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МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

# НАУКОВИЙ ВІСНИК
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# Application of international humanitarian law by the European Court of Human Rights

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■ **Abstract.** The problem of human rights protection is particularly acute during armed conflicts, when the most widespread and serious human rights violations occur. International humanitarian law is a reliable tool for countering such violations, specifically through the implementation of its norms alongside the European Convention on Human Rights in the judgments of the European Court of Human Rights. The purpose of this study was to make some generalisations about the approaches of the European Court of Human Rights to determining the relationship and correlation between the European Convention on Human Rights and international human rights law, international humanitarian law, and the limits and conditions of application of international humanitarian law by the European Court of Human Rights. The study employed a combination of methods of cognition to collect, analyse, and interpret information, namely: documentary, statistical, legal, historical, and critical. The chosen methodology ensures the objectivity and reliability of the study. The study was based on the judgments of the European Court of Human Rights, which examine, analyse, and apply international humanitarian law, as well as on academic publications, recommendations and explanations of international institutions, experts, and human rights organisations regarding the relationship between international human rights law, the European Convention on Human Rights and international humanitarian law, and the possibility of their simultaneous application. The study summarised a range of legal positions of the European Court of Human Rights, which helped to identify the principal approaches and trends in the application of international humanitarian law in the consideration of complaints of human rights violations in armed conflicts, including the expansion of the practice of applying international humanitarian law, strengthening the protection of human rights in armed conflict, and attention to new challenges associated with armed conflicts. The practical significance of the study lies in the fact that it contributes to a better understanding of international humanitarian law and the legal positions of the Court, and to the development of additional mechanisms for ensuring respect for human rights and international humanitarian law

■ **Keywords:** European Convention on Human Rights; international human rights law; legal position; law enforcement; armed conflict

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## Introduction

The European Court of Human Rights (the ECHR, the Court), as an international court that monitors compliance with the European Convention on Human Rights[1] (the Convention) by the States Parties, is one of the key institutions for the protection of human rights in Europe. The significance of the ECHR and its activities lies in the fact that the ECHR issues judgments that oblige states to perform their obligations under the Convention to respect fundamental human rights. The Court's judgments are an important source of international human rights law (IHRL), and the Court's activities contribute to the expansion of cooperation in the field of human rights protection between states and the development of strengthening democratic institutions, which is of particular importance in times of armed conflict. Such conflicts, posing a serious threat to human rights, lead to violations of a range of such rights, including those guaranteed by the Convention, which has led to a considerable number of interstate and individual applications to the Court, the consideration of which has prompted the Court to seek effective approaches that allow for the application of not only the Convention, but also international humanitarian law (IHL) governing the conduct of armed conflicts. Thus, the Court's practice has developed a relevant trend. This requires an investigation of the Court's position on the limits and conditions of application of IHL, the interpretation of its provisions, and the relationship between the IHRL, the Convention, and IHL. The Court's legal opinions in which IHL is applied reflect the further expansion of such application, which contributes to the strengthening of human rights protection in armed conflicts and contributes to the development of IHL practice and its interpretation. For national law and law enforcement, the significance of such legal positions cannot be overestimated considering the circumstances of the ongoing international armed conflict. The relevant provisions should be considered to expand the possibilities and prospects for human rights protection by the ECHR in the context of the Convention and IHL, and to introduce additional mechanisms for ensuring human rights in the context of armed conflict into national law.

The application of IHL by the Court has been investigated at various times primarily in the context of the relationship between IHL, IHRL, and the Convention. Investigating the harmonisation of the norms of International Counter-Terrorism Law and IHL, V. Saul (2021) concludes that they need to be complementary. M. Sassòli (2019), focusing on the contradictions that affect IHL in practice, examined when IHL applies, its basic rules, how to ensure its observance, and covered the traditionally relevant issue of distinguishing between international and non-international armed conflicts. V. Saul & D. Akande (2020) propose an optimised approach to the mutual coherence between the International Counter-Terrorism Law and IHL, which is to recognise the legitimacy of both branches of law and minimise the negative mutual influence, which is fully supported by P. Askary (2022). T. Ferraro (2021) analyses the applicability of IHL in the context of counter-terrorism measures and operations, as well as the conditions for the effective joint application of IHL, the provisions of the International Counter-Terrorism Law and sanctions regimes.

A range of publications are devoted to the investigation of individual cases and legal positions of the ECHR concerning armed conflicts and human rights violations during these conflicts. Thus, M. Longobardo & S. Wallace (2022), analysing the Court's conclusions in the 2021 case of "Georgia v. Russia (II)"[2] on the applicability of the Convention to the conduct of hostilities, summarise that the Court's conclusion is unconvincing, and the arguments are based on extra-legal considerations rather than on a correct interpretation of the concept of state jurisdiction under the Convention. The issue of the application of IHL in the context of the armed conflict in Ukraine is also currently widely discussed. O. Kaluzhna & K. Shunevych (2022) investigated the mechanisms of accountability for war crimes committed as a result of the Russian invasion of Ukraine in February 2022.

The topic of mutual influence of the Court's judgments and national legislation stays relevant for discussion within the framework of scientific research. Through an analysis of judicial practice and interviews with government officials, K. Dzehtsiarou (2023) examines the influence of third parties (states) on the Court's reasoning and concludes that the Court is aware of the objectives of national governments and considers them. W. Phelan (2021) investigated the role of the Constitutional Courts of Germany and Italy in the development of the Court's jurisprudence. Analysing its practice in cases based on applications of national judges, A. Demyda (2021) states that the Court's judgments are reflected in national legislation by amending them with due regard to the principles of justice.

[1] Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#n421.

[2] Judgment of the of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)" (2021, January). Retrieved from https://rm.coe.int/georgia-v-russia-ii-gc-ukr/1680a58450.

The purpose of this study was to summarise the Court's approaches to determining the relationship and correlation between the Convention (as the main legal instrument) and the IHRL, IHL, as well as the limits and conditions for the Court's application of IHL rules in judicial practice.

## Materials and methods

The methodology for investigating the application of IHL by the ECHR comprises a set of methods and is an important component of such a study, as it ensures its objectivity and reliability. Among the methods of cognition used to collect, analyse, and interpret information was the documentary method, which involves the analysis of documents related to the application of IHL by the Court. Such documents include court decisions[1,2], legal acts of the Court[3,4]. The legal method helped to analyse the legal norms and principles related to the application of IHL by the ECHR. This method was employed to determine how certain provisions of IHL and the Convention are interpreted by the ECHR. The historical method involved the investigation of the historical context to interpret information on the application of the IHL by the Court, and it was used to find out how the application of the IHL the Court has evolved over time.The critical method involved using a critical approach to interpret information on the application of the IHL by the ECHR, and helped to predict how the application of the IHL by the ECHR can be improved in the future. The theoretical framework of the study was based on publications that address the fundamental issues of the IHL concept and its application (Mégret & Swinden, 2019; Dzehtsiarou & Tzevelekos, 2022; Longobardo & Wallace, 2022).

The study analysed the provisions of the European Convention on Human Rights[5], the Third Geneva Convention relative to the Treatment of Prisoners of War[6], and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War[7], which were used in the analysed ECHR cases. To clarify the ECHR's approaches to the implementation of IHL, the Court's judgments in "Hassan v. The United Kingdom"[8], "Ukraine and the Netherlands v. Russia"[9], "Georgia v. Russia"[10], "Banković and others v. Belgium and others"[11] were investigated. The analysed documents are the principal international instruments related to the protection of human rights and humanitarian norms in wartime. The specificity of their analysis lies in the study and determination of how each of these documents and their concrete provisions are applied in the judicial practice of the ECHR. The analysis included the study of court decisions in cases involving violations of these conventions, as well as the establishment of standards and precedents determined by the court following the requirements of these international documents, and the compliance of states' actions with the provisions of the Convention.

## Results and discussion

Article 32 of the Convention stipulates that the Court has the power to examine all questions relating to the interpretation and application of the Convention and its Protocols as prescribed in Articles 33, 34, 46, and 47. In case of a dispute over jurisdiction, the Court shall independently resolve the dispute[12]. Thus, the principal legal instrument for the Court's activities is the ECHR and its Protocols, but the need to address the issues raised in complaints related to human rights violations during armed conflicts has

[1] Judgment of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)". (2021, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-207757%22]}.
[2] Judgment of the European Court of Human Rights in the cases Nos. 8019/16, 43800/14 and 28525/20 "Ukraine and the Netherlands v. Russia". (2022, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-222889%22]}.
[3] Convention on the Protection of Human Rights and Fundamental Freedoms. (1950. November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#n421.
[4] The Vienna Convention on the Law of International Treaties. (1969, May). Retrieved from https://zakon.rada.gov.ua/laws/show/995_118#Text.
[5] Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#n421.
[6] Geneva Convention on the Treatment of Prisoners of War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_153#Text.
[7] Geneva Convention on the Protection of the Civilian Population during War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154#Text.
[8] Judgment of the European Court of Human Rights in the Case No. 29750/09 "Hassan v. the United Kingdom". (2014, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-153724%22]}.
[9] Judgment of the European Court of Human Rights in the Cases Nos. 8019/16, 43800/14 and 28525/20. "Ukraine and the Netherlands v. Russia". (2022, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-222889%22]}.
[10] Judgment of the European Court of Human Rights in the Case No. 38263/08. "Georgia v. Russia (II)". (2021, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-207757%22]}.
[11] Judgment of the European Court of Human Rights in the Case No. 52207/99. "Banković and Others v. Belgium and Others". (2001, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}.
[12] Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#n421.

prompted the Court to formulate its position on the possibility of applying IHL.

To substantiate this position, the Court refers to the case law of the UN Human Rights Committee[1], the International Court of Justice[2,3,4], the Vienna Convention on the Law of Treaties[5], and the conclusions of academic institutions and human rights organisations (Hudoc. European Court of Human Rights, n.d.). In the case of "Banković and others v. Belgium and others"[6], it was noted that the principles underlying the Convention cannot exist or be applied in isolation. The Court is also obliged to consider any relevant rules of international law when deciding on matters within its competence and, accordingly, to establish state responsibility following the basic principles of international law. The Convention is to be interpreted in harmony with the other principles of international law of which it is a part, to the extent possible. In "Hassan v. The United Kingdom"[7], the Court notes that, according to the case law of the International Court of Justice, the European Court considers that even in the circumstances of international armed conflict, the guarantees provided by the ECHR are still applicable, albeit interpreted in the context of IHL. As a result of the coexistence of guarantees prescribed by IHL and the Convention during an armed conflict, the grounds for authorised deprivation of liberty set out in Article 5[8] should be consistent as far as possible with the detention of prisoners of war and civilians who pose a security risk under the third and fourth Geneva Conventions[9,10]. These provisions define the conceptual framework for the Court's application of IHL and are reproduced in judgments to substantiate the Court's position on the list of applicable law in cases of human rights violations in armed conflict. Notably, the growing number of scientific publications (Korniienko, 2022; Levchenko, 2022; Biloskurska & Fedorchuk, 2022) on the regulation of human rights restrictions in the context of armed conflict is evidence of the urgent need to address such issues, specifically in Ukraine.

The Court's approach to referring to IHL as a separate area of law enforcement in the structure of judgments is common, but not constant. When determining the normative basis of a decision, specifically IHL, the Court in some cases provides for such a section. See, for instance, "Relevant International and National Law and Practice" in the case of "Hassan v. The United Kingdom"[11], which states as follows: the provisions of the Third Geneva Convention of 12 August 1949[12] relative to the Treatment of Prisoners of War and the Fourth Geneva Convention of 12 August 1949[13] relative to the Protection of Civilian Persons in Time of War, which are directly relevant to the issues raised in the present case (para. 33); the practice of the UN International Court on the relationship between IHL and IHRL (paras. 35-37); Report of the Study Group of the International Law Commission on the Fragmentation of International Law: Challenges posed by the Diversification and Expansion of the Field of International Law, adopted by the International Law Commission at its 58th session in 2006

[1] General Comment of the Human Rights Committee No. 36(2018) "On article 6 of the International Covenant on Civil and Political Rights, on the Right to Life. Advanceunedited version CCPR/C/GC/36". (2018, October). Retrieved from https://www.ohchr.org/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf.

[2] Advisory Opinion of the International Court of Justice No. ICJ226 "Legality of the Threat or Use of Nuclear Weapons". (1996, July). Retrieved from https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf.

[3] The Legal Consequences of the International Court of Justice No. 131 "Construction of a Wall in the Occupied Palestinian Territory International Court of Justice". (2004, July). Retrieved from https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf.

[4] Judgment of the of the International Court of Justice in the Case "Concerning Armed Activity on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)". (2005, December). Retrieved https://casebook.icrc.org/case-study/icj-democratic-republic-congouganda-armed-activities-territory-congo.

[5] The Vienna Convention on the Law of International Treaties. (1986, June). Retrieved from https://zakon.rada.gov.ua/laws/show/995_118#Text.

[6] Judgment of the European Court of Human Rights in the Case No. 52207/99. "Banković and Others v. Belgium and Others". (2001, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}.

[7] Judgment of the European Court of Human Rights in the Case No. 29750/09. "Hassan v. the United Kingdom". (2014, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-153724%22]}.

[8] Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#n421.

[9] Geneva Convention on the Treatment of Prisoners of War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_153#Text.

[10] Geneva Convention on the Protection of the Civilian Population during War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154#Text.

[11] Judgment of the European Court of Human Rights in the Case No. 29750/09. "Hassan v. the United Kingdom". (2014, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-153724%22]}.

[12] Geneva Convention on the Treatment of Prisoners of War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_153#Text.

[13] Geneva Convention on the Protection of the Civilian Population during War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154#Text.

(para. 38)[1]. The case of "Georgia v. Russia (II)"[2] contains sections on the "Relationship between the provisions of the Convention and international humanitarian law" and "Relevant international humanitarian law". In this case, the Russian Federation claimed that the ECHR did not have jurisdiction over its compliance with IHL. The Court rejected these arguments using the rationale given above (conceptual basis).

The Convention contains the words "war" and "martial law" (Article 15: Derogation from obligations in time of public emergency)[3]. According to O.V. Taran (2023), this rule concerns the specifics of the application (rather than complete termination) of the Convention in the context of the lawful derogation of states from their obligations under the Convention. The conditions under which the retreat is possible, according to the said article, are war or other public danger that threatens the life of the nation (emergency situation). The limits of derogation are determined by the severity of the situation and the condition that the restrictive measures do not contradict other obligations of the state under international law. This or other rules do not regulate the application of the Convention exclusively in peacetime.

The cases in which human rights violations related to non-compliance with IHL were the subject of consideration concerned armed conflicts (international and non-international), e.g., the conflict between Turkey and Cyprus[4], Georgia and the Russian Federation over Abkhazia and South Ossetia[5], Armenia and Azerbaijan over Nagorno-Karabakh[6], Northern Ireland and the United Kingdom[7], the conflict in Chechnya regarding violations of IHL by the Russian authorities[8], etc. They determined the formation of the Court's practice of extending its jurisdiction to consider complaints of human rights violations that occurred in the context of armed conflicts. This practice is considered to be well-established.

Currently, the Convention applies not only in peacetime, but also during armed conflicts (international and non-international), which are regulated by IHL. This is not to say that the permissible acts, prohibitions, and restrictions prescribed by IHL and the Convention coincide, on the contrary, there is sometimes a substantial difference between them, which is conditioned by the very purpose and basic conditions of their application. However, the obligation to follow the minimum human rights standards stays in the context of armed conflict, with its scope and conditions determined in each case by its own legal basis (the Convention, IHL), as the absence of any legal regulation in emergency situations caused by hostilities will lead to an even greater crisis and may contribute to arbitrariness, cruelty, and abuse. It is the cases where the scope of protection under the Convention and IHL is different that pose a particular challenge in resolving such cases by the ECHR. In such cases, the law of the Court and IHL are correlated according to the general rule of *lex generalis* to *lex specialis* (Buromenskyi, 2023). Therefore, the Court applies an approach that allows it to "divide" the situation in dispute into components and considers these components in the light of the relationship between the Convention and IHL, with the criterion of the permissibility of the restriction being determined according to IHL *lex specialis*, considering the circumstances of derogation under Article 15 of the Convention.

As for the delineation of competence of the Court and other international courts in the context of IHL application, it stems from jurisdiction and international instruments, i.e., the Court, in case of a human rights violation that occurred in the context of an armed conflict (as a basis for the application of IHL) and the party's affiliation with a Council of Europe member state, may consider such cases according to its competence to protect human rights under the Convention. International courts specialise in hearing cases related to violations of IHL, including war crimes and human rights violations during armed conflicts, their jurisdiction extends to all persons regardless of their nationality, and they have special rules and procedures for hearing such cases.

[1] European Court of Human Rights in the Case No. 29750/09 "Hassan v. the United Kingdom". (2014, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-153724%22]}.

[2] Judgment of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)". (2021, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-207757%22]}.

[3] Convention on the Protection of Human Rights and Fundamental Freedoms. (1950, November) . Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#n421.

[4] European Court of Human Rights in the Case No. 25781/94 "Cyprus v. Turkey". (1996, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-3213.

[5] Judgment of the of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)". (2021, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-207757%22]}.

[6] Application to the European Court of Human Rights No. 42521/20 "Armenia v. Azerbaijan". (2021, March). Retrieved from https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6927916-9310877&filename=Receipt%20of%20application%20forms%20in%20two%20inter-State%20cases%20related%20to%20Nagorno-Karabakh%20conflict.pdf.

[7] Judgment of the of the European Court of Human Rights in the Case No. 5310/71 "Ireland v. the United Kingdom". (2018, March). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-181585%22]}.

[8] Judgment of the of the European Court of Human Rights in the Case No. 40165/07 and 2593/08. "Adzhigitova and Others v. Russia". (2021, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-210754.

Thus, these courts have different jurisdictions, but ther is an overlap in jurisdiction over human rights violations in armed conflict or related situations. The UN International Court of Justice has noted that some rights may be exclusively the prerogative of IHL[1]; others may be exclusively matters of IHRL; but some may be subject to regulation by both of these branches of international law.

The above, admittedly, does not exhaust the problems of application of IHL by the ECHR, and some of the Court's formulations do not contribute to the predictability of its decisions and the definition of important concepts in the context of armed conflicts and the application of IHL. For instance, in the case of "Georgia v. Russia (II)"[2] mentioned above, the Court emphasises that the very fact of hostilities between the enemy's armed forces to establish control over the territory in chaos is important, as it indicates not only the absence of "effective control" over this territory, but also the absence of any form of "power and control of a state agent" over individuals. Such an approach effectively leaves the Court's legal assessment of possible violations by the parties to the conflict outside the scope of its review. In this case, the respondent country actually formulated the thesis of the "context of chaos" (para. 86) and tried to apply it in the case of Ukraine and the "Netherlands v. Russia"[3]. Despite the Court's rejection of such arguments in the present case (paras. 703-704), one cannot deny the existence of the problem of vagueness of concepts and lack of predictability of the Court's position in such circumstances. This is particularly relevant for Ukraine, as the Court is awaiting cases related to the armed conflict since 2014.

## ■ Discussion

The study, which aims to summarise the Court's legal positions on the application of IHL, contributes to the development of scientific knowledge and practical approaches to the correlation between the IHRL (the Convention) and IHL, developed in such studies as M. Sassòli (2019) and E. Lush (2023), as different branches of law that can be applied simultaneously to protect human rights in armed conflicts. This helps to strengthen and reinforce such protection and the development of democratic institutions in general. Prospects and needs for scientific development of knowledge on the relationship between IHL and IHRL (the Convention) are determined by the fact that IHL and IHRL must evolve according to modern challenges. or IHL, the issues of its application in non-international armed conflicts, its role in the protection of civilians and the search for ways to improve the effectiveness of this protection, and the mechanisms of interaction between IHL and IHRL (the Convention) and international criminal law stay relevant. For the IHRL, the prospects for development lie in exploring new ways to ensure its enforcement and observance in situations of armed conflict, more effective alignment with IHL, and strengthening the significance of human rights law in ensuring peace and security. In the Court's practice, the interpretation and application of IHL provisions is of particular importance, which is combined with the Court's interaction with other international judicial bodies and the need to ensure the consistency of such interpretation and application.

According to E. Lush (2023), much of the debate on International Humanitarian Law (IHL) and International Law for the Protection of Persons in Armed Conflict (IHRL) in recent years has focused on the potential for convergence between the two regimes to enhance the protection of individuals during hostilities. At the same time, there are serious human rights violations during armed conflicts, specifically in Ukraine, Yemen, Ethiopia, Afghanistan, and other countries. Although IHL and IHRL have different objectives, both contain rules that are intended to protect individuals in such situations. By incorporating IHL norms into the IHRL framework, the protection of individuals in armed conflict can be enhanced. This mutual complementarity will allow treaty bodies to interpret and comment on the implementation of IHL by states parties, which will contribute to increased respect for such norms, including related enforcement and communication mechanisms.

F. Mégret & C. Swinden (2019), K. Dzehtsiarou & V.P. Tzevelekos (2022) and M. Longobardo & S. Wallace (2022) have investigated concrete situations of application of IHL by the ECHR. They highlight both the Court's general approach to the grounds for application of IHL and the specifics, limits, and conditions of application of IHL to certain persons and circumstances. Thus, F. Mégret & C. Swinden (2019) cover the problems of applying IHL and competition with IHRL using the example of the regulation of the return of the remains of combatants in international armed conflicts and the regime of such actions in

[1] The Legal Consequences of the International Court of Justice No. 131 "Construction of a Wall in the Occupied Palestinian Territory International Court of Justice". (2004, July). Retrieved from https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf.
[2] Judgment of the of the European Court of Human Rights in the Case No. 38263/08 "Georgia v. Russia (II)". (2021, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-207757%22]}.
[3] Judgment of the European Court of Human Rights in the Cases Nos. 8019/16, 43800/14 and 28525/20 "Ukraine and the Netherlands v. Russia". (2022, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-222889%22]}.

non-international armed conflicts, if the state considers members of armed groups to be terrorists and refuses to return them to their families. It appears that the experience of solving such problems may be useful in cases in the context of Ukraine's conflict with Russia. D. Thym (2020) analyses the controversial judgments of the Grand Chamber of the ECHR on migrants and refugees in Spain, which, according to the researcher, mark a turning point, indicating a temporary end point of the period of dynamism of interpretation by the ECHR, which played a substantial role in the progressive evolution of international law on refugees and human rights. The authors of the present study support the researcher's position that the Court has contributed to the dynamic development of IHL, specifically by expressing its willingness to broadly interpret the range of sources of this branch of law to clarify the provisions of the Convention in concrete cases. S. Wallace (2019) conducted a detailed analysis of how the Convention is applied in the context of military operations of all kinds and found relativism in the standards applied by the ECHR in such cases, which to some extent coincides with conclusions presented in this study about the existence of the problem of uncertainty of concepts and lack of predictability of the Court's position in such circumstances. Interesting are the conclusions of M.V. Buromenskyi (2023), who also used the method of analysis and generalisation of individual ECHR judgments on the application of IHL in cases related to armed conflicts. Thus, the researcher differentiates the ECHR's interpretation of the Convention in the light of IHL into clear (the judgment in the case contains references to concrete IHL norms or principles) and unclear (the judgment in the case does not contain concrete references to IHL norms or principles). Evidently, in the second case, the Court interpreted the Convention in the broadest international legal context, specifically, considering international judicial practices.

The study of the Court's legal positions using this approach (individual cases) helped to gain an objective understanding of how IHL is applied by the Court in concrete situations, including its interpretation. According to Ukrainian researchers O. Kaluzhna & K. Shunevych (2022) and O. Taran *et al.* (2022), it is also of particular importance to national law enforcement in the context of creating and improving accountability mechanisms for war crimes. It is difficult to disagree with this position, as bringing the Russian military to justice for crimes committed in Ukraine is currently a priority for legal researchers.

## ■ Conclusions

The study of the application of IHL by the ECHR necessitated the elaboration of the Court's legal positions formulated in the consideration of complaints on human rights violations in armed conflicts, the investigation of scientific sources on the correlation between IHL and IHRL (the Convention), the problems of interpreting IHL, the possibilities of its application by the Court, and the analysis of concrete judgments of the Court in which it refers to IHL.

Based on the findings of this study, some generalisations were offered regarding the Court's approach, namely that it rules on cases involving human rights violations within the scope of the Convention regardless of whether the violation occurred during an armed conflict or in peacetime. The grounds for the application of IHL in such cases are as follows: simultaneous force of the Convention and IHL; relevance to a concrete situation; and binding on the actors in that situation (usually parties to an armed conflict). Thus, even though the ECHR is not a specialised court for the application of IHL, like other courts, since IHL does not directly regulate this issue, in cases of proceedings on complaints related to the context of armed conflict, it considers and refers to the relevant provisions of IHL, since there is no other way to analyse the relevant legislation, which is a mandatory component of the judgment and is necessary for the court's reasoning and conclusions. The review and analysis of legislation (a matter of law) cannot be limited to the statement of the existence of relevant IHL rules; it always requires interpretation and clarification of the specific features of its impact and relevance to a concrete situation. The specific features of the simultaneous application of IHL and the Convention by the Court are that in each situation it examines the presence or absence of possible contradictions between the rules of IHL and the Convention and determines the rules of IHL *lex specialis*, if they apply to a concrete situation and regulate the relevant legal relations. These provisions can be defined as a relatively well-established legal position of the Court regarding the legality of the application of IHL by the Court, the conditions and limits of such application.

Promising areas for national law and law enforcement include improving legislation on the protection of human rights during armed conflict, increasing the effectiveness of legal regulation of issues related to armed conflict, effective application of IHL by courts (which requires the development of clearer criteria for determining when IHL is applicable) and human rights law and relevant ECHR judgments. Further research in the context of the study of the application of IHL by the ECHR may focus on solving the problems of law enforcement in the context of competition between the norms of the Convention and the IHL, the specifics of IHL application in non-international armed conflicts, and the development of legal instruments for the application of IHL in the context of the Convention.

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## Conflict of Interest

The author of this study declares no conflict of interest.

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## Застосування міжнародного гуманітарного права Європейським судом з прав людини

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■ **Анотація.** Проблема захисту прав людини гостро постає під час збройних конфліктів, коли відбуваються наймасовіші та найсерйозніші їх порушення. Міжнародне гуманітарне право є надійним інструментом протидії таким порушенням, зокрема шляхом реалізації його норм поряд з Європейською конвенцією про захист прав людини в рішеннях Європейського суду з прав людини. Метою статті є здійснення окремих узагальнень щодо підходів Європейського суду з прав людини до визначення зв'язку та співвідношення Європейської конвенції з прав людини та міжнародного права прав людини, міжнародного гуманітарного права, меж та умов застосування міжнародного гуманітарного права Європейським судом з прав людини. Під час дослідження застосовано сукупність методів пізнання для збирання, аналізу й інтерпретації інформації, а саме: документальний, статистичний, юридичний, історичний, критичний. Обрана методологія дає змогу забезпечити об'єктивність і достовірність дослідження. Підґрунтям роботи є рішення Європейського суду з прав людини, у яких досліджено, проаналізовано й застосовано міжнародне гуманітарне право, наукові публікації, рекомендації та роз'яснення міжнародних інституцій, експертів і правозахисних організацій, що стосуються співвідношення міжнародного права прав людини, Європейської конвенції з прав людини й міжнародного гуманітарного права, можливості їх одночасного застосування. За результатами дослідження узагальнено низку правових позицій Європейського суду з прав людини, що дає змогу виокремити основні підходи та визначити тенденції застосування міжнародного гуманітарного права під час розгляду скарг про порушення прав людини в умовах збройних конфліктів, зокрема розширення практики застосування міжнародного гуманітарного права, посилення захисту прав людини в умовах збройного конфлікту й уваги до нових викликів, пов'язаних зі збройними конфліктами. Практичне значення дослідження полягає в тому, що воно сприяє кращому розумінню міжнародного гуманітарного права та правових позицій Суду, напрацюванню додаткових механізмів забезпечення дотримання прав людини й міжнародного гуманітарного права

■ **Ключові слова:** Європейська конвенція з прав людини; міжнародне право прав людини; правова позиція; правозастосування; збройний конфлікт

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# Effectiveness of international legal instruments to combat corruption

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■ **Abstract.** The relevance of this study is argued by the need to implement international practices of combating corruption and to improve the efficiency of legal mechanisms and instruments for combating corruption in all spheres of the state's life. The purpose of this study was to conduct a comprehensive investigation of the effectiveness of international legal instruments for combating corruption in Ukraine. To fulfil this purpose, it was necessary to perform the following tasks: to identify international legal instruments for fighting corruption; to investigate ways to assess the level of corruption perception in the world; to determine the progress in the fight against corruption in Ukraine; to identify problems that prevent the increase of the corruption perception index in Ukraine; to develop tools for improving the level of combating corruption in Ukraine. The principles of dialectics served as the basis of the methodological framework of the study, which included such general scientific and special legal cognition methods as comparative legal, formal legal, analysis, and synthesis. Based on the analysis of secondary sources, the study established the significance of analysing and classifying the definition of international legal instruments for combating corruption and ways of assessing the level of perception of corruption in the world. The analysis of statistical data and sociological surveys helped to establish the progress of the fight against corruption in Ukraine, which is reflected in the concrete data of monitoring the level of perception of corruption in Ukraine. The emphasis was placed on a systematic approach to identifying the problems that hinder the improvement of the corruption perception index in Ukraine. Using the comparative legal method, the study compared the provisions of Ukrainian and international legislation directly related to the issues of combating corruption and its manifestations. The conclusions of the study were formulated, with propositions of concrete tools for improving the level of combating corruption in Ukraine by improving the activities of state structures. The study reviewed and analysed relevant scientific articles of Ukrainian and foreign researchers. The practical significance of this study lies in the possibility of using its findings in the activities of Ukrainian state bodies, considering the international experts' assessment of the effectiveness of the anti-corruption instruments already applied

■ **Keywords:** international norms; anti-corruption measures; corruption perception index; recommendations; reforms

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## Introduction

The principal vector of Ukraine's foreign policy is its European integration, which involves systematic reforms in various areas following the norms and standards of the European community. One of the key challenges in implementing the EU's requirements for Ukraine is systemic corruption in the public and private sectors of Ukraine. This is a pervasive phenomenon that permeates Ukrainian society, threatens national security, violates the Constitution and social order, and is one of the reasons for the growth of Ukraine's shadow economy. It has penetrated the institutions of government, the party system, and civil society. Manifestations of corruption affect all aspects of public life, contribute to the spread of organised crime and generate social tension, and call into question the ability of the authorities to implement measures aimed at overcoming the systemic crisis and promoting positive development of Ukraine, including organisational and practical actions. International legal instruments were used for many years to counteract corruption in Ukrainian society based on international agreements and relations, and their effectiveness ensures the gradual overcoming of this phenomenon. However, the pace of such activities does not match the efforts expended. That is why the study is relevant, considering the urgency of addressing the issue of fighting corruption, which is becoming an obstacle to joining the international community, the full development of Ukrainian society, and even the prompt resolution of the armed conflict.

Z. Semchuk *et al.* (2018) argue that corruption is a phenomenon that continues to evolve, change, and adapt to the legislative, social, and state conditions of development, but its essence and negative consequences have not changed. The transformation processes of corruption should be predicted and prevented by appropriate state instruments adapted to the needs of the present. L. Hbur (2020) emphasises that effective anti-corruption requires a scientific concept of its prevention. J. Barafi *et al.* (2022) investigated anti-corruption mechanisms in international law and national legislation of Jordan and Iraq, which is interesting in the context of understanding that Jordan is also a developing country, like Ukraine. V. Holovachko *et al.* (2019) reviewed the existing provisions in the field of preventing and combating corruption in Romania, Hungary, Slovakia, and Ukraine, and compared the methods of preventing corruption employed in these countries.

M. Kirzhetska & Yu. Kirzhetskyy (2023) thoroughly investigated the main areas of legalisation of economic processes, i.e., bringing public finances of Ukraine out of the shadow. B. Lohvynenko *et al.* (2022) emphasised the benefits of using electronic trading systems and the application of control measures over public procurement procedures as appropriate tools for preventing corruption. I. Adama & M. Fazekas (2021) reviewed the state of the evidence on the role of new technologies in the fight against corruption, conducting a comprehensive analysis of the impact of information and communication technology tools on corruption, offering a detailed and context-specific assessment.

F. Ceschel *et al.* (2022), based on a literature review, concluded that corruption prevention strategies should be implemented on an ongoing basis and adapted to the local context. A. Bowra *et al.* (2022) analyse the anti-corruption activities of international organisations, combining elements of content analysis and thematic analysis. R.Yu. Polovynkina (2019) emphasises that the key role of international organisations in the fight against corruption is to develop policies that contribute to solving social, economic, and environmental problems in concrete states. V. Topchii *et al.* (2021) also investigated international anti-corruption standards and the specific features of their application in Ukraine.

B. Olmos Giupponi & H.L. Yu (2022) analysed the obstacles and challenges in fighting corruption directly in cases of illegal investment, assessing the effectiveness of the international investment arbitration regime in fighting corruption. L. Marchuk & V. Yakovlev (2023) studied the areas of economic development in a state under martial law. O.A. Uliutina (2021) researched such an anti-corruption tool as the institution of a specialised anti-corruption prosecutor's office in Ukraine and compared it with the legal support of the institution of anti-corruption prosecutor's office in foreign countries. F. Ceschel *et al.* (2022), reviewing the scientific literature, concluded that it is necessary to apply measures aimed specifically at preventing corruption, i.e., measures aimed at avoiding the occurrence of corrupt behaviour in the organisational context. The positions of researchers are appropriate and should be considered in the activities of Ukraine's state bodies and its political course. At the same time, most scientific research is aimed at developing various anti-corruption measures, rather than assessing the effectiveness of the measures already in place, which is necessary to provide reasoned scientific recommendations.

The purpose of this study was to analyse the effectiveness of international legal instruments for combating corruption in Ukraine with a view to finding promising ways to counteract the phenomenon considering foreign practices. The objectives of the study were to assess the state of perception of corruption in Ukraine in state-building and on the path towards European integration in comparison with other foreign countries; to analyse the effectiveness of anti-corruption measures recommended by international organisations; and to identify further ways to combat corruption in Ukraine.

## Materials and Methods

The study employed a set of methods of scientific cognition. The principles of dialectics underlay the methodological framework of this study and outlined a strategy for determining the effectiveness of international legal instruments to combat corruption in Ukraine. The methods of analysis, classification, and the systemic-structural method were used to identify international legal instruments for combating corruption and ways to assess the level of perception of corruption in the world. Statistical and sociological methods helped to determine the progress of the fight against corruption in Ukraine based on concrete data from the monitoring of the level of perception of corruption in Ukraine. Therewith, the systematic approach helped to identify the issues preventing the improvement of the corruption perception index in Ukraine. The comparative legal method helped to compare the provisions of Ukrainian and international anti-corruption legislation. The functional method helped to propose tools to enhancing the level of combating corruption in Ukraine by improving the activities of state structures. The generalisation method was used to formulate the conclusions of the study.

The study also employed and analysed relevant scientific articles of Ukrainian and foreign researchers on the subject under investigation. The conclusions drawn in previous studies have become the basis for comprehensive research of the effectiveness of anti-corruption in Ukraine. Furthermore, public information from official representations of state and international bodies and organisations provided the basis for the conclusions. The study analysed the websites of the Council of Europe (Second Compliance Report of Ukraine, 2022; Interim compliance report of Ukraine, 2023), the Prosecutor General's Office (2023), Transparency International (2023; 2024), the Jordanian Integrity and Anti-Corruption Commission[1], etc. Public information on the implementation of anti-corruption instruments in Ukraine was investigated, specifically, the websites Prozorro (What is Prozorro, 2023), eHealth (CIET Holding, 2024), Spending (Ministry of Finance of Ukraine, 2024). The regulatory framework of this study included international legal acts (Criminal Law Convention on Corruption[2], Civil Law Convention on Corruption[3], On the Twenty guiding principles for the fight against corruption[4], Model Code of Conduct for Civil Servants[5], Uniform rules for combating corruption in the financing of political parties and election campaigns[6], etc.), anti-corruption legislation of Ukraine (Law of Ukraine "On Prevention of Corruption"[7], Anti-corruption strategy[8], State anti-corruption program[9], etc.), and some other states (e.g., anti-corruption strategies of Great Britain[10], Vietnam[11], Jordan[12], Egypt[13], Armenia[14], etc.), as well as regulations that determine the administrative legal status of certain bodies of the state and judicial branches of the government of Ukraine, which affects the effectiveness of the fight against corruption and the effectiveness of the international tools used to combat it. This approach helped to obtain the most complete understanding of the definition of the content and guarantees of the implementation of the principles under study. To obtain reliable research results, the use of these methods is interrelated and interdependent.

[1] The National Integrity and Anti-Corruption Strategy 2020-2025 (updated). (2005, June). Retrieved from https://jiacc.gov.jo/EBV4.0/Root_Storage/AR/EB_Blog/JIACC_Strategy_2020-2025_English.pdf.
[2] Criminal Law Convention on Corruption. (1999, January). Retrieved from https://rm.coe.int/168007f3f5.
[3] Civil Law Convention on Corruption. (1999, November). Retrieved from https://rm.coe.int/168007f3f6.
[4] Resolution of the Council of Europe No. (97)24 "On the Twenty Guiding Principles for the Fight Against Corruption". (1997, November). Retrieved from https://rm.coe.int/16806cc17c.
[5] Recommendation of the Committee of Ministers to Member states No. R(2000)10 "On Codes of Conduct for Public Officials". (2000, May). Retrieved from https://rm.coe.int/16805e2e52.
[6] Recommendation of the Committee of Ministers to member states No. R(2003)4 "On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns". (2003, April). Retrieved from https://rm.coe.int/16806cc1f1.
[7] Law of Ukraine No. 1700-VII "On Prevention of Corruption". (October, 2014). Retrieved from https://zakon.rada.gov.ua/laws/show/1700-18#Text.
[8] Law of Ukraine No. 2322-IX "On the Principles of State Anti-Corruption Policy for 2021-2025". (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2322-20#Text.
[9] Resolution of the Cabinet of Ministers of Ukraine No. 220 "On the Approval of the State Anti-corruption Program for 2023-2025". (2023, March). Retrieved from https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text.
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[13] National Anti-corruption Strategy 2019-2022. (2019, January). Retrieved from https://sherloc.unodc.org/cld//treaties/strategies/egypt/egy0001s.html?lng=en&tmpl=sherloc.
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## ■ Results and Discussion

The goal of international organisations in the fight against corruption is to pursue policies that promote prosperity, equality of opportunity and well-being for countries, civil society, and the population. In cooperation with governments, political leaders and society, international organisations work together at meetings and scientific events to set international standards and develop sound social, economic, and environmental solutions that have an impact on reducing corruption risks. These measures include improving economic welfare, increasing employment, developing high-quality new education and combating tax evasion offences on a global scale. International institutions are making every effort to combat corruption through national commitments, voluntary agreements with firms, the development of national anti-corruption laws, the introduction of licensing of firms to prevent unauthorised payments, the creation of codes of conduct, and the ratification of international legal instruments to combat corruption.

One of these international organisations is the Council of Europe, which implements anti-corruption measures in three interrelated areas: creating European standards, monitoring their implementation, and providing technical support to countries and regions. The Council of Europe has developed a range of international legal documents in this area, including the Criminal Law Convention on Corruption[1], the Civil Law Convention on Corruption[2], On the Twenty guiding principles for the fight against corruption[3], Codes of Conduct for Public Officials[4], and Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns[5]. The implementation of these documents is monitored by the Council of Europe Group of States against Corruption (GRECO), which is one of the key international organisations that aims to help states overcome corruption by setting anti-corruption standards in the work of public authorities and monitoring their compliance with the standards[6]. Since 2019, the Ukrainian delegation has been taking part in the work of GRECO and coordinating Ukraine's activities aimed at improving the national anti-corruption policy, implementing legislative, institutional, and operational measures. When assessing the progress of Ukraine in meeting the requirements for full membership in the European Union, the European Commission will consider the state of implementation of GRECO recommendations.

It is positive that Ukraine continues to work towards fulfilling GRECO's requirements for implementing transformational anti-corruption measures even amidst the introduction of martial law (Second compliance report..., 2022). Such a policy is positively perceived by international partners and is factored in when determining the level of corruption perception in Ukraine. Specifically, GRECO representatives emphasise the need to improve the regulation of problematic issues related to conflicts of interest among MPs arising from legal restrictions on engaging in prohibited activities, including entrepreneurship, ensuring the inviolability of the status of judges, regulating the career development process in the prosecution service, and introducing effective means of raising awareness of the morality of MPs themselves (Interim compliance report..., 2023).

It is worth highlighting such organisations that are making attempts to overcome corruption as the European Union[7], as well as international organisations such as the Organisation of American States (United Nations Convention Against Corruption[8]), the Global Coalition for Africa (On the Twenty Guiding Principles for the Fight Against Corruption[9]), etc. Considering the activities aimed at combating and preventing corruption within these international organisations, one of the key trends can be identified – anti-corruption agreements strengthen political commitments to fight corruption and define fundamental international norms and procedures for combating this phenomenon. This confirms the interest of the international community in fighting corruption at the national level and in the global context. In other words, international organisations act as a guideline for state policy and the work of Ukrainian

[1] Criminal Law Convention on Corruption. (1999, January). Retrieved from https://rm.coe.int/168007f3f5.
[2] Civil Law Convention on Corruption. (1999, November). Retrieved from https://rm.coe.int/168007f3f6.
[3] Resolution of the Council of Europe No. (97)24 "On the Twenty Guiding Principles for the Fight Against Corruption". (1997, November). Retrieved from https://rm.coe.int/16806cc17c.
[4] Recommendation of the Committee of Ministers to Member States No. R(2000)10 "On Codes of Conduct for Public Officials". (2000, May). Retrieved from https://rm.coe.int/16805e2e52.
[5] Recommendation of the Committee of Ministers to Member States No. R(2003)4 "On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns". (2003, April). Retrieved from https://rm.coe.int/16806cc1f1.
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[8] United Nations Convention Against Corruption. (2003, October). Retrieved from https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.
[9] Resolution of the Council of Europe No. (97)24 "On the Twenty Guiding Principles for the Fight Against Corruption". (1997, November). Retrieved from https://rm.coe.int/16806cc17c.

government agencies in the fight against corruption, carrying out their activities in a systematic and comprehensive manner, accommodating the objective situation in the country and the factors influencing the effectiveness of the proposed measures.

The sustainability of anti-corruption processes in Ukraine is often based on the cooperation of the community, business, and the state. This is most clearly manifested in innovative solutions that not only help the state to eliminate the possibility of influencing certain processes through corruption, but also serve as a positive example for other countries to follow. There are several key international legal mechanisms to counteract corruption in Ukraine, which have already been applied in other countries and proved to be effective (E-Government Development Index, 2024). Prozorro is an electronic tool for public procurement, an electronic platform where businesses and public sector organisations seeking to place procurements issue tenders for the purchase of certain goods, works, and services. At the same time, entrepreneurs and organisations compete in tenders to get the opportunity to receive these goods and provide services to the state. This system allows observing where citizens' financial contributions are spent. Since the launch of the Prozorro system, over 15 million deals worth UAH 4.3 trillion have been announced. In 2020, Prozorro was recognised as the most transparent public sector procurement platform in the world. Prozorro-sale is a state-owned joint-stock company owned and operated by the Ministry of Economy, which is an online auction system for the sale and lease of property. As of the beginning of 2024, sales and leases at Prozorro-sale auctions brought more than UAH 83 billion to the state budget of Ukraine and local budgets of various levels (What is Prozorro, 2023).

eHealth is an electronic healthcare system that automates the recording of medical services and manages medical information in electronic form. The eHealth system includes the main database with the relevant registers and the information system of the National Health Service of Ukraine, and medical information systems that automatically exchange data. Using eHealth (CIET Holding, 2024), citizens can make appointments with doctors online and receive an electronic prescription for medicines. Furthermore, an electronic medical record is available. Proceeding from this, corruption is minimised when patients receive medical services.

"Spending" is the only source of information on the use of public funds, an official resource that publishes data on public finances following the Law of Ukraine No. 183-VIII[1]. This resource provides access to information on transactions of spending units, including amounts, purposes, and recipients (Ministry of Finance of Ukraine, 2024). E-declaration is an electronic system of the Unified State Register of Declarations of Persons Authorised to Perform the Functions of the State or Local Self-Government , using which one can search for declarations of concrete persons and view them according to the selected filters: by the last name, first name, or patronymic of the declarant, sort documents by type, year of submission, type and category of position, as well as see declarations of all persons who hold positions with a high level of corruption risks or a responsible (especially responsible) position (National Agency for the Prevention of Corruption, 2024). In September 2023, the mandatory electronic declaration in Ukraine, which had been suspended since the beginning of martial law, was resumed[2], including previously undeclared periods (2021-2023). In other words, this tool for combating corruption in Ukraine is also being used effectively, despite the continuation of martial law on its territory. This tool is effective, considering the possibility of public monitoring of the property status of persons authorised to perform the functions of the state or local self-government, including members of parliament, ministers, judges, etc. This helps to identify grounds for investigations into the illicit enrichment of individuals and other illegal corruption.

Summarising the most effective international legal means of combating corruption in Ukraine, the following conclusions can be drawn. The identified tools meet the requirements of the modern world and the highest achievements of e-government, which determines their relevance and timeliness. All instruments make provision for compliance with the principle of openness of the state's financial flows. Furthermore, all the tools are in electronic form, which ensures their publicity and the efficiency of information receipt and processing. The use of these tools facilitates the possibility of public control over the finances of the state and civil servants. The use of the proposed anti-corruption tools eliminates the possibility of a corrupt component, such as an intermediary.

Apart from these tools, it is worth emphasising the need for rulemaking, transformation of the functioning of state bodies, increased transparency of personnel policy, etc. All the steps taken by Ukraine are clearly monitored and evaluated by the international community, which is then digitally translated into

[1] Law of Ukraine No. 183-VIII "On Openness of the Use of Public Funds". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19/ed20150211#Text.

[2] Law of Ukraine No. 3384-IX "On Amendments to Some Laws of Ukraine on Defining the Procedure for Submitting Declarations of Persons Authorised to Perform the Functions of the State or Local Self-Government in Martial Law Conditions". (2023, September). Retrieved from https://zakon.rada.gov.ua/laws/show/3384-20#Text.

an annual report. The global Corruption Perceptions Index (CPI) is an internationally recognised index developed by Transparency International through the regular use of expert opinions on the level of corruption in a particular country. The index is regarded as the most comprehensive and reliable corruption measurement (Voyer & Beamish, 2004), along with analogous instruments such as the World Bank's Corruption Monitor (Judge *et al.*, 2011).

CPI expresses the views of entrepreneurs, capital investors, market researchers, etc. The composite index reflects the position of private sector businesspeople and the level of corruption in the public sector. The European Commission positively noted the methodology for determining the composite index and gave it a positive stamp. The CPI reflects experts' perceptions of corruption in the public sector, including bribery; theft of material assets; nepotism in the public sector; seizure of state power; the ability of government officials to apply integrity algorithms; inevitable prosecution of corruption-related offences; unnecessary bureaucratic restrictions; availability of an adequate legal framework for disclosure of financial data, prevention of conflicts of interest and access to relevant information; implementation of legislation on the protection of whistleblowers, reporters, and procedural persons (Transparency International, 2024).

There are also other ways to measure corruption, such as testing the level of corruption in a country before and after countermeasures are implemented to test the effects of fighting corruption over time, as well as the results of responding to it by introducing changes in globalisation and development levels (Aıssaoui & Fabian, 2022): The causal KOF-CPI model (M5) estimates the cross-country paths from globalisation and corruption to development, together with the reciprocal effects between globalisation and corruption; the inverse KOF-CPI model (M6) tests the reverse effects of development towards globalisation and corruption; the reciprocal KOF-CPI model, which combines M5 and M6, is fully saturated; the hypothetical model (M7) includes pathways identified by prevailing perspectives that suggest that globalisation affects both corruption and development; corruption affects both globalisation and development; and development affects both corruption and globalisation. In other words, theoretical calculations of the impact of corruption on society and the state continue, although their practical significance has not yet been widely applied. That is why identifying ways to increase the Corruption Perceptions Index stays a priority of Ukraine's state policy as a factor influencing the decisions of the European Union.

Considering this value of the index, it is necessary to analyse the indicators of corruption perception in the countries that became members of the European Union in the 21st century. The following countries were selected for comparison with Ukraine's indicators: Croatia (EU member since 2013); Romania (since 2007); Bulgaria (since 2007); Poland (since 2004); Latvia (since 2004); Lithuania (since 2004); Estonia (since 2004); Slovenia (since 2004); Slovakia (since 2004); Czech Republic (since 2004); Hungary (since 2004). The statistics presented in Table 1 show that the results of combating corruption in these countries are generally an order of magnitude higher than in Ukraine. In 2023, Ukraine was at the same level of corruption perception as Croatia, Bulgaria, Latvia, and Slovakia in 2000. At the time of accession to the European Union, Croatia's corruption perception index was 48; Romania's was 3.7 (37 according to the measurement method established in 2012); Bulgaria's was 4.1 (41); Poland's – 3.5 (35); Latvia's – 4 (40); Lithuania's – 4.6 (46); Estonia's – 6 (60); Slovenia's – 6 (60); Slovakia's – 4 (40); Czech Republic's – 4.2 (42); Hungary's – 4.8 (48); average – 4.08 (40.8). Ukraine has been gradually and steadily increasing its Corruption Perceptions Index, with annual increases every year. The data in Table 1 show that the growth of the Ukrainian index is in line with global trends, and in some cases even exceeds them (e.g., the average growth rate of the corruption perception index in the countries that became EU members in the 21st century is 1.4% compared to 4.4% in Ukraine), but in absolute terms, as of 2023, the indicators were insufficient for a country seeking to join the European community, as in 2000 Ukraine had the lowest index in the sample – 1.5 (15). Predicting the effectiveness of further anti-corruption measures taken by Ukrainian state authorities, it is possible to assert that the proper level of perception of corruption has been achieved, which will allow Ukraine to become a member of the European Union in the near future (two to three years at the current growth rate), based on the history of its European neighbours.

**Table 1.** Corruption Perceptions Index in the Countries that Became Members of the European Union in the 21st century

| Corruption Perceptions Index | Croatia | Romania | Poland | Bulgaria | Latvia | Lithuania | Estonia | Slovakia | Slovenia | Czech Republic | Hungary | Ukraine |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **2000** | 3.7 | 2.9 | 4.1 | 3.5 | 3.4 | 4.1 | 5.7 | 3.5 | 5.5 | 4.3 | 5.2 | 1.5 |
| **2001** | 3.9 | 2.8 | 4.1 | 3.9 | 3.4 | 4.8 | 5.6 | 3.7 | 5.2 | 3.9 | 5.3 | 2.1 |

*Table 1, Continued*

| Corruption Perceptions Index | Croatia | Romania | Poland | Bulgaria | Latvia | Lithuania | Estonia | Slovakia | Slovenia | Czech Republic | Hungary | Ukraine |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **2002** | 3.8 | 2.6 | 4 | 4 | 3.7 | 4.8 | 5.6 | 3.7 | 6 | 3.7 | 4.9 | 2.4 |
| **2003** | 3.7 | 2.8 | 3.6 | 3.9 | 3.8 | 4.7 | 5.5 | 3.7 | 5.9 | 3.9 | 4.8 | 2.3 |
| **2004** | 3.4 | 2.9 | 3.5 | 4.1 | 4 | 4.6 | 6 | 4 | 6 | 4.2 | 4.8 | 2.2 |
| **2005** | 3.4 | 3 | 3.4 | 4 | 4.2 | 4.8 | 6.4 | 4.3 | 6.1 | 4.3 | 5 | 2.6 |
| **2006** | 3.5 | 3.1 | 3.7 | 4 | 4.7 | 4.8 | 6.7 | 4.7 | 6.4 | 4.8 | 5.2 | 2.6 |
| **2007** | 4.1 | 3.7 | 4.2 | 4.1 | 4.8 | 4.8 | 6.5 | 4.9 | 6.6 | 5.8 | 5.3 | 2.7 |
| **2008** | 4.4 | 3.8 | 4.6 | 3.6 | 5 | 4.6 | 6.6 | 5 | 6.7 | 5.2 | 5.1 | 2.5 |
| **2009** | 4.1 | 3.8 | 5 | 3.8 | 4.5 | 4.9 | 6.6 | 4.5 | 6.6 | 4.9 | 5.1 | 2.2 |
| **2010** | 4.1 | 3.7 | 5.3 | 3.6 | 4.3 | 5 | 6.5 | 4.3 | 6.4 | 4.6 | 4.7 | 2.4 |
| **2011** | 4 | 3.6 | 5.5 | 3.3 | 4.2 | 4.8 | 6.4 | 4 | 5.9 | 4.4 | 4.6 | 2.3 |
| **2012** | 46 | 44 | 58 | 41 | 49 | 54 | 64 | 46 | 61 | 49 | 55 | 26 |
| **2013** | 48 | 43 | 60 | 41 | 53 | 57 | 68 | 47 | 57 | 48 | 54 | 25 |
| **2014** | 48 | 43 | 61 | 43 | 55 | 58 | 69 | 50 | 58 | 51 | 54 | 26 |
| **2015** | 51 | 46 | 63 | 41 | 56 | 59 | 70 | 51 | 60 | 56 | 51 | 27 |
| **2016** | 49 | 48 | 62 | 41 | 57 | 59 | 70 | 51 | 61 | 55 | 48 | 29 |
| **2017** | 49 | 48 | 60 | 43 | 58 | 59 | 71 | 50 | 61 | 57 | 45 | 30 |
| **2018** | 48 | 47 | 60 | 42 | 58 | 59 | 73 | 50 | 60 | 59 | 46 | 32 |
| **2019** | 47 | 44 | 58 | 43 | 56 | 60 | 74 | 50 | 60 | 56 | 44 | 30 |
| **2020** | 47 | 44 | 56 | 44 | 57 | 60 | 75 | 49 | 60 | 54 | 44 | 33 |
| **2021** | 47 | 45 | 56 | 42 | 59 | 61 | 74 | 52 | 57 | 54 | 43 | 32 |
| **2022** | 50 | 46 | 55 | 43 | 59 | 62 | 74 | 53 | 56 | 56 | 42 | 33 |
| **2023** | 50 | 46 | 54 | 45 | 60 | 61 | 76 | 54 | 56 | 57 | 42 | 36 |
| **Average growth rate** | 1.5% | 2% | 1.3% | 1.3% | 2.6% | 1.8% | 1.3% | 2.0% | 0.2% | 1.5% | -0.8% | 4.4% |

**Source:** Transparency International (2020)

The increase in this indicator by ten positions confirms the existence of positive changes in Ukrainian society. A more detailed analysis of the presented statistics suggests a gradual increase in the fight against corruption in Ukraine in 2012-2017 and relative stability in the global ranking of Ukraine in 2018-2022. Periods of state transformation and the introduction of anti-corruption mechanisms coincide with periods of improvement in Ukraine's global CPI score. For instance, the largest increase in the index was by three positions in 2020. This result was achieved due to the introduction of the High Anti-Corruption Court in Ukraine with the appropriate jurisdiction (Romanenko, 2019), as well as the reorganisation of the National Agency for the Prevention of Corruption[1]. The biggest pullback occurred the day before. In 2019, the index dropped by two points due to the failure to implement most of the recommendations of the international community on the use of anti-corruption tools (Transparency International Ukraine, 2020).

The increase in Ukraine's Corruption Perceptions Index by three points in 2023 (Table 1) indicates that the government is trying to fulfil its commitments to fight corruption and move closer to international standards. In 2023, Ukraine's result is one of the most successful indicators for this period in the world, despite the duration of the armed conflict on its territory. This result was achieved through the adoption and implementation of the Anti-Corruption Strategy[2] and the State Anti-Corruption Programme3, i.e.,

[1] Resolution of the Cabinet of Ministers of Ukraine No. 458 "On the Approval of the Criteria and Methodology for Evaluating the Effectiveness of the National Agency for the Prevention of Corruption". (May, 2020). Retrieved from https://zakon.rada.gov.ua/laws/show/458-2020-%D0%BF#Text.

[2] Law of Ukraine No. 2322-IX "On the Principles of State Anti-corruption Policy for 2021-2025". (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2322-20#Text.

[3] Resolution of the Cabinet of Ministers of Ukraine No. 220 "On the Approval of the State Anti-corruption Program for 2023-2025". (2023, March). Retrieved from https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text.

statutory-level regulation and coordination of the activities of all public authorities aimed at overcoming corruption. The UN Convention against Corruption[1], which has been ratified by Ukraine, points to the coordination of such actions as a necessary condition for effective counteraction to corruption. Formulation of an anti-corruption strategy can be identified as the crucial means of ensuring appropriate coordination, which has gained popularity. Analogous anti-corruption strategies are used by some governments in different regions of the world and levels of economic and social development: United Kingdom[2], Vietnam[3], Jordan[4], Romania, Egypt[5], Armenia[6], etc.

The second reason for Ukraine's rise in the ranking was the intensification of detentions and investigations of criminal cases for committing corruption offences on a large scale. The exposure of criminals who committed illegal corruption in the defence sector of Ukraine and the provision of supplies to the military caused particular public outrage (Pavlenok, 2023). However, the law enforcement agencies of Ukraine still face many challenges, as exemplary arrests of corrupt criminals are rare.

According to the official public statistics of the Office of the Prosecutor General of Ukraine, in 2023, the Prosecutor General's Office recorded 14,820 crimes committed by officials of various levels, in various areas of their professional activity, while providing public services (General Prosecutor's Office, 2023). Among these crimes, the largest number of cases were documented under the following offences in the Criminal Code of Ukraine[7]: abuse of power or position (Article 364) – 2,983 cases; abuse of power or authority by a law enforcement officer (Article 365) – 1,256 cases; abuse of authority by persons providing public services (Article 365-2) – 227 cases; forgery in office (Article 366) – 4,335 cases; negligence in office (Article 367) – 1,786 cases; acceptance of an offer, promise, or receipt of an undue advantage by an official (Article 368) – 1,403 cases; offer, promise, or provision of an undue advantage to an official (Article 369) – 2,041 cases (Prosecutor General's Office, 2023). However, the performance indicators of law enforcement agencies indicate that the results of such activities are not sufficiently effective. Thus, in 2023, the number of unlawful acts resulting in the serving of suspicion notices to offenders was 6,048 cases, while the number of criminal offences for which proceedings were sent to court was only 4,760. Therewith, the number of criminal offences in which proceedings were closed was 4,160, while the number of criminal offences in which no decision was made at the end of the reporting period was 9,885 (General Prosecutor's Office, 2023). In other words, there is a lack of efficiency and effectiveness of law enforcement agencies in fighting corruption and bringing perpetrators to justice. This performance will have negative consequences for Ukraine in the future when determining its place in the CPI rankings.

The third factor that influenced Ukraine's score in the CPI ranking is that most procurement is conducted through Prozorro. The implementation of this anti-corruption mechanism is most welcomed by international partners, as it is practical and is an effective state instrument. In the context of the armed conflict, this instrument was designed to provide comprehensive support to citizens, the state, and the Armed Forces of Ukraine. Accordingly, in 2022, 160,000 transactions following the principles of competition were made through electronic trading, worth almost UAH 200 billion. These procurements involved 33,000 entities. Furthermore, Prozorro Market is gaining traction, with the volume of purchases in the electronic catalogue amounting to approximately UAH 2 billion in 2022. Interesting for this study is the fact that Prozorro is integrated with the register of corruption offences (Public procurement. Annual report, 2023).

Accordingly, it can be concluded that the introduced anti-corruption instruments are directly proportional to the level of corruption perception. The presented dynamics confirms the need for further work of state authorities towards the implementation of fundamental changes in Ukrainian society by introducing additional tools that are effective in foreign countries. It is possible that the introduction of innovative, proprietary anti-corruption tools will also contribute to overcoming corruption.

However, it is the internal attitude of citizens towards corruption in the country that affects the

[1] United Nations Convention Against Corruption. (2003, October). Retrieved from https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.
[2] UK Anti-Corruption Strategy 2017 to 2022. (2017, December). Retrieved from https://assets.publishing.service.gov.uk/media/5a829eb7e5274a2e87dc21f0/6_3323_Anti-Corruption_Strategy_WEB.pdf.
[3] Drafting a National Anti-corruption Strategy for Vietnam. (2008, September). Retrieved from https://www.u4.no/publication/drafting-a-national-anti-corruption-strategy-for-vietnam.pdf.
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[6] Republic of Armenia Anti-corruption Strategy and Implementation Action Plan. (2001, January). Retrieved from https://www.gov.am/files/docs/74.pdf.
[7] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

world ranking. The results of independent sociological surveys conducted in Ukraine are worrying. Specifically, despite Ukraine's rise in the CPI ranking, in the spring of 2023, 53% of respondents said that corrupt officials in power were the state's biggest internal enemy. Therewith, 84% of respondents support the position that it is necessary to make the facts of corruption acts public. Notably, the survey confirms that the Ukrainian population understands the relationship between the eradication of corruption, community unity, support from international partners, and victory (Samayeva, 2023). In other words, based on the results of the survey, it can be argued that the existence of corruption in Ukraine is still an open question, one of the ways to solve which is to bring perpetrators to justice publicly.

The results of the external independent assessment of the effectiveness of the National Agency for the Prevention of Corruption, approved on 24 July 2023 (External independent assessment..., 2023), are not entirely optimistic. Thus, according to the report of such an assessment, the National Agency fulfilled 72% of the indicators for which the audit was carried out, while 28% (58 indicators) were not fulfilled. However, according to the external audit, the National Agency satisfactorily performed most of its tasks. As a result, the commission has developed 120 recommendations for the agency, which will further facilitate the National Agency's activities to achieve higher performance. In other words, further fruitful work should continue, and improvement of the activities of the main state anti-corruption bodies is a priority area that affects the results of Ukraine as a whole in this area.

The analysis of the activities of state bodies in Ukraine in combating corruption allows identifying the problems that prevent the improvement of the corruption perception index in Ukraine:

- The armed conflict on the territory of Ukraine, on the one hand, hinders the introduction of certain effective mechanisms for combating corruption, and on the other hand, it accumulates community efforts in this area, as evidenced by the above statistical information;
- Conventionally lenient attitude towards corruption in the Ukrainian government and society. The transfer of the traditions of Soviet society to the period of Ukraine's independence took decades. Self-awareness of the community's European affiliation and the development of anti-corruption mindset will help overcome existing problems;
- The existence of loopholes in the legislation that allow for ambiguous interpretation of corruption-related acts. That is why one of the requirements of international partners is to review the regulatory framework of anti-corruption legislation, which is being amended and improved;
- Fragmentary application of the proposed anti-corruption instruments. For instance, partners point to the lack of transparency in the activities of the National Agency for the Prevention of Corruption, although in other areas the implementation of this principle is not in doubt;
- Failure to fulfil Ukraine's goals and commitments to the international community in terms of reforming anti-corruption mechanisms and applying anti-corruption measures. For instance, considering the reports of the National Agency for the Prevention of Corruption.

It is on solving these problems that attention should be focused. It is worth considering the positive practices of national government agencies and developing them. A range of international documents define further anti-corruption measures to be taken by Ukraine: European Commission Report on the Enlargement of the European Union on Ukraine as a Candidate State for 2023[1], List of Priority Reforms from the US Government (The White House sent out a letter..., 2023). The latest report on the implementation of the IMF-Ukraine Memorandum[2]. Some of the requirements for Ukraine to overcome corruption and the tools to fight it are overlapping in these international documents. The analysis of the recommendations of international partners and domestic experts allows Transparency International to identify the priority areas of work of Ukrainian government agencies in the fight against corruption for 2024, which are presented in Table 2, and which will help reduce the level of corruption. Therewith, Transparency International develops global recommendations for governments to ensure effective fight against corruption as a threat to national security: to define corruption as a threat to national security and to make the fight against it a goal of internal and external policy; to balance the system of checks and balances by organising the activities of anti-corruption bodies and oversight institutions; real access to public information, including the movement of financial resources of the state; policy should be determined by fair and public processes; and measures to counter transnational forms of corruption.

[1] European Commission Staff Working Document No. SWD(2023) 699 final "Ukraine 2023 Report". (2023, November). Retrieved from https://neighbourhood-enlargement.ec.europa.eu/document/download/bb61ea6d-dda6-4117-9347-a7191ecefc3f_en?filename=SWD_2023_699%20Ukraine%20report.pdf.

[2] Staff Report and Statement by the Executive Director for Ukraine No. 2023/132 "Request for an Extended Arrangement Under the Extended Fund Facility and Review of Program Monitoring with Board Involvement-Press Release". (2023, March). Retrieved from https://www.imf.org/en/Publications/CR/Issues/2023/03/31/Ukraine-Request-for-an-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-Review-of-531687.

**Table 2.** Transparency International's recommendations for further fight against corruption in Ukraine

| Area | Content |
|---|---|
| Improvement of the procedure for bringing to criminal liability those who have committed corruption offences | ▪ conducting investigations and litigation efficiently and promptly;<br>▪ increase the capacity and conduct an objective competitive selection of NABU employees, SAPO prosecutors, and judges of the High Anti-Corruption Court;<br>▪ implement the reform of the forensic service;<br>▪ eliminate conflicts in criminal procedure and criminal legislation, review the timeframe for consideration of corruption-related criminal cases |
| Implementation of mechanisms for alienation of property obtained as a result of corruption offences | ▪ improvement of the efficiency of the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes by changing the personnel policy, implemented forms and methods of the agency's activities, specifically in the area of asset sales;<br>▪ development, adoption, and implementation of a regulatory framework for the implementation of mechanisms for the alienation of property obtained as a result of corruption offences according to international standards;<br>▪ prescription of mechanisms in the current legislation to seize Russian assets on the territory of Ukraine as a precautionary measure before their confiscation;<br>▪ criminalise acts of violation of restrictive sanctions imposed by the international community in connection with the armed conflict on the territory of Ukraine in any way |
| Reform of the financial and budgetary control bodies of Ukraine | ▪ development, adoption, and implementation of the legal framework for reforming the activities of the Accounting Chamber, including updating the approaches to the personnel selection procedure;<br>▪ reform the activities of the State Audit Service of Ukraine, changing its vector to a preventive one, specifically in terms of monitoring public procurement |

**Source:** Transparency International (2023)

When identifying tools to improve the level of anti-corruption in Ukraine, it is necessary to consider internal and external factors of Ukraine that affect the social order, as well as positive and negative results of previously used tools. External control by international partners directly affects the effectiveness of the fight against corruption in Ukraine. Despite a fairly large body of research and analytical materials, including those discussed in this study, the issue of combating corruption stays relevant. The effectiveness of international legal instruments to combat corruption in Ukraine requires special attention.

The analysis of modern scientific research on the issues covered in this study confirms the conclusions and recommendations made and encourages discussion. O.H. Melnyk (2021) notes that the effective fight against corruption in Ukraine is based on several fundamental principles. These include the political will to implement anti-corruption measures, compliance with international regulatory documents, the existence and continuous improvement of clear anti-corruption legislation, effective operation of all responsible institutions, transparency and accountability of public authorities, and clear rules of financial control. While these measures are not universal, they point to opportunities for considerable improvement in Ukraine's anti-corruption system. Notably, there is no single way to fight corruption, and therefore it is necessary to develop one's own way, accommodating local realities, foreign practices, and developing civic awareness, which contributes to changes in the perception of corruption and improves the transparency and accountability of public institutions in the provision of services.

The authors of this study agree with the conclusions drawn by A. Bowra *et al.* (2022), who emphasise the need to adopt comprehensive and effective anti-corruption strategies developed based on monitoring and evaluation of the activities of international organisations in the field of anti-corruption. F. Ceschel *et al.* (2022) also noted the need to consider the specific features of each state when developing anti-corruption strategies. V. Topchii *et al.* (2021) conclude that measures taken by individual states to combat corruption may have short-term effects. That is why the researchers' position is to unite the efforts of states through the adoption of international treaties and recommendations that should underlie an effective mechanism for monitoring corruption. J. Barafi *et al.* (2022) also emphasise the increased role of international and local monitoring agencies. In other words, monitoring and evaluation of the activities of public authorities in this area should be the basis for the introduction of international anti-corruption instruments in each state.

Supporting L. Hbur's (2020) position on interpreting corruption as a socially determined phenomenon, we can agree with the researcher's areas of anti-corruption public policy: improvement of current legislation; comprehensive use of positive foreign practices in combating corruption; involvement of the general public and public institutions in anti-corruption programmes; application of measures to improve preventive activities in the field of corruption. However, such areas are rather forms of implementation of the international anti-corruption instruments introduced by the national authorities.

M. Kirzhetska & Yu. Kirzhetskyy (2023) investigated the tools for counteracting illegal economic processes in Ukraine, concluding that the factor that affects the overcoming of shadow imports is not the level of wages of employees, but the level of integrity of civil servants of the State Customs Service, for example. This opinion coincides with the thesis that

lenient attitude towards corruption in the government and society of Ukraine is a factor that influences the effectiveness of the fight against it and is a problem that should be eradicated. Therewith, it is worth agreeing with the opinion of R. Subačienė *et al.* (2023), who propose that anti-corruption measures include training of employees of enterprises, institutions, and organisations on anti-corruption issues, supplementing the thesis with the need to train civil servants. Training in the basics of preventing and combating corruption can encourage Ukrainian citizens to have a virtuous attitude towards their official duties, to fulfil their tasks, and to apply countermeasures in their everyday lives. I. Nalyvaiko & R.W. McGee (2023) and R. Subačienė *et al.* (2023) emphasise the significance of interaction between the state, civil society, and business to ensure sustainable social development, and thus free from the impact of corruption.

The research results presented in this study confirmed the position of B. Lohvynenko *et al.* (2022) on the effectiveness of the use of electronic systems and tools for combating corruption, which has been practically implemented in Ukraine on the example of public procurement. The tool minimises the possibility of corrupt influence in various areas, which can also be called a means of controlling integrity in various sectors of the economy. I. Adama & M. Fazekas (2021) find it debatable that information and communication technologies are a positive tool for making governments more transparent, accountable, and less corrupt. The researchers note the positive impact of information and communication technologies on the level of fighting corruption, but such technologies can also provide new opportunities for corruption through the dark web, cryptocurrencies, or the misuse of technologies such as centralised databases.

B. Olmos Giupponi & H.L. Yu (2022) consider the gaps in the international investment arbitration regime as a tool for combating corruption. The researchers identify two broad strategies for addressing the issue of liability for corruption. The first strategy involves reorganising the existing international investment arbitration regime. The second strategy envisages the creation of an institute of specialised international criminal investigators who will work in tandem with special anti-corruption courts that will hear criminal complaints. Ukraine's path in the fight against corruption involves development according to the second scenario, as Ukraine has ratified the Anti-Corruption Protocol to the UN Convention against Corruption[1], which makes provision for the obligation to introduce specialised international criminal investigators and specialised anti-corruption courts in the country. Such tools will contribute to the effectiveness of the fight against corruption and improve the perception of corruption in Ukraine.

The position expressed by O.A. Uliutina (2021) on the withdrawal of the Specialised Anti-Corruption Prosecutor's Office from the subordination of the Prosecutor General's Office of Ukraine can be considered debatable, since the creation of the institution has already had a positive impact on the effectiveness of combating corruption. The analysis of the study conducted by L. Marchuk & V. Yakovlev (2023) proves the relevance of applying the international anti-corruption instruments identified in the present study under martial law, as the need to regulate and stabilise the financial system of regions and the state as a whole was confirmed.

## Conclusions

Having analysed the provisions of various types of regulations and literature and having investigated the opinions of scholars who have addressed the issue of the effectiveness of international legal instruments for combating corruption in Ukraine, the authors of this study concluded that the purpose of the study was fulfilled.

The international legal instruments for fighting corruption introduced in Ukraine (Prozorro, eHealth, Spending) meet modern requirements and are a manifestation of e-governance. It is the electronic format of public services and financial transactions by public authorities that ensures the implementation of the principle of openness of the state and enables public control over the finances of the state and its officials. The effectiveness of international legal instruments for combating corruption in Ukraine depends on their types and intensity of application. The analysis of the level of perception of corruption in Ukraine over the past 24 years has led the authors of this study to conclude that the introduced anti-corruption instruments are directly proportional to the level of its perception.

The tools used at this stage of development of Ukrainian society are effective, as the corruption perception index in Ukraine is gradually increasing. Guided by the path of European countries towards EU membership, and considering the dynamics of the corruption perception index in these countries, it is predicted that Ukraine will achieve the due level of corruption perception that will allow it to become a member of the European Union in the near future (two to three years).

However, an analysis of the activities of certain state bodies suggests that the measures taken are insufficient and that further transformational processes in Ukrainian civil society are needed to combat corruption. The author highlights the problems that prevent the introduction of certain effective mechanisms for

[1] Criminal Law Convention on Corruption. (1999, January). Retrieved from https://rm.coe.int/168007f3f5.

combating corruption: the armed conflict in Ukraine; conventionally lenient attitude towards corruption in the government and society of Ukraine; gaps in the regulatory framework of anti-corruption legislation; fragmented application of the proposed anti-corruption instruments; and Ukraine's failure to fully perform its obligations to the international community.

The key areas for further research on the effectiveness of international legal instruments to combat corruption include the development of new and improvement of existing means of combating this phenomenon. The identification and elimination of gaps in international and national anti-corruption legislation by providing concrete practical recommendations is also worthy of academic attention. Furthermore, it is worth emphasising the need for researchers to develop the reform of financial and budgetary control bodies.

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## Conflict of Interest

The authors of this study declare no conflict of interest.

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# Ефективність міжнародних правових інструментів боротьби з корупцією

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■ **Анотація.** Актуальність статті обґрунтована необхідністю імплементації міжнародних практик протидії виявам корупції, підвищення ефективності оперування правовими механізмами й інструментами боротьби з корупцією в усіх сферах життєдіяльності держави. Метою статті є комплексне дослідження ефективності міжнародних правових інструментів боротьби з корупцією в Україні. Для досягнення поставленої мети виникла потреба виконати завдання, що стосуються визначення міжнародно-правових інструментів боротьби з корупцією; дослідження способів оцінювання рівня сприйняття корупції у світі; з'ясування прогресу боротьби з корупцією в Україні; визначення проблем, які перешкоджають підвищенню індексу сприйняття корупції в Україні; розроблення інструментів підвищення рівня боротьби з корупцією в Україні. Принципи діалектики були основою методологічної конструкції дослідження, яка охоплювала такі загальнонаукові та спеціально-юридичні методи дослідження, як порівняльно-правовий, формально-юридичний, аналізу й синтезу. На основі аналізу вторинних джерел було встановлено важливість аналізу та класифікації визначення міжнародно-правових інструментів боротьби з корупцією і способів оцінювання рівня сприйняття корупції у світі. Аналіз статистичних даних і соціологічних досліджень дав змогу встановити прогрес боротьби з корупцією в Україні, що знайшов своє вираження в конкретних даних моніторингу рівня сприйняття корупції в Україні. Було акцентовано на системному підході до виявлення проблем, які стоять на заваді підвищенню індексу сприйняття корупції в Україні. За допомогою порівняльно-правового методу було зіставлено положення українського й міжнародного законодавства, що безпосередньо стосуються питань протидії корупції та її виявам. Сформульовано висновки наукової роботи, на підставі яких запропоновано конкретні інструменти підвищення рівня боротьби з корупцією в Україні шляхом удосконалення діяльності державних структур. У процесі вивчення порушеного питання використано та проаналізовано відповідні наукові праці українських і зарубіжних дослідників. Практичне значення здійсненого дослідження полягає в можливості використання цих висновків у діяльності державних органів України, з огляду на оцінку міжнародних експертів результативності вже застосованих інструментів протидії корупції

■ **Ключові слова:** міжнародні норми; заходи протидії корупції; індекс сприйняття корупції; рекомендації; реформування

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# Disarmament of civilians after war: International standards and national legislation

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■ **Abstract.** In the 21st century, the human need for self-defence, protection of relatives and property has raised the issue of regulatory legalisation of conventional weapons, and their disproportionate concentration in the hands of Ukrainian citizens as a result of military and political events to the real threats to post-war peace will require effective mechanisms of prohibitions and restrictions without violating the right to life. The purpose of this study was to design a model of national security in the field of use, development, accumulation, and proliferation of concrete types of conventional weapons in a special period. To fulfil this purpose, the study employed the methods of content analysis combined with heuristic search, empirical analysis, mathematical percentage ratio, and concrete analogy. It was found that the mechanisms of civilian disarmament in the modern world are directly related to the introduction of legalisation or prohibition of conventional weapons and ammunition for the civilian population. The geopolitical challenges of the 21st century have revealed the unpreparedness of national systems to ensure the right to life in times of armed aggression and civil wars. The weakening of the influence of international organisations and their regulations has increased the significance of national legislation in shaping global security. The study analysed the definition of the term "weapon" in the current legislation of Ukraine and the relevant EU Directive. It was concluded on the necessity of adopting a special law on weapons at the national level. The terminological consistency with international standards of the Draft Law of Ukraine No. 5708 of 25 June 2021, adopted by the Verkhovna Rada of Ukraine on 23 February 2022 as a basis for the law, was stated. The study outlined the areas of implementation of the mechanism of prohibitions or restrictions on the use, development, accumulation, and proliferation of concrete types of conventional weapons during a special period, namely: formation of national legislation, creation of powerful police units, and implementation of international mini-disarmament programmes. The practical significance of this study is that its findings can be used in international and national lawmaking, development of mechanisms for preparing the country for the transition from martial law during the period of rebuilding peace

■ **Keywords:** firearms; armed conflict; arms trafficking; security; martial law; human rights; ratification; demilitarisatio

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## Introduction

In the context of Russia's armed aggression, Ukraine has been forced to become a centre of arms accumulation, and therefore the ratification of international standards for limiting and controlling arms trafficking, which has not been remarkably successful in peacetime, is a necessary step in the post-war reconstruction of the state. Building a moderate disarmament strategy will help prevent a new wave of internal armed conflicts and further the success of European integration processes.

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW)[1] defines civilian disarmament as the introduction of prohibitions or restrictions on the use, production, stockpiling, and distribution of certain conventional weapons. Strict and effective international control is an essential element of this system. Even though the issue of the type of legal acts with legal force that will establish the disarmament mechanism in the post-war period and the introduction of relevant prohibitions or restrictions on arms trafficking that meet European and international standards is not the only one in an endless list of terminological clarifications and ethical considerations, the implementation of control functions by the state and the international community in this process lacks a single conceptual approach.

Pointing to the moderation of numerous countries in acceding to and ratifying international treaties regulating or prohibiting weapons, J. Karlas (2023) identifies the danger of the environment and security costs as the reasons for such a policy as a consequence of the implementation of international standards in national legislation. D. Borsani (2023) believes that the focus of the disarmament process should be on state control of civilian industries that can potentially be transformed to meet military needs. Z. Elzarov (2022) sees the implementation of the civilian disarmament programme in the coordinated work of the country's political forces and security sector reform. V. Litoshko (2022) associates the possibility of legislative regulation of issues in the post-war period with the legalisation of firearms for civilians and bringing draft national legislation in line with the provisions of Directive (EU) 2021/555[2]. According to A.O. Kravchenko & O.G. Strelchenko (2023), strict control of weapons and their owners by the MIA and NPU bodies (units), as well as improvement of the permitting process, will help strengthen Ukraine's security system to further counter military threats.

In developing new conceptual provisions for the disarmament of civilians and its national legal regulation, A. Shevchuk & O. Bodnaruk (2023) propose to follow the international practice of countries that, for certain reasons, have introduced full legalisation of weapons in their territories. Cultural and social factors (Bogus, 2023) led the United States to prescribe the right of civilians to keep and bear arms in the Second Amendment to the Constitution of the United States[3]. The commercial production and export of small arms around the world is the reason for an amendment to the Czech Constitution[4] in 2021. The legal norm on the possession and use of weapons is justified primarily by the right of a person to self-defence and protection of others in a situation where weapons are easily accessible in the state and the number of law enforcement agencies does not ensure proportionality of their provision of police services to the civilian population. The concentration of numerous illegal weapons left in the territory of the Republic of Estonia during the Second World War led to the adoption of laws on weapons possession by the country's authorities in 1991 and 2001. The contrast in crime statistics in countries with legalised and unlawful civilian arms rights, as pointed out by N. Shcherbyna (2023), is an indicator of the effectiveness of the liberal approach related to the codification of the right of civilians to protect their lives, the lives of family members, and personal property in preventing offences.

It is impossible to ensure strict control over the storage, movement, and destruction of weapons without registering them and their owners. Ukrainian society is now ready to implement European provisions on the legalisation of conventional weapons and the positive practices of foreign countries as a further step in disarming the civilian population after the war.

The purpose of this study was to highlight the provisions of international standards that will be effective for implementation in national legislation with

[1] Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (with Protocols I, II and III). (1980, October). Retrieved from https://zakon.rada.gov.ua/laws/show/en/995_266?lang=uk#Text.

[2] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555.

[3] Constitution of the United States. (1791, May). Retrieved from https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm.

[4] Constitution of the Czech Republic. (1992, December). Retrieved from https://www.psp.cz/en/docs/laws/1993/1.html#:~:text=CHAPTER%20ONE%20%2D%20Fundamental%20Provisions&text=(1)%20The%20Czech%20Republic%20is,its%20obligations%20under%20international%20law.

an aim to disarming civilians after the war, to formulate the conceptual foundations of the mechanism of state regulation of prohibitions or restrictions on the use, production, stockpiling, and proliferation of concrete types of conventional weapons, considering the practices of foreign countries, and to outline the prospects for further research and discussion in this area.

The originality of the presented study lies in the empirical substantiation of the shift in priorities in shaping global security policy in the 21st century from international standards to national legislation; identification of the determinants of implementation of the practices of foreign countries in terms of legalisation of the right of a person to own firearms; development of a system of measures aimed at optimising the mechanism of state regulation of the use, production, accumulation, and distribution of concrete types of weapons.

## Materials and Methods

The disarmament of civilians as a field of research is characterised by the lack of methodological approaches. This is primarily explained by the continuing effectiveness of international standards adopted in the mid-20th century and the irrelevance of scientific developments due to the lack of active geopolitical events. National lawmaking movements related to attempts to legalise weapons in the early 21st century led to the emergence of special laws in some foreign countries. The reasons for this effect had cultural, social, political, or economic grounds. Considering that none of the above factors was a lever in the codification of the right to life in Ukrainian public life before the full-scale invasion of Russia, the resource of national legislation in this area was limited to the Constitution, the model document, and subordinate acts in the field of the permitting system. The factor of armed aggression requires balanced steps in strategic planning for future peacebuilding. This and the existence of foreign practices in disarmament led to the investigation of the norms of the current national legislation, draft regulations adopted as a basis for the law, international standards for the regulation of security, and the practice of disarmament in the world community.

This study put forward the following hypothesis: if the terminology of national legislation that can be used to conduct civilian disarmament processes is consistent with the terminology of international standards, the practices of foreign countries can be applied to national practice without adopting special laws related to the implementation of prohibitions or restrictions on arms trafficking. Otherwise, an effective process of civilian disarmament requires the adoption of a special law and the development of effective mechanisms.

To confirm or refute the propositions put forward, the methods of content analysis in combination with heuristic search, empirical analysis, mathematical percentage ratio, and concrete analogy were employed. The method of content analysis combined with heuristic search was used to build categorical structures of terminological units related to the term "weapon" used by current legislation and international standards. The method of empirical analysis was applied to the identified structural elements of categorical terminology systems classifying weapons, devices, and ammunition in European norms and provisions of national lawmaking. The method of mathematical percentage ratio made it possible to trace the distribution and compare the units of terminology of national draft laws (on the example of the Draft Law of Ukraine No. 5708 dated 25 June 2021[1]) and international standards (on the example of Directive (EU) 2021/555[2]). The method of concrete analogy was used to formulate the conceptual foundations of the mechanism of state regulation of prohibitions or restrictions on the use, production, accumulation, and proliferation of concrete types of conventional weapons.

The findings of this study should reveal a shift in the priorities of world politics in shaping security in the 21st century from international standards to national legislation; identify the determinants of implementing the practices of foreign countries in terms of legalising the right of a person to own firearms; and highlight measures that optimise the mechanism of state regulation of the use, production, accumulation, and proliferation of concrete types of weapons after the war.

## Results and Discussion

To understand the challenges Ukraine will face on this path, the practices of countries that experienced post-war socio-political development and, for some reason, ignored the legal regulation of prohibitions or restrictions on the use, production, stockpiling, and proliferation of certain types of conventional weapons for the civilian population or were forced to take effective disarmament measures under pressure from international obligations will help. Weapons left behind by the US military during their withdrawal from the Islamic Emirate of Afghanistan have fallen into the hands of militants in Kashmir who have been trying to use them to resolve the conflict in the disputed South Asian region. The government of the Republic of South Sudan's radical solution to the problem of

[1] Draft Law on the Right to Civilian Firearms. (2021, June). Retrieved from: https://itd.rada.gov.ua/billInfo/Bills/Card/27190.
[2] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555.

civilian disarmament has led to new paramilitary uprisings, civilian deaths, and an increase in the number of victims of violence and ill-treatment by regular troops. The mass shooting of civilians in the Republic of Serbia forced the government to review the legal framework and increase liability for violations of the firearms licensing system. The Potsdam Declaration[1] obliged the Japanese state to disarm and demilitarise after losing World War II, and therefore it took effective measures to collect, destroy weapons, ammunition, and dismantle military facilities. Clearly, the problem of disarming the civilian population will face Ukrainian society and the Russian Federation in the near future, and therefore the subject under study is relevant and requires scientific discussion given the unstoppable steps that Ukraine is taking to overcome obstacles on the way towards global recognition as a peaceful state capable of repelling the aggressor if necessary.

The issues raised in the present study are related to the search of the Ukrainian and international scientific community for legal regulation of military disarmament, legalisation of conventional weapons that can cause excessive damage or have indiscriminate effects, and bans on the proliferation of weapons of mass destruction of various types, including bacteriological (biological), toxic, psychotropic, and nuclear weapons. Scientific studies by Ukrainian researchers, which present a comparative analysis of international standards and provisions of European legislation in the field of arms trafficking, are mostly focused on the issue of legalisation or complete prohibition of firearms for civilians. Citing numerous examples of countries that have made additional amendments to their constitutions or have special regulations, the researchers leave the decision to introduce such mechanisms to the discretion of officials (Bakhchev, 2022; Shevchuk & Bodnaruk, 2023). The legislative branch continues to work on draft legislation, creating new options. As of 2021, the official website of the Parliament of Ukraine has published the texts of three draft laws on the circulation of civilian weapons and ammunition, namely: No. 4335 dated 06 November 2020[2], No. 5708-1[3] dated 13 July 2021, and No. 5708[4] dated 25 June 2021. Verkhovna Rada of Ukraine rejected the first two.

N. Shcherbyna (2022) identifies discussions around the terminological definition of the term "weapon", inaccuracies in the classification of weapons, requirements for entities that can be or are owners of weapons, as the main reason for the adoption of a special national law regulating the manufacture, acquisition, storage, registration, transportation, use, and possession of firearms.

The monitoring of legislative terminology on the official web portal of the Verkhovna Rada of Ukraine revealed 65 interpretations related to the term "weapon". As prescribed in the model document and sub-legislative acts, the principal categories they cover relate to the general definition of the term "weapon" – 9% (6 legal provisions), its purpose/origin – 20% (13 legal provisions), classification by type – 68% (44 terminological clarifications)- others, unrelated to the categories listed above – 3% (2 legal provisions). In the texts of international legal acts, such terminology is not specific to the interpretation or has a small share in the terminological system of normatively accepted definitions. The distribution of the elements of the terminology system in national and international (European) legislation is presented in Figure 1.

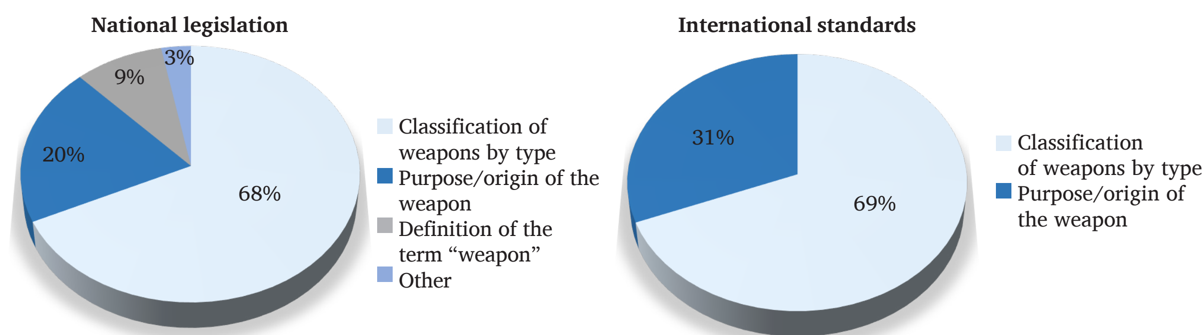


**Figure 1.** Terminological breakdown of the term "weapon" in the current national legislation and international standards
**Source:** compiled by the authors of this study

[1] Potsdam Declaration. (1945, July). Retrieved from https://www.ndl.go.jp/constitution/e/etc/c06.html.
[2] Draft Law of Ukraine No. 4335 "On the Circulation of Civilian Firearms and Ammunition". (2020, November). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/4535.
[3] Draft Law of Ukraine No. 5708-1 "On the Right to Self-Defence and Ownership of Civilian Firearms". (2021, July). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/27343.
[4] Draft Law of Ukraine No. 5708 "On the Right to Civilian Firearms". (2021, June). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/27190.

The graphic material in Figure 1 shows that the definition of "weapon" in national legislation has a prominent place in the terminological content in this area. International standards focus mainly on explaining the classification of weapons (13 explanations). The content of the latter, compared to the analogous content of Ukrainian legislation, has a specific, but not significant weight of 31% (4 terminological units) in Directive (EU) 2021/555[1] against 20% (13 terminological units) in the legal framework of Ukraine. The disproportionality of the categorical fields of terminological units means that the current national legal regulation lacks transformational elements that allow Ukraine to influence the development of international experience and/or implement the EU regulatory mechanisms in an integrated manner without substantial revision.

The Draft Law of Ukraine No. 5708 dated 25 June 2021[2], which as of 2024 is adopted by the Parliament as a basis for the law and should regulate "public relations in the field of exercising the right of citizens and legal entities in Ukraine to civilian firearms, ammunition, as well as products structurally similar to weapons and ammunition, defines the legal regime of ownership of civilian firearms, establishes the basic rights and obligations of individuals and legal entities regarding the production, acquisition, possession, alienation, carrying, transportation, repair, and use of civilian firearms and ammunition, as well as other social relations directly related to this, including according to Ukraine's international obligations"[3], bases the categorical distribution of the structural elements of the terminology system on international standards. At the same time, it reflects well-established national practice. In the system, which includes 66 terminological units, the term "weapon" is defined through a single permissible interpretation and the construction of a chain of terms that exhaustively clarify its understanding. Factually, in the Draft Law of Ukraine No. 5708 dated 25 June 2021[4], the basis is successfully outlined, thanks to which the rest of the constructed categorical structural components proportionally follow the categorical apparatus of Directive (EU) 2021/555[5]. A comparison of the distribution of categories of the "weapon" terminology in national legislation and the European standard is presented in Figure 2.

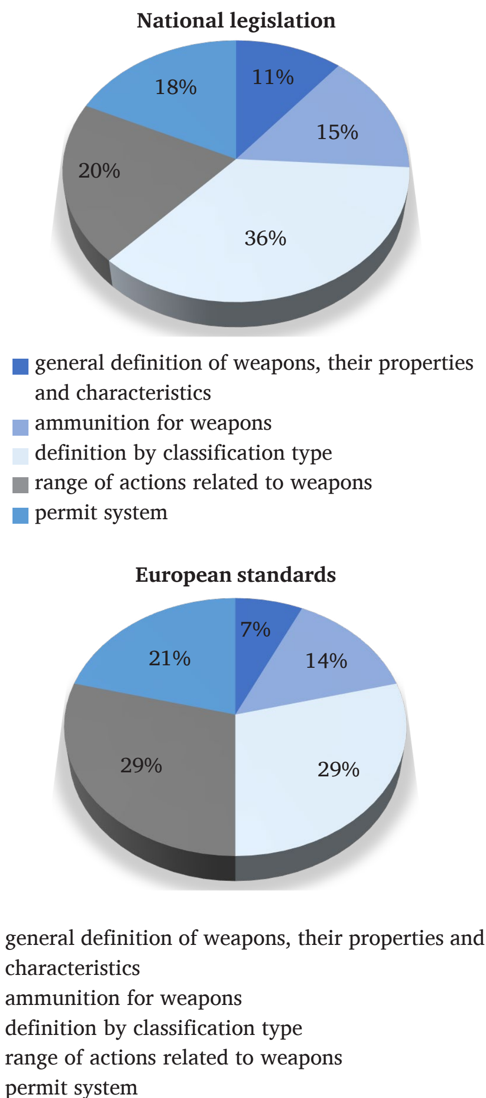


**Figure 2**. Distribution of categories of the "weapon" terminology in national legislation and the European standard

**Sources**: Draft Law of Ukraine No. 5708 dated 25 June 2021[6] and Directive (EU) 2021/555[7]

The graphic material presented in Figure 2 suggests that for European standards and national legislation, unlike international norms, the interpretation of the general category of "weapon" is a mandatory element. The list of definitions of Directive (EU)

[1] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555.
[2] Draft Law of Ukraine No. 5708 "On the Right to Civilian Firearms". (2021, June). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/27190.
[3] Ibidem, 2021.
[4] Ibidem, 2021.
[5] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555.
[6] Draft Law of Ukraine No. 5708 "On the Right to Civilian Firearms". (2021, June). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/27190.
[7] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555.

2021/555[1] has 1 terminological unit "weapon" (7% of the terminology base). The Draft Law of Ukraine No. 5708 dated 25 June 2021[2] presents a terminological system containing 7 terminological units (11% of the definitions and concepts used). The terminology of national lawmaking mostly follows the categorical groups of European standards. Specifically, this applies to legal provisions that clarify the concepts of different types of ammunition, species classifications, and the permit system itself. Cultural and social Ukrainian factors have affected the implementation of the categorical group "circle of persons involved in arms-related activities" presented in Directive (EU) 2021/555[3] by 4 terms (29% of definitions). In the Draft Law of Ukraine No. 5708 dated 25 June 2021[4], 13 terms (20% of the definitions and concepts used) are interpreted as a list of actions that can be taken with regard to weapons. Directive (EU) 2021/555[5] and the act adopted by the Verkhovna Rada of Ukraine as a basis for the law have a proportional ratio of elements. At the same time, the quantitative predominance of terminological units for each group indicated in Figure 2 is recorded in favour of national legislation. For comparison, here are examples of the category "ammunition for weapons", in which 2 terms (14%) and 10 terms (15%) are represented in European standards in the Draft Law of Ukraine No. 5708 dated 25 June 2021[6], "definition by classification type" – the respective figures are 4 terms (29%) and 24 terms (36%) – and "permit system" with 3 normatively prescribed terms (21%) for Directive (EU) 2021/555[7] and 12 terms (18%) for national legislation.

The content of the terminological units included in the terminology systems for the classification of weapons, devices, and ammunition (Table 1) suggests that the national draft law has incorporated the terminological basis of European norms.

**Table 1.** Structural elements of categorical terminology systems that classify weapons as devices and ammunition

| European standards | National lawmaking | European standards | National lawmaking |
|---|---|---|---|
| firearms* | automatic firearms | Ammunition* | ammunition* |
| – | firearms* | – | additional equipment for weapons |
| – | smooth-bore firearms | – | components of ammunition |
| – | smooth-bore short-barrelled firearms (traumatic) | – | cartridge |
| – | long-barrelled (long) firearms | – | Flobert cartridge |
| – | short-barrelled (short) firearms | – | – |
| – | combined firearms | – | – |
| – | semi-automatic firearms | – | – |
| – | rifled firearms | – | – |
| – | revolver | – | civilian firearms and ammunition |
| – | antique firearms | – | gas cartridge |
| alarm and signalling weapons* | prop weapons | – | light and sound cartridge (signal cartridge) |
| – | neutralised weapons (mock-ups, mass-dimensional mock-ups, cutaway weapons) | – | traumatic action cartridge |
| – | gas pistols and revolvers | – | night vision sight |
| – | pneumatic weapons | – | blank cartridge |
| – | signal firing devices* | – | – |
| – | civilian firearms and ammunition | – | – |

[1] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555
[2] Draft Law of Ukraine No. 5708 "On the Right to Civilian Firearms". (2021, June). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/27190.
[3] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555
[4] Draft Law of Ukraine No. 5708 "On the Right to Civilian Firearms". (2021, June). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/27190.
[5] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555.
[6] Draft Law of Ukraine No. 5708 "On the Right to Civilian Firearms". (2021, June). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/27190.
[7] Directive of the European Parliament and of the Council No. (EU) 2021/555 "On Control of the Acquisition and Possession of Weapons (Codification)". (2021, March). Retrieved from https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32021L0555.

*Table 1. Continued*

| European standards | National lawmaking | European standards | National lawmaking |
|---|---|---|---|
| salute and acoustic weapons* | devices for sound or light signalling* | – | – |
| disabled firearms | cutaway weapons | – | – |
| – | objects that imitate firearms or pneumatic weapons | – | – |
| – | honorary weapons | – | – |
| – | unloaded weapons | – | – |
| – | products that are structurally similar to weapons | – | – |

**Note**: the symbol (*) indicates terms that have common regulatory frameworks at the international and national levels
**Source**: compiled by the authors of this study

Apart from the fact that the terminological system of national lawmaking related to the term "weapons" has many structural elements, its components are intricately linked to the terminology of European legislation focused on the mechanisms of legal regulation of the global security system and harmonisation of national legislation. The legal principles and further support of the state policy in the field of arms trafficking is determined by national security. At the individual level, its constituent elements are personal integrity and personal security of citizens (Dikhtiievskyi, 2022). Within the framework of this study, it is necessary to discuss the category of citizens who, according to international standards and national legislation, acquire the status of civilians in the context of armed aggression and in the post-war period.

A person's belonging to the "civilian population" is statutorily prescribed through the explanation of prisoners of war[1] and combatants[2]. While the international standard defines the status of a civilian or a person's affiliation with the civilian population as a permanent, unchanging category, the addition of transitional features to the national legislation factually indicates that direct involvement in hostilities in certain cases and during a certain period is not considered to be the acquisition of combatant status. Clearly, by "individual cases" and "individual period" the legislators mean the conditions of violation of human rights and freedoms constitutionally guaranteed by the state and international humanitarian law.

Violation of rights and freedoms gives rise to the right of a civilian to protect their life as a reaction to the inability of the state to fully perform law enforcement functions in the context of war or armed aggression (Poshyvaniuk, 2023). The legal regime of martial law introduced in Ukraine has given state bodies special powers to ensure national security and repel armed aggression by the Russian Federation and has exacerbated the problem of ensuring the rights of citizens to personal integrity (Dikhtiievskyi, 2022). The right to life as a social value is a necessary condition for the existence of other human rights. Directly related to the development of society, the state, legal awareness of citizens, and their mutual respect, it is guaranteed and protected not only by national legislation, but also by international legal acts, specifically, the Universal Declaration of Human Rights of 1948[3], the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950[4], the International Covenant on Civil and Political Rights of 1966[5], the Convention on the Rights of the Child of 1989[6]. Ye.A. Horduna (2023) attributes the absence of a single definition of the "right to life" to its complexity and multifunctionality for scientific research.

O. Pokhyl (2021) considers the right to protection of life in the context of armed aggression to be a guarantee of the exercise of human and civil rights and freedoms. The effectiveness of its provision by the state is determined at the instrumental and substantive levels. The instrumental level is based on the understanding of this category as a guarantee of the existing list of human rights and freedoms. Substantive – based on the perception of it as an independent human right that should be ensured by institutional and regulatory means. The achievement of certain benefits is the state's exercise of the right to protect the

[1] Geneva Convention Relative to the Treatment of Prisoners of War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_153#Text.
[2] Ibidem, 1949.
[3] The Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/en/995_015?lang=uk#Text.
[4] The Convention for the Protection of Human Rights and Fundamental Freedom. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.
[5] The International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text.
[6] The Convention on the Rights of the Child. (1989, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_021#Text.

life of a citizen, but its own violation for the achievement of such benefits is unacceptable (Pokhyl, 2021).

The development of new approaches to the formation and provision of the foundations of the legal protection mechanism requires considering the specifics of political, economic, and social life as the major priority areas in public policy. The situation in Ukraine has affected the functioning of the global arms market and revealed the complete unpreparedness of its actors for such a surge in demand (Tkach & Gerlakh, 2023). The geopolitical challenge of the 21st century has exposed the shortcomings of the global security system, forcing the international community to consolidate its efforts and respond immediately, radically changing the chain between suppliers and recipients. In the current geopolitical situation, co-operation between producers of crude oil, after its reserves have been depleted, is a top priority. For Ukraine, the ability to manufacture better quality products at a reasonable price, exchange or obtain new technologies, and develop products that have no global analogues is not just about corporate development of foreign countries and foreign companies, or the results of establishing partnerships in the arms trade. This is the principal condition for its survival thanks to the external saturation of the defence industry. The active phase of Ukraine's armed conflict is clearly playing a catalytic role in positive changes in innovation and technological advance. Geopolitical tensions are shifting the "centres of power" (Tkach & Gerlakh, 2023), determining the degree of influence of the state in the security sector on the global arms market and demanding the right to provide national security. A substantial increase in administrative legal obligations, restrictions, and prohibitions, combined with additional legal grounds for subjective determination for concrete legal relations with minimal context (Onishchenko *et al.*, 2023), artificially creates a situation where public administration must simultaneously follow the constitutional order and the national order based on it in peacetime, as well as be proportionate to real threats to national security and defence.

The implementation of regulatory support in the post-war peaceful period should follow the principles of building a legal and social state. According to N. Onishchenko *et al.* (2023), the principal areas in which law should be implemented at this time are a concrete functional focus to ensure the sustainability of regulation of social relations, general recognition of international principles of a universal nature, and adaptation of national legislation to the legal space of the European Union. Effective implementation of legal regulation in these areas will ensure security, restore law and order during the emergency period, and optimise the state's return to normal peaceful life with full respect for the rights and freedoms of citizens.

In this context, the functions and tasks of public authorities, the Armed Forces of Ukraine, law enforcement agencies, executive authorities, and local self-government bodies to ensure control over the manufacture, acquisition, storage, registration, transportation, use, and possession of firearms are of particular importance. The legal framework for the activities of human rights actors here is the Constitution of Ukraine[1], special legislation of Ukraine and systemic decisions of the President of Ukraine, the Cabinet of Ministers of Ukraine, the military command, executive authorities, military administration, and local self-government bodies (Dikhtiievskyi, 2022). The latter, aiming to create appropriate conditions for the exercise of rights and freedoms, protection of citizens' interests under martial law, form general social guarantees for the post-war period, which is a potential asset for the international community in disarming the country's civilian population after the war.

K. Bakhchev (2022) sees the main range of powers of state executive bodies in the implementation of law enforcement functions in the post-war period in the performance of tasks to prevent offences in the field of firearms trafficking. To this end, it is suitable to take measures for the voluntary surrender of weapons, introduce rewards for information useful to national law enforcement agencies, carry out preventive work with demobilised persons and persons prone to committing offences on an individual level, and develop interactive firearms registration databases. According to K. Bakhchev, the most effective for modern conditions and the post-war period is the practice of military management aimed at identifying persons belonging to sabotage groups, stimulating the surrender of prohibited or restricted weapons, production, accumulation, and distribution of weapons or ammunition for a reward.

Analysing the state's policy on civilian disarmament in the Kingdom of Spain after the war in 1917-1923, A.C. Cañiz (2023) points out that insufficient state funding, the absence of a parallel private or political force capable of competing with the royal power, difficulties in reforming the national police units while expanding the administrative and repressive apparatus of the monarchy contributed to the fact that the accumulation of illegal weapons by the civilian population in large quantities was not perceived as a threat to the stability of the Bourbon restoration regime. Having been empowered by the state to protect public order and security, the armed working class transformed into a potentially subversive force that helped the Kingdom of Spain to endure elevated levels of gun violence in the interwar period and

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254к/96-вр?lang=uk#Text.

forced it to develop structured forms of gun control. According to A.C. Cañiz (2023), the developed legislative framework was far ahead of its time. However, it was an effective tool that allowed disarming and rearming the population by legal and illegal means.

In the Republic of Italy, the legal regulation of the disarmament process in the post-war period in 1944-1946 was based on borrowed provisions of the national legislation of the post-war period and contradicted the tasks of ensuring strict state control over the possession and circulation of weapons, which were assigned to the police. The re-establishment of state structures in the form of a centralised, authoritarian administration with strict control over the territory and even stricter firearms legislation, and the intensification of systematic purges, helped to uncover hundreds of thousands of firearms (Aterrano, 2021). In the southern part of the country, weapons left behind or buried by the retreating German army, Allied divisions moving north, and Italian soldiers who deserted after the armistice, or stolen from army caches and found their way into the homes of bandits, former guerrillas, politicians, activists, and civilians were mostly seized. In the northern territories, where the prolonged Nazi occupation spawned a brutal civil war and a powerful resistance movement, there were hidden firearms that the Allies supplied to partisans through the plundering of German and Italian occupation forces or kept by former soldiers and Social Republicans. As a national problem, the seizure of illegal weapons from civilians in the Italian Republic has helped unite all its regions, regardless of the specifics of the liberation.

N. Hultin (2022) considers the formation of internal national arms control under the influence of international efforts and with the support of international organisations to be a specific feature of the disarmament of the civilian population in Africa. For modern societies around the world, the issues of subjects and conditions of ownership of conventional weapons are significant, but its legal regulation is rarely initiated by the national leadership of South African countries. The establishment of control over the possession and trafficking of small arms and light weapons is mainly the result of the efforts of international actors (e.g., the United Nations) and individual states (e.g., the United States of America) concerned about the internal politics of post-conflict countries. Using the example of the Republic of Uganda, P. Kachope (2021) proves the success of international micro-disarmament programmes for the civilian population. The human security approach used in the Karamoja Integrated Disarmament and Development Programme (KIDDP) is a well-coordinated, multi-stakeholder structure that considers the context in which the global problem of the illicit proliferation of small arms and light weapons (SALW) is being addressed.

The disarmament of the civilian population as a direction of state policy implementation is a national-level problem that should be addressed considering the country's role in international relations, historical experience, and traditions of arms production and export, specific features of the development of the national defence industry, etc. Globalisation, which is determined by the integration of states in the political, economic, and cultural spheres of social relations, is a driving force in the modern world that determines the use of measures by the military and political leadership of the state to stabilise and ensure the safe development of civilisation. The complexity of solving this problem, according to I. Semenets-Orlova (2021), requires the world's leading countries to focus more on the development of regional security systems to prevent direct military threats. The stability of the global system, which determines regional security, contributes to the unification of interdependent relations between countries on the world stage.

The effectiveness of measures to prevent illicit arms trafficking is an indicator that allows assessing the state of national security (Dzafarova & Dunaieva, 2023). The complex nature of such measures at the general social, specialised criminological and individual levels, together with social control in society, involvement of the government, bodies with police powers and public activists, facilitates the exercise of law enforcement functions by the state. According to O.I. Yevmieshkin (2023), the vulnerability of the state and the ineffectiveness of measures to prevent and counteract national security threats are indicated by "insufficient efficiency of state bodies, inconsistency, and incompleteness of reforms of the security forces, imperfection of mechanisms of legal, organisational, personnel, financial, logistical support for the development of the national security system". Apart from these, socio-political factors related to cyberattacks by the aggressor country, "destructive foreign and domestic propaganda, attempts by subjects of intelligence and subversive activities to gain access to information constituting state secrets and proprietary information, as well as restricted information, etc." (Yevmieshkin, 2023) should be considered. In modern conditions, the security of society and the state depends on ensuring the right to life (Garcia, 2022; Dikhtiievskyi, 2022). With the help of law, society subjugates the state and makes it function in its favour (Hontar, 2023).

The exercise of the right to protection of life during martial law and in the post-war period depends on the quality of regulatory support, the place of a person in society, which recognises the possibility of safe exercise of rights and freedoms, and the person's confidence in the protection of their vital interests from possible harm. The introduction of adequate organisational means and effective law

enforcement practice is the key to resolving the issue of disarmament of the civilian population, meeting the socially just and progressive needs of citizens and society as a whole.

## Conclusions

Globalisation dimensions and integration intentions dictate current trends in the development of society, influencing the development of the legal idea and the interests of the individual, as well as the idea of their personal inviolability. Successful integration of international experience into national practice influenced the development of legal standards in the 20th century in the use, production, stockpiling, and proliferation of concrete types of weapons. The disproportionate distribution of terminological interpretation between them and national legislation developed in the late 20th and early 21st centuries is causing the international community to shift its focus to state lawmaking. The content of the legal frameworks of the world's leading countries, including the Republic of Croatia, the Republic of Estonia, the Republic of Finland, the United Kingdom of Great Britain and Northern Ireland, the French Republic, the Australian Union, and the Swiss Confederation, has become crucial in shaping the provisions of international (including European) acts on arms trafficking.

The post-war period for Ukraine will require a considerable amount of political, social, and economic resources, as well as the assistance of the international community. The main efforts in civilian disarmament should be focused on the development of national legislation aimed at introducing a mechanism of prohibitions or restrictions on the use, production, stockpiling, and distribution of concrete types of conventional weapons at the state level, creation of powerful units of the National Police capable of providing police services to the population to protect public order and security in a special period, conducting international mini-disarmament programmes considering historical conditions, cultural traditions, and the country's legal system.

The conceptual implementation of prohibitions or restrictions on the use, production, stockpiling, and proliferation of concrete types of conventional weapons at the national level should consider the real possibilities for the exercise of the right to personal integrity of citizens in society and the state, as well as the specific features of the global arms market. The implementation of international standards into Ukrainian legislation does not preclude the creation of interim rules. Specifically, this applies to the CCW in terms of establishing strict and effective control over arms trafficking, Directive (EU) 2021/555 in terms of qualifying weapons and ammunition allowed for purchase and possession by civilians, and the Geneva Convention relative to the Treatment of Prisoners of War in terms of defining the status of a "civilian".

Further research and discussion in this area is needed on the issues of legal regulation of the right to life, ways to overcome armed violence and improve global security.

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## Conflict of Interest

The authors of this study declare no conflict of interest.

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# Роззброєння цивільного населення після війни: міжнародні стандарти й національне законодавство

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■ **Анотація.** Потреба людини в самозахисті, захисті рідних, власного майна у XXI ст. актуалізувала питання нормативно-правової легалізації звичайної зброї, а її непропорційне зосередження в руках українських громадян унаслідок воєнно-політичних подій до реальних загроз післявоєнного миру вимагатиме дієвих механізмів заборон та обмежень поза порушенням права особи на захист життя. Метою статті є проєктування моделі національної безпеки у сфері застосування, розроблення, накопичення та розповсюдження конкретних видів звичайної зброї в особливий період. Для досягнення мети дослідження застосовано методи контент-аналізу, поєднані з евристичним пошуком, емпіричного аналізу, математичного відсоткового співвідношення та конкретної аналогії. Встановлено, що механізми роззброєння цивільного населення в сучасному світі безпосередньо пов'язані з упровадженням легалізації або заборон звичайної зброї та боєприпасів для цивільного населення. Геополітичні виклики XXI ст. виявили неготовність національних систем до забезпечення права на життя під час виникнення збройної агресії та громадянських війн. Послаблення впливу міжнародних організацій та їх нормативно-правових актів посилило значення національних законодавств у формуванні положень світової безпеки. Проаналізовано визначення поняття «зброя» в чинному законодавстві України та відповідній директиві ЄС. Сформульовано висновок про необхідність прийняття на національному рівні спеціального закону про зброю. Констатовано термінологічну узгодженість з міжнародними стандартами проєкту № 5708 від 25 червня 2021 року, прийнятого Верховною Радою України 23 лютого 2022 року за основу закону. Окреслено напрями впровадження механізму заборон або обмежень у застосуванні, розробленні, накопиченні та розповсюдженні конкретних видів звичайної зброї в особливий період, а саме: формування національного законодавства, створення потужних підрозділів поліції, упровадження міжнародних програм мініроззброєння. Практична значущість роботи полягає в тому, що результати дослідження може бути використано в міжнародній та національній законотворчості, розробленні механізмів підготовки країни до переходу з воєнного стану в період миробудівництва

■ **Ключові слова:** вогнепальна зброя; збройний конфлікт; обіг зброї; безпека; воєнний стан; права людини; ратифікація; демілітаризація

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# The latest experience of statutory regulation of lobbying in Europe

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■ **Abstract.** In the 21st century, the number of countries that have developed special regulations in the field of lobbying has almost doubled, which shows that modern elites are interested in regulating lobbying. The purpose of this study was to conduct a comparative analysis of the legal framework regulating lobbying activities in several European countries, namely the UK, Germany, and France. Apart from the general scientific methods of analysis, synthesis, and generalisation, the study employed the method of comparative legal analysis and the method of institutional analysis. Based on a comprehensive literature review, this study highlighted recent research that has contributed to the development of the theoretical framework for the regulation of lobbying. The study provided a critical analysis of various legislative approaches adopted by European countries, assessing their effectiveness in promoting transparency, accountability, and ethical lobbying practices. The study compared the legislative frameworks and outlined the current challenges and opportunities inherent in regulating lobbying. The comparative analysis identified common and distinctive features in each country's approach to lobbying regulation. The UK model focuses on voluntary registration and self-regulation, while Germany's approach reflects a more informal practice with minimal legal requirements. In contrast, France has taken stricter measures, focusing on mandatory registration and public disclosure of lobbying activities. The study summarised the best practices that can be used in the development of lobbying legislation. This study is a contribution to the debate on the role of lobbying in democratic societies. The conclusions offer recommendations that should be followed when preparing new drafts of lobbying regulations or when reforming the current legislation in the relevant area. This study is also of practical significance for European politicians, lobbyists, and civil society specifically. Based on the considered approaches of the UK, Germany, and France, states can identify best practices and adapt them to their unique political, social, and legal contexts

■ **Keywords**: democracy; corruption; interests; transparency; influence; politics; financing

## ■ Introduction

Lobbying groups representing their interests in politics and society are part of democratic political regimes in the UK, Germany, France, Belgium, Ukraine, etc. Lobbying is a widespread and influential practice in the political sphere. It serves as a link between the interests of the public and politicians. Lobbying is a way of persuading or influencing legislators and officials to achieve policy outcomes favourable to certain groups. Considering lobbying's ability to shape legislative and regulatory policy, regulating lobbying is an essential aspect of democratic governance. The modern concept of lobbying, characterised by concerted efforts to influence public policy and legislation, dates to the period of industrialisation and the recognition of democratic rights, which expanded the scope of influence groups and necessitated the development of formal channels for such interaction. Over the past 10-15 years, the number of countries that have developed special lobbying legislation has actually doubled worldwide (Bismuth *et al.*, 2023).

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This applies to countries in Europe, South America, and the Middle East. The complexity of lobbying is growing, which requires a more thorough understanding of this phenomenon.

The regulation of lobbying activities, which forms an integral part of the functioning of democratic societies, is based on a rich theoretical framework. Over the past 5 years, a range of in-depth studies have been conducted on lobbying activities. Such publications include the study by S. Koehler (2019), which provides a thorough analysis of the communication strategies of interest groups in parliamentary political systems and develops a formal model of lobbying in a bicameral parliament with strong party discipline. Under the formal model of lobbying, S. Koehler understands a complex structure that reflects the strategic interaction between interest groups and politicians in the context of political uncertainty. This model provides insights into how information asymmetry, strategic communication, institutional context, and political uncertainty together shape the policy-making process and the outcomes of lobbying efforts. Another solid piece of research is the joint study by R. Chari *et al.* (2019), which innovatively examines how to determine the robustness of lobbying laws in terms of promoting transparency and accountability. Based on the experience of the researchers, who have advised governments around the world, a clear roadmap on how to develop an effective lobbying law is offered. The key provisions of an effective lobbying law include a registration requirement, a clear scope of regulation, a list of information to be disclosed, public online access to information databases on lobbying activities, and sanctions for non-compliance with the law.

Some researchers address the impact of modern challenges on the lobbying process and the consequences of such lobbying. M. Crepaz *et al.* (2022) demonstrates the fierce lobbying competition between different social and economic interests during the COVID-2019 pandemic. A team of social and natural science experts analyses the impact of lobby groups during the pandemic and outlines the consequences of this "viral lobbying". The researchers define viral lobbying as the efforts of non-governmental organisations to influence public debate and policy during the COVID-19 pandemic, covering a wide scope of actors, including NGOs, trade unions, professional associations, think tanks, business associations, and individual firms. Through a comprehensive investigation of viral lobbying, the study elucidates the complexities of representation and the challenges of ensuring balanced and inclusive policies in times of crisis.

The use of modern technologies to improve the effectiveness of lobbying has not been overlooked. K. Taczanowska *et al.* (2023) considered the issue of the considerable influence of social networks and online communities on the decision-making process in states. The study demonstrates considerable differences between the findings obtained through offline (face-to-face) and online (social media) surveys. The researchers emphasise the need for careful planning of online survey distribution channels to ensure representativeness. It also emphasises the usefulness of using multiple survey modes to identify biases, which contributes to more reliable survey results.

The issues of countering Russia's armed aggression against Ukraine and organising assistance to Ukraine have also been the subject of lobbying activities since 2022. A.L. Rueland & N. Rueffin (2024) examine the impact of Russia's invasion of Ukraine on the debate and lobbying processes in the parliaments of the United Kingdom and the Federal Republic of Germany. The researchers conclude that after 24 February 2022, the governments of Germany and the United Kingdom considerably restricted the ability of lobbyists from these countries to engage with Russian representatives.

The purpose of this study was to examine, through a comparative analysis of the legal framework, the specific features of lobbying regulation in different European countries, specifically in the UK, Germany, and France, and to highlight its key role in democratic societies.

## Materials and Methods

The study examined the diversity and effectiveness of regulations, their promotion of transparency, accountability, and fairness in lobbying. The study assessed the legal acts regulating lobbying according to three main criteria:

- transparency: This criterion assesses the extent to which the legal framework requires disclosure of information on lobbying activities, including registration of lobbyists, reporting of lobbying expenditures, and publication of lobbying objectives.
- accountability: This criterion examines the mechanisms in place to ensure that lobbyists and public officials comply with established rules and ethical standards, including codes of conduct and rules on conflicts of interest.
- enforcement: This criterion assesses the effectiveness of enforcement mechanisms, including the powers of regulators, sanctions for non-compliance, and the frequency and thoroughness of inspections and investigations.

The choice of European countries for this study, namely the United Kingdom, Germany, and France, was based on the rich diversity of legal approaches to lobbying regulation. These countries were selected for their diverse political systems, legal traditions, and lobbying cultures. Together, this provides a comprehensive overview of the European lobbying regulatory

landscape. The study of these countries revealed the nuances of each legal system, the problems that arise in law enforcement and compliance, as well as the impact of regulations on the lobbying ecosystem.

The study used the method of comparative legal analysis to examine the lobbying regulation in the UK, Germany, and France. This method has made it possible to effectively identify differences and similarities between different legal systems, which helps to understand the impact of different regulatory approaches on lobbying practices. It also helped to identify best practices and potential areas for reform. To carry out an in-depth analysis of various institutions in the field of lobbying, the study employed the method of institutional analysis. This method helped to identify the roles, competence, and interaction of lobbying actors in the UK, Germany, and France.

The study analysed concrete legal documents regulating lobbying activities in the selected countries. For instance, the 2014 UK Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act[1], the 2021 Law of Germany On the Establishment of a Register of Lobbyists (2021)[2] and the 2016 Law of France Sapin II[3] were key to understanding the legal requirements, registration processes, disclosure obligations, and enforcement mechanisms that are unique to each jurisdiction. The analysis of these acts helped to assess the scope, transparency, accountability, and enforcement criteria of lobbying regulation in each country.

The study used official reports, such as the Audit of Political Engagement (Blackwell *et al.*, 2019) by the Hansard Society, as well as data from organisations such as The Office of the Registrar of Consultant Lobbyists (2024), the German Lobby Register (Lobby register for the representation of interests..., 2024), and the High Authority for Transparency in Public Life in France (The High Authority for..., n.d.). These reports and databases provide insight into the number of registered lobbyists, the frequency of lobbying activities, the level of compliance with the law and the effectiveness of transparency measures.

## Results and Discussion

The impact of lobbying on policy making and governance is multifaceted. On the one hand, lobbying can strengthen democratic governance by promoting informed decision-making and ensuring that politicians are aware of the views and needs of different stakeholders. On the other hand, if not properly regulated, lobbying can lead to the abuse of access to decision-makers, distort policy outcomes in favour of well-resourced interests, and undermine public trust in democratic institutions.

The United Kingdom provides a compelling example of lobbying regulation, characterised by a combination of legislative measures, self-regulation, and the evolution of public expectations. As of 2024, according to The Office of the Registrar of Consultant Lobbyists (The Office of the Registrar..., n.d.), there were more than 4,500 registered lobbyists in the UK. Lobbying regulation in the UK has evolved considerably in recent decades, reflecting wider trends in governance and public accountability. Historically, the UK's approach to lobbying has been largely informal and based on internal rules and self-governance of the lobbying community. However, growing public concern about the transparency and influence of lobbyists on public decision-making has led to calls for more formal regulatory mechanisms (Fisher, 2018).

A series of high-profile political scandals that occurred during David Cameron's prime ministership in 2010 (Lefort, 2010) and 2013 (Sinha, 2013) prompted the UK government to regulate lobbying. This process culminated in the adoption of the Law on Transparency of Lobbying, Non-Partisan Campaigning and Trade Union Management in 2014[4], which marked a considerable shift towards legislative regulation of lobbying activities. This law is commonly referred to as the "Lobbying Act". The law aims to increase the transparency of the lobbying process by creating a register of lobbyist consultants and defining requirements for reporting on lobbying activities. The main provisions of the Lobbying Act are presented in Table 1.

**Table 1.** Key provisions of the UK Lobbying Act

| | |
|---|---|
| **Registration of lobbyists** | Lobby consultants must register and provide detailed information about their clients and the nature of their lobbying activities (P. 1, S. 1, 5). |
| **Quarterly reports** | Registered lobbyists are obliged to submit quarterly reports on their lobbying activities, including information on the public officials they lobbied (Sch. 1). |

[1] Act of Parliament of the United Kingdom "Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act". (2014, January). Retrieved from https://www.legislation.gov.uk/ukpga/2014/4/contents.

[2] Law of Federal Republic of Germany "On the Establishment of a Register of Lobbyists for the Representation of Interests in the Bundestag and the Federal Government of Germany". (2021, April). Retrieved from https://www.bundestag.de/resource/blob/865318/cd4b1c6434afc1d7ad520dbc64c7343d/gesetzestext_BGBl_2021_I_S_818.pdf.

[3] Law of France No. 2016-1691 "On Transparency, the Fight Against Corruption and the Modernisation of Economic Life". (2016, December). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033558528?init=true&page=1&query=2016-1691+du+9+decembre&searchField=ALL&tab_selection=all.

[4] Act of Parliament of the United Kingdom "Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act". (2014, January). Retrieved from https://www.legislation.gov.uk/ukpga/2014/4/contents.

*Table 1. Continued*

| | |
|---|---|
| **Code of conduct** | Although the Lobbying Act does not establish a specific code of conduct for lobbyists, it encourages compliance with existing professional codes (P. 1, S. 21). |

**Source**: compiled by the author of this study based on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act[1]

The implementation of the Lobbying Act is monitored by the Registrar of Lobbyist Consultants, an independent institution established according to the Lobbying Act. The Registrar's responsibilities include maintaining a register of lobbyists, monitoring compliance with reporting requirements and investigating potential violations of the Lobbying Act. Penalties for non-compliance with the law may include fines and, in severe cases, criminal punishment[2]. As of 2024, apart from the above-mentioned Lobbying Act, the lobbying regulations are contained in the Code of Conduct for MPs, Ministers[3] and in the Civil Service Code[4]. Despite this, lobbying legislation is systematically criticised for its limitations. According to a 2019 survey, 63% of UK citizens believed that the British system of governance is rigged in favour of the rich and powerful (Blackwell *et al.*, 2019). The reason for this is that lobbying is mainly available to those with significant resources (Solaiman, 2023).

Critics argue that the narrow definition of lobbying contained in the Lobbying Act, which focuses primarily on direct communication with senior government officials, does not cover the full range of lobbying activities (Tudor, 2016). Furthermore, the Law applies only to lobbyist-consultants, leaving out full-time lobbyists and lobbyists working for non-profit organisations (Soo *et al.*, 2020). The effectiveness of the UK's lobbying laws is a subject of ongoing debate. Proponents argue that the Lobbying Act has brought greater transparency to lobbying activities by providing the public with more information about who is lobbying whom and for what purpose (Fisher & Savani, 2022). However, critics argue that the law's narrow scope and exemptions limit its ability to fully address issues of transparency and undue influence on policymaking (Phillips & Power, 2022). The above criticisms of the Lobbying Act are valid, but at the same time, the introduction of a register of lobbyist consultants is a step in the right direction towards greater transparency, and the current UK legislation is still aimed at addressing the lack of transparency in lobbying activities. To improve the effectiveness of the Act, reduce potential unintended consequences and create opportunities to comprehensively address issues related to transparency and regulation of lobbying, it is necessary to work on concrete amendments. However, considerable state intervention in social processes, coupled with increased bureaucracy, can lead to the shadowing of processes.

According to the Open Data Barometer (n.d.), the UK government was ranked 1-2 in terms of openness between 2013 and 2017. At the same time, according to some experts, information about lobbying is kept in the dark. Over 90% of reported ministerial meetings were with groups or individuals whose information is not available in the lobbyist register. This suggests that the list of lobbying clients listed in the Register differs substantially from the list of groups (individuals) with whom ministries report meetings, and the law's provisions on lobbying transparency are not sufficiently reliable (McKay & Wozniak, 2020).

In addition, the disadvantages of the existing system of control over lobbying activities in the UK include the fact that information about meetings held by government officials is exceedingly difficult to analyse and compare with the information in the lobbyist register (Dinan, 2021). The reason for this is the lack of standardisation in the records and the frequent use of different abbreviations and acronyms in records relating to the same events (groups, individuals). Another drawback of lobbying legislation is the weak liability and sanctions for violations in this area. Some researchers note that sanctions are applied only to relatively few lobbyist-consultants. Furthermore, the Registrar's investigative powers are limited and do not go beyond the power to issue an information notice (Crepaz *et al.*, 2022). In response to this criticism, there have been calls for reform, including proposals to expand the definition of lobbying, extend the registration requirement to full-time lobbyists, and introduce a legally enforceable code of conduct for all lobbyists (Soo *et al.*, 2020). Such reforms aim to increase the accountability and transparency of lobbying activities, ensuring that they make a positive contribution to the democratic process.

The investigation of the UK legal framework provides a basis for comparing lobbying regulation in European countries. By analysing the strengths

[1] Act of Parliament of the United Kingdom "Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act". (2014, January). Retrieved from https://www.legislation.gov.uk/ukpga/2014/4/contents.
[2] Ibidem, 2014.
[3] United Kingdom House of Commons Code of Conduct and Guide to Rules. (2023, June). Retrieved from https://www.parliament.uk/business/publications/commons/hoc-code-of-conduct/.
[4] Civil Service Code of United Kingdom. (2015, December). Retrieved from https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code.

and weaknesses of the UK approach, insights are gained into potential areas for improvement and best practices that could be used to regulate lobbying in other jurisdictions. Thus, in Germany, as in many other democratic societies, the regulation of lobbying activities is important to prevent undue influence and ensure transparency and accountability of the legislative process. According to the Bundestag member J. Fechner (Ismar, 2023), about 6,000 lobbyists in Germany invest 800 million euros a year in political lobbying.

In contrast to the UK, Germany has traditionally not had a specific, separate piece of legislation dedicated exclusively to the regulation of lobbying activities. Instead, lobbying regulation in Germany has evolved through a combination of parliamentary rules, voluntary lobbying registers, and special legal provisions within broader legislative texts. A turning point in the debate on lobbying regulation in Germany was the growing public and political concern about the transparency and influence of lobbyists on legislative processes, especially considering several high-profile lobbying scandals (Kölbel, 2019).

In 2020-2023, Germany took major steps to formalise its approach to lobbying regulation. One such step was the adoption of the Law on Disclosure of Information on Lobbying Activities (Lobbyregistergesetz). Adopted in 2021, the law marks a significant step towards greater transparency of lobbying activities aimed at the Bundestag (Federal Parliament) and the Federal Government[1]. The Law on Disclosure of Information on Lobbying Activities, commonly referred to as the "Lobbyist Register Act", includes a range of key provisions, as presented in Table 2.

**Table 2.** Key provisions of the German Lobbyist Register Act

| | |
|---|---|
| **Mandatory registration** | The principal feature of the Act is the creation of a mandatory public register for lobbyists and lobbying organisations that interact with the Bundestag (German Federal Parliament) and the Federal Government. This register is designed to make information about who influences legislative and political decisions visible (Official website of the Lobbyregister, n.d.). |
| **Information disclosure requirements** | Registered lobbyists must provide detailed information, including their personal data, information about the organisations they represent, their objectives, and the subjects of their lobbying efforts (§3, s. 1, 2). This requirement is aimed at ensuring that the sources of influence on legislative and governmental decisions are known to the public. |
| **Scope of application** | The Act applies to professional lobbyists and organisations, including non-governmental organisations, corporations, associations, and self-employed lobbyists, who aim to influence the legislative process or decision-making by executive authorities (§ 1, s. 4, § 2, s. 1). |
| **Measures to ensure transparency** | Apart from the registration requirement, the Act stipulates that registered lobbyists must report annually on their activities, which increases transparency (§ 6). |
| **Enforcement and penalties** | The law provides that failure to follow the registration and disclosure requirements may result in fines. This serves as a deterrent against evasion of transparency rules (§ 11). |

**Source**: compiled by the author of this study based on the Lobbyist Register Act[2]

Various stakeholders welcomed the adoption of the Lobbyist Register Act. This was due to increased transparency. Proponents of transparency praise the law for creating a more transparent legislative process, as it makes visible the actors (individuals, groups) and interests that try to influence political decisions. Such transparency is considered a crucial step in allowing the public and media to scrutinise lobbying activities (Ismar, 2023).

Another positive element was the introduction of accountability. By requiring lobbyists to disclose information about their activities, the law enhances accountability by making it easier to identify potential conflicts of interest and undue influence on politicians. Increased transparency and accountability have contributed to increased public trust in political processes, as citizens have access to more information about who influences political decisions and how (Polk, 2021). An essential consequence of the adoption of the Lobbyists Register Act was the establishment of a level playing field. This helped to create a level playing field for lobbyists, ensuring that all actors, regardless of size or resources, are held to the same transparency standards (Lange *et al.*, 2021).

Thus, the lobbyist registry has made a considerable contribution to increasing the transparency and traceability of lobbying activities, as well as to strengthening trust in the political process. It has created a framework in which representation of interests is fair and open to the public, thereby contributing to the development of a healthier and more balanced democracy. This brings Germany closer to the best international practices in lobbying regulation.

Although the German Lobbyist Register Act has been praised for its role in increasing transparency and accountability in the political process, several criticisms and negative aspects have emerged since its adoption. These comments relate, for instance, to

[1] Law of the Federal Republic of Germany "On the Establishment of a Register of Lobbyists for the Representation of Interests in the Bundestag and the Federal Government of Germany". (2021, April). Retrieved from https://www.bundestag.de/resource/blob/865318/cd4b1c6434afc1d7ad520dbc64c7343d/gesetzestext_BGBl_2021_I_S_818.pdf.

[2] Ibidem, 2021.

the limited scope of the law. The law prescribes exemptions for certain types of organisations, such as churches and professional associations, which some believe creates loopholes that could be used to avoid registration and disclosure. This can potentially lead to an incomplete picture of lobbying activities and influence (Ismar, 2023). This comment is valid to some extent, but we believe that the administrative burden associated with registration and reporting requirements may disproportionately affect smaller organisations, such as NGOs and grassroots human rights groups. These organisations may lack the resources to follow the law as easily as larger, better-funded organisations, which can lead to a marginalisation of their voice in the political process. It is also noteworthy that the scope of the law is too narrow, focusing mainly on lobbying activities aimed at the Bundestag (federal parliament) and the federal government. This limitation means that lobbying efforts aimed at other important federal decision-makers, such as independent regulators, may not be covered by the Act.

Another substantial criticism is that the Act does not require detailed disclosure of financial information. Unlike in some other countries, lobbyists in Germany are not required to disclose the amount spent on lobbying activities or detailed financial information about their transactions. This shortcoming limits the ability of the public to fully assess the financial impact behind lobbying activities (Krol, 2022). Furthermore, the analysis of the current legislation leads to the conclusion that there are gaps in the control of party funding, especially due to the absence of a maximum limit for donations and sponsorship. In this regard, there is a need to increase transparency in party funding, especially regarding sponsorship and third-party contributions.

Concerns have been raised about the mechanisms for enforcing the Law and the adequacy of penalties for non-compliance. Some critics have argued that the fines prescribed for violations are not sufficient to deter violations of the law and that there is a need for tougher enforcement measures to ensure compliance. Concerns have also been raised that the law focuses on direct lobbying and may not adequately cover indirect lobbying strategies such as public campaigns, social media influence, or third-party advocacy (Eschmann & Lange, 2024). This limitation may lead to a considerable part of lobbying activities staying unreported, undermining the effectiveness of the law in promoting transparency.

Finally, there are concerns about the level of public engagement with and awareness of the lobbying register. For the register to be an effective tool for transparency, it must be actively used and scrutinised by journalists, researchers, and the general public. However, if the registry is not user-friendly or well-publicised, its potential impact on enhancing democratic accountability may be limited (Chari *et al.*, 2019).

This criticism highlights the challenges and complexities associated with effective regulation of lobbying activities. While the Lobbyist Register Act is a major step forward towards transparency in Germany, ongoing evaluation and potential reforms may be required to address these negative aspects and strengthen the regulation of lobbying activities. Apart from the Lobbyist Register Act, there are several other regulations in Germany that help regulate lobbying activities. These rules complement the Lobbying Register Act by covering aspects of lobbying and political influence that the primary law cannot fully cover. These acts include the Political Parties Act (Parteiengesetz)[1] which regulates the financing of political parties in Germany, including donations, membership fees, and public funding. It requires political parties to maintain transparency of their finances, including disclosure of significant donations, which indirectly affects lobbying by regulating how interest groups can financially support parties.

There is a range of documents that are not directly aimed at regulating the lobbying process, but at the same time overlap with lobbying activities. For instance, the Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb)[2] addresses unfair practices in business competition, which may include certain forms of influence. It provides a legal basis for action against deceptive or unethical practices that can be used to gain undue influence on policy-making. Germany's federal Freedom of Information Act (Informationsfreiheitsgesetz)[3] allows citizens to access information held by public authorities, increasing the transparency of government, and promotes accountability by making government processes more transparent, potentially revealing the influence of lobbyists. The Federal Budget Code (Bundeshaushaltsordnung)[4] contains provisions on transparency in the awarding of federal contracts and the allocation of public funds. The requirement of the Code to

[1] Law of Federal Republic of Germany "On Political Parties". (1967, July). Retrieved from https://www.gesetze-im-internet.de/partg/BJNR007730967.html.

[2] Law of Federal Republic of Germany "Against Unfair Competition". (2004, July). Retrieved from https://www.gesetze-im-internet.de/ifg/BJNR272200005.html.

[3] Law Regulating Access to Federal Information of Federal Republic of Germany. (2005, September). Retrieved from https://www.gesetze-im-internet.de/ifg/BJNR272200005.html.

[4] Federal Budget Regulations of Federal Republic of Germany. (1969, August). Retrieved from https://www.gesetze-im-internet.de/bho/BJNR012840969.html.

report publicly on financial decisions indirectly regulates the possibility of lobbying to influence public procurement and funding decisions.

The rules governing the activities and financing of parliamentary factions in the Bundestag (Fraktionsgesetz)[1] and the Rules of Conduct for Members of the Bundestag[2] also have an impact on lobbying activities. These rules set out transparency requirements and restrictions on how parliamentary groups receive and use funds, which indirectly affects their interaction with lobbyists and interest groups and define ethical standards and rules of conduct for their members, including how they interact with lobbyists and interest groups. These rules are aimed at preventing conflicts of interest and ensuring transparency and accountability of MPs' interaction with lobbyists. In addition, Germany is a federal republic and lobbying activities at the Länder level may be governed by additional rules and laws specific to each region (Länder)[3,4]. They can differ substantially, creating another layer of complexity in the regulatory landscape.

These regulations and provisions form a comprehensive system aimed at ensuring transparency, accountability, and fairness in the lobbying process and in the German political system as a whole. They reflect the multifaceted approach needed to effectively regulate lobbying activities and reduce the potential for undue influence on policy-making (Matuschek *et al.*, 2021).

Thus, the adoption of the Lobbyist Register Act[5] is a major step forward in the legal regulation of lobbying in Germany. By establishing clear registration and disclosure requirements, the law seeks to elucidate the influence of lobbyists on the formation of public policy and legislation. Compared to the UK, Germany's legislative efforts show a growing consensus on the need for formal lobbying regulation. However, as in the UK, Germany faces challenges in ensuring that its regulatory framework comprehensively addresses the complexities of modern lobbying. An analysis of Germany's approach to lobbying regulation, specifically the adoption of the Lobbyist Register Act, provides valuable insights into efforts to increase transparency and accountability in lobbying across Europe. The German example highlights the significance of continuous evaluation and potential reforms to address emerging issues in lobbying practice and regulation.

Lobbying in France dates to the early days of the French Republic, when influence peddling and advocacy were informal. In contrast to the formalised and often public lobbying efforts observed in contemporary France, early lobbying efforts were characterised by behind-the-scenes negotiations and personal connections. Influential individuals and groups have used their social and political connections to influence legislative and policy decisions, often without any public disclosure and beyond scrutiny (Chari *et al.*, 2019). The end of the 20th and beginning of the 21st centuries marked a significant shift in the perception and regulation of lobbying in France. During this period, there was a growing awareness of the potential for conflicts of interest and corruption, driven by high-profile scandals and a global desire for more transparent governance practices. In response, the French authorities have begun to scrutinise and regulate lobbying activities more closely, recognising the need to balance the role of interest groups in policy-making with the public's right to transparency and accountability.

The current regulatory framework for lobbying in France is based on the principles of transparency, accountability, and ethical behaviour. Central to this system are regulations designed to control and regulate the interaction between lobbyists, civil servants, and politicians. One such legal act is the Law No. 2016-1691 "On Transparency, the Fight Against Corruption and the Modernisation of Economic Life", better known as the Sapin II Act[6]. As the cornerstone of modern lobbying regulation in France, the Sapin II Act introduced mandatory registration of lobbyists, creating a transparent environment where lobbying activities are openly registered and monitored. According to this law, lobbyists are obliged to disclose their goals, the interests they represent, and their actions aimed at influencing government decision-making.

[1] Explanation of the Internal Regulations of the Bundestag of Federal Republic of Germany. (1980, July). Retrieved from https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/erlaeuterungen_geschaeftsordnung.

[2] Rules of Conduct for Members of the Bundestag of Federal Republic of Germany. (2022, September). Retrieved from https://www.bundestag.de/resource/blob/194754/b50c330629e0bcf866f89a774a3cfb54/web_Verhaltensregeln_2022-data.pdf.

[3] Law of the Hamburg House of Representatives "Hamburg Transparency Act". (2012, June). Retrieved from https://www.landesrecht-hamburg.de/bsha/document/jlr-TranspGHArahmen.

[4] Law of the Berlin House of Representatives "On the Regulation of Transparency in Berlin". (2023, June). Retrieved from https://www.parlament-berlin.de/ados/19/IIIPlen/vorgang/d19-1014.pdf.

[5] Law of the Federal Republic of Germany "On the Establishment of a Register of Lobbyists for the Representation of Interests in the Bundestag and the Federal Government of Germany". (2021, April). Retrieved from https://www.bundestag.de/resource/blob/865318/cd4b1c6434afc1d7ad520dbc64c7343d/gesetzestext_BGBl_2021_I_S_818.pdf.

[6] Law of France No. 2016-1691 "On Transparency, the Fight Against Corruption and the Modernisation of Economic Life". (2016, December). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033558528?init=true&page=1&query=2016-1691+du+9+decembre&searchField=ALL&tab_selection=all.

Sapin II also created the Haute Autorité pour la transparence de la vie publique (HATVP), which oversees the registration and disclosure processes. Apart from the Sapin II Act, various regulations and guidelines issued by the HATVP provide detailed instructions on compliance, disclosure, and ethical standards for lobbying activities. These guidelines are crucial for ensuring that lobbyists understand their obligations and for promoting a culture of integrity and transparency in the lobbying community (Chardeau, 2017). The HATVP is a government agency that plays a key role in regulating lobbying activities in France. Its responsibilities include maintaining a public register of lobbyists, ensuring compliance with disclosure requirements, and providing guidance on ethical lobbying practices. The HATVP also has the power to investigate potential violations of lobbying rules and impose sanctions, if necessary.

The registration process has been designed to be comprehensive, yet accessible. The registration process requires lobbyists to provide detailed information about their activities, including the identity of their clients, the objectives of their lobbying efforts and the financial resources allocated to these activities. Such transparency is intended to inform the public and politicians about who is trying to influence decision-making and on what grounds. Generally, the French lobbying regulatory framework is based on several key principles:

- transparency, i.e., creating conditions for lobbying activities to be carried out openly, with clear records of who lobbies whom and for what purpose (Section 2 of the Sapin II Act);
- accountability, achieved by introducing liability for lobbyists and those they try to influence for their actions and decisions (Articles 25-33 of the Sapin II Act);
- ethical behaviour, expressed through the promotion of high standards of professionalism and ethics among lobbyists, including respect for public institutions and processes (Articles 25-33 of the Sapin II Act).

According to experts, the main positive aspects of the Sapin II Act are increased transparency in the field of lobbying through mandatory registration of lobbyists and compliance with detailed disclosure requirements and strengthening of anti-corruption measures through the creation of the French Anti-Corruption Agency (Agence française anticorruption – AFA), while requiring large companies and international groups to implement comprehensive programmes to prevent corruption and influence peddling (The French Anti-Corruption..., 2020; Gerdemann, 2023).

Another positive aspect is that the Sapin II Act provides a legal framework for whistleblower protection, encouraging people to report corruption, fraud, and other unethical practices without fear of retaliation, and enhancing accountability (severe penalties for corruption and the possibility of holding legal entities liable for corrupt practices) (Pietrancosta, 2017). Notably, French legislation follows international anti-corruption standards set by organisations such as the OECD (Organisation for Economic Cooperation and Development) and the UN and creates conditions for cross-border cooperation in the investigation and prosecution of corruption offences.

The above has a positive impact on the culture of integrity in the corporate sector and the strengthening of democratic processes by increasing the transparency of lobbying and reducing the risk of corruption. While the Sapin II Act has had a positive impact on increasing transparency, fighting corruption, and modernising economic activity, it has also been criticised and raised concerns among various stakeholders. This criticism focuses on the problems of practical implementation, potential unintended consequences, and areas where the law may not achieve its ambitious goals. One of the key challenges associated with the implementation of the Sapin II Act is the requirement to introduce comprehensive anti-corruption measures, such as compliance and internal control programmes. These requirements can be particularly cumbersome for small businesses that have limited resources to implement them. Furthermore, the ambiguity and vagueness of some provisions of the law create uncertainty for businesses and lobbyists, complicating compliance, and potentially leading to inconsistent application of the law (Porta & Vithenian, 2020).

The issue of enforcement and effectiveness of the Sapin II Act is also of concern. The insufficient human and financial resources of the French Anti-Corruption Agency (AFA) may impede effective monitoring of compliance with and application of the law. Moreover, the law does not fully cover the full breadth of lobbying practices, potentially allowing some forms of influence to escape control (Gerdemann, 2023).

The impact of the Sapin II Act on international business and investment is also a cause for concern. Strict requirements and compliance costs can be a deterrent to foreign companies considering investing in France. For multinationals, aligning global compliance practices with the concrete requirements of the Sapin II Act can be a complex and costly task. Furthermore, the provisions of the law may conflict with or overlap with other international anti-corruption norms, creating additional challenges for companies operating in different legal jurisdictions (Porta & Vithenian, 2020). To successfully achieve these goals, it is necessary to take these criticisms into account and work to improve the law and its implementation to ensure that transparency and anti-corruption regulation in France is fair and effective.

Compared to the UK and Germany, France's lobbying regulatory framework is notable for its comprehensive approach to transparency and ethical principles. The Sapin II Act[1] reflects a strong commitment to ensuring that lobbying activities are conducted in an open and accountable manner, making a positive contribution to the democratic process. The study of France's approach to lobbying regulation, specifically through the Sapin II Act, provides valuable insights into the dynamics of legal reform and the challenges associated with implementing effective regulatory measures. The French experience highlights the significance of continuous evaluation and adaptation in the regulation of lobbying activities.

**Table 3**. Results of the comparative analysis

| Criteria | Countries | | |
|---|---|---|---|
| | **United Kingdom** | **Germany** | **France** |
| **Transparency** | Register of lobbyist consultants. Limited information on clients and issues lobbied for. No financial disclosure requirements. | Register of associations and their representatives. Information on the objectives, interests and number of members of the associations. No financial disclosure requirements. | Register of lobbyists. Detailed information on clients, issues lobbied for, and lobbying costs. Mandatory disclosure of financial information. |
| **Accountability** | Absence of a mandatory code of conduct for lobbyists. Limited sanctions for non-compliance with registration requirements. | Voluntary code of conduct for lobbyists. No concrete sanctions for non-compliance with registration requirements. | Mandatory code of conduct for lobbyists. Strict sanctions for non-compliance with registration requirements and breaches of the code of conduct. |
| **Law enforcement** | The Registrar of Lobbyist Consultants maintains the Register. Limited investigative and sanctioning powers. | The register is maintained by the Bundestag. Lack of a special body to monitor compliance with registration requirements. | The French Anti-Corruption Agency (AFA) maintains the register. Broad powers of the AFA to monitor, investigate, and impose sanctions. |

**Source**: systematised based on the analysed legislation[2,3,4]

It should be emphasised that the existence of legislation regulating lobbying procedures does not protect countries from the desire of certain actors to circumvent the established rules. Thus, the Greensill Capital scandal in the United Kingdom has highlighted considerable gaps in lobbying legislation. The scandal was that former Prime Minister David Cameron lobbied the financial company Greensill Capital to gain access to government and financial support during the COVID-19 pandemic (Neate, 2023). This situation highlighted the limitations of the UK lobbying legislation, which does not apply to former civil servants or full-time lobbyists. This allowed David Cameron to circumvent the official lobbying registers. These events have raised public concerns about the transparency of lobbying activities, resulting in demands for reform of lobbying legislation.

Germany has also been marked by a range of lobbying scandals. One of the most famous was the Wirecard scandal, which involved one of the German financial and tech giants (Storbeck, 2021). These events highlighted considerable shortcomings in regulatory oversight and raised questions about the impact of corporate lobbying on financial regulation. Although the Wirecard case was not a lobbying scandal in itself, it highlighted the need for robust mechanisms to detect and prevent undue influence on regulators and supervisors, leading to increased scrutiny of corporate lobbying activities. The situation highlighted the significance of comprehensive lobbying regulation with strict disclosure and transparency requirements.

In France, there has been intense lobbying by the healthcare sector, especially in tobacco and pharmaceutical regulation (Dautzenberg, 2018). Lobbying efforts to regulate e-cigarettes and tobacco alternatives have demonstrated the difficulty of balancing public health interests with industry lobbying. The case highlighted the role of the Sapin II Act in increasing transparency, as healthcare lobbyists were

[1] Law of France No. 2016-1691 "On Transparency, the Fight Against Corruption and the Modernisation of Economic Life". (2016, December). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033558528?init=true&page=1&query=2016-1691+du+9+decembre&searchField=ALL&tab_selection=all.
[2] Ibidem, 2016.
[3] Law of the Federal Republic of Germany "On the Establishment of a Register of Lobbyists for the Representation of Interests in the Bundestag and the Federal Government of Germany". (2021, April). Retrieved from https://www.bundestag.de/resource/blob/865318/cd4b1c6434afc1d7ad520dbc64c7343d/gesetzestext_BGBl_2021_I_S_818.pdf.
[4] Act of Parliament of the United Kingdom "Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act". (2014, January). Retrieved from https://www.legislation.gov.uk/ukpga/2014/4/contents.

required to disclose information about their activities and objectives. This allowed the public to exercise control and make informed decisions. These events also highlighted the significance of adhering to ethical principles in lobbying, especially in sensitive sectors such as healthcare, where the public interest must be more carefully protected than in industry lobbying efforts.

The analysis allows offering some recommendations aimed at improving the efficiency, transparency, and accountability of lobbying regulation in different countries. These recommendations include the following:

- Expanding the scope of regulation. Regulations should cover a wider range of lobbying entities, including full-time lobbyists, former government officials, and representatives of non-profit organisations. This will provide a comprehensive regulatory framework that will not leave any important lobbying activity unchecked.
- Increasing transparency through comprehensive information disclosure. Lobbyists must submit detailed reports on their lobbying activities, including the targets of lobbying, the officials they contacted, and the results they sought to achieve. This transparency can be facilitated by the creation of digital platforms that make such information easily accessible to the public. It is also desirable to introduce real-time reporting on lobbying contacts and activities, which will provide a timely understanding of the lobbying landscape and increase public trust.
- Strengthening law enforcement mechanisms. It is necessary to establish independent lobbying oversight bodies, such as the Register of Lobbyist Consultants in the UK, the Federal Ministry of Justice and Consumer Protection in Germany and HATVP in France, with sufficient resources and powers. A clear and strict system of sanctions for non-compliance with lobbying rules should be introduced, including fines, public censure and, in severe cases, criminal prosecution, to deter unethical lobbying practices.
- Promoting ethical lobbying practices. A comprehensive code of conduct should be developed and implemented for lobbyists, which includes ethical principles and expected behaviour. This code should be universal for all lobbyists and actively promoted by supervisory authorities. Educational and training programmes should be offered for lobbyists and government officials on ethical lobbying practices and compliance with the legal framework, promoting a culture of integrity and transparency.
- Promoting public engagement and awareness. Easy public access to lobbying registers and reports should be ensured, using user-friendly interfaces and searchable databases to facilitate engagement and verification. Public awareness campaigns should be conducted on the role of lobbying in the democratic process, the importance of transparency, and how to access and interpret lobbying data.
- Continuous evaluation and adaptation. Lobbying legislation should be regularly reviewed to assess its effectiveness, identify areas for improvement, and adapt to changes in lobbying practices and technologies. Part should be taken in international cooperation to share best practices, experiences, and lessons learned in the field of lobbying regulation, using a global perspective on the problems and solutions.

Effective lobbying regulation is crucial to ensure that lobbying activities contribute positively to the democratic process by strengthening, rather than undermining, public trust in government. Our recommendations and best practices are based on research in the UK, Germany, and France and aim to provide a roadmap for countries seeking to improve their lobbying frameworks. By adopting a comprehensive, transparent, and adaptive approach to lobbying regulation, countries can better navigate the complex landscape of modern lobbying, ensuring that it serves the public interest. Thus, the experience of the UK, Germany, and France shows that it is necessary to strike a balance between the legitimate role of lobbying in a democratic society and the need to protect the public interest from undue influence. As lobbying practices evolve, the framework that governs them must also change, ensuring that lobbying stays transparent and accountable.

## Conclusions

Thus, based on the findings of the study of the key provisions of the regulatory framework for lobbying in the UK, Germany, and France, conclusions can be drawn about the effectiveness of the existing systems. The UK legislation is often considered as having a narrower scope than German and French legislation, as it focuses on lobbyist consultants. This leaves a potentially significant portion of lobbying activity unregulated. In contrast, Germany and France have adopted broader definitions of lobbying, seeking to cover a wide scope of activities and actors within their legal frameworks. The enforcement mechanisms differ substantially in these three countries. The UK's Register of Lobbyist Consultants, the German Federal Ministry of Justice and Consumer Protection, and the French HATVP play a crucial role in overseeing compliance with the law. However, the effectiveness of these bodies depends on their ability to monitor, investigate, and punish non-compliance with the law. France, with its dedicated body (HATVP) and comprehensive set of sanctions, may have a more robust enforcement mechanism. All three countries have made efforts to increase the transparency of lobbying activities through public registers. However, the effectiveness of these registers as tools for

public engagement and oversight depends on their accessibility and completeness of the information provided. France's digital registry, which is overseen by HATVP, stands out from the rest with its user-friendly interface and comprehensive data. The dynamic nature of lobbying requires that the legal framework be adaptive. The recent adoption of the German Lobbyist Register Act and the ongoing evaluation of the French law demonstrate a commitment to continuous improvement and to responding to new and emerging challenges. The United Kingdom, which has made considerable progress, is facing calls for further reforms to broaden the scope of its regulatory framework.

A comparative analysis of lobbying regulation in the UK, Germany, and France shows a common desire to increase transparency and accountability in the lobbying sector. However, differences in scope, enforcement mechanisms, and approaches to public engagement highlight the diversity of strategies adopted by each country. The effectiveness of these regulations in achieving their objectives depends on their ability to adapt to the changing landscape of lobbying activities and to respond to criticisms and challenges as they arise. This analysis highlights the significance of a robust, flexible, and transparent legal framework to ensure that lobbying contributes positively to the democratic process.

Further research will be aimed at identifying best practices in the regulation of lobbying activities, which will help to develop effective European lobbying legislation and ensure greater transparency and efficiency in decision-making processes.

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## Conflict of Interest

The author of this study declares no conflict of interest.

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# Новітній досвід нормативно-правового регулювання лобізму в Європі

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■ **Анотація.** У XXI столітті кількість держав, які розробили спеціальні нормативно-правові акти у сфері лобіювання, збільшилася майже вдвічі, що засвідчує зацікавленість сучасних еліт у нормативному регулюванні процедури лобізму. Метою дослідження є проведення порівняльного аналізу нормативно-правової бази, що регулює лобістську діяльність у кількох європейських країнах, а саме Великої Британії, Німеччини та Франції. У межах дослідження, крім загальнонаукових методів аналізу, синтезу й узагальнення, використано метод порівняльно-правового аналізу та метод інституційного аналізу. На підставі всебічного огляду літератури виокремлено нещодавні дослідження, які сприяли формуванню теоретичних засад регулювання лобізму. Наукова стаття містить критичний аналіз різних законодавчих підходів, прийнятих європейськими країнами, з оцінкою їхньої ефективності в просуванні прозорості, підзвітності й етичних практик лобіювання. Зіставлено законодавчі бази, окреслено сучасні виклики й можливості, притаманні процесу регулювання лобіювання. На підставі порівняльного аналізу визначено спільні та відмінні риси в підходах кожної країни до регулювання лобіювання. Модель Великої Британії передбачає акцент на добровільній реєстрації та саморегулюванні, натомість підхід Німеччини відображає більш неформальну практику з мінімальними законодавчими вимогами. На противагу цьому, Франція вжила жорсткіших заходів, зосередивши увагу на обов'язковій реєстрації та публічному розкритті інформації про лобістську діяльність. У роботі узагальнено найкращі практики, які можуть бути використані під час розроблення законодавства про лобіювання. Здійснене дослідження є внеском у дискусію про роль лобіювання в демократичних суспільствах. У висновках запропоновано рекомендації, яких слід дотримуватися під час підготовки нових проєктів нормативно-правових актів у сфері лобіювання або в період реформування чинного законодавства у відповідній сфері. Проведене дослідження має також практичне значення для європейських політиків, лобістів, зокрема громадянського суспільства. На підставі розглянутих підходів Великої Британії, Німеччини та Франції держави можуть визначити найкращі практики й адаптувати їх до унікального політичного, соціального та правового контексту

■ **Ключові слова:** демократія; корупція; інтереси; прозорість; вплив; політика; фінансування

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# Application of the European Court of Human Rights practices by the investigator during the search

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■ **Abstract.** The European Court of Human Rights has long been issuing judgments in which it has argued that human rights and freedoms are violated by the authorised state bodies in their professional activities, specifically in such a complex investigative (search) action as a search, which demonstrates the relevance of investigating the issues of applying the practice of this court by investigators during a search. The purpose of this study was to determine the basis for the investigator to apply the practices of the European Court of Human Rights during a search and to formulate relevant recommendations for investigative practice. To fulfil this purpose, the following scientific methods were employed: philosophical (dialectical), general scientific (analysis, induction, deduction, comparative legal, analogy, formal legal), and special forensic (forensic versioning, forensic planning, criminal analysis of the situation) methods. The study found that the application of the practices of the European Court of Human Rights by an investigator during the collection of evidence, specifically during a search, is regulated by the national legislation of Ukraine. It was emphasised that the investigator is authorised to apply the judgments of the European Court of Human Rights, delivered both against Ukraine and other states, during the search. Based on the analysis of several judgments of the European Court of Human Rights concerning Ukraine and Bulgaria, the study found that they reflect not only the criminal procedural aspects of search (compliance of the criminal procedure legislation of Ukraine and Bulgaria with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols; clear requirements for conducting procedural actions), but also the forensic aspects (contain an indication of the optimised tactical behaviour of investigators in certain situations; prescribe the mechanism, method of detection, recording and seizure (obtaining) of forensically relevant information). The study identified the stages of a search and the specific features of applying the practices of the European Court of Human Rights within their framework. Based on the findings of the study, certain forensic recommendations for investigators during a search were developed based on the practices of the European Court of Human Rights. The findings of the study will be useful for improving the relevant provisions of the criminal procedure legislation of Ukraine and investigative practice

■ **Keywords:** personal search; search of a person's home or other property; right to respect for private and family life; collection of evidence; criminal proceedings; criminal offence

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## Introduction

The European Court of Human Rights (ECHR, the Court) is one of the most popular institutions in Europe for the protection of international human rights and freedoms. Its practices are a source of law on the territory of almost the entire European continent, including Ukraine. Every year, the ECHR reports on the work it has performed, including statistical indicators. Every right and freedom prescribed in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (the Convention) and its protocols is important in human life. At the same time, in the current circumstances, the ECHR statistics show a high rate of violations by the authorised bodies of Ukraine, specifically, of the right to respect for private and family life, as prescribed in Article 8 of the Convention (year 2021 – 19 violations; 2022 – 7; 2023 – 13) (ECHR, 2022; 2023; 2024). These violations are caused, among other things, by the failure of the authorised bodies to follow the procedural form of conducting such investigative action as a search, and by the failure to consider forensic recommendations, which in their entirety may lead to violations of this right. Under the laws of Ukraine and most countries of the world, it is the investigator ("detective") of a law enforcement agency who is authorised to conduct pre-trial investigations. In the current scientific discourse, there are no developments on the application of the ECHR practices by an investigator or detective during a search, which makes the study relevant. At the same time, the study of issues related to the ECHR practices, including under Article 8 of the Convention "Right to respect for private and family life"[1] and separately such an institution of evidence collection as a search, has attracted the attention of many researchers.

In the context of the ECHR's practices, it is worth noting that the ratification of the Convention and its Protocols by the respective states automatically creates an obligation to take part in the ECHR's proceedings and to follow its final judgments (Articles 19, 46 of the Convention)[2]. V. Zavhorodniy (2016), conducting research on the ECHR practice, came to the logical conclusion that over the entire period of the ECHR existence, the States Parties to the Convention have taken many measures to regulate their national legislation, especially criminal procedure, following the ECHR practice (Austria, Belgium, Germany, the Netherlands, Ireland, Italy, Sweden, Switzerland, the United Kingdom). British researchers A. Donald & A.-K. Speck (2019), examining the extent to which the ECHR recommends or requires states to take certain measures after a violation of the Convention has been established, note that the Court has recently been gradually moving away from its traditionally limited declaratory approach to remedial measures, sometimes ordering intangible individual and/or general measures.

As for the investigation of search-related problems, such Ukrainian researchers as I. Gorbanov *et al.* (2022) note that this investigative action attracts special attention, as its implementation is always associated with the restriction of constitutional rights to inviolability of home or other property, privacy, and inviolability of property rights. L. Bernardini & F. Sanvitale (2023) rightly point out that authorised national agencies of states usually conduct searches during investigations of serious crimes (murder, cybercrime, drug trafficking, etc.).

Generally, a range of researchers have investigated the ECHR practices in criminal proceedings. S. Wickramasinghe (2016) identified the specific features of investigating cybercrime that infringes on the right to respect for private and family life, as prescribed in Article 8 of the Convention. S. Eskens *et al.* (2016) investigated the legal standards of secret surveillance in criminal proceedings, which are formed, specifically, under Article 8 of the Convention and its interpretation by the ECHR. B. Weisser (2019) analysed the role of the Convention and the ECHR in ensuring fair criminal proceedings in Europe. R. Goss (2023) investigated the practices of the ECHR under Article 6 of the Convention, which concerns various aspects of criminal proceedings, etc. V. Galagan *et al.* (2021) investigated the comments of the European Court of Human Rights on judicial review as a guarantee of non-interference with privacy during pre-trial investigation. O. Drozdov & O. Drozdova (2022) investigated this subject in the context of the current criminal procedural legislation of Ukraine. I. Hloviuk *et al.* (2020), O. Pchelina (2020), I. Basysta (2021) also investigated Various aspects of the issue under study.

The purpose of this study was to define the basis for the application of the ECHR practices by an investigator during a search and to formulate appropriate recommendations for investigative practice. Fulfilment of the stated purpose entailed completion of the following tasks: to determine the legal basis for the application of the ECHR practices in criminal proceedings in Ukraine, to highlight the criminal procedural and forensic basis of a search, and to analyse certain ECHR judgments relating to the search.

## Materials and Methods

To comprehensively investigate the subject matter of the study and draw sound conclusions, considering

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

the purpose of the study, the methodological tools were represented by a system of philosophical, general scientific (theoretical), and special methods of scientific cognition. The study was based on a dialectical approach to the knowledge of legal reality applied to the study of the ECHR as an international institution of the European level and the development of its practice in the national legal system of Ukraine. As for the theoretical methods, the study made extensive use of analysis, which made it possible to distinguish the types of searches by the object of the search, to highlight clear provisions of legal acts that allow for the application of ECHR practices during a search, etc.

The application of the induction method helped to determine the presence of not only criminal procedural aspects in the ECHR judgments, but also forensic aspects in the conduct of procedural actions by authorised persons. The method of deduction also helped to identify those ECHR positions that relate to the specifics of search by authorised persons in certain situations. The method of analogy made it possible to establish the legal basis for the application of the ECHR practices in the practical activities of an investigator, including during a search. The comparative legal analysis helped to identify those ECHR judgments that address the issues of criminal procedural and forensic aspects of the search. The comparative legal method helped to identify certain gaps in Ukrainian legislation in regulating the issue of personal search of an advocate. The formal legal method made it possible to establish the specific features of legislative regulation of the issue of application of the ECHR practices during an investigator's search. Consideration of special forensic methods (forensic versioning, forensic planning, criminal analysis of the situation), together with general scientific methods based on the ECHR practice, ensured the development of forensic recommendations for investigators during the search.

The following legal framework was used in the study: The Constitution of Ukraine[1], the Convention[2], the CPC of Ukraine[3], the Law of Ukraine "On the Execution of Judgments and Application of the Practices of the European Court of Human Rights"[4], the Law of Ukraine "On the Advocacy and Practice of Law"[5]. Thanks to the use of such methods of scientific cognition as analysis, deduction, induction, and comparative legal methods, it was possible to identify two of the most illustrative judgements of the ECHR in the cases of Gutsanovi v. Bulgaria (2014)[6] and Kadura and Smaliy v. Ukraine (2021)[7], namely in terms of criminal procedural and forensic aspects of the search; those positions of the ECHR that concern the specific features of conducting a search by authorised persons in certain situations.

## Results and Discussion

An investigator is an official in criminal proceedings who is authorised to conduct pre-trial investigations of criminal offences in accordance with the legislation of the country in which they work and which may pose a threat of violation of the privacy and personal dignity of citizens (Kremens, 2020; Topping & Bradford, 2020). Considering that the present study focuses on the Ukrainian legal system, the investigator in Ukraine may be the bodies defined in Item 17 of Part 1 of Article 3 and Part 2 of Article 38 of the Criminal Procedure Code of Ukraine dated 13 April 2012 (the CPC of Ukraine)[8]. During the pre-trial investigation, the investigator is authorised to perform a range of functions that are generally prescribed in Article 40 of the CPC of Ukraine, specifically, they are authorised to conduct investigative (detective) actions. One of the most illustrative of such investigative (detective) actions is a search, which restricts the constitutional right of a person to their private and family life (Article 32 of the Constitution of Ukraine)[9]. Furthermore, such a right is prescribed in Article 8 of the Convention[10] (an international treaty regulating the key human rights and freedoms of the world level, and which has superior legal force to the national laws of Ukraine, except for the Constitution of Ukraine). Considering that

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4] Law of Ukraine No. 3477-IV "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/3477-15#Text https://zakon.rada.gov.ua/laws/show/3477-15#Text.
[5] Law of Ukraine No. 5076-VI "On the Advocacy and Practice of Law". (2012, July). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[6] Decision of the European Court of Human Rights in the Case No. 34529/10 "Gutsanovi v. Bulgaria". (2013, October). Retrieved from https://hudoc.echr.coe.int/rus?i=001-127426.
[7] Decision of the European Court of Human Rights in the Case Nos. 42753/14 and 43860/14 "Kadura and Smaliy v. Ukraine". (2021, April). Retrieved from https://zakon.rada.gov.ua/laws/show/974_f71#Text.
[8] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[9] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[10] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

Ukraine has ratified the Convention, it (through its authorised bodies) is obliged to follow its provisions, the key ones being 1) to ensure the observance of human rights and freedoms prescribed in the Convention on its territory; 2) to recognise the jurisdiction of the ECHR, which is authorised to interpret and apply the Convention and its Protocols in cases of violation of human rights and freedoms prescribed in the Convention and its Protocols, and whose judgments in cases specified by the Convention are precedential and binding on the states parties to the Convention (Hvozdyuk, 2021a).

The application of the ECHR practices in criminal proceedings is directly regulated by the following legal acts: the CPC of Ukraine (Articles 8 and 9 prescribe the application of the principles of the rule of law and legality, with consideration of the ECHR practices[1]) and the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights"[2]. The legitimacy of direct application of the ECHR practices by investigators during investigative (detective) actions, including during a search, is presented in previous scientific studies (Chornous & Hvozdiuk, 2021). Specifically, the criminal procedural aspects reflected in the ECHR judgments (compliance of the criminal procedural legislation of Ukraine with the provisions of the Convention and its Protocols; clear requirements for conducting procedural actions) are imperative, as the Court affirmatively notes the non-compliance or compliance with the provisions of the Convention and its Protocols. As for the forensic aspects covered in the ECHR judgments (containing an indication of the more suitable tactical behaviour of investigators in certain situations; providing a mechanism, method of detection, recording, and seizure (obtaining) of forensically relevant information) are advisory, since the ECHR does not state that actions should be taken in this way, but only grants the investigator the right to do so, provided that they take all possible measures during the investigation. At the same time, the tactical errors in the investigation (forensic aspects) identified by the Court may, in the aggregate, lead to ineffective pre-trial investigation, which may violate the provisions of the Convention and its Protocols (Hvozdyuk, 2021a). As fairly noted by V. Mihashko (2019), when applying the provisions of the Convention, Ukrainian judges should consider the practices of the ECHR both in relation to Ukraine and the practices developed in consideration of complaints filed against other states (including the practices developed in cases considered prior to Ukraine's accession to the Convention). Only under this condition can new violations of the Convention be avoided in Ukraine. By analogy, investigators conducting pre-trial investigations (including the entire process, as well as investigative (detective) actions) must also comply with the ECHR practices both in relation to Ukraine and other states.

In terms of searches, pursuant to Article 234 of the CPC of Ukraine[3], a search is aimed at identifying and recording information about the circumstances of a criminal offence, searching for the instruments of a criminal offence or property that may be related to the offence, and establishing the whereabouts of wanted persons. Furthermore, the search is also mentioned in Part 3 of Article 208 of the CPC of Ukraine, which states that the investigator may search a detained person, while following the provisions of Part7 of Article 223 and Article 236 of the CPC of Ukraine[4]. Thus, the analysis of the provisions of the CPC of Ukraine shows that a search, depending on the object of its conduct, can include 1) premises; 2) areas; 3) vehicles; and 4) persons (Pyaskovskyi *et al.*, 2020).

According to the provisions of the CPC of Ukraine, a search is conducted by a decision of the investigating judge, which is formalised in a ruling based on a motion initiated by the investigator and approved by the prosecutor. In certain cases, as prescribed in Part 3 of Article 233 of the CPC of Ukraine[5], a search may be conducted immediately, i.e., without the investigating judge's decision, but after such a search, it must be formalised (both in terms of approval and refusal to approve). When considering the forensic aspect of the search, it includes three stages: 1) preparatory; 2) working; 3) final (recording the course and results of the search) (Nechval, 2019). The preparatory stage includes the drafting of a plan for conducting this investigative (detective) action; preparing a petition and obtaining a ruling from the investigating judge; perusing and analysing the criminal proceedings; identifying the necessary search participants; collecting orientation information; selecting and setting up technical means, etc.

The working phase consists of three stages. The preliminary stage includes the arrival at the scene of search and entering the premises. The stage of general inspection (all premises subject to search are inspected to establish the approximate scope of search actions, distribute search areas among the available

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Law of Ukraine No. 3477-IV "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/3477-15#Text https://zakon.rada.gov.ua/laws/show/3477-15#Text.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4] Ibidem, 2012.
[5] Ibidem, 2012.

authorised persons, designate the most likely places to store objects or arrange a cache, and put forward search versions). Detailed inspection and search (the search site is divided into areas, the order of their inspection is established, publicly accessible areas and places already inspected or those with seized items are supposed to be located are inspected first, and then other areas are inspected, which can take considerable time and effort) (Blahuta & Priakhin, 2013). The final stage is characterised by the preparation of a search report, which must be drafted following the requirements set out in Articles 104 and 236 of the CPC of Ukraine[1]. The report may be accompanied by annexes (diagrams, written explanations of specialists, photo tables, audio and video recordings of the procedural action), as prescribed in Articles 105 and 106 of the CPC of Ukraine[2]. According to Part 10 of Article 236 of the CPC of Ukraine[3], a search of a person's premises or any other place by the decision of an investigating judge must be recorded using audio and video recording.

Considering the above, it is worth addressing certain ECHR judgments that investigators may apply during a search. Thus, it is useful to analyse the decision in the case of Kadura and Smaliy v. Ukraine of 2021[4]. In this case concerning V. Smaliy, who acted as a defence counsel in the criminal proceedings, on 6 December 2013, the police initiated criminal proceedings against him on suspicion of verbal abuse and attempted assault on a judge. On 9 December 2013, V. Smaliy was detained in the building of one of the law enforcement agencies of Ukraine in connection with his professional activities (he was defending another person in criminal proceedings) and subjected to a personal search, during which his phone and documents, which he believed contained confidential information about his clients, were seized. This procedural action was recorded in a report. Having examined the situation, the ECHR made the following conclusions[5], which can be presented as follows:

1) actions of the authorised bodies that violate the right to private and family life should be based on the relevant provisions of national legislation and follow the rule of law;

2) violation of professional secrecy of defence lawyers may affect the proper administration of justice and, as a result, the rights secured by Article 6 of the Convention[6];

3) during the detention of V. Smaliy as a defence lawyer, the authorised subjects should have been aware of the possibility of confidential information in his documents.

4) the seizure of the applicant's documents and phone during a personal search was carried out without proper grounds and guarantees of proper handling of confidential information;

5) the national legislation did not provide any guarantees in connection with the detention and personal search of a lawyer, including the provisions of the Law of Ukraine "On the Advocacy and Practice of Law"[7].

Generally, the ECHR found a violation of the right under Article 8 of the Convention[8]. As for Clause 1, the search by the investigator must be conducted following the principles of legality and the rule of law. At the same time, if the legislation does not regulate certain aspects of the search, they should be implemented according to the rule of law. This principle in analogous situations is highlighted by the practices of the ECHR in its decisions, where the investigator can draw information and find a way out of a comparable practical situation.

Clause 2 states[9] that if the investigator violates the defence counsel's professional secrets during a personal search, then, along with a possible violation of the right to respect for private life (Article 8 of the Convention), the right to a fair trial (Article 6 of the Convention[10]) may be violated. The CPC of Ukraine (Article 14, Part 3 of Article 47, Item 2 of Part 2 and Part 3 of Article 65, Part 8 of Article 224)[11] and the Law of Ukraine "On the Advocacy and Practice of Law" (Item 2 of Part 2 of Article 21, Article 22, Item 2 of Part 1 and Paragraph 3 of Part 2 of Article 23, Item 4 of Part 1 of Article 28, Item 2 of Part 2 of Article 32, Item 4 of Part 2 of Article 34)[12] clearly

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Ibidem, 2012.
[3] Ibidem, 2012.
[4] Decision of the European Court of Human Rights in the Case Nos. 42753/14 and 43860/14 "Kadura and Smaliy v. Ukraine". (2021, April). Retrieved from https://zakon.rada.gov.ua/laws/show/974_f71#Text.
[5] Ibidem, 2021.
[6] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[7] Law of Ukraine No. 5076-VI "On the Advocacy and Practice of Law". (2012, July). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[8] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[9] Decision of the European Court of Human Rights in the Case Nos. 42753/14 and 43860/14 "Kadura and Smaliy v. Ukraine". (2021, April). Retrieved from https://zakon.rada.gov.ua/laws/show/974_f71#Text.
[10] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[11] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[12] Law of Ukraine No. 5076-VI "On the Advocacy and Practice of Law". (2012, July). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

describe the issues related to the secrecy of a defence counsel in criminal proceedings. As a general rule, the provisions of these legal acts prohibit defence lawyers from disclosing professional secrets, and only in exceptional cases is this permissible. In Clause 3, the ECHR notes[1] that the situation at the time "directly" indicated that the applicant had documents that were secret in criminal proceedings, as he was at that time in a law enforcement agency as a representative of the interests of one of his clients. Therefore, when preparing for a personal search, investigators should consider such circumstances. Clause 4 indicates[2] that the investigator, when conducting a personal search of the advocate in such circumstances, should have considered this scenario and provided sufficient guarantees to the defence lawyer so that there would be no leakage of confidential information about a person or persons who are his clients. Specifically, to ensure that a relevant independent specialist (lawyer, advocate, representative of the regional bar association, etc.) with the appropriate form of security clearance is present during a personal search. As for Clause 5[3], the issue of personal search of an advocate if they are not in their home or other property has not yet been settled, since in this case Part 2 of Article 23 of the Law of Ukraine "On the Advocacy and Practice of Law"[4] does not apply. In this regard, it is advisable to amend Paragraph 2 of Part 2 of Article 23 of the said Law with the following wording: "When conducting a personal search of the advocate, search or inspection of the advocate's home... such procedural action, and in case of a personal search of the advocate, such official shall, if possible, notify the bar council of the region at the place of such procedural action in advance" (Hvozdyuk, 2021a). The proposed amendments will correlate with Article 8 of the Convention[5] and the practices of the ECHR.

Attention should also be drawn to the judgment of the Court in the case of Gutsanovi v. Bulgaria[6] dated 15 January 2014. The plaintiffs were the Gutsanov family (husband, wife, and their two daughters), and we will focus on the husband, B. Gutsanov (a well-known local politician). Authorised state bodies suspected him of committing corruption offences. Considering this, at 06:30 a.m., police officers (including a special forces unit) entered his house to conduct a search, breaking down the front door, as the plaintiff did not respond to the police order to open it voluntarily. At that time, his wife and two young children were sleeping, they were woken up and the plaintiff was taken to another room. As a result of the search, a number of documents and items were seized.

The ECHR, having examined the arguments of the parties, concluded, specifically, that Article 3 of the Convention was violated[7] and highlighted a range of positions, some of which can be summarised as follows:

- the use of force by police officers must be proportionate to the circumstances. Therefore, it is important to have information in advance whether there is a risk of resistance by B. Gutsanov against law enforcement agencies;
- B. Gutsanov was the head of the city council at the time of the events and a well-known politician, and nothing in the case suggests that he had a criminal record and could pose a threat to the police;
- B. Gutsanov legally kept firearms and ammunition at home, which was considered when planning the search, however, the presence of weapons in the house was not sufficient in itself to involve a special forces unit or to use the level of force that was used in this case. The evident presence of young children (the watchman's warning about the presence of children in the apartment was not considered) and his wife was not considered either during the planning or the conduct of the search;
- law enforcement officers did not provide for other ways of conducting the search (e.g., changing the time of the intrusion or otherwise using different police officers). It was necessary to consider the legitimate interests of the three plaintiffs in this case, as Mrs Gutsanova was not suspected of involvement in the crimes, like her husband, and their daughters were psychologically vulnerable due to their early age (five and seven years old);
- the absence of a preliminary judicial review of the necessity and legality of the search indicates that the planning of the search was carried out entirely at the discretion of the authorised bodies and this did not allow for full consideration of the legitimate rights and interests of Mrs Gutsanova and her young children[8].

Considering the ECHR's positions, which reflect the forensic aspects of the search, the following forensic recommendations for the investigator can be

[1] Decision of the European Court of Human Rights in the Case Nos. 42753/14 and 43860/14 "Kadura and Smaliy v. Ukraine". (2021, April). Retrieved from https://zakon.rada.gov.ua/laws/show/974_f71#Text.
[2] Ibidem, 2021.
[3] Ibidem, 2021.
[4] Law of Ukraine No. 5076-VI "On the Advocacy and Practice of Law". (2012, July). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[5] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[6] Decision of the European Court of Human Rights in the Case No. 34529/10 "Gutsanovi v. Bulgaria". (2013, October). Retrieved from https://hudoc.echr.coe.int/rus?i=001-127426.
[7] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[8] Ibidem, 2013.

formulated. In case of a search of a suspect's home and subsequent detention, it is necessary to examine all background information about the suspect and the persons living with them to reach a logical conclusion: whether there are grounds to believe that such persons will resist the arrest of the suspect (e.g., the suspect will attempt to flee or be assisted in escape by injuring or harming law enforcement agencies or destroying evidence) and whether they will oppose the search; whether there are persons in the home whose rights may also be restricted in connection with the procedural action and what risks exist. When planning, it is necessary to consider all the risks of violating the rights of other persons in the suspect's home who are not involved in the commission of criminal offences (trying to adjust the time of the procedural action, involve other authorised police officers with skills in communicating with children or involve a psychologist, reduce or increase the level of psychological stress during the search). The urgency of the search (without the investigating judge's order) must be justified by the public danger of the act committed by the suspect, as well as the risk of loss of evidence (this cannot be evidenced by a lengthy investigation process regarding the suspect's known identity).

Furthermore, the ECHR found a violation of Article 8 of the Convention[1]. The Court noted that the Bulgarian Code of Criminal Procedure dated 25 October 2005[2] allows for urgent searches (without prior court authorisation) if there is a danger of altering evidence. At the same time, the wording of this provision in practice leaves a wide room for discretion for the authorised bodies to assess the need for and scope of searches. In such situations, the absence of a search warrant may be challenged by a judicial review of the legality and necessity of the measure. In this case, the search warrant was handed over to the regional court judge, who approved it the next morning, but did not give any reasons for this approval, and merely put his own signature, the words "J approves", the date and time of the decision, and the seal of the regional court on the front page of the search warrant. This does not indicate that the judge effectively verified the legality and necessity of the challenged measure. Control over the legality of the search was necessary, as it had never been specified what concrete documents and items were required as evidence. The protocol only mentioned that B. Gutsanov was asked to provide any object, document, or computer media containing information related to the investigation. The general scope of the search is confirmed by the large number and variety of items and documents seized, as well as the absence of any evident connection between some of these items and the criminal offences under investigation[3]. Generally, the decision violated the rights and freedoms of the Gutsanov family under Articles 3, 5, 6, 8, 13 of the Convention[4].

As for the judge's approval of the search warrant, proceeding from the provisions of the ECHR judgment under consideration, the judge had to control the legality of the search by examining all the information contained in the search warrant and its annexes. Accordingly, the judge had to issue such a decision in the form of their own procedural document (e.g., a ruling), indicating the reasons for allowing such a search or indicating the legality of the procedural action taken by law enforcement agencies.

Furthermore, the analysis of the ECHR practices indicates the need to include in the national legislation of the countries party to the Convention provisions on searches that prescribe "identification of individual or general signs of belongings, documents, other property or persons subject to search, as well as their connection with the criminal offence committed", as this will help prevent abuse by authorised persons conducting searches.

## Conclusions

Thus, improper conduct of searches by authorised persons (non-compliance with the requirements of Ukrainian legislation and disregard of the practices of the European Court of Human Rights and forensic recommendations) may violate a wide range of human rights and freedoms, such as the prohibition of torture, the right to liberty and security of person, the right to a fair trial, the right to respect for private and family life, the right to an effective remedy, etc.

The application of the practices of the European Court of Human Rights during a search is based on the provisions of national legislation. The Court's practices on searches highlight the criminal procedural (determining the inconsistency of the provisions of the criminal procedure legislation with the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, misapplication of the criminal procedure legislation by authorised persons) and forensic (making justified tactical decisions in the current situation; ensuring priority preparation for the conduct of a procedural action, considering all its conditions; due organisation of the procedural action at all stages) aspects of this process.

[1] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[2] Criminal Procedure Code of Bulgaria. (2005, August). Retrieved from https://www.wipo.int/wipolex/en/legislation/details/21804.
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The investigator can apply the practices of the European Court of Human Rights at all stages of the search (e.g., at the preparatory stage - when drafting the plan, note certain decisions of the Court that are comparable to the current situation (it will help them to recall the key positions of the Court that are necessary in the current situation); at the working stage – implement the relevant positions of the Court during the search process (take the children in the home to another room, provide them with a psychologist, etc.); at the final stage – to formalise the results of the search, considering the Court's position (e.g., to prevent corrections in the report, to ensure that the investigating judge's decision on the recognition of justified interference with a person's home or other property in the current situation is obtained).

Areas for further research include the investigation of the application of the practices of the European Court of Human Rights by authorised law enforcement agencies of foreign countries during searches.

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## Conflict of Interest

The authors of this study declare no conflict of interest.

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# Застосування слідчим практики Європейського суду з прав людини під час проведення обшуку

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■ **Анотація.** Європейський суд з прав людини вже давно виносить рішення, у яких аргументує порушення прав і свобод людини уповноваженими органами держави в їхній професійній діяльності, зокрема під час проведення такої складної слідчої (розшукової) дії, як обшук, що засвідчує актуальність вивчення проблематики застосування практики цього суду слідчим під час проведення обшуку. Метою роботи є визначення основ застосування слідчим практики Європейського суду з прав людини під час проведення обшуку та формування відповідних рекомендацій для слідчої практики. Для досягнення мети використано такі наукові методи: філософські (діалектичний), загальнонаукові (аналіз, індукція, дедукція, порівняльно-правовий, аналогія, формально-юридичний) і спеціальні криміналістичні (криміналістичне версіювання, криміналістичне планування, кримінальний аналіз ситуації) методи. Встановлено, що застосування слідчим практики Європейського суду з прав людини під час збирання доказів, зокрема під час проведення обшуку, урегульоване національним законодавством України. Акцентовано увагу на тому, що слідчий під час проведення обшуку уповноважений застосовувати рішення Європейського суду з прав людини, що постановлені як проти України, так і проти інших держав. На підставі аналізу декількох рішень Європейського суду з прав людини щодо України та Болгарії з'ясовано, що в них відображено не лише кримінальні процесуальні аспекти проведення обшуку (відповідність норм кримінального процесуального законодавства України й Болгарії нормам Конвенції про захист прав людини і основоположних свобод та її протоколів; чіткі вимоги до проведення процесуальних дій), а й криміналістичні (містять вказівку на оптимальну тактичну поведінку слідчих у певних ситуаціях; передбачають механізм, спосіб виявлення, фіксації та вилучення (отримання) криміналістично значущої інформації). Визначено етапи проведення обшуку й особливості застосування в їх межах практики Європейського суду з прав людини. За результатами дослідження сформовано окремі криміналістичні рекомендації для слідчих під час проведення обшуку на основі практики Європейського суду з прав людини. Результати дослідження стануть у нагоді для вдосконалення відповідних положень кримінального процесуального законодавства України та слідчої практики

■ **Ключові слова:** особистий обшук; обшук житла чи іншого володіння особи; право на повагу до приватного і сімейного життя; збирання доказів; кримінальне провадження; кримінальне правопорушення

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# Best practices in police personal security: A systematic review

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**Abstract.** The difficult geopolitical situation in Ukraine creates new challenges for the law enforcement system and increases the relevance of ensuring the personal safety of police officers. This necessitates highlighting the problematic aspects of this area, as well as a detailed description of new dangerous challenges for the security and defence sector, shaped by the today's reality. The purpose of this study was to analyse current trends in the investigation of the specifics of ensuring personal security of a police officer. Fulfilling this purpose required the use of a set of methods, including Internet heuristics, systematisation, and comparison. The principal findings outlined the specifics of the law enforcement system of Ukraine under martial law. A systematic analysis of the literature helped to identify the key dangerous factors and conditions that currently affect the state of personal security of law enforcement officials in the world. It was also found that the modern scientific literature does not sufficiently address the issue of ensuring personal safety of a police officer in the context of military operations. The study showed that in the current scientific discourse this problem is covered only through the lens of the existing shortcomings of standard education (training) programmes for law enforcement officials, which presently cannot ensure their safety. The absence of a theoretical component makes it important to find ways to implement the police officer's right to safely perform their duties. The practical significance of this study is that its findings can be used by researchers for further investigation of this topic, as well as by practitioners to implement the most effective experience of ensuring the personal safety of police officers

**Keywords:** war; security; training system; de-occupied territories; illegal armed groups; sabotage and reconnaissance groups

## Introduction

The work of law enforcement is inextricably linked to the growing levels of various types of crime, including organised and transnational crime, acts of terrorism, corruption, drug addiction, cybercrime, and arms trafficking. For Ukraine, an additional factor is the armed aggression by a neighbouring state. All the above aspects lead to an increase in the number of deaths, injuries, traumas, maiming, mental disorders, and suicides among law enforcement officers. The rapid increase in the number of crimes and incidents of violence threatens the quality and safety of law enforcement officers' lives and increases the risks to their mental health and professional effectiveness.

The negative trend outlined above is reflected in the scientific studies of contemporary researchers. J.C.V. Jiménez *et al.* (2020) concluded that over 14 years, the number of injuries sustained by the municipal police in Cadiz (Spain) had an identical number of arrests. At the same time, S. Koerner & M. Staller (2022) published statistics on attacks on German police officers from 2011 to 2022. These data indicate an increase in the number of attacks. Therewith, re-

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searchers at the American University of Pennsylvania D.B. Yanich & J.C. Gibbs (2024) identify a positive trend over the past few decades in relation to intentional attacks on police officers. B. Beck *et al.* (2024) highlight high-profile police killings in many US cities. In this context, it is also appropriate to note the study by E.R. Maguire & E.A. Paoline III (2023), in which experts determined the percentage of police officers who were injured while countering offenders.

Ukrainian researchers did not stay away from covering this issue either. T. Shevchenko (2022) examines cases of attacks on police officers and identifies sources of increased danger. V.V. Chumak (2019) provides examples of dangerous attacks on law enforcement officials in Georgia and compares them with the Baltic States and Ukraine. R.V. Dmytryk (2019) focuses on the ability of a police officer to lawfully resist attacks by aggressive individuals. On the other side of the issue, V. Bohuslavskyi (2019) found approaches and highlighted attacks on a police officer through the lens of information support.

Apart from stating the existence of the problem under study, the academic community offers its own vision of the factors and conditions of its occurrence. First of all, it is necessary to point out the findings of the study by K. Hine *et al.* (2018), where researchers identified the relationship between cognitive and physiological disorders and the ability of a police officer to successfully counteract aggressive influence. P.G. Renden *et al.* (2015) express an analogous opinion on the situation, identifying prominent levels of anxiety among officers in the performance of their duties. The factor of police anxiety in high-risk situations is partly related to the lack of practical experience of law enforcement officers. Furthermore, the shaky basis of theoretical knowledge and practical skills acquired in the system of education (training) on algorithms of police actions hinders the adoption of extremely complex and literally vital decisions. The findings V. Bondarenko (2018) confirm this statement. The researcher drew parallels between the inability of law enforcement officials to act effectively and safely in high-risk situations and the system of their education (training).

The generalisation of scientific research illustrates the fact that the system of training of law enforcement officials is considered by researchers as the basis for their safe work. However, it is imperfect in the current environment. Despite the considerable interest in the stated topic, it is marked by a host of problematic issues that need to be identified, theoretically addressed, and the results of which must be implemented in the practical activities of the security and defence sector. Therefore, the purpose of this study was to review the literature on both the current challenges to police officers' personal security in the modern Ukrainian reality and the literature that investigates and highlights the latest police training measures. The analysis of these two groups of research will help to understand what qualitative innovations the police training system needs to better ensure their personal safety in modern conditions.

The research methodology was based on such methods of survey research as Internet heuristics, systematisation, and comparison. The first method used in the study was a systematic keyword search of available published research on the topic in scientific literature databases. This approach helped to collect a wide range of data from various sources for further analysis. The second method used in the study was systematisation. This method involved organising the collected information into a logical structure to understand and summarise its key findings. The systematisation helped to organise the analysed literature and identify key themes and trends in understanding how to ensure police officers' personal safety. The third method employed in the study was comparison. It was used to analyse analogous and different views, interpretations, results, and conclusions of the scientists who investigated the issue.

## Ensuring personal safety of a police officer in the context of military operations

Due to the current reality, the newly formed duties of representatives of the law are closely related to the introduction of martial law in Ukraine. Such conditions, in which non-standard scenarios often arise, have considerably expanded the requirements for police officers and, as a result, affected their safety. In support of this opinion, the findings of S. Koerner & M. Staller (2022) can be cited – German scientists have concluded that modern conditions, not only martial law, require prominent standards of awareness, decision-making, and interaction skills from police officers.

The current day-to-day activities of Ukrainian law enforcement officials result in a high level of deaths and injuries among their personnel. S.B. Kuzikova *et al.* (2023a) and S.B. Kuzikova *et al.* (2023b) highlighted this issue in their studies. For the most part, a considerable percentage of the negative consequences are related to the need to ensure the highest international standards of policing in the de-occupied and adjacent territories. However, even in such circumstances, it is vital to ensure the safety and effectiveness of the police to maintain law and order and protect civil rights and freedoms. Of importance for the investigation of the problematic under study are the findings of S. Kurt & G. Tüysüzoğlu (2023), Turkish researchers who addressed the issue of the de-occupied territories around Nagorno-Karabakh after the war. Their study provides a solid basis for understanding the current political and geopolitical

context of the region and can serve as a valuable source of information for further research in this area.

The need for law enforcement in this area is driven by the desire of Ukrainian citizens to return to cities, villages, etc. liberated from the invaders. The findings of I. Bohdanov *et al.* (2023) confirm this statement. The researchers found that 52.8% of respondents expressed a desire to return to the de-occupied territories. In this context, it is worth mentioning the study by A. Petryna (2023), who examines the issue of security in the de-occupied territories not only in the context of Ukraine, but also at the general theoretical level, which emphasises the significance of understanding this aspect for ensuring stability and security in regions where military operations are ongoing.

In the context of a full-scale war, the law enforcement system of Ukraine is gaining advanced, but negative, experience, which comes with a significant risk to the safety of law enforcement officers. This statement can be confirmed by the example of police counteraction to illegal armed formations of the aggressor country in the form of subversive and reconnaissance groups (SRGs). It is a small special unit formed of individuals who are specially trained, properly armed and equipped and aim to inflict maximum damage on the enemy. This situation presents law enforcement agencies with difficult tasks of ensuring the security and protection of citizens in the context of military conflict (Subversive and reconnaissance group..., n.d.).

In this context, it is appropriate to note the findings of B. Fink *et al.* (2024), in which the researchers emphasise that special tactical units differ from other units in that they perform more physically demanding tasks. The above indicates the need for parity in physical development of law enforcement officers and defines a prominent level of their physical development as an axiom of police service. W.G. Barbosa *et al.* (2022) substantiate the professional suitability of a police officer to perform tasks with high physical activity. The experimental observational and longitudinal study confirmed that after six months of training at the academy, during which physical exercise was not the main goal, but its regularity was maintained, the cadets' physical fitness indicators continued to improve. The findings of the study indicate that regular training at the level of minimum physical standards can potentially contribute to the health and long-term career prospects of police officers.

As of the first half of 2024, there is no algorithm for countering illegal armed groups by law enforcement officials. However, the general picture of resistance to the negative phenomenon is still covered in scientific studies. Thus, J.C. Ruiz Vásquez *et al.* (2023) consider the possibility of eliminating illegal armed groups by strengthening the security and defence sector. The key contribution to this issue was made by V.P. Gorodnov *et al.* (2021), who determined the amount of ammunition needed during a battle with an SRG before reinforcements arrived. U.A. Aja (2024) expressed an analogous scientific approach. Therewith, the study raised the prominent issue of the proliferation of weapons among the civilian population. The study recommends the adoption of a national strategy that considers the nexus between governance and security as a panacea for stemming the tide of illicit small arms and light weapons proliferation in Nigeria.

Over the two years of the full-scale invasion, the law enforcement system of Ukraine has identified promising steps to effectively counteract the SRGs, namely: 1) transition of law enforcement officers from semi-automatic weapons (pistols), which are the standard weapons of law enforcement officers, to the use of automatic weapons (assault rifles and their modifications); 2) improvement of tactical training (mastering theoretical knowledge and practical skills of moving in open and closed areas, as well as algorithms of actions during the approach and inspection of buildings); 3) ensuring an adequate level of equipment (this criterion requires not only a material component); 4) compliance with the regulatory requirements that allow a police officer to act according to the existing level of threat (including the possibility of proactive use of firearms); 5) coherence in actions and communication between representatives of the security and defence sector.

However, the above is only a part of the newly emerging challenges for the law enforcement system. Activities in the de-occupied and adjacent territories are an unusual and rather dangerous factor for the life and health of law enforcement officers. An absolutely new level of threat is caused by the high degree of contamination of the territory with explosive devices, the presence and active work of illegal armed groups, the unwillingness of certain categories of the population to recognise the legitimate authorities, the existence of a developed system of collaboration, artillery shelling, war crimes, a considerable number of people suffering from post-traumatic stress disorder, and the presence of a significant number of unregistered weapons in the possession of civilians. The activity of law enforcement officers in such conditions without appropriate training considerably increases the possibility of bodily harm and causes deaths among law enforcement personnel.

Current reality shows that standard training programmes, the key of which is the International Criminal Investigative Training Assistance Programme of the US Department of Justice (ICITAP), which was introduced in Ukraine in 2005 and aims to help the government develop professional and transparent law enforcement agencies that protect human rights and

freedoms, fight corruption, cybercrime, and the activities of transnational criminal groups, as well as counter extremist and terrorist organisations (The Criminal Division..., n.d.), cannot ensure the safe operation of a police officer in the face of a full-scale invasion.

Despite the considerable number of programmes implemented around the world, namely 1) support for post-conflict reconstruction in the Balkans; 2) curriculum development in Pakistan; 3) new police academies in Iraq; 4) advanced training of trainers in Tanzania, ICITAP police instructors do not have relevant experience in the field. N. Maksimentseva & M. Maksimentsev (2024) point out that stabilisation and transition strategies in countries such as Afghanistan and Bosnia and Herzegovina, which have undergone significant efforts to restore security and establish effective law enforcement and judicial systems after periods of conflict, are now becoming relevant for Ukraine in regions that have undergone transformation as a result of armed conflict. While these strategies serve as a fundamental framework, they are not definitive and will be adjusted to reflect Ukraine's unique circumstances. Depending on the criminological situation in the particular liberated territories, these strategies may be revised or supplemented with additional approaches and measures. Maintaining a comprehensive strategic focus on fighting crime, based on preventive measures such as disarmament, demobilisation, and reintegration, stays essential. Transitional justice will play a key role in this effort. The successful implementation of post-war strategic initiatives will require considerable support from international donors, UN agencies, the EU, and other global partners. In Ukraine, the issue of training personnel to perform their duties in the de-occupied and adjacent territories is particularly relevant, as preliminary estimates suggest that the event will involve 50,000 law enforcement officers. At the same time, the experience gained by the law enforcement system of Ukraine allows identifying measures that can ensure the safe operation of police officers in these extremely difficult conditions.

Considering the above research findings, it is particularly important to conduct additional educational activities aimed at gaining police officers' experience in the context of military conflict: the need for enhanced physical training, work with civilians, the proliferation of weapons and the activities of SRGs all pose additional risks for which law enforcement officers should be prepared. In this regard, it is necessary to consider the global experience of such initiatives and their coverage in the scientific literature.

## Police training as a factor in ensuring their personal safety

Modern trends in society create new and previously unknown challenges for the law enforcement system, where effective counteraction to the criminal environment makes it impossible for law enforcement to operate safely. S. Koerner & M. Staller (2022) show that the police profession is inextricably linked to risk, as these professionals face violent conflicts in the course of their duties. P.G. Renden *et al.* (2015) shares an analogous opinion. Dutch researchers are considering the possibility that police officers may have to deal with aggressive individuals who threaten them, resist arrest, and cause physical injury. In their opinion, in such cases, law enforcement officers should use the necessary force but refrain from using firearms. However, this approach can lead to an increase in the number of injuries related to the performance of official duties. This problem may arise due to the complexity of the situation and the need to properly manage conflict situations without the intervention of firearms, which may be too radical a solution.

Considering the negative dynamics of attacks on police officers, as well as the inability of law enforcement officials to effectively resist aggressive individuals, the problem of ensuring the personal safety of police officers is becoming particularly acute and relevant in most countries of the world. At the same time, the above is evidence that the established standards of fighting crime have faced a new milestone in this area. I. Okhrimenko *et al.* (2020) highlighted the issue of the unsatisfactory system of education (training) of law enforcement officers and the inability of the latter to fully perform police functions. Analysing this factor, O. Avramenko & V. Kucher (2020) propose ways to address it. Researchers emphasise the need to improve the quality of training of law enforcement officials and further improvement of the system of their education (training). Researchers also point to the need to focus on in-depth legal knowledge, development of legal and psychological culture in the training of future police officers. They particularly emphasise the significance of improving the education system by ensuring that it is technologically advanced and practically oriented, that it is research and development-oriented, and that it develops skills and abilities that often become automatic. Generally, specialists should prepare for concrete areas of activity that are adapted to real-world conditions. In this context, of value are the remarks of O.S. Pronevych (2011), who highlighted the role of security measures in the context of the legal framework of the police in Germany and Poland. These mechanisms can be used to improve the police training system in Ukraine as well.

The exercise of a police officer's right to perform their duties safely involves the use of a comprehensive mechanism that includes a system of education and training. This process is accompanied by a range of activities aimed at achieving concrete results. Notably, the effectiveness of these measures directly

depends on the longstanding experience of the police system in fighting crime. This area of ensuring personal security of police officers has its positive and negative aspects depending on the country. The United States of America is generally considered the leader in this area. The country is implementing a considerable number of programmes aimed at educating (training) police officers for safe practice. V. Timashova (2013) highlights some of these programmes in her study. Analysing her research, it becomes clear that the training measures she investigated are closely intertwined with the everyday activities of law enforcement officials, providing the latter with the theoretical knowledge and practical skills necessary to ensure their safety. The emerging levels of danger on the path of a police career are variable and directly related to the current picture of the world. The crime situation and military conflicts show that aggressive influence on a police officer manifests itself in various, completely unpredictable forms. The counter-argument in this regard is the ability of a lawyer to implement their theoretical knowledge and practical skills acquired in the system of education (training). However, in today's reality, the above system of education (training) is imperfect. L. Alison *et al.* (2022) highlight the general state of affairs in this area.

In this context, it is worth citing the findings of scientific research that contribute to solving this problem. Thus, a group of Spanish scientists C.F.P. Calderón *et al.* (2023) focused on the physical condition and stress level of law enforcement officials. Although stress and physical fitness of police officers are not directly the subject of this study, they cannot be ignored, as they are closely related to the factors of ensuring the personal safety of law enforcement officers. Researchers have found an inverse relationship between the level of stress experienced by police officers at work and their physical activity levels. Thus, the study emphasises the vital role of physical fitness as a factor of stress resistance, which is necessary in modern conditions.

N. Lee & Y.K. Wu (2024) rightly address the specifics of the work of law enforcement officials, stating that it is a stressful and extremely demanding profession that requires maximum concentration of a high level of consciousness and awareness in many areas. Comparable scientific approaches have also been expressed by P. Gullon-Scott & L. Longstaff (2024), P.A. Faria *et al.* (2024). Clearly, the performance of tasks assigned to police officers, especially in extreme conditions, adversely affects the general condition of law enforcement officers. The results of the specifics of such work are highlighted in a study by M.G. Harris & K.M. O'Brien (2024), who noted negative psychological effects, including stress and symptoms of depression, as a result of prolonged exposure to adverse conditions. J. Nisbet *et al.* (2023) reached an analogous conclusion, moreover, the researchers identified frequent contacts of law enforcement officers with various potentially psychologically traumatic events that can lead to symptoms of post-traumatic stress disorder and other mental health disorders of police officers. It is also worth mentioning the research of A.F. Moreno *et al.* (2024). Their findings suggest that there is growing interest in developing programmes to minimise the impact of the stressful nature of police work. Having thoroughly analysed them, the researchers recommend that their peers and clinicians involved in the preparation of these programmes include simulations of critical scenarios based on real-world conditions whenever possible. This can help improve decision-making, stress management, self-regulation, and performance in challenging situations, as well as ensure ecological validity and transferability of skills to real-world contexts.

The above is especially important considering the findings of P.G. Renden *et al.* (2015), which suggest that there is insufficient information on the ability of officers to adequately manage their actions in the performance of their duties in high-risk situations, as well as the factors that directly affect this process. For the most part, law enforcement officials may not be prepared for critical incidents in the real world due to a lack of experience in making decisions under severe physiological stress. In a state of overwhelm or inability to cope with the problem, a wrong decision can potentially lead to dire consequences, such as injury or death, not only for law enforcement officers but also for civilians. This is explained by the fact that a police officer is, first and foremost, a person endowed with a very concrete set of physiological characteristics of the body and a range of biochemical processes where hormones act as regulators, the secretion of which, in critical circumstances, plays a crucial role.

A synthesis of scientific research shows that in situations with a considerable risk to the life and health of a police officer, one can sometimes observe uncertainty, ignorance, or disregard for the basics of personal safety, or, on the contrary, aggression towards a person in need of help. Often, such behaviour by a law enforcement officer results in human rights violations that have led to dire consequences. This is confirmed by the findings of M. Christopher *et al.* (2024). Researchers have argued that during extreme situations, law enforcement officers use excessive force without controlling their actions. Police brutality is a widespread phenomenon around the world. B. Magaloni (2024) came to this conclusion in his study.

Without going into further detail on the unlawful actions of law enforcement officials in situations with a substantial risk to life and health, it is worth highlighting some of the specific features of such behaviour. Confusion or aggression in the actions of a police officer is primarily related not to the level

of their theoretical knowledge or practical skills, as it may seem at first glance, but to the physiological characteristics of the human body, which are manifested in that when a person feels in danger, the adrenal glands secrete the so-called stress hormones, including epinephrine (adrenaline), norepinephrine (noradrenaline) and the natural glucocorticoid hormone cortisol, also known as the stress hormone, as confirmed by M.M. Oros & O.V. Hal (2021). These are different hormones that affect the human body in different ways. They pose a health hazard only when released in large quantities or when a person is in a state of permanent stress. At this point, it should be noted that a group of physiologically active substances (catecholamines), including epinephrine and norepinephrine, are released into the bloodstream when a person experiences strong emotional arousal or danger. At the physiological level, this is manifested by the fight-or-flight response (also called hyperarousal or acute stress response).

In other words, the physiological reaction of the body in response to a dangerous event, physical injury or threat to life limits the police officer's ability to some extent, and in essence, returns the person to the elementary basic movements possible only through muscle memory. However, to preserve life, the law requires a representative of the law to make a decision on further actions, namely, to resist or, on the contrary, to try to avoid interaction with a source of increased danger. Evidence from A. Nieuwenhuys *et al.* (2009) suggests that declining police productivity affects other complex procedural skills, including arrest and self-defence behaviour, which are commonly used by law enforcement in high-risk situations. Notably, the amount of stress hormone secretion directly depends on the level of danger, the duration of the event, and the individual characteristics of the law enforcement officer's body. Only with the passage of time or de-escalation of the situation can a police officer regain control of themselves and return to consciously performing their duties.

P.M. Di Nota & J.-M. Huhta (2019) made the most significant contribution in this area. The researchers concluded that it is necessary to conduct practical exercises with the most realistic levels of stress. According to scientists, such a system of education (training) can minimise the secretion of stress hormones in extreme situations and, as a result, reduce the negative effects of interaction between law enforcement officers and the public. J.C.V. Jiménez *et al.* (2020) and M.H. Martaindale *et al.* (2024) share an analogous opinion, identifying the use of realistic situational scenarios capable of providing a level of stress comparable to practical activities as one of the key features of the education (training) system.

At the same time, part of the academic community addresses other aspects of police training, namely the pedagogical approach to the teaching system and the professional awareness of the person responsible for this process. M. Staller *et al.* (2022), concluded that it is necessary to use modern pedagogical approaches in the system of education (training) of law enforcement officers. The findings of Ukrainian researchers D.V. Shvets *et al.* (2020) suggest the possibility of improving the education (training) system by optimising teaching technologies. In this context, it is appropriate to note the conclusion reached by S.J. Simon (2023), namely on the significance of the competence of the instructor involved in the educational process.

In today's Ukrainian reality, ensuring the personal safety of police officers directly depends on the response of their education (training) system to new challenges. In other words, the system does not always have time to adapt to new police security requirements, thus creating "time gaps". The results of a series of trainings for police trainers on police operations in the de-occupied territories, held in the first quarter of 2024 with the involvement of experts from the European Union Advisory Mission Ukraine (Partnership in action: Training..., 2024), suggest that the safe operation of law enforcement officers in the de-occupied and adjacent territories requires the following: 1) enhanced tactical training, namely basic training in individual and small groups, where the purpose is to ensure the safety and security of personnel; 2) awareness of the risks associated with explosive devices; 3) ability to provide aid to the wounded in combat situations; 4) mastery of algorithms for law enforcement, organisation of checkpoints, patrolling, evacuation of the population, communication, and interaction with other units of the security and defence sector; 5) increased level of firearms proficiency; 6) understanding the algorithms of action in the event of artillery fire.

## Conclusions

The issue of ensuring the personal safety of police officers is relevant all over the world. Current research shows a negative trend – attacks on law enforcement officers that end in tragic consequences have moved from the category of emergency events to everyday occurrences. This demonstrates the inability of law enforcement officials, despite the presence and ability to use firearms, to effectively counter aggressive individuals. For the most part, researchers agree that the system of education (training) of law enforcement personnel, which is a mechanism for exercising the right of a law enforcement officer to safely perform their duties, is imperfect and does not ensure the proper level of police safety in the performance of their duties.

Since most researchers consider the problem of ensuring personal security of police officers through the lens of standard law enforcement activities,

without considering the aggravating factor of military conflict, the findings of their studies suggest the need to address only the "weaknesses" of the existing system. However, the need to fundamentally reformat or improve the system of education (training) of law enforcement personnel is driven by the current Ukrainian reality, where the law enforcement system is directly linked to previously unknown challenges that create additional threats and increased demands on police officers. They are largely related to the need to ensure the highest international standards of policing in the de-occupied and adjacent territories, as well as the situational intensification of illegal armed groups of the aggressor country.

A positive impetus for improving the situation in general is the construction of a completely new architecture of police education (training), which should factor in the newly emerging threats and provide conditions for reducing negative incidents related to the personal safety of law enforcement officers, especially injuries and deaths of law enforcement personnel. An optimised model for ensuring the personal safety of police officers should be based on the experience of the law enforcement system of Ukraine gained during the years of countering a full-scale invasion and should include the following components: enhanced tactical training; awareness of the risks of explosive substances and objects; sufficient knowledge of tactical medicine; mastery of algorithms for law enforcement under martial law; improved firearms skills; mastery of algorithms for action in the event of artillery fire. A promising step in today's reality is to find ways to increase police awareness of explosive devices, algorithms for countering sabotage and reconnaissance groups, and ensuring safety during artillery fire. The newly developed model of law enforcement training should partially or fully replace existing police training programmes, depending on the country. The investigation of the regional specifics of the implementation of these programmes is a promising avenue for future research in this area.

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## Conflict of Interest

The author of this study declare no conflict of interest.

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# Передовий досвід забезпечення особистої безпеки поліцейського: систематичний огляд

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■ **Анотація.** Складна геополітична ситуація в Україні створює нові виклики для правоохоронної системи та підвищує актуальність питання забезпечення особистої безпеки поліцейського. Зазначене обумовлює необхідність висвітлення проблемних аспектів цієї сфери, а також детального окреслення нових небезпечних викликів для сектору безпеки й оборони, сформованих реаліями сьогодення. Метою статті є аналіз сучасних тенденцій у вивченні специфіки забезпечення особистої безпеки поліцейського. Досягнення мети передбачає застосування комплексу методів, зокрема таких, як інтернет-евристика, систематизація, порівняння. Основні результати дослідження полягають у тому, що в статті окреслено специфіку діяльності правоохоронної системи України в умовах режиму воєнного стану. Проведення систематичного аналізу літератури допомогло визначити основні небезпечні фактори й умови, що нині впливають на стан забезпечення особистої безпеки представників закону у світі. Також встановлено, що в сучасній науковій літературі недостатньо змістовно розглянуто питання забезпечення особистої безпеки поліцейського в умовах воєнних дій. З'ясовано, що в сучасному науковому дискурсі цю проблему висвітлено лише крізь призму наявних недоліків стандартних програм навчання (підготовки) представників правоохоронних органів, які в реаліях сьогодення не здатні забезпечити їх безпеку. Відсутність теоретичної складової актуалізує пошук шляхів реалізації права поліцейського на безпечне виконання покладених на нього обов'язків. Практична значущість результатів дослідження полягає в тому, що його результати можуть бути використані науковцями для здійснення подальших досліджень з тематики, а також практиками для реалізації найефективнішого досвіду забезпечення особистої безпеки поліцейського

■ **Ключові слова:** війна; безпека; система підготовки; деокуповані території; незаконні збройні формування; диверсійно-розвідувальні групи

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# Fintech, the threat of technology in the conventional financial system

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■ **Abstract**. This study centred on the effect of technology on conventional payment methods and their consequences for society. Considering the presence of digital currencies, also known as cryptocurrencies, used in transactions through financial technology (fintech), this study could serve as a basis for developing laws and regulations governing fintech. The purpose of this study was to offer a clear and specific understanding of the legitimacy and societal advantages of fintech in Indonesia. This study employed regulatory research methodology, incorporating socio-legal techniques, legislative analysis, and examination of legal concepts. The findings of this study have effectively achieved three fundamental criteria in the use of fintech: assurance, benefit, and fairness. The regulations on fintech are outlined in Bank Indonesia Regulation No. 19/12/PBI/2017, Financial Services Authority Regulation No. 77/POJK.01/2016, and Law No. 8 of 1999, which also address matters related to consumer protection. From a sociocultural standpoint, fintech embodies a technologically-driven revolution that fosters societal development. Fintech endeavours to offer benefits to the public through facilitating electronic financial transactions. It was emphasised that fintech plays a crucial role in reshaping society by revolutionising how people interact with finances. A key aspect of this transformation is the shift away from conventional payment methods towards digital alternatives. It is essential for both consumers and fintech companies to understand and follow legal requirements when implementing fintech solutions,

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as adherence to regulations is critical. Failure to uphold ethical standards within the fintech industry can hinder its widespread adoption and lead to negative consequences. Understanding the potential threats posed by fintech to the conventional financial system will allow financial institutions and regulators to develop effective risk management strategies

■ **Keywords**: financial technology; fairness; customer protection; social change; legal purpose

## ■ Introduction

The progress of technology in the current era of globalisation is closely intertwined with societal development. The consequences of this expansion can be advantageous or detrimental, irrespective of how individuals employ technology. Technological advancements, especially in the field of financial technology (fintech), are having a profound effect on societal transformation. Fintech is a manifestation of economic and technological advancement within the trade business. The internet serves as the fundamental basis for technology advancements in the trading industry, usually referred to as online commerce. Online trading is a prevalent practice in society, demonstrating the impact of technological advancements on societal transformation.

The emergence of fintech has been influenced by the mechanics of buying and selling transactions. R. Rusmi *et al.* (2022) found that conventional forms of exchange, such as bartering, continue to be prevalent in Indonesia. F. Allen *et al.* (2022) present evidence that fintech and decentralised finance have permeated every aspect of the financial system and have bolstered financial inclusion over the last decade. According to M.M. Alshater *et al.* (2022), fintech has experienced advancements that are now aligned with religious law, specifically Islamic fintech. Islamic fintech aims to create and implement innovative technological solutions that follow Sharia principles and cater to the needs of Islamic financial institutions. F. Shao (2022) emphasised that the digital divide poses a considerable challenge to the development of fintech in rural areas. To overcome this obstacle and promote the global application of fintech, particularly in rural areas, the revitalisation of these regions through the utilisation of machine learning algorithms is imperative. M. Doumpos *et al.* (2023) discussed how they utilised operational research approaches and artificial intelligence to address significant obstacles and possibilities in the banking sector, particularly in fintech.

Fintech presents a potential threat to organisations that are still engaged in conventional cash-based transaction systems for buying and selling. Hence, it is crucial to prioritise the topic of legal clarity on this technology. Key areas of attention should be the expansion of fintech services to the lower-middle socioeconomic stratum and the integration of payment systems in traditional markets. In 2020, Indonesian peer-to-peer lending fintech startups primarily aimed to capture numerous conventional markets. These firms want to integrate financial technology into payment systems in as many as 5,000 conventional marketplaces (Jati, 2020). Upon analysing the fundamental tenets of the Indonesian government, it is clear that fintech occupies a prominent position in the nation's economic expansion. Fintech plays a crucial role in promoting economic development by ensuring fair efficiency and balanced advancement[1].

The purpose of this study was to investigate whether the payment system supported by fintech media follows the required legal criteria. It focused on examining two specific problem formulations. What is the organisational framework of the payment system enabled by fintech media and how does it affect social transformation? Furthermore, this study examined the fintech payment system in Indonesia through the lens of social transformation and found how fintech can effectively fulfil legal purposes, such as ensuring certainty, advantages, and equity.

## ■ Materials and Methods

This study primarily examined normative research methodologies, specifically focusing on socio-legal approaches, statutory approaches, and legal analytical approaches. Normative research methodology was employed to examine the legal certainty and efficiency of financial phenomena by evaluating pertinent legal sources. This study used the normative method to analyse the internal characteristics of positive law on fintech. Therefore, it was imperative to gather primary sources of legal data, which encompass relevant laws and regulations. The normative research methodology helped to examine the existing laws and regulations on fintech concerns from a legal standpoint. Hence, normative research methodology was bolstered by legal methodologies and the examination of legal concepts to elucidate and scrutinise fintech from a legal perspective. The incorporation of socio-legal approaches was crucial due to the integration of several interdisciplinary and multidisciplinary sciences, including social sciences and computer technology science, in fintech research. The purpose of employing a socio-legal approach was to fully integrate the

[1] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45%20ASLI.pdf.

knowledge, expertise, and research methodologies of multiple disciplines to address the theoretical and methodological constraints of those disciplines. This approach aimed to establish a basis for the development of a novel form of fintech analysis within the field of law. This socio-legal method aimed to comprehensively investigate a problem by not only examining relevant legal norms or doctrines but also considering the broader context of fintech rules and implementation in Indonesia. An integrative strategy was expected to enhance endeavours in the pursuit of truth and the investigation of occurring situations.

The sample for this study comprised a range of laws and regulations, notably the Law of the Republic of Indonesia No. 8 of 1999, which pertains to consumer protection[1], Law of the Republic of Indonesia No. 19 of 2016 "Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions"[2], Bank Indonesia Regulations, Regulations of the Financial Services Authority of the Republic of Indonesia, and Circular Letter of the Indonesian Financial Services Authority, The International Financial Services Centres Authority Act, 2019[3], Notification of the Bank of Thailand No. FPG. 6/2565 Re: Regulations on Commercial Banks' Financial Business Groups Undertaking Digital Asset-Related Businesses and Transactions.[4] Furthermore, this study employed a prescriptive analytical methodology. This study analysed the legislative and regulatory framework that governs the different aspects of financial technology (fintech). The research was backed by secondary sources, such as legal and scientific literature and government publications, to address uncertainties in the legislation cited.

## Results and Discussion

**Financial technology overview.** Fintech is well-known in business, particularly in Indonesia, especially during the COVID-19 pandemic. As a result of the pandemic, all activities, particularly in business ventures, have had to be shifted to a hybrid system and conducted fully through the network, including the payment system. Regarding fintech regulation, Article 1 Item 1 of the regulation issued by Bank Indonesia defines financial technology as a system that utilises technology to produce products, services, technologies, and business models in the modern era. These innovations have implications for maintaining monetary stability, ensuring the efficiency and stability of the financial system, and enhancing security. Fintech-based financial systems can overcome these challenges[5].

The fintech industry in Indonesia is seeing tremendous growth due to the country's massive population, which is the highest in Southeast Asia and is among the top five most populous countries globally. The inception of fintech in Indonesia commenced in 2015, with the foundation of the Indonesian Fintech Association (AFI). AFI has a major role in shaping the growth of fintech in Indonesia (Igamo *et al.*, 2024). AFI was established in 2016, leading to the emergence of companies and goods involved in this fintech system.

The presence of 125 businesses listed at Financial Services Authority Indonesia (OJK) signifies the enormous development of fintech. Furthermore, Bank Indonesia has registered 54 payment systems facilitated by fintech media (Rahman, 2020). The Indonesian population is considered technologically savvy, particularly in financial technology (fintech). The distribution of loans through fintech in Indonesia in 2019 amounted to Rp 25.92 tn, showing a 14.36% rise compared to Rp 22.67 tn in 2018. AFI reported a 78% growth in the fintech industry in Indonesia in 2016. As of November 2016, AFI documented 135-140 start-up enterprises in this sector (Wahyuni, 2019). Based on the statement above, Indonesia embraces this fintech system to address the financial requirements of the social society in Indonesia. Fintech offers considerable potential to address the pressing demands of conventional financial institutions in Indonesia. Fintech development in Indonesia encompasses more than just funding and lending. It has expanded into transport services, with companies like Gojek introducing GoPay, Grab launching Dompet Grab, and Uber also entering the market. The fintech industry in Indonesia is now mostly controlled by entrepreneurs involved in payment services (43%), lending (17%), and other forms of aggregators, crowdfunding, and analogous activities (Hassan *et al.,* 2023).

The fintech industry is a popular segment of the financial services sector that has gained significant traction in the current era of globalisation, particularly during the COVID-19 pandemic. The government and the community view fintech as a promising solution to facilitate the availability of financial services (Murinde *et al.,* 2022). Fintech is driving a

[1] Law of the Republic of Indonesia No. 8 "On Consumer Protection". (1999, April). Retrieved from https://peraturan.bpk.go.id/Details/45288/uu-no-8-tahun-1999.
[2] Law of the Republic of Indonesia No. 19 "On Amendments to Law No. 11 of 2008 Concerning Electronic Information and Transactions". (2016, November). Retrieved from https://peraturan.bpk.go.id/Details/37582/uu-no-19-tahun-2016.
[3] The International Financial Services Centres Authority Act. (2019, December). Retrieved from https://www.indiacode.nic.in/bitstream/123456789/14009/1/A2019___50.pdf.
[4] Notification of the Bank of Thailand No. FPG. 6/2565 "Regulations on Commercial Banks' Financial Business Groups Undertaking Digital Asset Related Businesses and Transactions". (2022, October). Retrieved from https://www.bot.or.th/content/dam/bot/fipcs/documents/FPG/2565/EngPDF/25650188.pdf.
[5] Regulation of the Bank of Indonesia No. 19/12/PBI/2017 "On Implementation of Financial Technology". (2017, November). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Documents/PBI_191217.pdf.

revolutionary transformation in the startup business sector by facilitating various services such as mobile payments, crowdfunding, and money transfer services. Fintech is demonstrated by the efficacy of the crowdfunding platform, which enables the collection of donations from a global audience straightforwardly and effortlessly. Furthermore, fintech enables individuals to conduct global or international money transfers. PayPal exemplifies the influence of fintech by automatically adjusting currency exchange rates, enabling individuals in countries like Australia to purchase goods from Indonesia conveniently.

It is important to understand that the services provided by this fintech platform are closely linked to technology, which is a crucial aspect in driving societal change. From the perspective of backend system development, fintech presently utilises a wide scope of programming languages, including Ruby, Java, Go, etc., to construct several services or mobile applications (Demir *et al.*, 2022). Through the development of mobile applications, fintech service users may effortlessly access data, financial transactions, loans, and bill payments to meet their everyday demands (Zhou *et al.*, 2022).

The key considerations in advancing fintech today are safeguarding user data and the integrity of transaction processes. Each database management system (DBMS), such as MySQL, MongoDB, and PostgreSQL, offers distinct functionalities (Pizzi *et al.*, 2021). Several security measures, including QR Code Scan and OTP (One Time Password) code, were created to protect data and transactions (Agung, 2021). Fintech companies currently under development and registered and licensed by the OJK have introduced convenient transaction methods, including top-ups, withdrawals, and transfers through banks and other third-party channels. The global perspective on technological advancements in digitalising payment methods, as seen in the fintech system, reveals rapid and continuous growth in various sectors. These sectors include lending startups, payment systems, financial planning, financing, retail investment, financial research, remittances, and more.

**The legal perspective of fintech.** The genuine essence of the legal purpose encompasses the concepts of certainty, practicality, and fairness following the law. Before discussing this fintech phenomenon, it is imperative first to explore the concept of legal certainty and its relevance to this study. Legal certainty, as defined by science, is the fundamental basis of a state that adheres to legal ideology, like Indonesia, where the emphasis is on establishing laws and regulations, adherence to them, and pursuing justice in all state policies. The concept of legal certainty is closely intertwined with the principle of the rule of law, indicating that the law holds supreme authority within a state. The rule of law is a fundamental concept that guarantees the fair and consistent enforcement of laws, safeguards individual rights, and maintains fairness and responsibility within a community. Sovereignty is derived from the law rather than from a leader's authority, position, or rank. The ultimate sovereignty is in the power of the law, as it is the legal standards that grant and define an individual's rights and obligations. Legal standards are predetermined regulations or criteria that serve as benchmarks for assessing compliance with the law, making decisions, or determining accountability.

In fintech, the determination of legal certainty is based on the regulations set by Bank Indonesia and the Financial Services Authority (OJK). Bank Indonesia has established two rules related to fintech. The initial rule, implemented in 2016, concerns limitations on processing financial transactions. The second provision, enacted in 2017, pertains to the application of financial technology. The regulations on fintech are explicitly outlined in Article 1 of Bank Indonesia Regulation No. 19/12/PBI/2017[1]. According to this regulation, fintech is a technological tool within the financial system that generates products and services to facilitate secure and efficient payment systems. The parameters for fintech are outlined in Article 3, Item 1, which identifies five distinct sectors for its application. One of these categories pertains to financial services and payment systems.

Additionally, according to Article 2 Item 2 of Financial Services Authority Regulation No. 77/POJK.01/2016[2], it is required that providers of financial services in the payment system using technology services must be legal entities in the form of limited liability companies or cooperatives. The precise framework of fintech regulation in Indonesia has not yet been established within the context of state legislation. Admittedly, fintech has undeniably received legal recognition from regulatory bodies such as Bank Indonesia and OJK.

Legal expediency is a legal purpose that is inherently biased towards society. Jeremy Bentham's comment confirms that the objective assessment of a legal policy involves determining if the policy may yield advantages or produce a useful outcome (Lasswell & Kalpan, 2017). Legal expediency involves the practi-

[1] Regulation of the Bank of Indonesia No. 19/12/PBI/2017 "On Implementation of Financial Technology". (2017, November). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Documents/PBI_191217.pdf.
[2] Financial Services Authority Regulation No. 77/POJK.01/2016 "Information Technology-Based Money Lending and Borrowing Services". (2016, December). Retrieved from https://www.ojk.go.id/id/regulasi/otoritas-jasa-keuangan/peraturan-ojk/Documents/Pages/POJK-Nomor-77-POJK.01-2016/SAL%20-%20POJK%20Fintech.pdf.

cal and pragmatic criteria that guide decision-making in the legal system, considering aspects like efficiency, feasibility, and the overall advantages and repercussions of a particular course of action. The legal system comprises legal policies, and a policy is considered a failure if it causes harm to the affected population.

The legal convenience in the fintech industry is clear in the stipulations of Article 3 Item 2 of Bank Indonesia Regulation No. 19/12/PBI/2017[1], which specifies that fintech must meet certain characteristics, including the ability to deliver advantages to the community and be widely accessible. These laws demonstrate that fintech is a platform designed to serve the greater community. Fintech plays a crucial role, particularly during the COVID-19 pandemic, where non-cash payment methods, lending, and other financial activities are necessary. The legal purpose of its elaboration is inherently intertwined with the concept of justice, namely legal justice. Legal justice seeks to provide an equitable allocation of societal rights and responsibilities. It is essential to have a beginning state that directly assures a fair process to ensure this condition's proper and accurate implementation. The essay examines the necessity of rethinking the rights of individuals in motion, highlighting the significance of legal protection rights as a crucial element in guaranteeing justice for society. This initial condition, known as the initial position, is characterised by the principles of freedom, rationality, and equality (El-Chaarani *et al.*, 2022).

Financial institutions, particularly those involved in fintech media, must comprehensively understand the legal rights and responsibilities outlined in laws and regulations. It is crucial to uphold legal fairness for companies and their customers or consumers. Nevertheless, considering the regulations set by Bank Indonesia and OJK that govern the application of fintech by enterprises, the focus stays on imposing penalties on companies that fail to follow the rules. Article 20, Items 1-3, explicitly state that fintech enterprises failing to follow the regulations would face severe penalties, including termination of business activities, removal from the list of fintech operators, and revocation of business licenses[2].

Legal justice must be examined from the standpoint of fintech organisers and the perspective of fintech consumers, who are the customers of these fintech businesses. Legal justice encompasses the just and unbiased enforcement of laws, regulations, and court procedures to guarantee that persons and organisations are held responsible for their conduct and get fair treatment within the legal framework. Thus, to explain fintech in terms of legal justice, it is essential to delve into the legal regulations about fintech consumers, who are essential members of contemporary society. Specifically, there are currently no legal regulations for customers who actively engage in implementing this technology. Hence, this study will use the legislative provisions outlined in the Consumer Protection Law of 1999[3] to guarantee equitable treatment for customers of fintech services.

The fairness principle is a key idea that can be applied to implement equitable fintech. Fairness is of utmost importance in climate negotiations, as it directs the conversations regarding the just allocation of duties, capabilities, and rights among nations. The idea of fairness states that everyone should be treated justly, with equal opportunities and results, regardless of their inherent qualities or circumstances. It functions as a fundamental principle in diverse fields, such as social justice, law, ethics, and decision-making procedures. The fairness principle of fintech pertains to guaranteeing equal and justifiable availability of financial services and products, irrespective of one's socioeconomic situation or demographic (Davidson, 2021). The text highlights the significance of transparent and impartial algorithms, equitable pricing, and equal treatment of customers to foster inclusivity and prevent prejudice. The fairness principles in fintech underscore the significance of guaranteeing equitable access and impartial treatment for all users, irrespective of their socioeconomic situation or background while utilising financial technology services. Financial technology services include refraining from engaging in discriminatory practices, reducing the influence of biases in algorithms and data, and actively advocating for openness and accountability in decision-making processes. The principle of fairness is a fundamental notion that governs ethical and moral issues in different circumstances, such as consumer protection. It highlights the need to treat consumers fairly and protect their rights and interests in commercial transactions and relationships with firms.

The proposed approach integrates fairness issues and legal purposes to advance sustainable development, enhance environmental quality, and reach the outcome of augmenting community economic value through fintech at both the provincial and national scales. In the context of legal procedures, the fairness principle denotes the notion that every individual should be treated equitably and without prejudice. Its priority is the equitable implementation of laws

[1] Regulation of the Bank of Indonesia No. 19/12/PBI/2017 "On Implementation of Financial Technology". (2017, November). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Documents/PBI_191217.pdf.
[2] Ibidem, 2017.
[3] Law of the Republic of Indonesia No. 8 "On Consumer Protection". (1999, April). Retrieved from https://peraturan.bpk.go.id/Details/45288/uu-no-8-tahun-1999.

and procedures, guaranteeing that every individual is provided with an impartial and equitable chance to submit their argument and obtain a just resolution. The fairness principle is a guiding principle in resource allocation that aims to distribute resources equitably and impartially among users or entities. It ensures that no individual or group is disproportionately favoured or disadvantaged. The fairness concept in fintech consumer protection involves guaranteeing that individuals are treated fairly and without prejudice in their dealings with financial technology products and services. The concept entails advocating for transparent methods, impartial algorithms, and equitable access to financial possibilities while addressing any biases and protecting consumer rights. Ensuring equitable treatment, openness, and morally sound methods in delivering financial services to consumers (Mikołajczak & Becker, 2019). It includes equitable access to financial products and services, transparent disclosure of terms and conditions, and effective resolution channels for consumer complaints and disputes.

Consumer protection in electronic transactions, particularly in financial systems like fintech, is strongly linked to Laws and Regulations. Consumer protection seeks to defend individuals rights and interests when engaging with firms, promoting fairness, openness, and safety in the marketplace (Al-Khowarizmi *et al.*, 2024). Hence, social communities embody a certain demography that actively engages in consuming products and services provided by enterprises operating in fintech. People buy and sell goods, services, online events, and financial transactions using fintech services. Fintech services cover a diverse array of cutting-edge financial technologies and digital solutions that seek to improve efficiency, accessibility, and convenience in banking, payments, investing, and other financial operations (Etudaiye-Muhtar *et al.*, 2024). The community must exercise caution and selectivity to obtain legal protection when engaging in fintech activities. Legal protection in the fintech industry encompasses the implementation of regulatory frameworks, the preservation of consumer data privacy, and the mitigation of potential risks such as cyber threats and criminal actions. Thus, this is done to ensure that the community, as consumers, can seek justice in the event of any financial losses made by fintech businesses. Justice in financial losses entails the impartial and just allocation of responsibility, accountability, and compensation among the parties affected. Section 2 establishes the principles and objectives of consumer protection. One of these concepts is the promotion of fairness and balance (Law of Indonesia on Consumer Protection)[1].

OJK demonstrates its commitment to ensuring justice for fintech consumers by issuing a Circular Letter of the Financial Services Authority No. 2/SEOJK.07/2014[2], which addresses the service and implementation of consumer complaints to financial service institutions. Furthermore, according to Article 1 No. 3 of the OJK Regulation on information technology-based money loans, it is specified that information technology-based lending services are a type of financial service that aims to facilitate the connection between lenders and borrowers to enter into money lending and borrow agreements using electronic transaction methods[3]. According to the regulations issued by OJK regarding consumer protection in fintech, if there are indications of actions that violate the rules and cause losses, OJK will request the cessation of business activities by fintech operators. Another form of protection carried out by OJK is legal advocacy for the interests of consumers who feel disadvantaged by filing lawsuits in court against the parties involved and causing such losses (Pranita & Suardana, 2019).

The above description suggests that fintech has been officially acknowledged and defined within Indonesia's legal framework. This recognition is evident in the regulations Bank Indonesia and the Financial Services Authority set forth. Fintech aims to offer advantages to the general public by enabling electronic financial transactions, as outlined in Article 3 Item 2 of Bank Indonesia Regulation No. 19/12/PBI/2017[4]. Law No. 8 of 1999 "On Consumer Protection"[5], OJK Regulation No. 77/POJK.01/2016[6], and Circular

[1] Law of the Republic of Indonesia No. 8 "On Consumer Protection". (1999, April). Retrieved from https://peraturan.bpk.go.id/Details/45288/uu-no-8-tahun-1999.

[2] Circular Letter of the Financial Services Authority No. 2/SEOJK.07/2014 "On Service and Settlement of Consumer Complaints". (2014, February). Retrieved from https://ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/regulasi/surat-edaran-ojk/Pages/SEOJK-tentang-Pelayanan-dan-Penyelesaian-Pengaduan-Konsumen-pada-PUJK.aspx.

[3] Regulation of the Financial Services Authority No. 1/Pojk.07/2013 "On Consumer Protection in The Financial Services Sector". (2013, July). Retrieved from https://www.ojk.go.id/id/regulasi/Documents/Pages/POJK-tentang-Perlindungan-Konsumen-Sektor-Jasa-Keuangan/POJK%201%20-%202013.pdf.

[4] Regulation of the Bank of Indonesia No. 19/12/PBI/2017 "On Implementation of Financial Technology". (2017, November). Retrieved from https://www.bi.go.id/id/publikasi/peraturan/Documents/PBI_191217.pdf.

[5] Law of the Republic of Indonesia No. 8 "On Consumer Protection". (1999, April). Retrieved from https://peraturan.bpk.go.id/Details/45288/uu-no-8-tahun-1999.

[6] Financial Services Authority Regulation No. 77/POJK.01/2016 "Information Technology-Based Money Lending and Borrowing Services". (2016, December). Retrieved from https://www.ojk.go.id/id/regulasi/otoritas-jasa-keuangan/peraturan-ojk/Documents/Pages/POJK-Nomor-77-POJK.01-2016/SAL%20-%20POJK%20Fintech.pdf.

Letter of the Financial Services Authority No. 2/SEOJK.07/2014[1] offer legal protection to consumers of fintech services in case of financial losses caused by fintech service providers. Fintech actors must not only be supervised but also follow rules and regulations of information technology, such as Law No. 19 of 2016, which amends Law No. 11 of 2008 "On Electronic Information and Transactions"[2].

The term "global" in this context refers to something that has spread worldwide, particularly the fintech industry, which is seeing rapid growth and expansion in various locations. Hence, this discourse pertains to Indonesia and other Global South nations like India and Thailand. One of the reasons for selecting India and Thailand for this study is the resemblance between Indonesia, India, and Thailand in terms of having a government predominantly influenced by significant religious-centric components. Furthermore, the robust presence of heterogeneity, characterised by a diverse range of cultures and religious views, in the countries above has led to the selection of Indonesia, India, and Thailand to examine fintech development in Global South nations. The topic of fintech rules in Indonesia has been addressed in the previous paragraph. This study will examine the progress and oversight of fintech in India and Thailand.

The fintech sector in India has had substantial advance during the digital revolution, leading to considerable developments in financial infrastructure and fostering entrepreneurship. Fintech advancements, including mobile payments, peer-to-peer lending, and digital banking services, have considerably contributed to improving financial inclusion and broadening the availability of financial services throughout the nation. The fintech sector in India has shown substantial expansion and acceptance, driven by the country's digital transformation and growing availability of technology. The fintech industry in India is expected to have a valuation of $150-160 bn by 2025, demonstrating its significant potential and influence on the financial sector (Aggarwal *et al.*, 2023). The regulation of fintech in India is a multifaceted and dynamic environment. The Reserve Bank of India (RBI) is the central bank and regulator, with the important responsibility of establishing norms and frameworks for fintech enterprises. RBI includes areas such as digital lending, prepaid payment instruments, and the issue of credit and debit cards. The Reserve Bank of India (RBI) serves as the primary governing body for fintech in India, functioning as the central bank and regulator for banking and non-banking financial activity. The International Financial Services Centers Authority (IFSCA) is vital in overseeing fintech activity in the International Financial Services Centre (IFSC) situated in Gandhinagar, Gujarat.

India has become a leading global innovator in the FinTech industry thanks to its cutting-edge technology solutions and widely acclaimed digital payment systems. The expansion of the FinTech sector in India has revolutionised the country's financial landscape, positioning cities such as Bangalore and New Delhi as prominent global FinTech centres (Migozzi *et al.*, 2023).

Thailand has experienced substantial growth in various forms of FinTech, including adopting digital wallet technology. The emergence of digital wallets, such as World coin, has played a major role in reshaping financial transactions and driving the country's digital economy (Kraiwanit *et al.*, 2023). The Bank of Thailand has revoked prior legislative constraints on Thai financial institutions, granting them unrestricted permission to operate in the fintech sector, except for investments in digital assets. In Thailand, the regulatory strategy focuses on utilising technology, encouraging sustainability, and ensuring the capacity to address new hazards in the fintech industry.

On 6 October 2022, the Bank of Thailand (BOT) revoked prior regulatory constraints that restricted Thai financial institutions from investing in the fintech sector, per the regulations. The BOT acknowledges the potential of fintech to provide value and innovation to customers. It intends to utilise technology and open data, promote fair competition, and address national sustainability problems in the advancement of financial technology. ICT and mobile banking have played a crucial role in fostering financial inclusion in Thailand, especially among vulnerable groups like the elderly. Thailand has achieved notable advancements in financial inclusion, placing sixth in the highest 25% among nations in the Asia-Pacific region (Bui & Luong, 2023). Nevertheless, despite the prevalence of financial accessibility, certain individuals, particularly the elderly, continue to experience financial exclusion. Table 1 of laws and regulations pertaining to fintech regulation in Global South countries, specifically Indonesia, India, and Thailand, will encompass the necessary elements to streamline the legal aspects of fintech.

[1] Circular Letter of the Financial Services Authority No. 2/SEOJK.07/2014 "On Service and Settlement of Consumer Complaints". (2014, February). Retrieved from https://ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/regulasi/surat-edaran-ojk/Pages/SEOJK-tentang-Pelayanan-dan-Penyelesaian-Pengaduan-Konsumen-pada-PUJK.aspx.

[2] Law of the Republic of Indonesia No. 19 "On Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions". (2016, November). Retrieved from https://peraturan.bpk.go.id/Details/37582/uu-no-19-tahun-2016.

**Table 1.** Fintech tables in legal regulations in Indonesia, India, and Thailand

| Country | Regulation | Description |
|---|---|---|
| Indonesia | ▪ Law of the Republic of Indonesia No. 8 of 1999;<br>▪ Law of the Republic of Indonesia No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions;<br>▪ Bank Indonesia Regulation No. 19/12/PBI/2017 concerning implementing Financial Technology;<br>▪ Copy of Financial Services Authority Regulation No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector;<br>▪ Financial Services Authority Regulation No. 77/ POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. | The laws and regulations in Indonesia about fintech govern the roles of consumers and business actors in technology-driven financial transactions. The regulations also pertain to the protection of consumer data and the settlement of problems linked to fraud in the fintech industry. |
| India | ▪ Reserve Bank of India (RBI) Regulations[1];<br>▪ Payment and Settlement Systems Act, 2007[2];<br>▪ Information Technology Act, 2000[3];<br>▪ Securities and Exchange Board of India (SEBI) Regulations[4];<br>▪ Insurance Regulatory and Development Authority of India (IRDAI) Regulations[5];<br>▪ Consumer Protection Act, 2019[6];<br>▪ Anti-Money Laundering (AML) and Know Your Customer (KYC) Regulations[7]. | Fintech companies operating in India are obligated to comply with norms and regulations set forth by different governing bodies. The regulations encompass requirements for obtaining a license, standards for sufficient capital, measures to ensure data security, measures to protect clients, and the prohibition of money laundering and fraudulent actions. |
| Thailand | ▪ Fintech-related regulations issued by the Bank of Thailand (BOT)[8];<br>▪ Electronic Transactions Act[9];<br>▪ Personal Data Protection Act (PDPA)[10];<br>▪ Anti-Money Laundering Act (AMLA)[11];<br>▪ Securities and Exchange Act[12]. | The Bank of Thailand (BOT) is the main regulatory body responsible for supervising financial services in Thailand. They have implemented legislation encompassing several areas of fintech, such as investment by financial institutions, virtual bank licensing, open banking. data interchange, and technology utilization. The Digital Asset Business Act (DABA) governs the operations of digital assets and enterprises in Thailand, establishing criteria such as licensing, anti-money laundering protocols, consumer safeguards, and reporting responsibilities. |

**Source:** systematised by the authors of this study

**Social changes in the maintenance of fintech.** Social change refers to the alterations that take place inside a society, which are inevitable and ongoing. Social changes can considerably influence society's fabric, moulding its customs, principles, and establishments. Currently, this is widely regarded as the standard. The rapid dissemination of social change across many world regions is intricately linked to the pivotal role of technical advancements in modern communication. Technological discoveries have sparked a revolutionary movement, transforming several sectors, including education, culture, and

[1] Reserve Bank of India Act. (1934, March). Retrieved from https://rbi.org.in/CommonPerson/upload/english/content/pdfs/70981.pdf.
[2] The Payment and Settlement Systems Act. (2007, December). Retrieved from https://lddashboard.legislative.gov.in/sites/default/files/A2007-51_0.pdf.
[3] The Information Technology Act. (2000, October). Retrieved from https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf.
[4] Securities and Exchange Board of India (Index Providers) Regulations. (2024, March). Retrieved from https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=3&smid=0.
[5] Insurance Regulatory and Development Authority of India (IRDAI) Regulations. (2020, June). Retrieved from https://irdai.gov.in/documents/37343/602265/Insurance+Regulatory+and+Development+Authority+%28Registration+of+Indian+Insurance+Companies%29+Regulations%2C+2000+%28Updated+upto+8th+Amendment%29.pdf/783aeac9-ff12-2bae-fdfc-74c83d31b7c0?version=1.4&t=1665253127440&download=true.
[6] Consumer Protection Act. (2019, September). Retrieved from https://www.indiacode.nic.in/bitstream/123456789/15256/1/a2019-35.pdf.
[7] Anti-Money Laundering and Know Your Customer Regulations. (2021, June). Retrieved from https://www.cnhindustrialcapital.com/en_in/Documents/KYC-AML%20Policy_v.5.0.pdf.
[8] Regulation of the Bank of Thailand No. B.E. 2544 "Electronic Financial Services". (2001, September). Retrieved from https://www.bot.or.th/content/dam/bot/documents/en/our-roles/payment-systems/payment-systems-notification---circulars/%E0%B8%BABOT-EFS/regulation/EFS%20Regulations%20BE%202544%20-%20EN.pdf.
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[11] Anti-Money Laundering Act. (2019, April) Retrieved from https://www.amlo.go.th/amlo-intranet/en/files/AMLA%20No%201-4(1).pdf.
[12] Securities and Exchange Act. (2019, March). Retrieved from https://www.sec.or.th/EN/Documents/ActandRoyalEnactment/Act/act-sea1992-amended.pdf.

commerce. This phenomenon will persist in several locations and swiftly become widely known among individuals residing in different regions of the nation (Soekanto, 2016).

Arnold M. Rose proposed three overarching theories regarding social changes in his study. Arnold elucidated three factors contributing to social change: the gradual accumulation of technological advancements, interactions, or conflicts between different cultures, and the emergence of social movements (Soekanto, 2016). Connectivity has a crucial role in driving societal change by facilitating technical advance. Societal changes can exert beneficial and detrimental effects on communities, influencing several domains like politics, culture, and social conventions (Sternisko *et al.*, 2020). The COVID-19 pandemic has resulted in substantial global social changes, such as enforcing lockdown measures, introducing social distance rules, and heightened dependence on remote communication. Artificial intelligence (AI) can induce substantial social change by affecting everyday life, employment, and governance (Mas-Tur *et al.*, 2021).

The argument above shows that the technology sector plays a significant role in driving social development. Economic issues in social life can be considered of secondary importance. The community's incentive to create technological discoveries stems from its desire to gain an economic edge by producing new technology. C. Brand *et al.* (2020) investigate the shift to a low-carbon transportation system and the disruptive policies that come with it. They emphasise the significance of carefully considering social change and economic issues to ensure stakeholders' fair and sustainable transition.

Regarding those mentioned above, when considering the economic advantages of technical innovations, it is crucial to acknowledge the legal obligations individuals must adhere to in every action they take within their social context. Societal changes frequently result in economic benefits as societies adjust and develop, generating fresh prospects for expansion and affluence (Ball, 1971). Implementing sustainable practices in advancing renewable technologies like fintech can lead to societal transformations, such as enhanced environmental welfare, as well as economic benefits, such as employment opportunities and reduced expenses (Brashier & Schacter, 2020). Nevertheless, it is crucial to consider the human mentality's conduct when engaging in technological advancements, as it must adhere to the relevant legal regulations. In the sociology of law, the "Holmesian dictum" or legal interpretation, refers to the significance of conduct as a component of legal standards (Dymond, 2024). The application of law is contingent upon its integration into the legal awareness of society rather than being perceived solely as a set of rules. Implementing legal principles guarantees the maintenance of societal structure, fairness, and the safeguarding of individual liberties within a certain community (Werner, 2024). The legal practice is evidenced by the community's adherence to the laws. According to the given description, it is crucial to focus on the legal conduct of the community when implementing this fintech (Trzaskowski, 2024). Legal practice applies to the organisers, the managers of fintech firms, and those taking part in fintech activities as consumers.

In terms of the impact of fintech on social development, fintech plays a major role in driving technological and economic transformations. Fintech deviates from conventional expectations by aiming to enhance the financial system in lending, payment processing, crowdsourcing, and more. The swift incorporation of fintech technologies into financial systems has accelerated social transformation by fostering financial inclusivity, empowering underrepresented people, and revolutionising conventional banking practices. Fintech is a component of societal transformations that have the potential to transform traditional payment systems into contemporary and futuristic forms of payment systems in the future. The emergence of fintech has resulted in beneficial societal transformations. However, it also presents some obstacles and factors that need to be considered, including data privacy, cybersecurity, and fair and equal technological access (Simandan, 2020). In the context of a technologically and economically evolving society, it is essential to establish rules that govern legal behaviour. These rules should be designed to assess their effectiveness in technological and economic domains. Consequently, legal behaviour plays a crucial role in maintaining social order and demonstrating the existence of a legal framework.

The legal framework for overseeing the implementation of fintech in Indonesia is based on various regulations, including Financial Services Authority Regulation No. 77/POJK.01/2016[1], Financial Services Authority Circular Letter No. 2/SEOJK.07/2014[2], and Law No. 19 of 2016 "On Amendments to Law No. 11 of 2008 concerning Electronic Information

[1] Financial Services Authority Regulation No. 77/POJK.01/2016 "Information Technology-Based Money Lending and Borrowing Services". (2016, December). Retrieved from https://www.ojk.go.id/id/regulasi/otoritas-jasa-keuangan/peraturan-ojk/Documents/Pages/POJK-Nomor-77-POJK.01-2016/SAL%20-%20POJK%20Fintech.pdf.

[2] Circular Letter of the Financial Services Authority No. 2/SEOJK.07/2014 "On Service and Settlement of Consumer Complaints". (2014, February). Retrieved from https://ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/regulasi/surat-edaran-ojk/Pages/SEOJK-tentang-Pelayanan-dan-Penyelesaian-Pengaduan-Konsumen-pada-PUJK.aspx.

and Transactions”[1]. These regulations are the foundation for monitoring and regulating fintech activities, shaping public perception of legal conduct in the fintech sector. Furthermore, these legal provisions serve as the foundation for implementing fintech in Indonesia, ensuring that social changes in financial system technology are regulated and preventing any actions that may result in legal violations and hinder the achievement of legal objectives in the fintech implementation within the social community.

## Conclusions

The legal aims of implementing fintech can be understood concerning the establishment of legal certainty in the fintech sector, which has been acknowledged and defined in the rules of Indonesia, including Bank Indonesia rules and regulations from the Financial Services Authority. Fintech aims to offer advantages to the general public by enabling electronic financial transactions, as specified in Article 3 Item 2 of Bank Indonesia Regulation No. 19/12/PBI/2017. Law No. 8 of 1999 on Consumer Protection, OJK Regulation No. 77/POJK.01/2016, and Circular Letter of the Financial Services Authority No. 2/SEOJK.07/2014 ensure legal protection for consumers of fintech services in case of financial losses caused by fintech service providers.

The significance of fintech in social transformation lies in its ability to bring about transformative effects in people’s lives inside the realm of the financial system. The most prominent transformation resulting from fintech is transitioning from conventional payment systems to non-cash payment systems. Consumers and management of fintech enterprises must clearly understand and adhere to the rule of law when implementing fintech. It is crucial as legal conduct plays a significant role as a law component. If the ethical conduct of fintech organisers is poor and indifferent, then adopting this fintech will have detrimental consequences. Furthermore, integrating fintech into the conventional societal framework necessitates the involvement of government authorities, who must ensure legal clarity and promote the advantages of employing fintech within the financial system.

The purpose of this study was to contribute to developing an optimised fintech implementation by advocating for fair legal policies based on principles of fairness. This study enables stakeholders to develop and implement precise and comprehensive regulations for adopting fintech. The findings of this study are expected to serve as a reference for the Indonesian government in its efforts to worldwide promote fintech and effectively address the digital divide between regions, hence yielding beneficial outcomes in the future.

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## Conflict of Interest

The authors of this study declare no conflict of interest.

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# Фінансові технології як загроза традиційній фінансовій системі

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■ **Анотація.** Це дослідження зосереджене на впливі технологій на традиційні способи оплати й наслідках його для суспільства. З огляду на поширення цифрових валют, також відомих як криптовалюти, які використовують у транзакціях за допомогою фінансових технологій (фінтех), це дослідження може слугувати основою для розроблення законів і нормативних актів, що регулюють фінтех. Мета цього дослідження – запропонувати чітке й конкретне розуміння легітимності й суспільних переваг фінтеху в Індонезії. У цій статті використано методологію регуляторних досліджень, що охоплює соціально-правові методи, аналіз законодавства та вивчення правових концепцій. Результати цього дослідження надали можливість визначити три фундаментальні критерії використання фінтеху: гарантії, вигоди та справедливості. Положення про фінтех викладено в Положенні банку Індонезії № 19/12/PBI/2017, Положенні Управління фінансових послуг № 77/POJK.01/2016 та Законі 1999 року, які також стосуються питань, пов'язаних із захистом прав споживачів. Із соціокультурної позиції фінтех уособлює технологічну революцію, яка сприяє суспільному розвитку. Фінтех має на меті запропонувати переваги для суспільства через спрощення електронних фінансових транзакцій. Аргументовано, що фінтех відіграє вирішальну роль у реформуванні суспільства, революціонізуючи взаємодію людей із фінансами. Ключовим аспектом цієї трансформації є перехід від традиційних методів оплати до цифрових альтернатив. Як для споживачів, так і для фінтех-компаній надзвичайно важливо дотримуватися законодавчих вимог під час упровадження фінтех-рішень, оскільки дотримання нормативно-правових актів має вирішальне значення. Недотримання етичних стандартів у фінтех-індустрії може стати на заваді її широкому впровадженню та призвести до негативних наслідків. Розуміння потенційних загроз, які фінтех становить для традиційної фінансової системи, дасть змогу фінансовим установам і регуляторам розробити ефективні стратегії управління ризиками

■ **Ключові слова:** фінансові технології; справедливість; захист прав споживачів; соціальні зміни; правова мета

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