan [54], A. Ploszka [55], C. M. J. Ryngaert & D.W.H. Siccama [56], FX A. Samekto, M.A. Mahfud & A.P. Prabandari [57], M.L. Taylor [58], Y. Won [59], H. Woolaver [60], as well as works by Ukrainian international lawyers, in particular, M.V. Buromensky [61-63], O.V. Butkevych [64-66], V.H. Butkevych [67-69], V.N. Denysov [70], A.I. Dmytriev [71], M.M. Gnatovskyy [72], V.V. Hutnyk [73], O.R. Ivashchenko [74], N.V. Kaminska [75], S.B. Karvatska [76], T.R. Korotkyy [77], A.O. Korynevych [78], V.M. Steshenko [79; 80], Y.J. Streltsova [81], O. V. Tarasov [82; 83], O.I. Vinglovska [84], T.V. Vovk [85], S.V. Voychenko [86], O.V. Zadorozhniy [87], including experts in EU law such as T.V. Komarova [88], V.I. Muraviov [89], R.A. Petrov [90] and others [91-93] over the last century turns up a lack of consistent terminology in the study of the relationship between international and domestic law, to which has been added the problem of the relationship between European law (including EU law) and Ukrainian law, the ambiguity of views on the nature, content, functions and even number of ways of implementing international obligations of states in national law, faulty methodology used in some studies, and so on.

Thus, the literature offers the following names for the methods (forms, types) of interaction between international (including European) and domestic law: adaptation, approximation, introduction, enforcement, reference, inclusion, enactment, compliance, harmonisation, borrowing, convergence, implementation, incorporation, integration, coordination, modification, bringing in line, transfer, conversion, adjustment, direct and indirect enaction, direct and indirect application, realisation, reception, authorisation, transmission, transposition, transformation, synchronisation, unification, etc. [94-96 and others]. Furthermore, according to the authors, some of these methods include several others, which creates additional confusion in understanding the very essence of the phenomena being studied. In addition, one may encounter a rather odd method of classification, wherein the same method (type, form) of national legal implementation is broken down into stages, which in turn are designated as separate methods (types, forms) of implementation. For example, N.B. Haletska, in her well-researched study, presents references to treaties ("formal integration", interpreted by the author as a component of national implementation lawmaking) separately from direct application thereof (as a component of implementation law enforcement) and makes no mention of them at all as a component of implementation law interpretation [97, p. 79]. Yet, such referencing remains the same method of national implementation in all its stages – both lawmaking and law enforcement, including the need for legal interpretation.

Materials and Methods

Arguably, the solution to problems in this area of research lies in the application of an adequate methodology. Thus, from the point of view of *legal systemology*, one should consider the level of abstraction when studying any legal phenomenon and avoid confusing it with others. The level of legal philosophy and general theory, which encompasses international and national legal components that are, in turn, subdivided into public and private law categories, and the branch of law, hinges on the availability of an appropriate methodology and a conceptual and categorical framework. The level of legal technicalities, where specific mechanisms of national legal implementation of states' international obligations function directly, should not be confused with philosophical and legal problems of the relationship between civilizations and the human world order. Sadly, the use of different-level components within a single conceptual and categorical framework is one of the most common methodological errors in domestic research.

Another theoretical and methodological problem is the confusion between form and content (sometimes the category "substantive characteristic"

is used instead of "content", but as a philosophical category, "form" correlates with "content", while content itself can be assessed by its legal characteristics – substantive or procedural, public or private, international or national, etc.) in studying the mechanisms of national legal implementation of states' international obligations. For example, the formal legal issue of treaty functioning in Ukraine's national legal system subtly transforms into a substantive legal discussion of the relationship between the peremptory norms (whether treaty or customary) of general international law (*jus cogens*) and the provisions of national law, which have varying legal effects. After all, from the perspective of *legal morphology*, which studies form and content in legal contexts, the formal subordination of treaties to the corresponding national laws does not negate the substantive subordination of the dispositive provisions of national law to the peremptory norms of general international law (*jus cogens*). Thus, when it comes to sources of national law, an international interdepartmental agreement formally ranks above departmental acts but below government resolutions. If they contradict one another, the technical legal solution is to go by the government resolution rather than the interdepartmental agreement. However, the government has no right to repeal the peremptory norms referenced in the interdepartmental agreement, as they derive from the UN Charter or customary international law. Therefore, in the event of a conflict, the government resolution should be applied only to the extent that it does not contradict the peremptory norms of general international law, regardless of its form.

In our view, the issue of how peremptory norms of general international law function in Ukraine's national legal system should be resolved by utilizing the methodological apparatus of *legal axiology*, the study of legal values. Reconciling universal human values, reflected in the peremptory norms of general international law, with the values of a particular civilisation, enshrined in the mandatory provisions of regional international law, and both of these, in turn, with an individual nation's values, which requires constitutional and legal regulation, demands an appropriate philosophical and legal reflection. The jurist's own worldview on this issue has a direct impact not only on the results of scholarly research and the training of future legal professionals, but also on practices. The Russian view of international law as a purely technical tool that should facilitate the implementation and consolidation of the results of aggressive policies, a tool subordinate to the domestic law of the Russian Federation, clearly does not match the level of modern civilisation achieved by humanity. The interests of humanity, individual nations, and individuals are inherently interconnected and must be mutually consistent. International and domestic law should serve these goals. Therefore, the normal state of affairs

does not require the supremacy or subordination of one legal system to another, but rather relies on cooperation to achieve common goals through the specific mechanisms of each legal system. This is very different from a situation when an offence is committed, and the offender intends to evade responsibility by constructing pseudoscientific concepts of "the priority of domestic law over international law". The principle of the inevitability of punishment for a crime should not be confused with the completely different problem of the relationship between legal systems.

The fundamental problem of the relationship between the individual, the nation, and humanity necessitates that researchers apply the methodological apparatus of *legal anthropology* as an integral part of general legal personology. The legal personhood of an individual, as recognized in Art. 6 of the 1948 Universal Declaration of Human Rights and subsequent international human rights treaties, implies consistency between the international (universal, interregional, regional, and subregional) and national legal statuses of a natural person. This should be facilitated, not hindered, by mechanisms for the national legal implementation of international obligations. If national implementation mechanisms are deficient, the international legal status of a natural person should be directly recognised and exercised under the national legal system. International human rights law occupies a special place in the system of modern international law and is not limited to classic interstate cooperation, as some anthropological nihilists who deny the international legal personhood of the human being believe. Accordingly, national implementation of fundamental human rights and freedoms is a particularly sensitive issue in research, education, and practice, requiring the utmost attention of scholars. In particular, any national implementation practice that results in non-recognition, negation, or annulment of human rights is considered a gross violation of international legal obligations.

Having identified the main theoretical and methodological problems of the national legal implementation of Ukraine's international obligations, we shall now offer our vision of how to solve them based on the methodology of legal systemology, morphology, axiology, anthropology, and temporology, which is, of course, not to say that we shall be ignoring the entire spectrum of traditional normological methodology.

Results and Discussion

The problem of classifying methods (types, forms) of national legal implementation of Ukraine's international obligations

It appears that the excessive conceptual and categorical "creativity" in this field of research calls for Occam's razor. There is no need to multiply entities

when one can clearly define the necessary and sufficient phenomena for further research. Thus, in domestic literature attempts have already been made to limit oneself to only three methods (types) of national legal implementation of Ukraine's international obligations: incorporation (sometimes also described as "transformation"), reception, and reference [98, pp. 66-69; 99, p. 34; 100, pp. 275-276, etc.]. Undoubtedly, such a classification looks more attractive than the hodgepodge found in most scholarly publications.

However, morphological analysis leads us to question even this three-component formula. In particular, while there is a fundamental difference between reference on the one hand and incorporation and reception on the other, when it comes to the form and content of international legal provisions implemented into the national legal system, no such difference can be observed between incorporation and reception. The nature of reference lies in the inclusion of a source of international law in its entirety – both in form and content – into the national legal system. A reference norm of national law performs at least three basic regulatory functions with regard to the source of international law. First, a reference norm *legalises* the application of a source of international law in the national legal system in general. Second, a reference norm establishes a source of international law within the hierarchy of national law sources, thereby resolving potential conflicts in the enforcement of international law. Third, a reference norm names the *subject of regulation*, i.e., it identifies the norms of international law that specify which social relations within the national system are subject to their regulatory effect.

Unlike reference, incorporation and reception rely on the same process in terms of their legal nature: the national legislator, government official or judge takes the source of international law as a model and, on its basis ("in its image and likeness"), creates a source of national law or an individual legal act at the legislative, executive or judicial level of powers. In this case, the international legal form is replaced by a national legal form, and the content changes depending on the practical goals of implementation, with minimal changes in the case of reception and more substantial changes in the case of incorporation.

Thus, incorporation and reception fall under one single method of national legal implementation of Ukraine's international obligations, and the difference between them lies in the degree of likeness between the content of the source of international law and the content of the corresponding source of national law. Domestic scholars have named this method of implementation "transformation" [101], given the process of "transforming" international legal form and content into national legal form and content.

We would add that the process of transformation is not limited to reception, when the content of a norm of international law is reflected almost unchanged in the content of a norm of national law, or incorporation, when the content of a norm of international law is adapted to the peculiarities of the national legal system and is not a carbon copy of the original source's content. Unfortunately, during the transformation process, the content of the source of international law may be distorted at the level of national law to such an extent that the implementing legislation may not comply with the state's international legal obligations at all. In our view, this extent of transformation should be referred to as "distortion". It would also be better to replace the term "incorporation" with the more accurate "optimisation", because the term "inclusion" can, by and large, refer to any method of national legal implementation when the norms of international law are, in one way or another, "included", "introduced", "transposed", "transferred", "imported" etc. into the national legal system. As for the term "reception", let us just say this: it is easily confused (especially by students during the learning process) with its homonym, which denotes the process of a state's borrowing and assimilating more advanced foreign legal forms, including those from past eras. An example is the reception of Roman law, which began in medieval Europe. This is the level of philosophical, theoretical, and historical conceptualization of the interaction between civilizations. To avoid confusion, it would be better to use the more accurate term "repetition" in the sense of a literal, verbatim, undistorted reproduction (reflection, copying) of the text of an international legal act in a national legal act.

The temporal aspect should also be considered when distinguishing between the functions of reference and transformation. It should be recalled that *legal temporology*, the study of time in law, uses two equivalent and complementary methodologies – diachronic and synchronic. Diachrony assumes only one legal temporal state, encompassing three temporal dimensions: past, present, and future. Synchrony has a more complex structure, with three legal temporal states, each of which has three temporal dimensions:

(1) Potentiality (pre-actuality), actuality, and post-actuality;
(2) Prematurity, timeliness, and lateness;
(3) Lag, simultaneity, and haste.

From the point of view of diachrony and reference, both transformation and reference operate in the legal dimension of the present. Yet from the point of view of synchrony, the situation already differs for each of the two methods of national legal implementation of states' international obligations. Whereas, in the case of reference, the national legal system always applies the current norms of international law, as if receiving a "live broadcast" from

the international legal system, in the case of transformation, something like instant "snapshots" or "copies" of the content of international law norms are made and enshrined in national legislation, which requires amendments to be made to national law every time the corresponding international law changes; i.e., transformation always deals with events that have already taken place, and the national legislator exists in a temporal dimension of constant lag.

In the language of legal temporology, referencing enables the national legal system to be in a constant state of legal temporal synchrony with the international legal system, particularly in the temporal dimensions of actuality, timeliness, and simultaneity. Transformation also implies a legal temporal state of synchrony; however, in the temporal dimensions of post-actuality, it necessitates lateness and lag on the part of the national legal system relative to its international counterpart. Of course, the national legislator may act proactively by adopting national legislation that will comply with the state's future international legal obligations (preliminary transformation) and thus enter the temporal dimensions of potentiality, prematurity, and haste. However, these temporal dimensions will only be temporary, and once these international legal obligations commence, they will gradually transition through the dimensions of actuality, timeliness, and simultaneity to post-actuality, lateness, and lag. This is one of the fundamental temporal differences between the functioning of reference and transformation.

Taking all of the above into account, we propose the following classification criteria for the typology of national legal implementation of international obligations:

- By method of implementation: transformation or reference;
- By degree of transformation: reception ("repetition"), optimisation or distortion;
- By degree of recognition of reference: (1) One-time, case-specific (*ad hoc*); (2) Temporary (*de facto*); or (3) Permanent (*de jure*);
- By time of commencement of international legal obligations (temporal criterion): diachronic or synchronic;
- By diachrony: past, present, or future;
- By synchrony: (1) Potential (pre-actual), actual or post-actual; (2) Premature, timely or late; (3) Lagging, simultaneous or hasty;
- Spatial criterion: subnational, national, or extranational (e.g., regarding overseas, associated or occupied territories);
- By the form of sources of international law and other international acts implemented in the national legal system (external formal normative criterion): (1) International legal customs; (2) Treaties;

(3) Resolutions of international intergovernmental organisations; (4) Decisions of international judicial and arbitration bodies, etc.

- By the content of sources of international law and other international acts implemented in the national legal system (external substantive normative criterion): (1) Peremptory norms or dispositive norms; (2) Substantive or procedural norms; (3) Direct or referential norms; (4) Regulatory or protective norms; (5) Binding, prohibitive or authorising norms; etc.;
- By scope of the system of sources of international law covered in implementation (referential or transformative) norms of national law (external systemological normative criterion): (1) General implementation (reference to or transformation) of all sources of international law without exception; (2) Particular implementation (reference or transformation) that only covers a specific category of sources of international law (e.g., only treaties); (3) Special implementation (reference or transformation) limited to a specific group of sources within a separate category of sources of international law (e.g., to a specific subset of treaties concluded at the highest political level); (4) Specific implementation (reference or transformation) of a single defined source of international law;
- By the form of sources of national laws and other acts implementing norms of international law (internal formal normative criterion): (1) Constitution; (2) Laws; (3) Decrees; (4) Resolutions; (5) Orders; (6) Judicial and arbitration decisions, etc.
- By the range of entities under national law to whom the implemented norms of international law apply (internal systemological personative criterion): (1) General personative national legal implementation covering all entities under national law without exception; (2) Particular personative national legal implementation covering certain categories of entities under national law (e.g., only natural persons); (3) Special personative national legal implementation, which applies only to a special group of persons within a separate category of entities under national law (e.g., natural persons of a certain gender, age, citizenship, religious beliefs, etc.); (4) Individualised personative national legal implementation, which concerns a specific entity under national law (e.g., when international legal sanctions are imposed by the UN Security Council and the relevant resolution is then implemented in national law);
- By the range of social relations subject to the implemented norms of international law (internal systemological communicative criterion): (1) General communicative national legal implementation covering basic, fundamental social relations within the domestic legal system

at the level of constitutional law; (2) Particular communicative national legal implementation covering certain types of social relations at the level of individual branches of national law; (3) Special communicative national legal implementation covering social relations at the level of sub-branches or institutions under individual branches of national law; (4) Specific communicative national legal implementation covering a single clearly defined social communication with individually named participants as parties to the legal arrangement;

- By the branches of powers implementing the norms of international law (cratic criterion): (1) Legislative; (2) Executive; (3) Judicial; (4) Supervisory;
- By the functional criterion: (1) Lawmaking; (2) Law enforcement; (3) Law interpretation;
- By position in the system of national and local authorities implementing the norms of international law (hierarchical criterion): (1) At the highest government level; (2) At the regional government level; (3) At the local government level.

Of course, this is not an exhaustive list of possible classification criteria for studying the problems of national legal implementation of states' international obligations. Nevertheless, it significantly supplements and improves the classifications proposed previously.

The problem of the direct (immediate) effect of international legal norms in the national legal system

The theoretical and methodological problem of the possibility or impossibility of directly effective international legal norms in the national legal system arises exclusively in relation to reference. Under transformation, the national legal system only applies the norms of domestic implementation laws, which must comply with the state's international legal obligations. Another issue is the extent to which implementation legislation actually fulfils its basic function of adapting the invariably compromising norms of international law to the unique features of a particular national legal system. So, it is precisely in the case of transformation at the level of distortion that referencing comes to the rescue, when the national legal system authorises the application of relevant norms of international law. However, the question arises: is such an application "direct" (or "immediate")?

According to legal morphology, the source of national law that contains the reference norm not only indicates the source of international law that must be applied in the national legal system, but also, through its national legal form, encompasses ("envelops") the international legal form and

then applies the resulting provision to regulate relations in the domestic legal system. The result is a complex normative construct in which the main ("parent") legal form is the national legal form, and the international legal form, although unchanged, acts as a subform ("filial" form) that is subordinate to the main form and cannot transcend it. Thus, the main national legal form restricts the functioning of the international legal subform within the domestic legal system by subjecting it to regulation and limiting its scope to entities under national law, as well as in terms of space and time.

At the same time, from the standpoint of legal systemology, the first subsystemic normative level in the internal structure of such a source of national law will include: (1) the national reference norm, and (2) the source of international law as a whole; while the second subsystemic level will include the substantive norm of international law itself, which should already have a regulatory impact on social relations in the domestic legal system.

Thus, an international legal norm is not directly effective, but rather defined by the opportunities provided by the source of national law, with a reference norm, i.e., through mediation, by authority, or by direct instruction in the national implementation law. However, in the event of distortion during transformation and the lack of a direct reference in the implementation law, our view is that the judicial branch of powers, through interpretation, in order to ensure the faithful fulfilment of the state's international legal obligations, is entitled to use a judicial reference to the international primary source, thereby granting permission for its use for specific purposes and applying it in the course of the judicial process. Of course, this would be a one-time application, i.e., an *ad hoc* reference, for a specific court proceeding. Nevertheless, all available means should be used to achieve the main goal: the efficient functioning of the mechanism for the national legal implementation of states' international obligations. In addition, there is always a possibility of further analysis and collation of implementation case law by the supreme judicial authorities, with recommendations being made, which would turn one-time, unforeseen *ad hoc* judicial references into established, generally acknowledged *de jure* judicial references.

The problem of conceptual rejection of the "dualistic/monistic" dichotomy for further research in the context of the relationship between international law and domestic law

Any theoretical construct must ultimately contribute to our understanding of reality. The highest level of philosophical abstraction, as well as the greatest heuristic effect, is found in the theoretical and methodological phenomenon known as the scientific worldview. When a scholar operates

within a clear, unambiguous, systematic, and logical worldview in their chosen realm, it is a sign of professionalism and allows for fruitful scientific discussions without the potential threat of misunderstanding, ambiguity, uncertainty, speculation, etc. It is precisely these generally accepted scientific worldviews, in their simplified form, that are presented in educational literature.

In studies of the relationship between legal systems, two classical theories have prevailed for more than a century: the dualistic and the monistic. Plenty of compromise options have been proposed based on these theories, leaning in one direction or another, but the essence has remained the same. Either you are a supporter of dualism in its various manifestations, or you are a supporter of various strains of monism. Yet legal practice provides examples that seem to confirm both opposing theories. According to O.O. Merezhko, "Perhaps we should consider both concepts non-existent in their pure form in real life; they are closer to 'ideal types' or models that do not fully reflect the complex and diverse practice of international relations" [102, p. 114]. A way out of this methodological dichotomy appears possible by recognising the existence of both particular scientific worldviews, but within a more general legal worldview.

Thus, the monist view of legal reality as a distinct, singular phenomenon, separate from politics, economics, religion, and so on, does not contradict the dualist view that legal reality itself encompasses various phenomena that may be relatively independent of one another. Moreover, the various components of legal reality are in constant flux, forming, changing, terminating, and re-establishing diverse interrelationships of coordination and subordination.

According to M.V. Buromensky, "In the modern world, the most widely accepted doctrine on the relationship between international and domestic law is the one based on a synthesis of the dualist theory and the primacy of international law. That said, one must proceed from the doctrine of the unity of law as a sociocultural phenomenon that generates an essentially single legal system which, in turn, consists of relatively independent international and domestic legal systems" [103, p. 64].

This legal worldview is more in line with an open synergistic vision than with a limited dualistic/monistic dichotomy. In particular, we posit that the turn of the 21st century saw a consensus emerge in the international legal system regarding the unconditional primacy of human rights and fundamental freedoms over all political, economic, ideological, religious, and other phenomena, even those formally enshrined in domestic law at the constitutional level. Of course, this only applies to democratic

regimes, because under totalitarianism, the state itself becomes the biggest criminal, whose goal is the consistent and systematic destruction of law as a phenomenon. We believe that the development of scholarly foundations for a synergistic legal worldview at the monographic level will make it possible to go beyond the classical theories of the late 19th and early 20th centuries without rejecting their achievements, opening up new theoretical and methodological horizons for studying various issues of the relationship between legal systems [104-106].

Characterising the mechanism of national legal implementation of Ukraine's international obligations

The current mechanism of national legal implementation of Ukraine's international obligations is characterised by the presence of both methods of implementing international law in the national legal system – reference and transformation. Thus, under Art. X of the Declaration of State Sovereignty of Ukraine of August 16, 1990, Ukraine recognises "the priority of generally accepted standards of international law over the standards of the domestic law" [107]. However, the document does not specify which international legal form these generally accepted standards of international law take, customary or treaty. Thus, the legislators emphasised the substantive rather than the formal component of the mechanism for the national legal implementation of Ukraine's international obligations.

In Article 9 of the Constitution of Ukraine of June 28, 1996 [108], the legislator adopted a formal legal approach, limiting it only to treaties in force, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine (namely by ratification, acceptance, or accession). Such treaties are recognised as part of Ukraine's national legislation and, in terms of their legal effect, are inferior in the hierarchy of sources of national law to the Constitution of Ukraine but superior to the laws of Ukraine.

Also important are the provisions of Art. 22(1) of the Constitution of Ukraine, which mentions an inexhaustible constitutional list of human and civil rights and liberties, opening up the possibility of expanding this list through the implementation of customary and treaty human rights norms of international law at the level of the Constitution of Ukraine, rather than at a lower legislative level. In other words, we are again dealing with a substantive approach rather than a formal one.

A certain threat to the faithful fulfilment of Ukraine's international obligations can be found in the provisions of Art. 151(1) of the Constitution of Ukraine, which allows the Constitutional Court of Ukraine to recognise a treaty in force or concluded by Ukraine as inconsistent with the Constitution of Ukraine [109].

It is also prudent to note a possible interpretation of Art. 8 of the Constitution of Ukraine, which recognises the principle of the rule of law. By and large, the rule of law implies the supremacy not only of national but also of international law, including international human rights law, over all other types of social norms within the national legal system. Some potential for interpreting implementation law is also apparent in Art. 18 of the Constitution of Ukraine [110, p. 138], which is devoted to foreign political activity based on generally acknowledged principles and norms of international law, including the principles of respect for human rights, faithful fulfilment of international obligations, etc.

While the reference in Art. 9(1) of the Constitution of Ukraine is limited only to those treaties in force, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine, Art. 19(2) of the Law of Ukraine "On Treaties of Ukraine" of June 29, 2004 [111] extends this list to include all treaties in force concluded by Ukraine. A relevant clarification on this matter was also provided by the Plenum of the High Specialised Court of Ukraine for Civil and Criminal Cases in Para 2 of the Resolution No. 13 "On the Application of Treaties of Ukraine by Courts in the Administration of Justice" of December 19, 2014 (hereinafter referred to as "the PHSCU Resolution No. 13 of December 19, 2014") [112]. Finally, the Law of Ukraine "On Lawmaking" of August 24, 2023, removes any ambiguity on this issue [113]. Thus, today, all treaties of the highest interstate level, all intergovernmental agreements, and all interdepartmental agreements are implemented into the national legal system of Ukraine by reference, respectively, in the Constitution of Ukraine, current legislation, judicial enforcement, and legal interpretation practice.

Accordingly, in the hierarchy of sources of national law, treaties formally and legally occupy the position determined by the reference norm of the relevant source of national law. Thus, treaties in force, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine are superior to the laws of Ukraine but inferior to the Constitution of Ukraine. Treaties concluded by the President of Ukraine are superior to decrees of the President of Ukraine but inferior to laws of Ukraine and the Constitution of Ukraine. Intergovernmental agreements concluded by the Prime Minister of Ukraine are superior to the resolutions of the Cabinet of Ministers of Ukraine but inferior to decrees of the President of Ukraine, laws of Ukraine, and the Constitution of Ukraine. Interdepartmental agreements concluded by the heads of individual ministries and departments are superior to departmental regulations but inferior to resolutions of the Cabinet of Ministers of Ukraine, decrees of the President of Ukraine, laws of Ukraine, the Constitution of Ukraine, etc.

It should be noted that under international municipal law (also known as international law of subnational territorial units), international agreements are possible between subnational territorial units (federal subjects, autonomies, regions, municipalities, etc.) of different states, concluded both between these units and with foreign states or international intergovernmental organisations, which also calls for a determined position of the implemented international intermunicipal agreements in national legal systems.

The established hierarchy of treaties in force as sources of implementation law in Ukraine is based exclusively on a formal legal basis and does not incorporate a substantive legal approach. The presence of substantive legal provisions in specific articles of the Declaration of State Sovereignty of Ukraine of August 16, 1990 and the Constitution of Ukraine of June, 28 1996 gives hope that the customary and treaty peremptory norms of general international law (*jus cogens*), as well as the norms of international and European human rights law, will be implemented into the national legal system of Ukraine not just formally and legally, but also while making use of the findings of legal axiology, personology, systemology, morphology, temporology and other innovative legal technologies.

Thus, any peremptory norm of general international law (*jus cogens*) undoubtedly takes precedence over a dispositive provision of Ukrainian national law, regardless of the position in the hierarchy of sources of Ukrainian national law assigned by the legislator to the source of international law containing the peremptory norms. The example of the Russian constitution proves that it is technically possible to enshrine even international crimes at the highest national level, which is absolutely impossible in a value-based (axiological) approach. Therefore, if the content of any international human rights treaty signed by Ukraine includes a list of human and civil rights and liberties not recognised by the Constitution of Ukraine, such a treaty is substantively (rather than formally) equal to the level of the Constitution of Ukraine itself, since it acts as a supplement thereto.

Of course, the mere presence of a reference does not preclude the possibility of parallel transformation of international law norms into Ukrainian national legislation. This is especially true for the provisions of so-called non-self-executing treaties, which, by mere reference, do not result in actual implementation and require additional implementation through lawmaking and/or judicial interpretation. Still, even in the case of self-executing treaties, there is frequently a demand for additional transformation in the form of optimising the technically complex rules of international law to the specifics of a national legal system. The presence of a reference in this case

serves as an additional guarantee of faithful implementation of the treaty, whose provisions may have been deliberately or accidentally altered by the national legislator during transformation through complete or partial distortion.

Interestingly, Para 6(2) of the PHSCU Resolution No. 13, dated December 19, 2014, refers to the authentic text of Ukraine's treaties in force, even those not officially published in Ukraine, whereas Para 14(3) of the same resolution states that international human rights treaties have direct effect. To us, this is a good example of judicial awareness, aimed at establishing an effective national legal mechanism for the implementation of Ukraine's international obligations.

Yet we cannot fully agree with the exception outlined in Para 7(2) of the PHSCU Resolution No. 13 December 19, 2014, which states that "in accordance with Art. 57(2) of the Constitution of Ukraine, treaties of Ukraine that define the rights and duties of citizens may only be applied by courts if they have been officially published, i.e., brought to the notice of the population in the manner established by law". If we only consider the duties of Ukrainian citizens, this is indisputable. However, the rights of citizens protected by treaties in force that have not been published due to the state's fault are threatened precisely because of the state's improper behaviour, which then refers to its own delinquency as proof of the lack of citizens' rights, subsequently refusing to protect them in court. Moreover, a literal reading of Art. 57 of the Constitution of Ukraine suggests that these restrictions apply only to the rights of Ukrainian citizens and do not affect the rights of foreigners. In other words, foreign citizens or stateless persons are entitled to defend their rights in Ukrainian courts, protected by a treaty of Ukraine that has not been published in Ukraine, while Ukrainian citizens are deprived of this opportunity.

It appears that, in this case, the formal legal approach must be supplemented by the application of the substantive legal approach, utilizing the methodologies of legal axiology and personology. It should be recalled that the principle of the rule of law, apart from its formal aspect as reflected in the principle of legality with the recognition of the supremacy of the Constitution of Ukraine as the Fundamental Law relative to all other sources of national law, also possesses a substantive (value-based) dimension, where human rights are given priority regardless of their formal enshrinement. As S.V. Shevchuk notes, "The substantive (organic) characteristic of the principle of the rule of law is not limited to the formal provisions of legislation and evaluates legal norms and practices in terms of their compliance with value-based and moral criteria, as well as human rights and fundamental freedoms" [114, p. 17].

Conclusions

The study's findings on the theoretical, methodological, and practical aspects of the relationship between international law and domestic law in Ukraine enable us to formulate several key conclusions.

First, a fundamental methodological problem in domestic research is mixing up levels of legal abstraction and confusing the formal and substantive legal characteristics of implementation mechanisms. This problem can be overcome by applying the methodology of legal systemology and legal morphology. The application of these methodologies will enable us to optimise the classification of methods of national legal implementation, reducing them to two main types: transformation and reference. Transformation should be distinguished by the degree of change in content: repetition (almost verbatim reproduction), optimisation, and distortion.

Second, the issue of the direct effect of international law norms arises exclusively in relation to reference. From the standpoint of legal morphology, provisions of international law function indirectly even in this case, utilising the opportunities provided by the source of national law that contains the reference norm. The national legal form serves as the primary framework, defining the limits of the international legal subform's functioning within the domestic legal system. At the same time, thanks to the methodology of legal temporology, it has been established that reference ensures synchrony, while transformation creates a lag between the national legal system and its international counterpart.

Third, the existing dualistic/monistic dichotomy does not reflect the complex practice of interaction between legal systems. We propose to go beyond its limits by developing a synergistic legal worldview that recognises the unity of legal reality but allows for the relative independence of international and domestic legal systems that interact to achieve common goals.

Fourth, domestic legislation implements treaties mainly through references, clearly defining the position of treaties among the sources of national law. Yet legal axiology and personology require the substantive priority of the peremptory norms of general international law (*jus cogens*) and human rights over the dispositive norms of national law, regardless of their formal position in the hierarchy of sources.

Fifth, it is necessary to identify the most complex theoretical and methodological problems of implementation law that are common to all branches of both domestic and international legal studies, and to initiate a substantive discussion on this matter at the national level.

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Suggested Citation: Tarasov O.V., & Steshenko V.M. (2025). Theoretical and Methodological Problems of National Legal Implementation of Ukraine's International Obligations. *Theory and Practice of Jurisprudence, 2*(28), 116-142. https://doi.org/10.21564/2225-6555.2025.28.346912.

Submitted: 06.10.2025
Revised: 30.11.2025
Approved: 18.12.2025
Published online: 25.12.2025

DOI: 10.21564/2225-6555.2025.28.346894

European Integration as a Driving Force for the Development of Ukraine's Legal Culture and the Modernization of its Legal System

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Abstract
This article aims to analyze the development of Ukraine's legal culture in the context of its strategic course toward European integration and its impact on the modernization of the national legal system, which determines the relevance of this research. The study employed interdisciplinary and terminological approaches, as well as dialectical, hermeneutic, historical-legal, comparative-legal, system-functional, and legal modeling methods. The content of the concepts "legal system" and "legal culture" is revealed, along with their characteristics. The core of the study is an analysis of the role of European integration (within the framework of both the Council of Europe and the European Union) in modernizing Ukraine's legal system and reforming its structural elements, particularly its legal culture. The article emphasizes the importance of adapting Ukraine's legal system to the European Union's legal order. This involves not only aligning Ukrainian legislation with the EU acquis communautaire but also adopting the system of legal values, principles, procedures, and practices on which EU law is based. Furthermore, it requires reorienting national legal science and legal education toward European standards. The research analyzes national and EU legal acts, which are primarily related to fulfilling the legal criteria for EU membership. Overall, the results of this study can provide a more thorough analysis of the evolution of Ukraine's legal system under the influence of European integration processes. The findings can also aid in developing a draft Concept for improving the legal culture of Ukrainian society and measures aimed at raising the level of legal culture among civil servants.

Keywords: *legal integration; values; EU law; adaptation of legislation; legal consciousness; legal education.*

Європейська інтеграція – рушійна сила розвитку правової культури України, модернізації її правової системи

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Анотація
Метою статті є аналіз розвитку правової культури України в умовах реалізації стратегічного курсу на європейську інтеграцію, її впливу на процес модернізації національної правової системи, що визначає її актуальність. У процесі дослідження застосовувались міждисциплінарний і термінологічний підходи, діалектичний, герменевтичний, історико-правовий, порівняльно-правовий, системно-функціональний методи, а також метод правового моделювання. Розкрито зміст понять «правова система» та «правова культура» й наведено їх характеристику. Стрижнем дослідження став аналіз ролі європейської інтеграції (у рамках як Ради Європи, так і Європейського Союзу) в процесі модернізації правової системи України та реформування її структурних елементів, зокрема правової культури. Обґрунтовано важливість адаптації правової системи України до правопорядку Європейського Союзу, що передбачає не лише наближення законодавства України до acquis communautaire ЄС, але й сприйняття системи правових цінностей і принципів, процедур і практик, на яких базується право ЄС, і переорієнтацію вітчизняної правової науки та юридичної освіти на європейські стандарти. Проаналізовано національні нормативно-правові акти та акти Європейського Союзу, що здебільшого пов'язані з виконанням правового критерію набуття членства в ЄС. У цілому результати дослідження можуть бути корисними для більш ґрунтовного аналізу еволюції правової системи України під впливом процесів європейської інтеграції, а також розробки проєкту Концепції підвищення правової культури українського суспільства й заходів, спрямованих на підвищення рівня правової культури державних службовців.

Ключові слова: *правова інтеграція; цінності; право ЄС; адаптація законодавства; правова свідомість; правове виховання.*

Introduction

The profound systemic transformations of Ukraine's legal system, mirroring those of other Eastern and Southern European countries embarking on legal integration into the European Union's legal order, necessitate scholarly attention to the complex issues associated with modernizing national legal

culture. Although legal culture constitutes only one component of a state's legal system, its qualitative state largely determines the developmental trajectory of all other elements. The direction and pace of legal reforms depend on the value system upon which the national legal culture is formed and developed. They also rely on the level of acceptance of this system by civil servants, who exercise authority in rulemaking, law enforcement, and legal interpretation activities, as well as scholars engaged in developing and refining legal doctrine.

Ukraine's legal integration commenced with the signing of the Partnership and Cooperation Agreement between Ukraine and the European Communities (now the European Union) and its Member States [1] (signed in 1994, entered into force in 1998). Since then, the issues surrounding the modernization of the legal system (O.V. Krasnokutskyi [2], V. Muraviov [3], R. Petrov [4], L. Tymchenko [5]) and its structural elements, notably legal culture (M. Čehulić [6], Gude A. Díaz, Papic I. Navarro [7], V. Lomaka [9]), have been actively explored by foreign and domestic scholars. This exploration draws upon the experience of the Europeanisation of legal systems in countries that previously joined the legal integration process (see, e.g., K. Kos [10], A. Kovacs, M. Varjú [11], C. Nowak [12]).

The issue of adapting Ukrainian legislation to EU legislation has been actively researched at both the general theoretical level (see, e.g., T. Komarova [13], I. Korzh [14], Y. Kryvytskyi, L. Kuznietsova et al. [15], R. Petrov [16], I.V. Yakoviyk [17]) and the sectoral level (see, e.g., M. Glukh, T. Matselyk et al. [18], V. Horoshko, Y. Nazymko et al. [19], O. Ostapenko, M. Blikhar et al. [20], S. Rybchenko, O. Kosytsia et al. [21]). A distinct group comprises publications dedicated to comparative legal studies of the legal integration of Ukraine and Eastern European countries (P. Chiocchetti [22], O. Horbachenko, V. Tomina et al. [23], D. Pryimachenko, T. Minka, V. Marchenko [24]).

Despite a significant body of literature examining various aspects of the domestic legal culture and legal system, a gap remains due to the absence in Ukraine of a tradition of studying these phenomena as interconnected and interdependent, undergoing substantial changes during the process of legal integration. This negatively impacts the rulemaking process, as evidenced by the considerable delay in initiating the development of the National Program for the Adaptation of Legislation to EU Law (May 2025) [25].

Materials and Methods

In the comprehensive study of terminology, the systemic approach is crucial. It enables individual legal terms to be viewed as components of a

unified, interconnected system of legal concepts and terms. Rather than studying terms in isolation, this approach facilitated a focus on analyzing their connections and interdependencies, not only within the national terminological system but also in the context of integrating Ukraine's legal system into the European Union's legal order. Applying the terminological approach contributed to a better understanding of the content of the terms and concepts denoting the phenomena studied in this article, examining their origins, and identifying terminological differences existing in domestic and foreign (primarily Western European) legal traditions. Using the hermeneutic method facilitated the elucidation and comparison of the content of terms such as legal culture, legal values, legal system, legal order, and legal integration within the legal traditions of Ukraine, European countries, and the European Union.

Historical-legal and comparative-legal research methods are significant in this work. They were primarily used to compare the approaches to defining the content of concepts related to legal culture and the legal system established in various European countries.

In this article, we have comprehensively analyzed the content of scholarly works on the issues of legal culture available in two authoritative scientometric databases: Scopus and Web of Science. This enabled a thorough investigation of the approaches, differences, and similarities in the understanding, interpreting, and conceptualizing of the studied legal phenomenon.

The regulatory framework for the study comprised the provisions of the Constitution of Ukraine [26], the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [27], the Law of Ukraine "On the National Program for the Adaptation of Ukrainian Legislation to the Legislation of the European Union" [28], the Founding Treaties of the European Union, and many subordinate legal acts of Ukraine.

Results and Discussion

The Concept and Main Features of Legal Culture

Legal culture is a component of the broader national culture and, simultaneously, the legal system, presupposing the formation of shared legal values, principles, traditions, procedures, and practices within society. It should be emphasized that the systems of legal values and principles formed within the framework of legal culture determine the nature of legal progress (or, in some cases, regression) achieved by society at each stage of its state and legal development [29]. Concurrently, it must be recognized that the development of national legal culture is influenced by both internal

factors (political, economic, and social reforms, as well as the qualitative state of other social regulators and value systems of the national culture) and external factors (reception, convergence, and legal integration). These factors influence the formation and development of the state's legal system and constitutional order[1]. The combination of different types of national culture determines the attitude towards law, human rights, and freedoms that forms within society and the state [21].

"Law", as is known, represents a system of universally binding, formally defined rules of conduct. In contrast, the concept of "culture" encompasses ideas about shared values and principles and appropriate behavior models. The interconnectedness and interdependence of these concepts complicate the interpretation of the category under study.

Although the interaction between culture and law was actively studied, for example [30], in the works of German jurists and cultural sociologists such as F.C. von Savigny, J. Kohler, M. Weber, G. Radbruch, and H. Heller in the 19th century [31], the starting point for research on legal culture is generally considered to be L.M. Friedman's work "Legal Culture and Social Development" (1969). Legal culture is proposed as a complex and multifaceted legal phenomenon structurally integrated into the national legal system. As a complex phenomenon, any legal system presupposes the presence of three components: structure, substance, and legal culture. According to Friedman, the structure unites legal institutions, their organization, and operation; the substance embodies the legal content, i.e., laws and legal procedures; while legal culture, embodied in the system of legal values and the attitude of subjects towards legal phenomena, connects all its components into a system and determines its position in society. Given this, studying legal culture helps identify the causes and conditions that influence changes that make the legal system more stable and effective, or, conversely, contribute to its degradation [32, p. 34]. In another article, "The Legal System: A Social Science Perspective" (1975), the philosopher defined legal culture as "attitudes toward law" and suggested considering it in connection with political culture [33], later characterizing legal culture as "a set of ideas, values, and attitudes" (1994) [34]. In the article "The Level Playing Field: Human Rights and Modern Legal Culture" (2014), Friedman noted that the legal culture of modern democratic states is based on commitment to the rule of law, fundamental human rights and the institutions supporting them, and freedom of choice, which is somewhat limited by social norms, and demonstrates a tendency towards convergence under the influence of globalization processes. However, according to

[1] Some scholars point to similarities between various concepts of legal culture and those of constitutional culture. For a more detailed discussion, see [30].

Friedman, global risks and adverse reactions based on tradition sometimes make the future of modern legal culture unpredictable [35; 36].

Legal culture and legal consciousness attracted significant attention from jurists during the Soviet period of domestic history. Despite their considerable contribution to developing these legal categories, the scholarly research of Soviet jurists was ideologized and served the needs of the Soviet political system. Therefore, although certain general theoretical propositions formulated by Soviet legal theorists did not lose their significance after the collapse of the USSR, they generally bore the imprint of communist ideology. Consequently, they could not be utilized in building Ukraine as a democratic, rule-of-law state that had proclaimed a course towards European integration.

In the 21st century, the formation of a new conceptual apparatus at the monographic level, adequately reflecting the developmental direction of the Ukrainian legal system and its components, has been contributed to by scholars such as I.V. Osyka [37], Yu.P. Bytiak, I.V. Yakoviyk et al. [38], L.M. Herasina, O.G. Danylian, O.P. Dzoban et al. [39], L.O. Makarenko [40], and O.O. Bezruk, L.M. Herasina, I.V. Holovko et al. [41]. In these and other works, the core idea is conceptualizing legal culture as a key factor in developing the national legal system. The qualitative state of legal culture determines the level of acceptance in society of the ideas of democracy, the rule of law and legality, respect for human and civil rights, and the selection of the vector for legal integration.

The content of legal culture is more fully revealed by elucidating the specific features of this phenomenon. An analysis of previous research provides grounds for identifying the following main characteristics of legal culture:

- it is one of the key elements of the legal system, influencing all its elements; consequently, the national legal system is viewed as the formalized embodiment of legal culture;
- knowledge of and respect for the law, awareness of its value, understanding of its principles and functioning mechanisms, and the ability to determine the purpose and objectives of legal regulation and the scope of legal acts;
- the formation of an individual's attitude towards lawful behavior and the habit of acting in accordance with the requirements of legal norms in everyday life;
- the creation and continuous improvement of the legislative framework and the mechanism for its enforcement;
- the legislative consolidation and guarantee of fundamental human and civil rights;

- a high level of legal consciousness among civil servants and society as a whole, which is a prerequisite for an individual's awareness of their rights and freedoms, and the ability and readiness to use legal mechanisms for their protection; the realization of this feature involves improving the system of legal education in the state;
- it engages in dialogue with other national legal cultures, leading to their mutual influence and interpenetration, thereby making legal integration possible [42].

The state of legal culture in society is heterogeneous; therefore, it is appropriate to differentiate it into types depending on its bearers. The broadest in terms of subject coverage is the legal culture of society, which is typically associated with the system of legal values, customs, and established views common to the population of a specific state. The existence of this type of legal culture is linked to a high level of legal awareness among the general population; the legal perfection and effectiveness of domestic systems of law and legislation; the efficiency of the judicial system; and adherence to legal norms by the vast majority of society, which also demonstrates trust in state authorities and local self-government bodies. This type of legal culture significantly influences the creation, interpretation, and application of legal norms at the national level [43].

I.V. Yakoviyk draws attention to the fact that within the framework of the legal culture of society, there may exist, firstly, legal subcultures, which, although differing in specific values, elements, positions, etc., are generally consistent with the legal culture of that society in their main features. Secondly, there exists a legal counterculture, within which a set of values, views, theories, attitudes, and activities of certain social groups is formed that openly opposes the prevailing legal culture in society and is, therefore, in a state of antagonistic contradiction or even open confrontation with it [42]. Until recently, the legal counterculture of the criminal community and extremist groups was considered the most dangerous. However, in the context of Russian aggression against Ukraine, the legal counterculture associated with the phenomenon of Collaborationism has emerged as the most significant danger to the state and its legal system [44].

The legal culture of specific social groups is formed within certain communities, professional or social groups. This type of legal culture does not conflict with the legal culture of society, although it possesses minor distinctive features compared to the general legal culture of society. The legal culture of lawyers is of particular importance (which, in turn, can be differentiated into the legal culture of judges, prosecutors, advocates, etc.). It is generally characterized by a theoretical level of legal consciousness

and the skills and abilities its bearers use in law-making, law enforcement, and interpretative legal activities. This type of legal culture is essential for developing the legal system as a whole and its integration into the legal orders of integration associations, particularly the European Union [30].

The legal culture of the individual is associated with the system of legal values, knowledge, beliefs, attitudes, and behavior of a specific person. The qualitative state of this type of legal culture depends on each person's awareness of their rights and freedoms, as well as their legal obligations. The formation of this type of legal culture is significantly influenced by legal upbringing, legal training, legal communication, legal information, and personal life experience.

Thus, it must be acknowledged that legal culture is of exceptional importance for developing the national legal system [45]. It ensures the consistency of national law with the prevailing values and moral norms in society, which guarantees legal order and legality.

The Essence and Key Elements of the Legal System

The problem of defining the content and structure of the legal system is addressed in the works of representatives of various legal schools. For instance, P.M. Rabinovych characterized the legal system as one that unites all legal phenomena of a single state or an association of states (a legal family or an integration association) [46, p. 118].

I.V. Yakoviyk emphasizes that the legal system is a fundamental category of the general Theory of law, encompassing a complex of all interconnected yet relatively autonomous legal phenomena and processes that form society's legal sphere and present it as an organic whole. A distinctive feature of the legal system is that it is not a rigid, static sphere of societal life; it is characterized by continuous development (which can lead to either progress or regression of society). Changes in the legal system and culture are necessitated by the need to respond to internal and external challenges facing society at a particular stage of state and legal development [38, pp. 45-46; 47]. I.V. Yakoviyk stresses that the development of the national legal system is primarily determined by the qualitative state and developmental direction of the legal culture of society [48].

In turn, N.M. Onishchenko, thoroughly investigating the legal system, proposes understanding it as "the unity of its components (parts), which are interconnected in a certain way (by substantive and formal criteria), and which, depending on their nature and the character of the links between them (objective, natural or subjective, arbitrary), form a relatively stable organization" [49, p. 641]. The author emphasizes that although the elements of the legal system are united by a common goal, tasks, and the

performance of certain standard functions, there are no grounds to speak of the homogeneity and identity of these components [50, pp. 16-18].

Similar approaches to defining the legal system and elucidating its relationship with legal culture can be found in the works of other domestic authors (see, e.g., O.V. Zaichuk [51], O.F. Skakun [52], as well as the collective monograph prepared by scholars of the National Academy of Legal Sciences of Ukraine [53]). The works of L.A. Luts [54-56], I.V. Yakoviyk [57-58], and Yu.L. Boshovytskyi et al. [59] were significant for revealing the relationship between the domestic legal system and the legal orders of the European Union and the Council of Europe, and for defining the role of legal culture in the process of European legal integration.

For the most part, any legal system can function effectively provided there is lawful behavior by members of society, resolution of conflict situations through legal mechanisms and procedures, prevention of offences, and development of legal education, upbringing, and science. This, however, does not exclude the possibility and necessity of compulsory enforcement of legal norms when specific subjects evade their implementation or directly engage in unlawful behavior or activities.

Certain structural levels within it indicate the complexity of any legal system. The normative level is represented by legal norms united into a system of law, which objectifies ideal concepts of justice and reflects the needs of legal regulation and the mentality of a specific society. At this level, legal norms are accumulated and organized into structured blocks depending on the legal traditions of the particular society (for example, for Ukraine, which belongs to the Romano-Germanic legal family, these would be institutes, sub-branches, and branches of law). This level also includes the system of legislation, which represents an ordered aggregate of all current legal acts of the state, the norms of which regulate social relations.

The institutional level signifies a unified system of state and legal institutions (primarily the highest bodies of state power, courts, law enforcement agencies, and other entities) involved in the law's development, adoption, interpretation, application, and enforcement. The system of such bodies possesses national specifics related to the peculiarities.

The ideological level is a system of legal concepts, views, principles, and values that form the basis for constructing the legal system and determine its specifics, including its affiliation with a particular legal family, as well as the possibility of legal integration within the framework of an interstate unification process. At this level, society's attitude towards the law and other elements of the legal system is formed, and the necessity of their reform or even modernization is recognized.

At the functional level, the mechanisms for creating, interpreting, and applying legal norms are revealed, and cases of their violation and the application of corresponding sanctions are studied. It is at the functional level that the effectiveness of the national legal system is determined, along with its capacity for development and improvement, as well as ensuring legality and legal order in society, protecting the rights and freedoms of citizens, and promoting social progress [60].

The elements of the legal system play a vital role in creating a coherent system of legal regulation of social relations, as through their interaction, they transform the legal system into a flexible and effective instrument of society. This typically allows for the timely reform of the legal system in a changing environment.

The specificity of the legal system can be elucidated through several of its main features. Systemicity (structuredness) is primarily conferred upon the legal system by the system of law, whose norms are differentiated by the subject and method of legal regulation into branches and institutes of law. The structure of the system of law, in turn, serves as a reference point for the structure of the system of legislation, although it does not fully coincide with it. Legal science and legal education are also significantly oriented towards the structure of the system of law. The integrity of the legal system is determined by the orientation of all its structural elements towards achieving a common goal – ensuring a stable legal order and a regime of legality in society. Its dynamic nature means that the legal system is in continuous development and self-improvement, as well as interaction with other national legal systems and international law, and concerning European states, with the law of the European Union as an integration association that Ukraine aspires to join.

Legal Culture as an Integral Component of the Legal System of Ukraine

Considering the legal system's ideological aspect, legal culture is one of the determining factors in its development. The significance of legal culture for the proper functioning and development of the legal system is due to its ability to influence the effectiveness of legal norms and the functioning of legal institutions. Thus, if a mature legal culture based on a system of values and principles has formed in society, individuals are more inclined to consciously and voluntarily adhere to established norms, and state institutions possess greater legitimacy and trust in the eyes of society. Conversely, when legal culture is characterized by immaturity, society will exhibit a greater degree of poor awareness of the law, disrespect and distrust towards it, and towards legal procedures and mechanisms. This, in

turn, destroys the legal system and its elements; consequently, the state's ability to maintain legal order and a regime of legality in society significantly decreases.

An indicator of the maturity of a society's legal culture is the attitude towards the principle of the rule of law, enshrined in Art. 8 of the Constitution of Ukraine [26]. The domestic legislator defines the content of this principle as follows: the Constitution has the highest legal force, and therefore other legal acts are adopted on its basis and must comply with it; the norms of the Constitution, as the Basic Law, are norms of direct effect, guaranteeing the right of individuals to apply directly to the court for the protection of their constitutional rights and freedoms. Given Ukraine's integration into the European Union, whose legal order is also based on the principle of the rule of law [61], Art. 9 of the Constitution acquires significant importance for the domestic legal culture and the development of Ukraine's legal system. It emphasizes that international treaties in force, the binding nature of which has been consented to by the Parliament, are an integral part of Ukrainian legislation.

In the preamble to the Treaty on European Union, the European Union emphasized that it draws inspiration from the cultural, religious, and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality, and the rule of law [62].

The legal culture of Ukraine, which for most of the 20th century was part of the Soviet Union, differs significantly from the common European legal heritage; consequently, its political and legal integration into the EU is complicated by this fact. Recognising this problem, the Ukrainian authorities initiated the process of decommunization (liberating public life from the consequences of communist ideology, deconstructing the Soviet mythology of the Second World War, and gradually forming a Ukrainian dimension of the war in its place [63]). This process proceeded slowly after the collapse of the USSR and primarily covered the sphere of education and upbringing. The decommunization process spontaneously intensified during the Euromaidan [64; 65]. It gradually acquired a legal basis. On June 12, 2009, by Presidential Decree No. 432/2009, the general dismantling of monuments and memorials dedicated to persons involved in the organization and implementation of the Holodomors and political repressions in the country during Soviet times was initiated in Ukraine. The Revolution of Dignity gave new impetus to the decommunization process, symbolized by the "Leninopad" (Lenin-fall), organized by civil society groups (similar processes occurred in Eastern European countries at the time) [32]. In January 2015, public initiatives received approval from the Ministry of

Culture, after which the organized dismantling of monuments associated with communist figures began. On April 9, 2015, the Verkhovna Rada adopted a package of four laws [66-69], which spurred the renaming of administrative units.

These processes encountered some resistance, primarily among those citizens whose political and legal consciousness was formed under the influence of Soviet ideology and the course towards the heroization of events and figures of the Soviet era. For instance, the constitutionality of the Law of Ukraine "On the Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the Prohibition of the Propaganda of Their Symbols" was challenged in the Constitutional Court of Ukraine by a group of people's deputies. However, the Constitutional Court of Ukraine, demonstrating the maturity of the legal culture of its members, recognized this law as constitutional on July 16, 2019 [70].

A logical continuation of the decommunization process was the course towards "de-Russification", which gained particular relevance and public support after the start of the Russian aggression in February 2022. On March 21, 2023, the Parliament adopted the Law of Ukraine "On the Condemnation and Prohibition of the Propaganda of Russian Imperial Policy in Ukraine and the Decolonization of Toponymy" [71], establishing a legal framework for the decolonization processes. By this law, the Verkhovna Rada recognized Russian policy as criminal and condemned it, banned its propaganda and symbols, and defined the mechanisms for implementation.

Despite these measures, it must be acknowledged that the Ukrainian authorities resorted to them belatedly. The objectivity of this conclusion is confirmed primarily by the phenomenon of collaborationism, which emerged in 2014 but became widespread after the Russian aggression in 2022. The prevalence of this phenomenon, particularly in the spheres of education, training, and culture, indicated a deformation of the legal consciousness of many Ukrainian citizens, who were viewed by the aggressor country as objects of its ideological influence [72-75]. This situation prompted the Verkhovna Rada to improve criminal liability for crimes against the foundations of national security related to such behavior [76].

It is evident that exclusively criminal law measures cannot rectify the situation regarding the deformation of legal consciousness and the formation of a counterculture in Ukrainian society. Therefore, in the current conditions and for the post-war period, it is planned to intensify educational activities aimed at instilling the European system of values in the citizens of Ukraine [77-79].

Membership in the Council of Europe as a Factor in the Democratization of the Legal Culture and Legal System of Ukraine

The history of Ukraine's legal integration into the legal order of a united Europe parallels the history of its independence: the Verkhovna Rada of the Ukrainian SSR, in its Resolution of December 25, 1990 [80], instructed the Council of Ministers to direct efforts towards ensuring the direct participation of our state in the pan-European process and European structures.

Cooperation with the Council of Europe has acquired significant importance for developing the domestic legal culture and the modernization of the legal system. This cooperation began in 1992[2], when Ukraine started collaborating with the advisory body on constitutional law of this international organization, the European Commission for Democracy through Law (Venice Commission). The Commission's activities are vital for post-socialist countries striving to bring their legislative and law enforcement activities into compliance with European standards in the fields of democracy, human rights, and the rule of law. The Venice Commission, whose interpretative legal activities focus on three areas (democratic institutions and fundamental rights; constitutional justice; elections, referendums, and political parties), exerts both direct and indirect influence on the development of the domestic legal system and its legal culture (it is known that the Commission's opinions have been taken into account by the European Court of Human Rights in cases against Ukraine). As noted on the official website of the Council of Europe Office in Ukraine, the opinions and other documents of the Venice Commission have repeatedly been referenced not only in the scholarly works of Ukrainian legal experts but have also served as a theoretical basis for resolving pressing issues in the legislative activities of the Parliament. They are also used as persuasive arguments to form the legal positions of the Constitutional Court and other Ukrainian judicial bodies. Overall, the Venice Commission's assessments of constitutional and legislative acts are perceived as an essential indicator of whether Ukraine's legal system is developing and functioning under European standards and the system of values [81].

Ukraine's accession to the Council of Europe took place in November 1995 following the Law "On the Accession of Ukraine to the Statute of the Council of Europe" [82]. It was linked to commitments to implement seventy measures aimed at completing the reform of the judicial and penitentiary systems; overcoming corruption and the legalization (laundering) of

[2] Ukraine became a full member of the Venice Commission in December 1996, following the entry into force of the Law "On Ukraine's Accession to the Partial Agreement on the European Commission for Democracy through Law".

proceeds derived from crime; creating conditions for the execution of judgments of the European Court of Human Rights; and taking measures to ensure Ukraine's participation in Council of Europe treaties, etc. The first significant results in implementing Ukraine's commitments to the Council of Europe were the adoption of the Constitution and fundamental constitutional Laws of Ukraine ("On the Cabinet of Ministers of Ukraine", "On the State Register of Voters", "On the Enforcement of Judgments and Application of the Case-Law of the European Court of Human Rights", etc.), new editions of the Civil, Criminal, Civil Procedure, and Criminal Procedure Codes of Ukraine and the Law of Ukraine "On the Bar and Practice of Law", as well as the revision of the role and functions of the Prosecutor General's Office [83]. It should be noted that the monitoring and control over the process of fulfilling commitments to the Council of Europe were immediately undertaken by the State Interdepartmental Commission on the Implementation of Council of Europe Norms and Standards into Ukrainian Legislation, established by Presidential Order No. 48/96-rp [84].

Ukraine's accession to the Convention for the Protection of Human Rights and Fundamental Freedoms was of great importance for adopting the system of pan-European legal values by the legal culture. The ratification of the Convention on 17 July 1997 signified Ukraine's undertaking of obligations to bring its national legislation into compliance with the international standards enshrined in the Convention (the legal acquis of the Council of Europe (conventions, agreements, protocols, and other legal acts) concerning the protection of human rights and freedoms comprises 173 documents). Initially, the Verkhovna Rada worked slowly on amending its legislation regarding human rights and freedoms following its commitments. This led to a debate on the issue in the Parliamentary Assembly on January 27, 1999. As a result, the Assembly stated that during the transition period from totalitarian to democratic statehood, Ukraine had not achieved a clear separation between the judicial, legislative, and executive powers; progress in adopting legislation on the reform of the judicial system and the prosecutor's office was insignificant; and adherence to the principle of the rule of law enshrined in the Constitution was questionable due to the non-enforcement of court decisions and the rise of corruption and crime. These and other shortcomings provided grounds for the Parliamentary Assembly in Resolution 1179 to state that if Ukraine did not achieve substantial progress in fulfilling its obligations by the beginning of the June 1999 session, the Assembly would be compelled to annul the credentials of the Ukrainian parliamentary delegation until their full implementation, and to recommend that the Committee of Ministers initiate the suspension of Ukraine's right of representation under Article 8 of the Statute of the Council of Europe [85].

A change in Ukraine's attitude towards fulfilling its obligations to the Council of Europe occurred after the adoption by the Verkhovna Rada on February 23, 2006 of the Law "On the Enforcement of Judgments and Application of the Case-Law of the European Court of Human Rights". The preamble of the Law emphasized that its adoption was necessitated by the need to execute the judgments of the European Court of Human Rights (ECtHR) in cases against Ukraine; eliminate the causes of Ukraine's violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols; implement European human rights standards in Ukrainian judicial proceedings and administrative practice; and create preconditions for reducing the number of applications to the ECtHR against Ukraine [86]. The official website of the Permanent Representation of Ukraine to the Council of Europe states that as of December 31, 2020, Ukraine ranked third among the member states of the organization in the number of cases (10,400 cases against Ukraine, constituting 16.8% of the total number of cases) pending before the European Court of Human Rights [87]. According to M. Gnatovskyy, the judge of the European Court of Human Rights from Ukraine, this situation is primarily due to several unresolved structural problems in the functioning of Ukraine's legal system (concerning conditions of detention in pre-trial detention centers and correctional colonies; the length of criminal proceedings and civil cases; insufficient grounds for taking a person into custody when choosing a preventive measure, etc.), which, unfortunately, have remained unresolved for more than 20 years. Cases against Ukraine are, in fact, typical; mechanisms for resolving the respective situations have long existed at the ECtHR level but remain substantively unresolved in Ukraine. According to the judge, the number of cases considered by the ECtHR against Ukraine can be reduced by utilizing the institute of constitutional complaint, and thus the capacity of the Constitutional Court to consider issues of human rights observance in Ukraine [88].

Under Art. 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms [89], a High Contracting Party may take measures derogating from its obligations under the Convention in time of war. In 2022, Ukraine exercised this right and informed the Secretary General of the Council of Europe about the possibility of introducing extraordinary measures during the period of the martial law regime under its own legislation (Art. 8 of the Law "On the Legal Regime of Martial Law" [90]). Specifically, this included the possibility of restricting the constitutional rights and freedoms of man and citizen provided for in Articles 30-34, 38, 39, 41-44, and 53 of the Constitution, and introducing temporary restrictions on the rights and legitimate interests of persons provided for in Articles 4(3), 8, 9, 10, 11, 13, 14, 16 of the Convention, Articles 1-3 of the Additional Protocol to the

Convention, and Art. 2 of Protocol No. 4 to the Convention. In 2024, Ukraine revised its notification and removed reservations regarding the restriction of a specific set of rights (in particular, references to specific clauses of Art. 8 of the Law "On the Legal Regime of Martial Law" were removed, as they do not concern Ukraine's derogation from its obligations under the Convention, and the list of articles subject to potential derogation was reduced). It should be emphasized that derogation from obligations should not be interpreted as an admission that the state cannot guarantee the rights enshrined in the Convention (clarification to Art. 15 of the Convention). In declaring a derogation from its obligations, Ukraine, like other states in similar situations, warned that the measures it might take "may" involve a derogation from its obligations under the Convention [91].

Adaptation of Ukrainian Legislation to the EU Acquis Communautaire as a Condition for Ukraine's Successful Legal Integration into the European Union

Parallel to Ukraine's accession to the Council of Europe, its foreign policy course towards European integration also proceeded in the direction of cooperation with the European Union, spurred by the Partnership and Cooperation Agreement between Ukraine and the European Communities [59]. The preamble of the Agreement emphasized the importance of ensuring the rule of law, and Art. 59 provided for multifaceted cooperation in education. This created conditions for the interpenetration of the legal cultures of the European Union and Ukraine, positively impacting the development and modernization of the domestic legal culture. The current state of Ukraine's legal integration is determined by the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (2014) [27]. It should be noted that the Agreement specifies more than 400 EU legislative acts in over 30 diverse areas to which Ukrainian legislation must be approximated. Such legislation must be fully and accurately aligned with the corresponding EU legislation, taking into account changes occurring therein, and incorporating them into the approximated legislation. The state must also ensure the most effective application of such legislation, reforming the relevant state authorities if necessary. The leading role in the legislative approximation activities belongs to the Verkhovna Rada of Ukraine.

It should also be noted that Ukrainian courts may apply the provisions of the Association Agreement directly when a specific provision of the Agreement contains a clearly formulated, precise obligation, the implementation of which does not depend on the adoption of special measures by domestic state authorities, i.e., it has "direct effect".

The primary direction of Ukraine's legal integration with the European Union has become the process of adapting domestic legislation to the EU acquis communautaire, which has, to a certain extent, affected virtually all elements of the national legal system.

The problem of the Europeanisation of legal science and education is fundamental, though underestimated. It is precisely at the level of these elements of the legal system that the formation of the legal consciousness of civil servants, including future lawyers, occurs, as well as the doctrinal substantiation of the directions of Ukraine's state and legal development. In this regard, higher education institutions and research institutes in the legal field must divest themselves of outdated doctrines, theories, and concepts, especially those borrowed from Soviet and contemporary Russian legal traditions. Instead, the curricula of educational-professional and educational-scientific programs in the legal field should include educational components that facilitate students' mastery of European legal values and knowledge of EU law, considering its complex structure and specific system of sources of law.

It should be noted that a particular shortcoming in the current state of legal science is the significant disproportion in the training of Doctors of Juridical Sciences and Doctors of Philosophy in international law, as well as the representation of international law specialists among the membership of the National Academy of Legal Sciences of Ukraine[3]. This problem reflects the Soviet disdainful attitude towards the science of international law, which has not yet been overcome in Ukraine today.

A positive practice introduced in the early 2000s is the involvement of scholars by the Ministry of Justice and other central government bodies in conducting comprehensive comparative legal studies on the compliance of Ukrainian legislation with the EU Acquis communautaire. Today, the Ministry of Justice website provides access to materials from approximately 40 comparative legal studies on various aspects of the compliance of Ukrainian legislation with the acquis communautaire [92].

The renewed legal science and education are intended to streamline domestic legal terminology and its gradual alignment with pan-European legal terminology. Without this, the integration of domestic law into EU law, its uniform understanding and interpretation, and the correct application of legal norms appear problematic [93].

The problem of translating the vast body of EU law into Ukrainian remains extremely acute. Although the Ministry of Justice approved the Procedure

[3] As of 2025, within the Department of State and Legal Sciences and International Law of the National Academy of Legal Sciences of Ukraine, the field of international law is represented by only one corresponding member, namely M.V. Buromenskyi.

for translating EU acquis communautaire acts into Ukrainian in 2005 [94], Ukraine is still far from accomplishing this task.

Enhancing the qualifications of civil servants, primarily those involved in legislative drafting, on issues of EU law and its application practice, is another priority driven by the adaptation process. Legislative, executive, and judicial authorities and law enforcement agencies must possess a sufficiently high degree of awareness and understanding of the European legal order's fundamental principles, procedures, and institutions [95].

The issue of renewing the legal culture, as one of the most critical conditions for the modernization of Ukraine's legal system, has gained particular relevance and practical significance in light of accelerating the state's course towards integration into the European Union. Ukraine's acquisition of candidate country status has provided additional incentives for the implementation of EU legal standards in the domestic legal system and the completion of reforms aimed at the consistent adoption and implementation of the principle of the rule of law, the independence and efficiency of judicial institutions, and the guarantee of the entire complex of human rights and freedoms at all levels of the legal system [96]. The success of this process depends directly on the level of acceptance, primarily among civil servants, scholars, and educators, of the value system of a united Europe, as well as the principles, legal procedures, and practices of EU law. This will ensure that legislative, law enforcement, and legal interpretation activities in Ukraine are brought into compliance with pan-European legal standards.

The Russian aggression against Ukraine became a test of the viability of its legal system, demonstrating the potential for Adaptation to challenges in extraordinary situations. Today, the interaction of two factors – European integration and martial law – shapes an environment in which the legal culture of society, its specific social groups, and individuals acts as a crucial factor in developing the national legal system.

The research provides grounds to state that there is a consensus among foreign and domestic researchers regarding the recognition of European integration as a driving force for reforming EU candidate countries' national legal cultures and systems. Legal integration objectively contributes to establishing the value of the rule of law in national legal cultures. The analyzed studies confirm the necessity of raising the qualitative level of legal culture, primarily among civil servants and Ukrainian society as a whole, forming a civic position, and combating manifestations of collaborationism.

Conclusions

Legal culture is a driving force behind the development and modernization of the legal system of Ukraine, of which it is a component. The evolution

of legal culture is linked to the state and legal development of Ukraine, the establishment of national identity, and the formation of the national idea. Thus, the developmental direction of the national legal system, its perfection, and effectiveness significantly depend on the qualitative state of the legal culture.

Since Ukraine chose the strategic course of joining the Council of Europe and the European Union, legal integration has acted as a catalyst for developing legal culture and reforming the legal system. Through the adaptation of Ukrainian legislation to the legal standards of the Council of Europe and the EU, significant results have been achieved in the democratization of legislative, law enforcement, and interpretative legal activities, and the affirmation of the principles of the rule of law. The Europeanisation of legal science and education is acquiring significant importance in modernizing the legal system. This involves abandoning outdated doctrines, theories, concepts, legal procedures, and practices borrowed from the legal traditions of the former Soviet Union and modern Russia, and adopting conceptual approaches based on the European system of legal values and principles. In this context, introducing a regulatory ban on using information sources of Russian origin in scientific activities should be positively assessed.

A promising direction for further scientific research is the assessment of the impact of the consequences of the Russian aggression against Ukraine on the development of Ukraine's legal system and its legal culture, and the conduct of comparative legal studies on the influence of European integration on the reform of the national legal systems of Eastern and Southern European countries.

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Suggested Citation: Lomaka, V.S. (2025). European Integration as a Driving Force for the Development of Ukraine's Legal Culture and the Modernization of its Legal System. *Theory and Practice of Jurisprudence, 2*(28), 143-167. https://doi.org/10.21564/2225-6555.2025.28.346894.

Submitted: 29.08.2025
Revised: 03.10.2025
Approved: 18.12.2025
Published online: 25.12.2025

Електронне видання

ТЕОРІЯ І ПРАКТИКА ПРАВОЗНАВСТВА

Електронний фаховий журнал
Випуск 2 (28) / 2025

THEORY AND PRACTICE OF JURISPRUDENCE

Electronic Peer-Reviewed Edition
Issue 2 (28) / 2025

Мови видання: англійська, українська

Відповідальний за випуск доц. *А. М. Ісаєв*

Редактор *М. М. Сорокун*
Коректорка *І. А. Гребцова*
Комп'ютерне макетування *А. Г. Якшиної*

Оприлюднено через мережу «Інтернет» 25.12.2025 р.
Формат 60x84 1/8. Обл.-вид. арк. 11,2. 562 КБ.

Національний юридичний університет
імені Ярослава Мудрого
Редакційно-видавничий відділ наукових видань
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Свідоцтво
про внесення суб'єкта видавничої справи до Державного реєстру видавців,
виготовлювачів і розповсюджувачів видавничої продукції
Серія ДК № 7560 від 28.12.2021 р.