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The role of abolitionist ideas in crime prevention

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Abstract
Punishing an offender does not always contribute to raising their awareness of the law or preventing unlawful behaviour. Punishment inflicts suffering on the offender but does not reduce the likelihood of future crime, and thus does not contribute to individual and public safety. The aim of this article was to identify the potential for applying the ideas of well-known proponents of abolitionism in the practice of crime prevention, as well as to forecast the consequences of such application. The study aimed to systematise and critically analyse the concepts of criminal law abolitionism in the context of contemporary transformations in anti-crime policy. It was noted that a significant problem facing society is the state's repressive control over crime, which contradicts the natural human rights to life, health, freedom and dignity. Moreover, the achievement of the goals of general and individual prevention through the imposition and enforcement of punishment was not empirically substantiated; consequently, the policy of criminal repression cannot be the primary means of combating crime. Above all, the suffering of crime victims, their families and society as a whole is of paramount importance. From this perspective, the absence of punishment for the offender contradicts humanism and justice. Supporters of abolitionism have not provided an answer to the question of reconciling the interests of the offender and the victim from the standpoint of justice. Until this issue is resolved, it is advisable to adhere to current legislation and its principle of the inevitability of punishment. The analysis of abolitionist ideas in criminology has demonstrated the need for an objective assessment of the consequences of an offence for the offender themselves, as well as for the victim and society as a whole. The proposals are aimed at a balanced and critical assessment of abolitionist ideas, at optimising law enforcement mechanisms regarding the prosecution of offenders whilst guaranteeing human rights and freedoms

Keywords:
crime; punishment; prison; death penalty; decriminalisation; transformation justice

Introduction

The current global criminological situation is characterised by a wide range of criminal phenomena, including traditional forms of crime as well as new ones driven by technological advancements and social change. Key trends include a rise in cybercrime, economic crime, organised crime and violent crime, as well as a shift in offenders' motivations. This state of affairs highlights the need to introduce stringent measures to combat and prevent crime. At the same time, the state must ensure the realisation of the rights and freedoms of every individual – both offenders and victims. However, certain measures aimed at improving law enforcement

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activities are causing deep concern among human rights defenders. Many perceive them as restrictions on human and civil rights. Accordingly, it is advisable first of all to focus on crime prevention – preventive activity should be directed at its causes.

In modern criminology, crime prevention is understood as the targeted influence of the state and society on the processes of determination and causality of crime, with the aim of preventing new individuals from joining the ranks of criminals, the commission of new crimes, and the expansion of the criminalisation of social relations. Crime prevention can be directed both at the general population and at specific at-risk groups or individuals who may commit a crime. A separate area involves influencing individuals who have already committed a crime, served their sentence, or are yet to be punished. The punishment of offenders is usually regarded as a necessary element of justice to achieve the goals of fairness, rehabilitation and crime prevention. However, there are also alternative approaches that propose intensifying efforts towards the resocialisation of offenders and assisting them in their reintegration into society. Ultimately, the ideas of abolitionism, which focus on the abolition or significant reduction of imprisonment and other forms of punishment, are aimed at the same outcome.

Contemporary scholars have already addressed the issue of abolitionism in criminology. For instance, B. Smith (2025) examined abolitionism in the history of political and legal thought, emphasising the abolitionist ideas of John Locke. A roadmap for dealing with repressive powers to achieve the long-term goal of abolishing criminal punishment is proposed in the article by I. Nafstad (2024). Correlations between criminalisation and social justice are explored in the article by D. Geeraert *et al.* (2024). In the article by J. Lemos (2024), the quarantine model of criminal justice was compared with the correctional model within the traditions of abolitionism. British researchers E. Shackelford *et al*. (2024) have traced the intersections between the eco-social approach and abolitionism. In their view, by combining environmental justice with the abolition of the death penalty, eco-social work will have greater scope for critiquing and resisting its own condition within racial capitalist systems that perpetuate economic, environmental, racial and social injustice. F. Anderson & R. Kramer (2023) criticised the negative consequences of punitive state intervention in social relations and explore the possibility of a non-punitive discourse within a context of social cohesion. P. Moraro (2025) examined philosophers' attitudes towards the idea of abolishing prisons and concluded that they support the practical strategies on the abolitionists' agenda but refuse to engage with the normative proposals that underpin them. This ambiguity stems from a deliberate methodological choice that relegates questions concerning the reality of prisons to the periphery of philosophical inquiry. In doing so, philosophers hinder a fair assessment of the abolition of prisons as a legitimate moral theory within criminal justice. The works cited here primarily examine the history and specific issues of abolitionist theory. However, the direct causal link between abolitionist ideas and their consequences in terms of reducing crime rates remains overlooked by scholars, prompting the author of this article to address this topic.

The aim of this article was to review and update the ideas of abolitionism through the prism of contemporary challenges in criminal policy. The research methodology was based on a comprehensive review approach aimed at systematising and critically analysing the concepts of criminal law abolitionism in the context of current transformations in criminal policy. The source base comprises academic publications in international peer-reviewed journals, as well as fundamental theoretical works by the founders and contemporary proponents of abolitionist thought. Materials were selected based on criteria of thematic relevance, citation frequency and influence within academic discourse. Within the scope of the study, the method of doctrinal analysis was applied to clarify the content of key concepts, argumentative strategies and assumptions of abolitionism. A comparative method was used to correlate classical abolitionist ideas with contemporary trends in anti-crime policy, particularly in the areas of decriminalisation, restorative justice and alternatives to punishment. The focus was on the works of T. Mathiesen (1974; 1986), J. Braithwaite (1989; 1996) and N. Christie (2004), as it is their works, in the author's view, that are most significant for the dissemination of abolitionist ideas and the prevention of crime.

The nature and origins of abolitionist ideas

The term "abolitionism" (Latin abolitio – abolition) refers to a philosophical and social movement that advocates the abolition of any law, institution or practice considered immoral. The most well-known form of abolitionism is the movement for the abolition of slavery. In criminology and criminal law this term has a dual interpretation: in the narrow sense it refers to the rejection of imprisonment as a form of punishment; in the broader sense it denotes an aspiration to reconsider the fundamental principles of criminal law in their modern understanding, shifting from punitive practice to restorative approaches through the influence of social institutions on the personality of the offender. Abolitionism is not a conceptually unified criminological orientation; rather, the term encompasses several directions. At the same time, certain common emphases can be identified in different abolitionist achievements, such as a clearly expressed critical attitude towards criminal law with regard to interpersonal relations described as "problematic", "violent", "harmful", or "conflictual".

Abolitionist criminologists believe that contemporary state approaches to combating crime remain largely ineffective and therefore the primary focus should not be on expanding criminal repression or searching for more effective methods of dealing with offenders under conditions of isolation, but rather on abandoning (partially or fully) criminal-law sanctions. Instead of criminal punishment, supporters of abolitionism propose the use of a special mechanism for resolving conflict situations arising from unlawful encroachments. Some scholars propose partially transforming the legal relations that arise as a result of violations of criminal law. In particular, it is suggested that the possibilities of pre-trial reconciliation between the parties (the victim and the offender) should be widely used. More radical abolitionists consider it appropriate to completely abandon the harshest punishments, in particular to eliminate the institution of imprisonment as a measure of criminal-law response to the fact of a criminal encroachment on declared social relations (Tymoshenko, 2020).

A significant influence on the formation of abolitionist ideas was exerted by the theory of power and the study of punishment conducted by the French philosopher and historian M. Foucault (1977), the results of which were presented in his book. Within the framework of his concept of power, the author considers the problem of punishment and execution as one of its forms. The researcher defines punishment as a generalised function connected with the whole body of society and with each of its elements. At the same time, it is a form of recompense that "the guilty party pays to each fellow citizen for the crime that has harmed everyone" He presents a number of propositions highlighting the shortcomings of imprisonment, namely: prisons do not reduce crime rates; imprisonment generates recidivism; the prison turns people into criminals through the very way of life imposed on prisoners; its entire activity takes place in the form of abuse of power; the prison makes possible and even encourages the organisation of a milieu of criminals who are mutually supportive, recognise a certain hierarchy, and are prepared for joint action in any future crime; the conditions in which prisoners find themselves after release condemn them to reoffend; the prison indirectly creates criminals by forcing the prisoner's family to live in poverty. In other words, the shortcomings of prison are inherent in its very nature and are necessary for the functioning of disciplinary power, while punishment in the form of imprisonment is aimed not at eradicating crime but at distinguishing offences, classifying them by type, and incorporating violations of the law into a general tactic of subordination.

Nils Christie's abolitionism

One of the most well-known contemporary moderate abolitionists is the Norwegian criminologist and sociologist N. Christie (2004), who advocated the minimisation of criminal punishment, particularly imprisonment. He regarded modern criminal policy as an excessive and poorly conceived strategy of the state that is capable of increasing criminogenic risks in society. In implementing such a policy, the researcher proposed alternative measures distinct from those of criminal law, drawing particular attention to the ideas of restorative justice and the practice of mediation. He attached significant importance to the relativity of crime from a historical perspective – comparing the concept of crime to a sponge that can absorb a multitude of situations and fates, but if squeezed too tightly, the very concept may lose its meaning. He denied the necessity of judges and proposed replacing them with mediators who would not conduct court trials but would persuade offenders and contribute to their moral education. N. Christie (2004) saw his task in explaining any human actions. A person's unlawful acts may be caused by circumstances that arise independently of their will. He considered crime to be an artificial construct that depends not only on the legislator but also on society and on the conditions in which a person is forced to exist. The definition of crime always corresponds to someone's interests. The unlawful behaviour of an offender is evidence of the existence of problems in society. The author emphasised that most people commit acts that fall under the definition of a crime, yet far from all of them are held accountable, and this represents social injustice.

According to N. Christie (2004), criminal courts always protect the interests only of materially secure sections of the population. This thesis is supported by contemporary studies which emphasise that economic inequality positively correlates with crime. The connection between economic inequality and crime is usually evident in macroeconomic data showing that areas with high levels of economic inequality also tend to experience higher crime rates (Itskovich & Factor, 2023). Moreover, corruption within the courts contributes to the strengthening of such inequality (Berggren & Bjørnskov, 2020; Prat *et al*., 2026). According to O. Khotynska-Nor & O.V. Salenko (2024), judicial corruption, which is particularly dangerous for the stable functioning of the state, has many manifestations (bribery, extortion, nepotism and others) and leads to a decline in the authority of the judiciary. N. Christie (2004) condemned economic inequality. He opposed the involvement of the military in solving internal problems of the state, including the protection of public order. He warned that the fight against crime could lead to violations of human rights and called for the reduction of the state's punitive apparatus. N. Christie (2004) substantiated the term "dangerous state". By such a state he meant any state that regards a person as a dangerous being who is always ready to commit a crime. The aim of such a state is merely to maintain total control over the population, and the boundaries of this control

should be clearly defined. N. Christie (2004) called on the state, through its law-enforcement bodies, to act as a guarantor of the safety of the individual and of society as a whole. N. Christie (2004) was an opponent of crime prevention strategies based on the tactic of "deterrence through intimidation" (Tymoshenko, 2019). The severity of punishment does not always deter an offender. In the modern world, in his view, the imposition of punishment is merely the infliction of pain, a form of retribution. He emphasised the need to minimise the infliction of pain if such pain is inflicted for the purpose of social control.

Restoring social relations as an alternative to punishment

T. Mathiesen (1974), one of the founders of the sociology of law in Norway, conducted in-depth research into prisons, surveillance technologies and power structures within society. He viewed the abolition of prisons as a long-term goal, whilst emphasising that the short-term goal of countering the harmful effects of the system through reform must adopt an abolitionist stance. Such reforms must be negative; they "challenge the fundamental structures of the prison system". Examples of negative reforms include reducing pre-trial detention and abolishing censorship of communications in prisons. He also proposed introducing extended leave and visits, which make prisons more open (Mathiesen, 1986). He substantiated the term "synopticon", referring to a situation in which the majority observes the minority. He recognised the effectiveness of self-control and self-discipline in the modern world, which, in his view, should support synoptic processes. However, the scholar overlooked the negative consequences of the synopticon, particularly from the perspective of human rights and legitimate interests.

Another abolitionist, the American criminologist and professor at the University of Pennsylvania, P.H. Robinson (2001), believed that it is social norms that are largely responsible for ensuring law-abiding behaviour. To harness the full power of these norms, criminal law must be grounded in the ideals of justice. If criminal law pursues objectives other than the attainment of justice – even those as important as the prevention of future crimes – it will not gain broad social acceptance nor earn moral trust. As the transition occurs from a punitive system of punishment for committed crimes to a system of prevention guided by the degree of danger posed by the offender, society may begin to understand that criminal liability does not necessarily imply condemnation of the convicted person, but may simply reflect a prognosis of that person's future behaviour.

It is now becoming clear that even short-term confinement in a prison increases the risk of future unlawful behaviour. C. Haney *et al.* (2004) explain this as follows: "Imprisonment inevitably breeds in most of its inmates a bitter hatred and contempt for the authority and order that exist in the society to which they must return. And it is impossible to quantify the damage inflicted on the human dignity of those tasked with administering punishment and those upon whom it is imposed." Longer prison sentences and an exaggerated understanding of the special role of imprisonment do nothing to reduce the number of convicts serving this form of punishment. This fact is also confirmed by contemporary research, for example, on the harmful effects of pre-trial detention and the advisability of limiting its use (Loeffler & Nagin, 2022). The link between reoffending and prior imprisonment is highlighted by M. Stam *et al*. (2023) and E.C. McCuish *et al*. (2025). Contemporary researchers believe that individuals who have served prison sentences face difficulties in reintegrating into society. At the same time, stable employment and housing, as well as social support, are key criteria for successful social reintegration (Moraro, 2025). There is little evidence that prisons reduce recidivism. One of the main aims of imprisoning people is to deter crime. However, the available data suggests that imprisonment does not fulfil this task (John Howard Society of Canada, 2023), particularly when compared with other available alternatives that do not involve arresting the individual.

Thus, the merit of moderate abolitionists lies in shifting the focus of crime prevention from punishment, as a means of deterring the offender, to the restoration of social relations. It is necessary to eliminate the social preconditions for committing a crime by influencing the social environment of the individual in question. In a correctional facility, prisoners are held in a closed environment, cut off from society, and are subjected to all the harmful and desocialising factors of imprisonment. Resocialisation, in the literal sense, means the restoration of the convict's positive social ties. Reintegration into society must be the aim of resocialisation, its ultimate outcome.

Transformative justice

Transformative justice was proposed as a new practical programme for addressing problems of state instability, conflict, security and justice in societies undergoing a transition from conflict or repression (Evans & Hoddy, 2025). This approach seeks to abandon traditional methods of punishment sanctioned by the state, such as policing, prisons, the judicial system and programmes for working with juvenile offenders. Based on the recognition that these institutions often harm people through surveillance and social control, supporters of transformative justice aim to reject the ways in which the criminal justice system contributes to the perpetuation of harm both within prisons and in the wider society beyond them (Kaba, 2021). Transformative justice is also grounded in the belief that interpersonal harm interacts with and reflects systemic and institutional mechanisms of oppression. For example, sexual

violence reflects a patriarchal conception of women as lacking personal autonomy. Thus, transformative justice recognises that eliminating individual interpersonal harm and conflict must simultaneously aim at dismantling systemic structures of power (such as patriarchy, cisheteronormativity, racism, ableism and colonialism). For this purpose, transformative justice employs a systemic approach, seeking to view problems not only as evidence of crime but also as its catalyst (Toward Transformative Justice..., 2007).

Transformative justice understands injustice and discrimination not only as phenomena that can be overcome through law, but also as opportunities for broader structural change beginning within communities. By building strong communities and actively participating in them, alongside state institutions, transformative justice identifies and addresses injustice while offering new visions of justice and eliminating structural and institutional harm, such as that arising from class, gender and racial inequality. Justice is best achieved through processes of accountability, care, support and intervention, by creating institutions and responding to harm within communities (Kim, 2021). Supporters of transformative justice warn against the idealisation of communities and the portrayal of society as benevolent, non-repressive and inherently non-violent. Such naivety is considered irresponsible and dangerous (Palacios, 2016). The topic of abolishing the death penalty also remains prominent. Guided by an abolitionist goal designed for the long term, P. Cullors (2019) substantiates twelve principles for the abolition of the death penalty, including: engaging boldly in discussion; committing to response rather than opposition; practising active rather than passive forgiveness; and embracing non-reformist reforms, among others.

Thus, transformative justice represents an approach to understanding and responding to crime that focuses on restoring justice and healing for all parties involved rather than solely punishing the offender. Its supporters emphasise the importance of transformative changes in justice and pay particular attention to reconciliation. At the same time, transformative justice does not provide an acceptable concept of fair compensation for victims of crime, which constitutes its principal shortcoming.

An alternative to criminal punishment

Supporters of the abolition of the death penalty are often criticised on the grounds that they allegedly cannot propose an alternative to this form of punishment. However, alternatives do exist. For example, these include "strict capital punishment without the right of pardon, followed by life imprisonment with a court-determined period of social security of not less than twenty years, as well as the use of electronic monitoring devices after the suspension of the sentence or early release; ... strict life imprisonment without the right of pardon, followed by life imprisonment with the possibility of reducing the number of days of the sentence, conditional punishment or early release without determining a minimum term of punishment, and life imprisonment with a court-determined period of social security of not less than twenty years" (Piromeiam, 2021). V. Zisman (2024) has expressed views opposing the abolition of criminal law and punishment due to the alleged absence of an appropriate alternative. In his opinion, the most well-known versions of abolitionism actually converge on the same alternative core of criminal law, even if they are motivated by entirely different considerations. This core, on which contemporary abolitionist theories converge, is twofold: first, the assertion that the state should compel offenders to provide compensation to the victim; second, the assertion that restorative processes should be used wherever possible in the consideration of criminal offences. "This shared core is sufficient to reject the objection concerning the absence of an alternative" (Zisman, 2024).

M.P. Capaldi (2023) puts forward a philosophical argument against the death penalty: "given the lack of any evidence and the extreme severity of the punishment, the question of its deterrent effect should be excluded from any discussion of the death penalty". There are compelling arguments both for and against its use. The issues surrounding abolitionism are relevant to modern society and are regularly placed on the agenda, as evidenced by the 8th World Congress against the Death Penalty, held on 15-18 November 2022 in Berlin (The 8th World Congress against ..., 2022). More than a thousand participants from 90 countries gathered in the German capital for the most important meeting of abolitionists, with the aim of further promoting the abolition of the death penalty and countering attempts to reinstate it where it has already been abolished. Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime, guilt, innocence or other characteristics of the individual, as well as the method used by the state to carry out the sentence. During the vote, which took place at the plenary session of the UN General Assembly on 17 December 2024, more than two-thirds of UN member states supported the call for a moratorium on the death penalty with a view to its abolition. Commenting on the adoption of the resolution, Amnesty International expert Chiara Sangiorgio stated: "This vote marks an important turning point for countries around the world and demonstrates that UN member states are steadily moving towards the abolition of the death penalty as a lawful punishment in accordance with international human rights law" (Global: UN Member States..., 2024).

The choice between arguments in favour of one punishment or another depends on the values, moral convictions and priorities of society. When proposing an alternative to punishment, one must bear in mind

that the purpose of punishment is not simply to inflict suffering. To deter the offender from reoffending and to deter others from committing similar acts – that is the purpose of punishment. Furthermore, the alternative must be guided by the principle of proportionality: a serious crime must be met with a commensurate punishment.

The theory of "reintegrative" shame

The ideas of abolitionism are also developed in the theory of "reintegrative shaming" proposed by the well-known criminologist and sociologist J. Braithwaite (1989). The scholar argued that the response to crime should combine condemnation with support. It is necessary to explain the significance of the norms that have been violated; however, this should occur in such a way that the offender still feels respect and care. Nowadays, this theory is quite popular, as is the strategy of restorative justice, which emphasises resolving the conflict between the victim and the offender without punishing the guilty party, through measures aimed at restoring the situation that existed prior to the offence (for example, compensation for losses caused by a property crime) (McGarrell, 2001). J. Braithwaite (1996) wrote that, from the perspective of supporters of restorative justice, civil society should have institutions capable of responding directly to emerging problems such as violence. This should by no means be done through punitive or stigmatising practices. Violence cannot be effectively controlled by communities until their members clearly understand that violence is shameful. This does not mean that criminal justice institutions are required to increase the level of shame. On the contrary, such an approach risks the emergence of institutions of stigmatisation. Instead, micro-institutions of deliberative democracy are needed, enabling citizens to discuss the consequences of criminal acts, determine who bears responsibility for them, and decide who and how should restore the disrupted social harmony. Such deliberative processes naturally provide an opportunity for those responsible for criminal behaviour to experience shame and find the strength to rectify the situation.

In 2024, a systematic review of research on shame and guilt among individuals who have committed violent crimes was published (Mottershead *et al*., 2024). The authors of this review concluded that feelings of shame and/or guilt associated with committing crimes were widespread among individuals who commit violent acts. These emotions are very important for the rehabilitation of offenders. Both shame and guilt can serve a person adaptively or maladaptively, depending on the situation, duration and intensity. However, due to limited data, methodological differences and inconsistencies in measuring shame and/or guilt as overlapping constructs, it remains difficult to gain a clear understanding of these experiences (Mottershead *et al*., 2024). Of particular importance is the study of guilt and shame in juvenile offenders conducted by M. Shi (2024). It has been demonstrated that, as the emotional experience of shame has a mitigating effect on the behavioural patterns of juveniles, appropriate forgiveness can prevent the negative consequences of excessive shame.

Thus, shame represents an external moral censure, distinct from internal guilt, often associated with public condemnation and loss of social status. Shame may compel a person to desist from criminal behaviour, but it is sometimes itself the reason why victims remain silent about crimes. Offenders feel shame for the crime they have committed, but the nature and depth of this shame varies depending on the culture.

Conclusions

Thus, supporters of abolitionism in criminology have recognised the existence of repressive, punitive and harsh state control over crime as a serious problem for society. They proposed alternative solutions to the problem of crime and its prevention through depenalisation and decriminalisation, the use of various social resources to counter crime, as well as informal and integrative forms of control. Although abolitionism is conceptually a heterogeneous criminological direction, abolitionists in criminology nevertheless demonstrate a critical attitude towards criminal law, while not opposing all forms of social control. They question the moral right of the state deliberately and systematically to inflict pain on people by excluding them from society. Such practices are regarded as violations of the natural human rights to life, health, freedom and dignity.

The abolitionist position that the achievement of the goals of general and individual prevention through the imposition and execution of punishment has not been empirically confirmed deserves particular attention. Consequently, policies aimed at intensifying criminal repression appear questionable. The verification of abolitionist theoretical constructions demonstrates their substantial validity: economic inequality leads to discrimination against economically disadvantaged groups when punishment is imposed; imprisonment does not guarantee the absence of recidivism; enormous expenditures for maintaining prisons and correctional institutions are borne by society, which in return does not receive guarantees of safety; time spent in places of detention negatively affects people's lives, both those of prisoners themselves and those of their families (leading to deterioration in health, reduced life expectancy, lower incomes and undermining family stability). These are real costs borne not only by prisoners but by society as a whole. All of this occurs in pursuit of a goal that ultimately fails to achieve its primary task – making people's lives safer.

The abolitionists' desire to eliminate the infliction of pain upon offenders is humane and understandable.

However, the question remains open regarding the suffering of the victim, the injured party and their family. A complete refusal of police intervention, prisons or any potential punishments, as advocated by supporters of the abolition of punishment, may itself be unjust and inhumane towards the victim, depriving the weak of protection from the strong and causing harm to communities and individuals. Supporters of abolitionism have not provided an answer to the question of how to reconcile the interests of the offender and the victim from the perspective of justice. Until this issue is resolved, it appears advisable to adhere to the existing legislation with its principle of the inevitability of punishment.

Even if one accepts the aspirations of abolitionists and assumes that the police and prisons might one day be abolished, power relations in a civilised society cannot be eliminated. At the same time, there are serious doubts that any of the numerous possible hypothetical versions of prisonless communities – including those proposed by prison abolitionists – would necessarily be more just than communities that assign law-enforcement institutions, imprisonment or other forms of punishment a significant role in combating unlawful behaviour. Another open question remains whether a society without prisons would be just without the punishment of offenders. Unfortunately, supporters of abolitionism have left this question unanswered.

Abolitionist criminologists have proposed several original solutions which modern society may not accept unambiguously, yet this does not diminish their value as a long-term orientation. Among such proposals is the idea that the state should not determine the type of punishment or the method of its execution; rather, this task should be resolved jointly by the close social environment of the offender and the victim. In both the short-term and long-term perspective, abolitionists pursue the ideal of "minimal criminal law", that is, a form of criminal law that can be ensured through constitutional and legal norms. These include the legal norms of modern states based on respect for human dignity and fundamental economic, political, cultural, social and other human rights.

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Роль ідей аболіціонізму в попередженні злочинності

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Анотація
Покарання злочинця не завжди сприяє підвищенню рівня його правосвідомості та попередженню протиправної поведінки. Покарання завдає страждань правопорушнику, але не знижує ймовірність злочину в майбутньому, а отже, не сприяє індивідуальній та суспільній безпеці. Мета статті полягала у визначенні можливостей застосування в практиці попередження злочинності ідей відомих прихильників аболіціонізму, а також прогнозування наслідків такого застосування. Дослідження спрямоване на систематизацію та критичний аналіз концепцій кримінально-правового аболіціонізму в контексті сучасних трансформацій антикримінальної політики. Констатовано, що істотною проблемою суспільства є репресивний контроль держави за злочинністю, який суперечить природним правам людини на життя, здоров'я, свободу та гідність. Досягнення завдань загальної та індивідуальної превенції як результат призначення та виконання покарання не підтверджується емпірично, тому політика кримінальної репресії не може бути основним засобом боротьби зі злочинністю. Передусім значення мають страждання жертв злочинів, їхніх рідних і суспільства загалом. З цієї позиції відсутність покарання злочинця суперечить гуманізму та справедливості. Прихильники аболіціонізму не дали відповіді на питання щодо узгодження інтересів правопорушника й жертви з погляду справедливості. Поки це питання не буде вирішено, доцільно дотримуватися чинного законодавства з його принципом невідворотності покарання. Здійснений аналіз ідей аболіціонізму в кримінології засвідчив необхідність об'єктивного оцінювання наслідків правопорушення як для самого правопорушника, так і для жертви й суспільства загалом. Пропозиції спрямовано на виважену та критичну оцінку ідей аболіціоністів, оптимізацію механізмів правозастосування в частині притягнення правопорушника до відповідальності та гарантування прав і свобод людини

Ключові слова:
злочин; покарання; в'язниця; смертна кара; депеналізація; декриміналізація; трансформаційне правосуддя

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General conditions for the trial of criminal cases ensuring the presence and exercise of the procedural rights of the parties in the proceedings

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Abstract
The relevance of the topic lay in the need to ensure a fair trial in criminal cases, which is a fundamental guarantee of human rights and justice. The study focused on the general conditions governing criminal proceedings, which ensure the proper participation of the parties in the proceedings and the observance of the procedural rights. To achieve this aim, an analysis was conducted of legislative provisions, the case law of the European Court of Human Rights, and the judicial practice of the Republic of Moldova. The main conditions for ensuring the participation of the parties in the judicial process were examined, in particular the equality of the parties, the principle of adversarial proceedings, and the right to defence. It was found that failure to meet these conditions may lead to a breach of the principles of fair trial and affect the outcome of the proceedings. It was established that it was important to comply with the requirements regarding the proper summons of participants in the proceedings, ensuring equal opportunities to present evidence and participate in its examination. The role of the court in ensuring the fairness of the proceedings was also analysed, particularly in the context of maintaining a balance between the prosecution and the defence. It was found that the judge's active participation in maintaining adversarial proceedings and assisting the parties during the process is essential to ensuring that the rights of each party are upheld. Furthermore, it was established that failure to comply with procedural rules, such as the proper notification of parties to the proceedings, can have serious consequences for the fairness of the proceedings, including the annulment of court decisions. It was concluded that failure to comply with these conditions could result in serious violations of the rights of the parties to the proceedings, requiring the court's intervention to ensure a balance of the parties' rights and obligations. The practical value of the work lay in the fact that its findings could be used by judges, solicitors

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and legal practitioners to improve law enforcement practice and ensure appropriate conditions for criminal proceedings, in accordance with international human rights standards

Keywords:
criminal cases; infringements of rights; court proceedings; parties to legal proceedings; presentation of evidence

Introduction

Criminal justice, as an institutionalised form of resolving conflicts arising from the violation of criminal law, is inconceivable in the absence of a rigourous procedural framework composed of clear, precise, and mandatory rules intended to guide the conduct of all procedural participants. In Chapter II, Title II of the Special Part of the Criminal Procedure Code[1] (in particular Articles 315, 319, 320-324, 334), certain common rules are provided; general norms according to which any trial before a court of first instance is conducted, which must also be applied accordingly to each remedy, depending on the case. "An important condition that ensures the exercise by the court of this function and effectively contributes to the achievement of the purpose of criminal proceedings is the unconditional observance by all persons participating in the proceedings of all general rules established by law, in accordance with which any judicial procedure is conducted" (Sedleţchi & Miluşev, 2018). Through these norms, the necessary framework is ensured for conducting the trial with due respect for the procedural rights of the parties, as well as for maintaining the balance between the interests of the prosecution and those of the defence.

The subject of criminal procedure and the safeguarding of the rights of parties to court proceedings is complex and multifaceted, as it encompasses a wide range of aspects covering both national legislation and international standards, in particular those arising from the case law of the European Court of Human Rights. Here is an overview of several important studies in this field, which highlight the key aspects of ensuring the fairness of judicial proceedings. T. Osoianu & O. Dinu (2023), examined an important aspect of the topic – the extraordinary review of criminal cases under the Criminal Procedure Code of the Republic of Moldova. The authors compared these procedures with international standards, in particular with the requirements of the European Convention on Human Rights. The authors concluded that the existing system of case review lacks transparency and proposed improvements to the procedures of national courts to ensure fairness and the protection of the rights of the accused. This study highlights the importance of integrating international standards into national legislation to ensure the effective participation of individuals in criminal proceedings.

In a subsequent study, T. Osoianu & O. Dinu (2025) again analyse extraordinary review procedures, but with a focus on comparisons between different jurisdictions. The authors note that certain principles enshrined in the national legislation of the Republic of Moldova do not always meet the requirements of international standards, particularly in relation to human rights. The study concludes that Moldova must adapt its legislation to international norms in order to prevent violations of the rights of individuals affected by criminal proceedings, as well as to ensure greater transparency and access to justice. S. Leontieva (2024) focused on the impact of ECtHR rulings regarding the exclusion of illegally obtained evidence in criminal cases. The author noted that this issue is particularly important for upholding the rights of participants in criminal proceedings, as illegally obtained evidence can significantly affect the fairness of the trial. S. Leontieva concluded that although the ECHR has established clear standards regarding the exclusion of such evidence, these standards have not yet been properly implemented in Moldova, which may lead to violations of the rights of individuals in criminal cases. In the authors' joint paper, S. Leontieva (2026), the authors focused on the methodology for assessing inadmissible evidence obtained unlawfully. The researchers emphasised the importance of improving procedures to more clearly define the limits of admissibility of evidence, which directly affects the fairness of court proceedings. The authors concluded that it is necessary to develop a more detailed and consistent methodology that will prevent errors during the assessment of evidence and ensure respect for the right to a fair trial.

The European Commission's (2025) report, entitled "Moldova report 2025", highlights the importance of further reforms in the Republic of Moldova's criminal justice system. The report emphasises the need to integrate European standards into the country's criminal justice system to safeguard human rights in criminal cases. In particular, it mentions the need to improve judicial procedures to ensure the participation of all parties in proceedings, as well as the importance of an appropriate response to violations of the rights of those involved in the proceedings. The report concludes that Moldova has significant potential for reform but requires further efforts to integrate international standards into its legal system. Thus, the studies highlight important aspects of the criminal process in Moldova, particularly regarding the review of criminal cases,

[1] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.

the exclusion of inadmissible evidence and the incorporation of international human rights standards into national law. Each of these studies points to the need for further reforms to ensure greater transparency and fairness in criminal proceedings.

The study focused on the general conditions governing criminal proceedings, which ensure the proper participation of the parties in the proceedings and the observance of the procedural rights.

Materials and Methods

The study was based on a conceptual and theoretical framework centred on the principles of a fair trial, in particular the adversarial principle, the equality of the parties, and the rights of the defence. The authors of the study focused on analysing criminal proceedings in the Republic of Moldova, as well as comparing national regulations with international human rights standards. Within this framework, both the theoretical foundations of criminal procedure and the practical aspects affecting the assurance of fairness in court proceedings were examined. The research methods employed in the study included comparative analysis, documentary analysis, and the interpretation of judicial practice. Comparative analysis enabled a comparison of the criminal procedure of the Republic of Moldova with procedures in other jurisdictions, particularly in the context of European standards. This method was chosen due to the need to identify the strengths and weaknesses of the Moldovan legal system in comparison with international requirements. Documentary analysis enabled a thorough review of legislative acts, court decisions, and international agreements relating to the right to a fair trial, which also contributed to a deeper understanding of the specifics of the Moldovan criminal procedure. In particular, documents such as the Criminal Procedure Code of the Republic of Moldova[1], as well as ECHR judgments on cases concerning criminal procedure and the rights of defendants, were utilised. These sources helped to identify key shortcomings in the Moldovan justice system that require reform to ensure fairness and respect for human rights.

The research process comprised several stages. The first stage involved a review of the theoretical foundations of criminal procedure and the principles underpinning a fair trial, as well as an examination of the legal framework of the Republic of Moldova. The next step was to compare Moldovan legal practice with international human rights standards. The final stage involved the study and analysis of ECHR judgments relating to criminal proceedings, with the aim of identifying gaps and proposing improvements to the administration of justice in Moldova.

Results

Equality of the parties before the court. Two equal parties appear before the court – the prosecution and the defence – who must be ensured by the court equal opportunities to present and support the respective positions, that is, the principle of equality of arms must be guaranteed. From a formal perspective, "equality of the parties before the judge" offers the parties the opportunity to participate equally in the examination of evidence[2] and, at the same time, to have at the disposal the same means to present the arguments[3,4].

In its extensive case-law concerning Article 6 of the Convention[5], the European Court of Human Rights reiterates that one of the essential elements of a fair trial within the meaning of Article 6 § 1 of the Convention is the right to adversarial proceedings, whereby each party must, in principle, have the opportunity not only to adduce evidence necessary for the presentation of its defence and the success of its claims, but also to have knowledge of and to comment on all evidence and observations submitted with a view to influencing the court's decision[6,7,8,9,10].

The prosecutor, the injured party, the civil party, the defence counsel, the defendant, the civilly liable party, and the representatives enjoy equal rights before the court with regard to the taking of evidence,

[1] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
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[3] Judgment of the European Court of Human Rights in the Case No. 17358/90 "Bulut v. Austria". (1996, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57971%22]}.
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[9] Judgment of the European Court of Human Rights in the Case No. 21497/93 "Mantovanelli v. France". (1997, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58023%22]}.
[10] Judgment of the European Court of Human Rights in the Case No. 48386/99 "Cottin v. Belgium". (2005, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-69232%22]}.

participation in the examination of evidence, and the submission of motions and requests. The court must ensure that the parties are granted equal rights concerning the taking of evidence. If a party encounters difficulties in producing evidence necessary to substantiate its position, upon request, the court shall provide assistance under the conditions of the Criminal Procedure Code[1] for the taking of the necessary evidence. The parties must be equally ensured the opportunity to participate in the examination of evidence during the court hearing. The court may base its judgment only on evidence whose examination was accessible to the parties on an equal footing. During the hearing, the parties independently determine the position, as well as the manner and means of supporting it. All motions and requests submitted by the parties are examined by the court with the opportunity afforded to the opposing party to express its views thereon, and in resolving those motions and requests, the court must address the position of each party to the proceedings.

"The requirement under Article 6 § 1 of the Convention that a case be examined fairly must be understood as ensuring respect for the fundamental principles of any proceedings, namely the principle of adversarial proceedings and the principle of the right to defence, both of which guarantee the full equality of the parties in the process"[2]. "The Court notes that the principle of adversarial proceedings, guaranteed by Article 24 of the Criminal Procedure Code, also implies the involvement of the court, paragraph (4) providing that: 'The court shall grant assistance to any party, upon request, under the conditions of this Code, for the taking of the necessary evidence"[3]. The examination of a case may take place only if the parties have been lawfully summoned and the summoning procedure has been duly completed. A party present at a hearing shall no longer be summoned for subsequent hearings, even if this party fails to appear at any of those hearings. Although Article 319 CPC[4] is entitled "Summoning of the parties to trial", the text of this article also refers to other participants in the proceedings who are not parties – the witness, the expert, the interpreter, and the translator.

Where the hearing is adjourned, the witnesses, experts, interpreters, and translators present shall be informed of the new hearing date. When the hearing continues, the parties and the other participants in the proceedings shall no longer be summoned. Military personnel shall be summoned for each hearing. In the case of summoning detained persons, the administration of the place of detention shall also be notified for each hearing. Persons appearing in response to a summons shall, upon request, be issued a certificate attesting the appearance before the court. Article 6 § 3 (d) of the Convention[5] grants the defendant the right "to examine or have examined witnesses against the defendant and to obtain the attendance and examination of witnesses on the defendant's behalf under the same conditions as witnesses against the defendant. (…) It is primarily for the national courts to assess the evidence before the national courts and the relevance of the evidence which the accused seeks to adduce, particularly as regards the number of witnesses proposed by the accused" (§ 28)[6].

Once the domestic courts have accepted, at least in principle, that the examination of a defence witness is relevant, such persons are under an obligation to take "effective" measures to secure the witness's attendance at the hearing, at a minimum by issuing a summons[7] or by ordering the compulsory appearance of the witness before the court through police escort[8]. In cases involving the investigation and trial of citizens of other States, the criminal investigation body and the national courts sometimes hesitate to summon such persons in the State of origin (pursuant to Article 539(1) of the CPC[9]), where such persons may be lawfully present, since at the time of leaving the territory of the Republic of Moldova those citizens were not subject to any preventive measures restricting the freedom of movement. The prosecutor erroneously considered that summoning those citizens at the temporary residence in the Republic of Moldova was sufficient.

"With reference to the above-mentioned legal provisions, the Extended Criminal Panel finds that both the criminal investigation body and the trial courts

[1] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[2] Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 68g/2018. (2018, June). Retrieved from https://www.constcourt.md/public/ccdoc/decizii/d_55_2018_68g_2018_rus.pdf?utm_source.
[3] Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 68g/2016. (2016, June). Retrieved from https://www.constcourt.md/ccdocview.php?tip=decizii&docid=210&l=ro.
[4] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[5] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[6] Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 68g/2016. (2016, June). Retrieved from https://www.constcourt.md/ccdocview.php?tip=decizii&docid=210&l=ro.
[7] Judgment of the European Court of Human Rights in the Case No. 30997/02 "Polufakin and Chernyshev v. Russia". (2009, January). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-88482%22]}.
[8] Judgment of the European Court of Human Rights in the Case No. 11423/03 "Pello v. Estonia". (2007, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-80123%22]}.
[9] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.

erroneously concluded that T.G., being a citizen of another State, had been lawfully summoned at the temporary address in xxxxx and that no other information regarding the defendant's whereabouts was known. However, a copy of the passport of T.G., a citizen of the Italian Republic, is attached to the case file, from which it results that the mentioned citizen was born in xxxxx and has residence in xxxxx"[1].

The ECtHR "(...) specified that in the judgment in Ziliberberg it found a violation of the applicant's right to a fair trial because the summons had been sent too late. In the present case, the situation was more serious, as it had not been proven that the applicant had in fact been summoned. It is difficult to establish how the applicant could have exercised the applicant's rights without being present. In conclusion, the Court held that the applicant had not benefited from a fair trial in accordance with Article 6 § 1 of the Convention... Similar conclusions were also presented in the judgment in Guţu v. the Republic of Moldova, in which the applicant complained about the lack of summoning to the hearing at which the applicant's appeal was examined. The Court noted that the case file from the national courts, a copy of which was submitted by the Government, did not contain any summons for the hearing of 16 January 2002 before the Chişinău Tribunal" (Poalelungi *et al*., 2017).

"In the case of Russu v. the Republic of Moldova[2], in addition to what was stated in the cases of Ziliberberg[3] and Guţu[4], the Court referred to the principle according to which the presence of the accused person at the examination of an appeal dealing solely with points of law is not crucial. However, in that case, the Court specified that since the applicant had not been informed of the hearing, the applicant had no opportunity to organise the applicant's defence and was not represented by a lawyer" (Poalelungi *et al*., 2017). The parties who participated in the examination of the case before the court of first instance must be lawfully summoned before the appellate court[5].

The European Court of Human Rights (ECtHR) has consistently emphasised the need for adversarial proceedings to ensure a fair trial, guaranteeing both parties equal opportunities to present evidence and make submissions. It also emphasises the court's duty to assist the parties in obtaining the necessary evidence and to base its decision solely on evidence available to all. The document also examines the procedural rules for summoning the parties and other participants to court hearings, whilst emphasising the importance of proper notification to ensure the fairness of the trial.

Participation of the prosecutor in the trial and the effects of the prosecutor's non-appearance. Article 320(1) of the Criminal Procedure Code of the Republic of Moldova [6] contains several rules concerning the participation of the prosecutor in the trial before the court of first instance, in particular:

- the basic rule – the prosecutor who conducted the criminal investigation or, as the case may be, personally carried out the criminal investigation in the given case shall participate in the trial before the court of first instance;
- the exception to the basic rule – in the event of the prosecutor's inability to participate (that is, where the prerequisites for the application of the basic rule are lacking), the hierarchically superior prosecutor shall order the participation of another prosecutor in the hearing;
- complementary to the exception – where necessary, the hierarchically superior prosecutor may order the participation of a group of prosecutors also in the trial before the court of first instance.

In accordance with Article 320(4) CPC[7], "If, during the examination of the case, it is established that the prosecutor is unable to continue participating in the hearing, the prosecutor may be replaced by another prosecutor". The court shall grant the prosecutor who has entered the proceedings sufficient time to become acquainted with the case materials, including those examined before the court, and to prepare for further participation in the proceedings; however, the replacement of the prosecutor does not require the recommencement of the trial from the beginning. The prosecutor is entitled to request the repetition of certain procedural actions already carried out at the hearing in the prosecutor's absence if there is a need to clarify additional issues. "In the event that several criminal case files, submitted by different prosecutors, are joined in court into a single set of proceedings, the prosecutor designated by order of the hierarchically superior

[1] Decision of the Extended Criminal Panel of the Supreme Court of Justice in Case No. 1ra-516/2018. (2018, May). Retrieved from http://jurisprudenta.csj.md/search_col_penal.php?id=11215.
[2] Judgment of the European Court of Human Rights in the Case No. 7413/05 "Russu v. Moldova". (2009, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-89579%22]}.
[3] Judgment of the European Court of Human Rights in the Case No. 61821/00 "Ziliberberg v. Moldova". (2005, February). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-68119%22]}.
[4] Judgment of the European Court of Human Rights in the Case No. 20289/02 "Guţu v. Moldova". (2007, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-80910%22]}.
[5] Decision of the Extended Criminal Panel of the Supreme Court of Justice in Case No. 1ra-115/2007. (2007, February).
[6] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[7] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.

prosecutor shall participate in the examination of the case... "If several prosecutors participate in the court hearing, the absence of one prosecutor from the group at the examination of the case shall not entail the adjournment of the hearing. In such cases, the judicial hearing may continue in the presence of one prosecutor" [1].

In the case of Karelin v. Russia[2] (§§ 53-57), the ECtHR found that the absence of a prosecutor from the hearing may lead to a violation of the principle of a fair trial. In Krivoshapkin v. Russia[3] (§§ 44-45), the ECtHR held that the trial court failed to preserve the guarantees of the adversarial nature of criminal proceedings and confused the functions of prosecutor and judge: it assumed the role of the prosecution, examined the issues, established the applicant's guilt, and imposed a sanction. Pursuant to Article 320(3) CPC[4], "The non-appearance of the prosecutor at the court hearing shall result in the adjournment of the hearing, with the hierarchically superior prosecutor being informed thereof. For unjustified absence, the prosecutor shall be sanctioned with a judicial fine where such absence has led to additional judicial expenses". By operating with the provisions of Article 124 of the Constitution of the Republic of Moldova[5] and Article 53 of the Criminal Procedure Code of the Republic of Moldova[6] (the powers of the prosecutor before the court), the prosecutor, in the examination of a criminal case before the court, performs the function of supporting the state prosecution, contributing to the administration of justice, as well as the function of protecting the rights of the individual, the State, and society.

In exercising the powers before the court, the prosecutor is independent and subject only to the law. The prosecutor is obliged to play an active role in the examination of the case and:

- presents at the court hearing the evidence of the prosecution and may also present new evidence in the case in which the prosecutor conducted or personally carried out the criminal investigation;
- participates in the examination of the evidence presented by the defence, presents new evidence necessary to substantiate the accusation, submits motions and expresses opinion on issues arising before the court;
- requests the court to remit the criminal case in order to bring a more serious charge against the defendant and to take new evidence if, following the judicial examination, it is established that the defendant has committed other offences and the evidence is insufficient;
- modifies the legal classification of the offence committed by the defendant if the judicial examination confirms that the defendant committed that offence;
- expresses, during the pleadings, the prosecutor's opinion regarding the application of criminal law and the imposition of punishment on the defendant for the offence committed"[7].

"Appeal and cassation are independent stages of the judicial process; accordingly, the prosecutor's powers at these stages are different" (Jitariuc & Calendari, 2025). Based on the principle of adversarial proceedings in criminal procedure, a unanimously recognised principle, and on the case-law of the ECtHR, the burden of proof at hearings before the court of first instance and before the appellate court rests with the public prosecutor by virtue of the public prosecutor's procedural function (Articles 26(3), 51, 53, 320 CPC[8]).

In accordance with Article 9(4) and (5) of the Law on the Prosecutor's Office[9], prosecutors of the Anti-Corruption Prosecutor's Office and of the Prosecutor's Office for Combating Organised Crime and Special Cases represent the prosecution before the courts of first instance, appeal, and cassation in cases falling within the statutory jurisdiction. In other criminal cases, the state prosecution before the appellate and cassation courts is conducted by prosecutors of the Northern, Central, and Southern District Prosecutor's Offices before the Northern, Central, and Southern Courts of Appeal, respectively, and by prosecutors of the Section for Representation of the Prosecution before the Supreme Court of Justice within the General Prosecutor's Office[10]. However, in practice, in most

[1] Judgment of the Plenum of the Supreme Court of Justice of the Republic of Moldova in Case No. 12. (2012, December). Retrieved from https://jurisprudenta.csj.md/search_hot_expl.php?id=43&utm.
[2] Judgment of the European Court of Human Rights in the Case No. 926/08 "Karelin v. Russia". (2016, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-166737%22]}.
[3] Judgment of the European Court of Human Rights in the Case No. 42224/02 "Krivoshapkin v. Russia". (2011, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-103078%22]}.
[4] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[5] Constitution of the Republic of Moldova. (1994, July). Retrieved from https://surl.li/wzcvvz.
[6] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[7] Judgment of the Plenum of the Supreme Court of Justice of the Republic of Moldova in Case No. 12. (2012, December). Retrieved from https://jurisprudenta.csj.md/search_hot_expl.php?id=43&utm.
[8] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[9] Law of the Republic of Moldova No. 3/2016 "On the Prosecutor's Office". Retrieved from https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)041-e.
[10] Decision of the Superior Council of Prosecutors of the Republic of Moldova in Case No. 1-391/2024. (2024, December). Retrieved from https://csp.md/sites/default/files/2025-01/391_proiect_hot_modificarea_structurii_final_2025.pdf.

cases examined by the Courts of Appeal, particularly the Northern and Southern Courts of Appeal, groups of prosecutors acting as public prosecutors are formed, composed of prosecutors both from specialised prosecutor's offices and from the district prosecutor's offices at the level of the respective court of appeal, in order to ensure a more effective representation of the state prosecution (Calendari, 2024).

Consequently, if a prosecutor is unable to attend a court hearing, that prosecutor may be replaced by another prosecutor, who is given time to become familiarised with the case file. The document also outlines the prosecutor's duties, including the presentation of evidence, participation in its examination, and the submission of procedural motions. ECtHR has ruled in cases where the absence of a prosecutor led to a violation of the right to a fair trial, emphasising the important role of the prosecutor in ensuring the adversarial nature of the judicial process. Furthermore, the document outlines the organisational structure of the public prosecutor's office in Moldova and its powers at various stages of the judicial process.

Participation of the defendant in the trial and the effects of the defendant's non-appearance. The examination of the case before the court of first instance and before the appellate court shall take place with the participation of the defendant. "In its case-law, the European Court has held that, in order to ensure the fairness of criminal proceedings, it is important that the accused have the opportunity to be present in the courtroom – whether during the initial proceedings or in the context of retrial proceedings"[1].

The examination of the case in the absence of the defendant may take place in the following situations:

1) where the defendant absconds from appearing before the court. "The Court observed that the applicant had left the address the applicant had notified to the judicial authorities without informing the judicial authorities in advance of the applicant's change of residence. The judicial authorities made all reasonable efforts to secure the applicant's presence before the court: the judicial authorities summoned the applicant at the known address, attempted to summon the applicant at other known addresses, sought to locate the applicant within penitentiary institutions, and verified whether the applicant had left the territory of the country. In the circumstances of the case, the Court considered that the applicant had knowingly and validly waived, in an implicit manner, the applicant's right to appear in person before the courts and therefore there had been no violation of Article 6 § 1 of the Convention"[2];

2) where the defendant, being in detention, refuses to be brought before the court for the examination of the case, and such refusal is confirmed either by the defendant's defence counsel or by the administration of the place of detention. "As regards the alleged parallel regulation of the defendant's refusal, the Court notes that the provisions of Article 321(2^1) CPC, introduced by Law No. 179 of 26 July 2018, concern the situation in which, following the defendant's refusal to appear at the court hearing, such refusal being established by the penitentiary institution and brought to the attention of the court, the latter orders the compulsory bringing of the defendant in order to confirm the defendant's refusal to participate in the examination of the criminal case"[3];

3) where the defendant requests that the case be examined in the defendant's absence, provided that the court establishes the existence of exceptional circumstances and objective reasons justifying the defendant's absence from the hearing; in this regard, the defendant having made a solemn declaration at a previous hearing or submitted a written statement countersigned by the defendant's defence counsel expressing a wish, based on an informed choice, to expressly waive the exercise of the defendant's right to appear before the court, and such waiver does not run counter to a more important public interest;

"The European Court has established that an accused cannot be considered to have waived, through an accused's conduct, the guarantees provided by Article 6 of the Convention unless it has been demonstrated that an accused could reasonably have foreseen the consequences of such conduct[4]" (see, in this respect, Sejdovic v. Italy[5], § 87; Haralampiev v. Bulgaria[6], § 33; and Idalov v. Russia[7], § 173). "In particular, there is no violation of the right to a fair trial where the accused person was informed of the date and place of the proceedings or where the accused person was represented by a

[1] Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 86/2018. (2018, July). Retrieved from https://www.constcourt.md/ccdocview.php?tip=decizii&docid=500&l=ro.
[2] Judgment of the European Court of Human Rights in Case No. 52009/07 "Lena Atanasova v. Bulgaria". (2017, January). Retrieved from https://hudoc.echr.coe.int/eng?i=001-170842.
[3] Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 124/2018. (2018, October). Retrieved from https://www.constcourt.md/ccdocview.php?docid=545&l=ro&tip=decizii.
[4] Ibidem, 2018.
[5] Judgment of the European Court of Human Rights in the Case No. 56581/00 "Sejdovic v. Italy". (2006, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72629%22]}.
[6] Judgment of the European Court of Human Rights in the Case No. 29648/03 "Haralampiev v. Bulgaria". (2012, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-110694%22]}.
[7] Judgment of the European Court of Human Rights in the Case No. 5826/03 "Idalov v. Russia". (2012, May). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-110986%22]}.

lawyer mandated for that purpose. These considerations formed the basis of the European Court's conclusion that there had been no violation of Article 6 of the Convention in Medenica v. Switzerland, 14 June 2001, §§ 56-59"[1];

4) upon the completion of the criminal investigation in the absence of the accused under the conditions of Article 291(1) CPC[2].

Where the case is examined in the absence of the defendant, the participation of defence counsel and, where appropriate, of the defendant's legal representative is mandatory. In the event of the unjustified non-appearance of the defendant at the hearing, the court is entitled to order the compulsory bringing of the defendant, including the issuance of a border alert, and to impose a preventive measure or replace it with another measure that will ensure the defendant's appearance before the court, and, upon the prosecutor's request, to order that the defendant be declared wanted. The ruling declaring the defendant wanted shall be executed by the internal affairs bodies. The Constitutional Court clarifies that an appeal in cassation against a ruling ordering compulsory bringing does not fall within the scope of the right to a double degree of jurisdiction in criminal matters, guaranteed by Article 2 § 1 of Protocol No. 7 to the European Convention[3]. "The task of the court deciding on the compulsory bringing of the defendant is not to determine the 'criminal charge', but to ensure the defendant's presence at the court hearing"[4].

The court decides to examine the case in the absence of the defendant on the grounds provided for in Article 321(2)(1) CPC[5] only where the prosecutor has presented credible evidence that the person charged and sent for trial is absconding from justice and that, following search measures, it has been impossible to obtain the defendant's expression of will to appear before the court. "From the case materials it is established that, during the examination of the case before the court of first instance, the defendant D.S. did not appear; however, the defendant's lawyer C.O., on 07.09.2020, submitted a request pursuant to Article 321(3) CPC, written and signed by the defendant and the lawyer, seeking the examination of the case in the defendant's absence, stating that the defendant fully admitted guilt in committing the offence imputed under Article 264[1](1) of the Criminal Code, with the participation of defence counsel on the defendant's behalf. Moreover, the appeal in cassation against the judgment was lodged by the defendant D.S., which indicates that the defendant was aware of the examination of the case in cassation proceedings. Therefore, the Criminal Panel notes that the appellant's arguments that the defendant had not been lawfully summoned cannot be upheld, since the case materials show that the appellate court undertook all actions provided by law in order to notify the defendant of the date and time of the hearings. Thus, on 27.05.2021 and 23.06.2021, summonses were sent to the residential address indicated in the case file, namely 'mun. Chişinău, com. XXXXX, str. XXXXX'; it is established that the summonses were not received by the defendant and were returned to the appellate court marked "unclaimed", and according to the extract from the search system, it is established that the defendant left the territory of the Republic of Moldova on 04.04.2021"[6].

It outlines several scenarios in which the defendant may be absent: if the defendant absconds, refuses to appear from detention, or voluntarily waive the right to be present, provided certain conditions are met. ECtHR has ruled that an accused cannot waive the accused person's right to appear unless the accused was fully informed of the consequences. Additionally, the court has the authority to order the defendant's compulsory attendance, including issuing a border alert or declaring the defendant wanted if necessary. Defence counsel's presence is mandatory in such cases to protect the defendant's rights.

Participation of defence counsel in the trial and the effects of defence counsel's non-appearance. Defence counsel participates in the examination of the case and exercises defence counsel's rights and obligations in accordance with Articles 67-69 of the Criminal Procedure Code[7], which apply accordingly. The Constitutional Court notes that "the European Court of Human Rights has recognised the requirement of the intervention of a lawyer at certain procedural stages as an appropriate and proportionate means available to

[1] Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 124/2018. (2018, October). Retrieved from https://www.constcourt.md/ccdocview.php?docid=545&l=ro&tip=decizii.
[2] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[3] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[4] Decision of the Constitutional Court of the Constitutional Court of Moldova in Case No. 77/2021. (2021, June). Retrieved from https://old.gov.md/sites/default/files/document/attachments/subiect-15_-_nu_210_ms_2021_1.pdf.
[5] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[6] Decision of the Criminal Panel of the Supreme Court of Justice of the Republic of Moldova in Case No. re-16/22. (2022, May). Retrieved from https://jurisprudenta.csj.md/search_col_penal.php?id=21245.
[7] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.

States to ensure enhanced guarantees and greater rigour in the defence of the accused"[1].

During the trial, defence counsel enjoys equal rights with the prosecutor. In the event of the non-appearance of defence counsel at the hearing and the impossibility of replacing defence counsel at that hearing, the hearing shall be adjourned. For unjustified absence, defence counsel shall be sanctioned with a judicial fine. Where the defendant has several defence counsel, the adjournment of the hearing may not be ordered if at least one of the defence counsel is present at the examination of the case. The replacement of defence counsel who failed to appear at the hearing is permitted only with the consent of the defendant.

If the participation of the defence counsel chosen by the defendant is impossible for a period exceeding three days, the court shall adjourn the hearing and propose that the defendant choose another defence counsel; in the event of the defendant's refusal to choose another counsel, the court shall request the coordinator of the territorial office of the National Council for State Guaranteed Legal Aid to appoint a lawyer providing state-guaranteed legal assistance. For the replacement of defence counsel under this paragraph, the court shall grant the defendant a time limit of five days.

The ECtHR "specifies that the appointment of counsel ex officio does not in itself satisfy the requirements of the Convention, which guarantees effective legal assistance. However, this is not ensured by the mere designation of counsel, since, as indicated above, appointed counsel may die, fall seriously ill, etc. In the present case, the accused did not benefit from effective assistance before the Court of Cassation. The Court concluded, unanimously, that Article 6 § 3 (c) of the Convention had been violated (...)" (Berger, 2001). The State's obligation to provide state-guaranteed legal assistance is not fulfilled by the mere appointment of a lawyer. Additional measures must be taken to ensure that this right is practical and effective. If a particular lawyer is ineffective, the State is obliged to provide the suspect with another lawyer[2].

The ECtHR has been reluctant to hold States responsible for the shortcomings of lawyers who, as members of independent and liberal professions, are expected to organise the professional activities. The ECtHR has frequently held that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for the purpose of providing legal assistance. States are required to intervene only when the failure of the defence to provide effective assistance is manifest or has been sufficiently brought to the attention[3]. An important issue concerns the effectiveness of the defence of a defendant absent from trial. Thus, in the criminal proceedings against Sannino before an Italian court, defence counsel declared withdrawal from participation in the proceedings; subsequently, Sannino's defence was carried out by various court-appointed lawyers who, during the trial in absentia, never requested the adjournment of the proceedings in order to become familiarised with the case materials and did not attempt to establish contact with the defendant. As a result, witnesses whose examination had previously been requested by the defendant were not heard. The European Court, while acknowledging that the State cannot be held responsible for unqualified legal assistance, nevertheless concluded that, where the omissions of the defence are manifest, the court must take appropriate measures[4].

With regard to inadequate legal assistance and the failure of the court to intervene to put an end to such conduct, reference may be made to the ECtHR judgment in Ananiev v. Russia, according to which a person accused of an offence does not forfeit the benefits of the right to defence merely because of the person's absence from the hearing. The Court reiterated that during the proceedings the applicant had been removed from the courtroom due to the applicant's conduct and was brought back to be given the last word, but evidence had been examined in the applicant's absence and in the absence of the applicant's lawyer, since the applicant had refused that lawyer's services on the ground that the manner of defence did not coincide with the applicant's views; however, the court was required to explain to the applicant the consequences of such conduct and of waiving defence counsel[5].

When deciding on the adjournment of the hearing in connection with the replacement of defence counsel, the court shall take into account the appropriateness of such a decision, having regard to the time already spent on the examination of the case, the complexity of the case, the time necessary for the newly appointed defence counsel to study the case materials, as well as other circumstances relevant to the preparation of the defence. The court shall grant the defence counsel who has entered the proceedings sufficient time and ensure appropriate facilities to familiarise defence counsel

[1] Judgment of the Constitutional Court of the Constitutional Court of Moldova in Case No. 16/2005. (2005, July). Retrieved from https://www.constcourt.md/public/files/file/Actele%20Curtii/acte_2005/h_16.pdf.
[2] Judgment of the European Court of Human Rights in the Case "Artico v. Italy". (1980, May). Retrieved from https://hudoc.echr.coe.int/eng?i=001-57424.
[3] Judgment of the European Court of Human Rights in the Case "Orlov v. Russia". (2011, June). Retrieved from http://hudoc.echr.coe.int/eng?i=001-105273.
[4] Judgment of the European Court of Human Rights in the Case "Sannino v. Italy". (2006, April). Retrieved from http://hudoc.echr.coe.int/eng?i=001-75213.
[5] Judgment of the European Court of Human Rights in the Case "Ananyev v. Russia". (2009, July). Retrieved from http://hudoc.echr.coe.int/eng?i=001-150432.

with the case materials, including those examined before the court, and to prepare for further participation in the proceedings; however, the replacement of defence counsel does not require the recommencement of the trial from the beginning. Defence counsel is entitled to request the repetition of certain procedural actions already carried out at the hearing in the defence counsel's absence if there is a need to clarify additional issues.

Participation of the injured party in the trial and the effects of the injured party's non-appearance. The injured party, by participating in the examination of the case, enjoys the rights and is subject to the obligations provided for in Article 60 of the Criminal Procedure Code[1]. The examination of the case before the court of first instance and before the appellate court shall take place with the participation of the injured party or the injured party's representative. In the event of the justified non-appearance of the injured party, the court, after consulting the opinions of the parties, shall decide whether to proceed with the examination of the case or to adjourn it, depending on whether the case can be examined in the absence of the injured party without infringing the injured party's rights and interests. Upon a well-founded request by the injured party, the court may exempt the injured party from appearing at the hearing, obliging the injured party to appear at a specific hearing scheduled for the injured party's examination. In the event of unjustified failure to appear before the court for examination, the injured party may be brought compulsorily and may be subject to a judicial fine.

The civil party and the civilly liable party, or the representatives, participate in the examination of the case and enjoy the rights and are subject to the obligations provided for in Articles 62, 74, and 80 CPC[2]. In the event of the non-appearance before the court of the civil party or the civil party's representative, the court shall leave the civil action without examination; in such a case, the civil party retains the right to bring the action in accordance with civil procedure. Upon a well-founded request by the civil party or the civil party's representative, the court may decide to examine the civil action in the absence. The non-appearance of the civilly liable party or the civilly liable party's representative before the court does not prevent the adjudication of the civil action.

The injured party must participate in the case examination, and if the injured party is unable to attend, the court will decide whether to proceed or adjourn, considering the injured party's rights and interests. In cases of unjustified non-appearance, the injured party may be compelled to appear and face a judicial fine. Similarly, civil parties and the representatives must be present, but if absent, the civil action may be left unexamined. However, the civil party retains the right to pursue the action through civil procedure. The court can decide to continue the civil case in the absence, and the non-appearance of the civilly liable party does not prevent the civil action from being adjudicated.

Measures taken against persons who disturb the order of the court hearing. The presiding judge shall ensure the maintenance of order and solemnity of the hearing and is entitled to take the necessary measures for this purpose. If the defendant disturbs the order of the hearing and fails to comply with the instructions of the presiding judge, the latter shall warn the defendant of the need to observe discipline; in the event of repeated disturbance or serious misconduct, the judge or, as the case may be, the judicial panel shall order the defendant's removal from the courtroom, continuing the proceedings in the defendant's absence. However, the judgment shall be delivered in the presence of the defendant or shall be communicated to the defendant immediately after delivery.

The removal of the applicant from the courtroom, in circumstances where the judge did not warn the applicant of the consequences of the applicant's conduct, and the taking of evidence in the applicant's absence, constitutes a violation of the right to a fair trial (ECtHR judgment in Idalov v. Russia[3] [GC], 22 May 2012, § 178). If the prosecutor or the lawyer disturbs the order of the court hearing and fails to comply with the instructions of the presiding judge, that person may be sanctioned with a judicial fine, and that person's conduct shall be reported to the Prosecutor General, and respectively to the Bar Association and the Minister of Justice.

If the injured party, the civilly liable party, or the representatives disturb the order of the hearing or fail to comply with the instructions of the presiding judge, the court may order, by ruling, the removal from the courtroom. Other persons present at the court hearing, for the same conduct, may be removed from the courtroom by order of the presiding judge. In cases of manifest disrespect towards the court by disturbing the order of the hearing, as well as by committing acts that demonstrate manifest contempt for the court, such persons may, by court ruling, be subject to a judicial fine.

The Constitutional Court "observes that the presiding judge, having the role of ensuring compliance with order during the court hearing [Article 317 CPC], is responsible for explaining ex lege to the defendant that, pursuant to Article 66(5)(6) CPC, the defendant is obliged to respect the order established during the hearing, as well as that, in the event of disregarding this imperative, the defendant may be removed from the courtroom, thereby assuming the legal consequences

[1] Criminal Procedure Code of the Republic of Moldova. (2009, November). Retrieved from https://www.unodc.org/cld/uploads/res/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf.
[2] Ibidem, 2009.
[3] Judgment of the European Court of Human Rights in the Case No. 5826/03 "Idalov v. Russia". (2012, May). Retrieved from https://hudoc.echr.coe.int/eng?i=001-110986.

concerning the right to participate in the trial"[1]. In this regard, the Supreme Court of Justice notes that "If the defendant appears at the hearing but displays unacceptable conduct, Article 334(2) CPC imposes on the judge the obligation to take measures to restore order during the hearing and allows, as an extreme measure, the removal of the defendant from the courtroom. However, in such a case, the proceedings continue in the absence of the defendant" (Ruling of the Supreme Court..., 2025).

Consequently, if the defendant disrupts order in the courtroom, the defendant will be given a warning; if the disruption continues, the defendant may be removed from the courtroom, in which case the hearing will continue in the defendant's absence. However, the court's decision will still be announced in the defendant's presence or brought to the defendant's attention at a later date. Disorderly conduct on the part of the prosecutor, a lawyer or other participants may result in sanctions, including court fines and notification of the relevant authorities. The court may also remove the injured party, the civil party or the injured party's or the civil party's representatives if the injured party, the civil party or those representatives disrupt the proceedings, and may impose fines for contempt of court. The Constitutional Court and the Supreme Court emphasise the judge's duty to explain to the defendant the consequences of such behaviour.

Discussion

The findings of this study are consistent with the results of the seminal study by P. Mahoney (2006) on the right to a fair trial under Article 6 of the ECHR, yet the findings of the present study also reveal a number of significant differences in emphasis and interpretation. Both analyses emphasise the importance of ensuring fairness in criminal proceedings, in particular through the participation of all parties in the trial and the maintenance of a procedural balance between the prosecution and the defence. Both also emphasise the equality of the parties, which is critical to ensuring that the defendant is able to present the case on an equal footing with the prosecution. The idea that an ineffective defence or the improper summons of parties to court can undermine the fairness of the trial is common to both works.

However, P. Mahoney's (2006) work focuses more on the procedural principles established by ECtHR and highlights how these principles are applied within a broader legal context, discussing specific defence rights and case law relating to the fairness of judicial proceedings. P. Mahoney's (2006) analysis, whilst discussing fairness and equality of arms, does not highlight the actual gaps in judicial practice in the way the present study does. P. Mahoney (2006) touches upon legal rights and judicial procedures, but does not delve as deeply into the court's procedural obligations to actively ensure that these rights are upheld throughout the proceedings.

C. DeFrancia's (2001) work is a fundamental legal analysis of the conceptual foundations of due process in an international context. Academic works from 2025-2026 predominantly assess individual aspects of criminal procedure from an empirical or comparative perspective, not always linking these aspects to fundamental theoretical issues of due process on a global scale. C. DeFrancia (2001) emphasises that, due to the hybrid nature of international criminal proceedings (some of the mechanisms having been borrowed from different legal cultures), the procedure cannot be reduced to a mere "technical form" – it shapes justice itself and confidence in judicial decisions. The articles published in 2025-2026 focus more on procedural irregularities, the effectiveness of application, and compliance with national or European law. This study, however, emphasises the importance of procedural fairness, particularly in the context of ensuring that the parties are properly notified, the right to participate in the proceedings, and the need for active judicial intervention to maintain a balance between the prosecution and the defence.

The study by B. Cerekja & O. Mucollari (2024) highlights the importance of striking a balance between efficiency and fairness in judicial proceedings, noting that countries such as France and Poland often prioritise expedited case processing, which may infringe upon the rights of the accused. At the same time, Germany, Italy and Albania emphasise a thorough examination of cases, which guarantees fairness but prolongs the process. This is consistent with the analysis conducted, which also highlights the importance of judicial impartiality and equality of the parties, but this study focuses more on the need to respect the rights of the accused. This leads to an emphasis on the efficiency of judicial procedures in the context of the technological solutions proposed by B. Cerekja & O. Mucollari (2024) to expedite the process.

This study shares common themes with the work of I. Vakhlyis (2023) in that both emphasise the importance of a fair trial and access to justice in the context of criminal proceedings; however, the present study highlights the difference in the legal nature and interrelationship. Vakhlyis notes that these rights must be distinguished due to the different legal nature, whilst the present research emphasises that these rights are integral components of the rule of law, and the application must be interlinked, particularly through the equality of the parties in the judicial process. Vakhlyis acknowledges that the right of access to justice is part

[1] Decision of the Constitutional Court of the Republic of Moldova in Case No. 11/2017. (2017, February). Retrieved from https://www.constcourt.md/ccdocview.php?docid=308&l=ro&tip=decizii.

of the right to a fair trial, which aligns with the position advanced in the present study, namely that the right to a fair trial includes guarantees of access to justice. However, this article devotes greater attention to the practical implementation of these rights, a point often overlooked in analysis. While I. Vakhlyis (2023) focuses more on the theoretical foundations and doctrinal distinctions between these rights, the present study stresses the practical aspects of ensuring these rights in criminal proceedings, particularly in ensuring effective defence, the availability of evidence, and the right to a timely and fair trial. Thus, this research offers a more comprehensive approach that incorporates both the legal theory and the real-world challenges in applying these principles, highlighting the importance of judicial reform and compliance with European human rights standards.

Conclusions

The analysis of the general conditions governing the trial of criminal cases reveals that those conditions do not represent mere procedural rules, but fundamental guarantees for the realisation of a fair criminal process within the meaning of Article 6 of the European Convention on Human Rights. The provisions contained in the Special Part, Title II, Chapter I of the Criminal Procedure Code constitute the indispensable normative framework for ensuring the real and effective participation of the parties in the trial and for maintaining procedural balance between the prosecution and the defence.

Compliance with the general conditions of the trial constitutes a prerequisite for the validity of the judicial decision. Any irregularity concerning the summoning of the parties, the participation, or the taking of evidence has the potential to affect the fairness of the proceedings and to lead to the quashing of the judgment; therefore, the court is obliged to verify ex officio the observance throughout the trial. The principle of equality of arms imposes on the court a positive obligation to intervene. The judge cannot remain passive in situations where one of the parties is objectively unable to exercise the party's procedural rights; it is necessary to grant the procedural assistance provided by law in order to prevent procedural imbalance. The summoning of the parties must be assessed from the perspective of effectiveness and the actual nature of the notification, not through excessive formalism. The mere dispatch of a summons is not sufficient if it results that the person did not genuinely become aware of the proceedings, especially in the case of foreign nationals, persons residing abroad, or persons in detention.

The participation of the prosecutor in the trial is indispensable for maintaining the adversarial character of criminal proceedings. The absence of the public prosecutor risks creating an inadmissible confusion between the functions of the court and those of the prosecution, affecting the objective impartiality of the judge and the procedural balance. The examination of the case in the absence of the defendant is of a strictly exceptional nature and must be subject to rigourous scrutiny. The court is obliged to verify whether the waiver of the right to be present was express, unequivocal, and made in full awareness of its consequences, or whether absconding from trial is established by credible evidence; any doubt must be interpreted in favour of the exercise of the right to defence. The right to defence entails the provision of effective and continuous legal assistance, not merely formal representation. The appointment of defence counsel does not release the court from the obligation to intervene where the defence is manifestly ineffective, passive, or lacking in substance; concrete measures are required to guarantee the effectiveness of this right.

Finally, the active role of the court in maintaining order and discipline during the hearing must be exercised with due respect for the right to defence. Measures such as the removal of the defendant or other participants must be applied as a last resort, only after prior warning and explanation of the legal consequences, so that the right to effective participation in the proceedings is not deprived of its substance.

Overall, the essential conclusion is that the cumulative and effective observance of the general conditions governing the trial of criminal cases constitutes the premise of a fair trial, and the rigourous application in judicial practice represents an indispensable instrument for preventing violations of fundamental rights and for strengthening confidence in the administration of justice.

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Загальні умови розгляду кримінальних справ, що забезпечують належну участь сторін і дотримання їхніх процесуальних прав

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Анотація
Актуальність теми полягала в необхідності забезпечення справедливого судового процесу в кримінальних справах, що є основною гарантією прав людини та правосуддя. Метою роботи було проаналізувати загальні умови проведення судових процесів у кримінальних справах, які забезпечують належну участь сторін у процесі і дотримання їхніх процесуальних прав. Для досягнення мети було здійснено аналіз законодавчих норм, практики Європейського суду з прав людини та судової практики Республіки Молдова. Досліджено основні умови для забезпечення участі сторін у судовому процесі, зокрема рівність сторін, забезпечення принципу змагальності та права на захист. Виявлено, що невиконання цих умов може призвести до порушення принципів справедливого судочинства та вплинути на результат судового процесу. Обґрунтовано значущість дотримання вимог щодо належного виклику учасників процесу, забезпечення рівних можливостей для подання доказів та участі в їх розгляді. Проаналізовано роль суду в забезпеченні справедливості процесу, зокрема в контексті підтримання рівноваги між обвинуваченням і захистом. З'ясовано, що активна участь судді в підтриманні змагальності та наданні допомоги сторонам у процесі є необхідною для забезпечення дотримання прав кожної сторони. Крім того, встановлено, що недотримання процедурних норм, таких як належне повідомлення учасників судового процесу, може спричинити серйозні наслідки для справедливості судочинства, зокрема призвести до скасування судових рішень. Сформульовано висновок, що недотримання цих умов може спричинити серйозні порушення прав учасників процесу, що вимагало втручання суду для забезпечення балансу прав й обов'язків сторін. Практична цінність роботи полягала в тому, що її результати можуть бути використані суддями, адвокатами та правниками для покращення правозастосовної практики та забезпечення належних умов для кримінальних процесів, відповідно до міжнародних стандартів прав людини

Ключові слова:
кримінальні справи; порушення прав; судовий розгляд; сторони в судовому процесі; подання доказів

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Reforming criminal justice in Bangladesh through technology: Comparative insights from e-justice models in India, the UK, and the US

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Abstract
This scientific and research-based paper took a qualitative and doctrinal approach to analysing the possibility for reforming Bangladesh's criminal justice system through the systematic use of technology. The study was based on the recognition that Bangladesh's criminal justice system is hampered by pervasive delays, inefficiency, and accessibility issues, which create strong hurdles to justice and contribute to a decline in public confidence. This paper viewed the use of e-justice as a scientific challenge in institutional modernisation and legal integration, requiring comparative analysis and context-sensitive adjustments. The key argument proposed is that digital change, when guided by comprehensive legislative frameworks and institutional preparedness, may be a powerful facilitator of criminal justice system reform. The study extracted scalable, legally acceptable, and context-relevant mechanisms that may drive Bangladesh's reform effort through a comparative analysis of lessons learnt from India, the United Kingdom, and the United States, all of which have adopted distinct e-justice frameworks. The objective of this study was to provide an evidence-based, whole-of-government roadmap for Bangladesh's adoption of e-justice, with a focus on law reform, digital infrastructure, institution building, and accessible justice for marginalised people. The study included a comparative investigation of law and combined law, policy, and technology. Combining doctrinal and comparative insights, the study contributed to the area of knowledge on legal digitalisation in the Global South and provided policymakers, judicial authorities, and development partners with practical advice. It showed how contextually appropriate technological reforms can improve public trust, uphold human rights, and strengthen procedural justice, offering a roadmap for the long-term, technologically driven reform of criminal justice system of Bangladesh

Keywords:
access to justice; comparative law; digital transformation; judicial efficiency; legal innovation

Introduction
The protection of human rights, the rule of law, and public trust in the administration of justice all depend on criminal justice systems' functional levels of efficacy, accessibility, and legitimacy. Procedural inefficiencies, massive backlogs, protracted trial times, and limited access to the legal system, particularly for underprivileged populations and the rural populace, have all been persistent problems in the criminal justice system of Bangladesh. Delays in the delivery of justice, a loss of trust in the legal system, and a turn to extrajudicial

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conflict resolution and justice administration systems are all consequences of these flaws. The imperatives for reform in Bangladesh's criminal justice system have been strengthened by growing needs for greater efficiency, transparency, and accountability in the administration of justice, all of which are more important, particularly in light of significant technological advancements and evolving methods of governance in the modern state. Technologically driven measures in the administration of justice can constitute a means to address inefficiencies and lack of access to justice in traditional court systems. Therefore, this study, by analysing the potential of technology-enabled solutions, fits into a larger discourse on the modernisation of criminal justice systems in emerging economies, emphasising the importance of contextually suitable strategies that strike a balance between technological advancement and legal and institutional integrity.

Recent research has looked into the present state of digital justice efforts, their efficacy and obstacles in different countries. A. Dahiya & S. Banerjee (2024) examined the scope of India's e-court project and documented the benefits of case management and remote hearings in lowering outstanding cases, but they also highlighted issues relating to infrastructure, digital literacy, and uniform processes. According to P. Bhattarai & S.K. Chaudhary (2025), although legal innovations play an important role in improving access to justice by eliminating unnecessary formalities in judicial processes, poor implementation of digital reforms may exacerbate the digital divide. As indicated by F. Casino *et al*. (2022), a comprehensive assessment of global approaches to combating cybercrime and handling electronic evidence highlights the importance of institutional capacity alongside standardised procedural models to ensure authenticity and admissibility of evidence. M. Latif & A.R. Innash (2024) investigated the current change of courts resulting from the use of ICT, concluding that digital case filing, online dispute resolution, and case management systems improve efficiency but require holistic methods and synchronisation with case procedures. The EU's European Commission (2025) emphasised the importance of using digital tools, such as electronic filing of cases, document management tools, and virtual oral hearings, to facilitate the smooth handling of cases through the judiciaries and enable the speedy dispensation of justice, which can help address the perennial problem of pending cases. However, the EU's new initiative highlights the limitations and impediments to standardising digital instruments throughout EU countries' judiciaries.

The doctrinal and comparative literature provides light on the regulatory and practical issues of judicial digitisation. H. Thakran (2025) investigated the doctrinal handling of electronic evidence in India, the United Kingdom, and the United States, focusing on the legal requirements essential to secure the admission and integrity of digital evidence in criminal prosecutions. Research on Kyrgyzstan's e-justice reforms demonstrates that digital tools are only effective when combined with institutional preparation, governance mechanisms, and extensive training for judicial officials (Maralbaeva, 2024). All these studies show that successful technology adoption in justice systems is dependent on not only infrastructure and software deployment, but also legislative frameworks, procedural harmonisation, and human capability. The early stages of digital justice in Bangladesh, however, have both optimism and a distinct set of constraints. Due to the COVID-19 challenge, according to M.I. Hasan & B. Mia (2021), the courts have turned to virtual courts for digital justice, which helps clear the backlog. This strategy suggested that technology may improve accessibility and speed up the administration of justice, especially in a busy court system. Subsequent initiatives, such as the e-Judiciary project and provisions of the "Usage of Information and Communication Technology in Court Ordinance 2020", sought to digitise courtrooms, allow for remote hearings, and enhance case administration through centralised databases and online cause lists. Nonetheless, implementation varies by district, and gaps exist in legislative support, procedural standards, and integration with law enforcement and prosecution systems (Sheikh *et al*., 2024). Insufficient infrastructure, poor digital literacy, and unequal adoption highlight the importance of evidence-based measures for ensuring fair, efficient, and legally sound e-justice interventions.

The purpose of this study was to assess how technology might be used to change Bangladesh's criminal justice system and to develop contextually feasible options influenced by experiences from the United States, India, and the United Kingdom.

Materials and Methods

This study used a qualitative, doctrinal, and comparative legal research methodology to analyse the role of technology in modernising Bangladesh's criminal justice system, building on lessons learned from India, the United Kingdom, and the United States. The doctrinal component entailed a thorough examination of legislation, case law, criminal procedural laws, policy instruments, and court decisions to determine how legal frameworks facilitate or impede the incorporation of technology in justice delivery. The research focused on areas such as digital evidence, virtual court proceedings, and court administration information systems that span jurisdictions. Comparative analysis was used to uncover parallels, contrasts, and contextually relevant practices that can guide policy and legal reforms in Bangladesh. This analytical approach guaranteed a careful evaluation of both local and international legal frameworks, allowing for evidence-based suggestions for implementing technology-driven improvements in Bangladesh's criminal justice system.

Furthermore, a comparative legal analysis was used to examine how different jurisdictions, with their varied socioeconomic contexts and regulations, have incorporated advances in information and communications technology into their criminal justice systems. This involved a comparative examination of legal statutes, institutional modifications, procedural mechanisms, and digital safeguards. The technique was beneficial for comparing jurisdictions and evaluating whether components of their e-justice frameworks may be replicated inside Bangladesh. Comparative methodology was prominent in reform-oriented legal studies and was effective for transcending inner answers. The information included in the study was derived from both primary and secondary sources. The European Commission for the Efficiency of Justice (CEPEJ) publications provide precise metrics on the use of information and communication technology (ICT) in European judiciaries, which help outline Bangladesh's situation in comparison to international norms (Council of Europe, 2024). The World Bank's Justice and Rule of Law initiatives, especially those focused on digital governance, provided frameworks and comparative case studies undertaken in low- and middle-income countries (Carøe & Upegui Caro, 2025).

The purposeful selection of India, the United Kingdom, and the United States as comparator jurisdictions was both strategic and context-appropriate. India and Bangladesh have a same legal history and confront similar issues such as court delays, access to justice, and socioeconomic inequities. For India, primary sources included the official government objectives and implementation plans for the e-Courts Mission Mode Project Phase III, which presented strategies for digital records in courts, virtual filing systems, and virtual participation to address issues of access to justice and case delays (Press Information Bureau, 2024). The United Kingdom was chosen because of its considerable use of digital technology in case management, virtual court services, and efforts to improve accessibility via digital platforms. All of this may be found in the digital services overview provided by the HM Courts and Tribunals Service (2025a; 2025b). It was also reflected in the official remote participation strategy and how remote court hearings can improve access to justice.

Results and Discussion

Overview of E-Justice initiatives in Bangladesh. Bangladesh has begun to digitalise its criminal proceedings, a process expedited by the COVID-19 pandemic. The establishment of virtual courts and video conferencing was an instant solution to ensure that judicial operations may continue despite social distancing procedures and lockdowns (Hasan & Mia, 2021). The emergency process rules empowered courts to hold distant hearings and therefore continue judicial proceedings despite physical limitations.

The initiative was renewed with the promulgation of the "Use of Information Technology by Courts Act, 2020"[1], a piece of legislation that provided a legal mandate for the institutionalisation of ICT in court procedures, thereby boosting the viability of virtual justice systems (Abu Taher & Jamaluddin, 2022). The invention represented a substantial change away from traditional judicial processes and towards a hybrid system that combines physical and digital components.

Apart from emergency response, Bangladesh has explored a number of digital projects to improve case management. The Supreme Court has implemented digital cause lists and limited e-filing systems, with the goal of minimising dependency on physical copies and expediting procedural mechanisms (Rafah, 2023). Furthermore, the "Amar Adalat" mobile application indicates efforts to increase accessibility by giving litigants instant access to case statuses and court schedules (UNDP, 2022). The application has received widespread praise for allowing litigants to connect with the legal system in a more transparent and convenient manner.

Despite these encouraging developments, Bangladesh's e-justice growth is inconsistent and hindered by a number of structural impediments. First, courts lack adequate ICT infrastructure, particularly those located outside of major centres. The fragmented pattern of high-speed Internet penetration, low hardware resources, and inadequate technical assistance hamper effective adoption. The digital infrastructure deficit is worsened by a large rural-urban connectivity divide that disproportionately affects vulnerable and underprivileged communities, reinforcing pre-existing hurdles to access to justice (Hasan & Rupa, 2021). Second, the use of e-justice and other e-technologies in courts has encountered opposition or hesitancy from both legal professionals and the subjects of the judicial system in a number of nations. Research shows that legal actors, including judges, attorneys, and court legal subjects, may exhibit ambivalence in accepting or embracing e-technologies because they believe the process is biased and raise concerns about data privacy when using them. They also have trouble connecting the use of e-technologies with traditional or core values in the legal process. Most attorneys wonder whether virtual hearings can provide acceptable standards of justice and effective representation, and this stems from a fundamental dispute about the propriety of emerging technology in sensitive criminal procedural concerns.

Additionally, a cohesive national e-justice policy framework is absent. The existing changes are mostly

[1] Law of No. 11 "On the Use of Information Technology by Courts Act of Bangladesh". (2020, July). Retrieved from http://bdlaws.minlaw.gov.bd/act-1305.html.

portrayed as separate pilot projects, with no overarching plan for their integration among multiple institutions within the criminal justice system, such as law enforcement, prosecution, and corrections. The absence of cohesiveness undermines the promise of a networked digital justice ecosystem and limits scaling. Security and data protection concerns, and standardised procedural rules, are not sufficiently addressed, posing hazards for further implementation. Overall, these challenges demonstrate that, while Bangladesh has taken first steps towards e-justice development, considerable institutional, infrastructural, and cultural obstavcles must be overcome to create a smooth, efficient, and inclusive digital criminal justice system.

Case study: India. India's experience with e-justice is an important point of reference for Bangladesh, owing to their shared colonial legal systems, similar socioeconomic issues, and the extent of judicial delay. The country's e-Courts Project is one of the most ambitious digital changes in the judiciary on a global scale. The initiative, which began in 2007 and is presently in Phase II, aims to improve district courts through automation, digitisation, and connection (Dahiya & Banerjee, 2024). Phase I focused on providing ICT infrastructure to courts and developing the National Judicial Data Grid (NJDG), a central repository that records real-time information on case filing, backlog, and disposal rates in hundreds of courts across the country. The NJDG serves as a key management tool, allowing administrative judges to identify regions with significant backlogs and more efficiently allocate resources. According to analysis, these centralised data platforms enable evidence-based policy choices by improving administrative efficiency and offering quantifiable insights on judicial bottlenecks (World Bank, 2024).

In addition to infrastructure development, India has embraced technological innovation to increase litigant involvement. The widespread use of video conferencing has helped courts continue to function during the COVID-19 outbreak and beyond, allowing litigants to hold distant hearings that minimise logistical barriers for both plaintiffs and witnesses (Saxena, 2022). E-filing system upgrades have enabled attorneys and litigants to file online, reducing the need for in-person visits and speeding up case resolution. Again, the use of SMS and smartphone notifications guarantees that litigants are instantly informed of developments in their cases, resulting in enhanced transparency and confidence in the courts (NIC, 2025). Although their efficacy depends on user accessibility and digital competence, these technological interventions show that digital technologies may significantly cut down on procedural delays and increase public confidence in legal procedures (Jubaer, 2025).

The Indian e-Courts initiative is greatly aided by the Supreme Court's e-Committee and the technical expertise offered by the National Informatics Centre (NIC) (2024), which ensures continual help, capacity building, and system upgrades. Judges' active participation in reform processes reflects a strong institutional commitment to modernisation. Research shows that a key success element is the combination of technological know-how and institutional support, emphasising the need of leadership in promoting long-lasting e-justice changes (Inter-American Development Bank, 2025).

The concept, however, has yet to be completely realised and has various flaws, including a lack of consistency in state-level implementation, disparities in digital literacy rates among attorneys, and deficiencies in court facilities at the rural level. This implies that in order to fully realise the potential of digital justice, fair access and standardised execution are just as important as technical infrastructure (Press Information Bureau, 2024). The entirety of Indian experience demonstrates that digital changes are a systemic effort that requires institutional commitment to training and inclusive measures to achieve impact. Thus, Indian e-justice is a comprehensive judicial approach to digitalisation that combines technical innovation and institutional orientation, giving good lessons for Bangladesh.

Case study: United Kingdom. The United Kingdom exemplifies a contemporary and integrated digital judicial system that values transparency, citizen engagement, and procedural fairness. The HM Courts and Tribunals Service (HMCTS) Reform Programme, which began in 2016, represents a comprehensive digital reform of the judiciary (HMCTS, 2024). According to the research, HMCTS's technology services not only altered the legal process, but also improved general satisfaction and robustness of the courtroom system, notably for virtual trials and submissions (HM Courts and Tribunals Service, 2025a). The "Common Platform", a unified case management system designed to centralise and digitalise workflow across criminal and civil courts, is at the heart of this endeavour. Judges, attorneys, and litigants have secured and real-time access to case files via the platform, allowing for faster case processing and reducing dependence on paper documents. The unified digital management system for digital cases improves interagency collaboration and decreases administrative cost by removing paper-based inefficiencies. This is one of the most important lessons for countries seeking to implement such techniques (HM Courts and Tribunals Service, 2025a). The Common Platform was widely implemented by mid-2024, resulting in a significant improvement in case management practice and administrative efficiency.

The United Kingdom has adopted innovative procedural innovations, such as an electronic plea system that allows defendants to present guilty pleas online, resulting in shorter court length and faster case resolution (Peay & Player, 2018). Digital evidence management solutions enable parties to safely upload evidence before to hearings, improving procedural transparency

and court preparedness. Digital mechanisms such as online pleas and the uploading of real-time evidence demonstrate the potential for procedural innovation to positively change responsive courts, underlining the importance of solid support models in such a situation (HM Courts and Tribunals Service, 2025b). Furthermore, the HMCTS Reform Programme aims to retain high levels of public engagement by focussing on continual end-user feedback, hence increasing confidence and ensuring that digital systems are suited to the demands of varied stakeholders (HMCTS, 2024).

The success of the UK's digital justice reforms may be credited to both technology advancements and a holistic plan that includes training, user assistance, and policy reform. Some practitioners' initial opposition was overcome by repeated capacity-building initiatives and pilot-testing phases, enabling for the progressive development of technologies that better correspond with court practice. The instance of the United Kingdom demonstrates the significance of a comprehensive approach that blends technical advancements with procedural and institutional reforms to improve justice delivery.

Case study: The United States. The United States features a complicated and layered structure of technology innovation in the criminal justice sector, characterised by a federally controlled system with a variety of state-level implementations. Among the most significant technology tools are AI-powered sentencing and risk assessment algorithms, such as COMPAS (Correctional Offender Management Profiling for Alternative Sanctions), which are intended to help courts make bail, sentencing, and parole decisions (Vo & Plachkinova, 2023). The technologies are designed to introduce consistency and predictive analytics into adjudicative decision-making processes. They have, however, aroused major criticism concerning algorithmic bias, a lack of transparency, and the protection of due process, with some claiming that automated risk assessment may affect some minority groups disproportionately (Angwin *et al*., 2023).

As a result, some jurisdictions have launched reform initiatives to audit, regulate, or limit the use of AI in the criminal justice system. Aside from artificial intelligence, the United States has embraced online dispute resolution (ODR) tools as viable alternatives to conventional court procedures, particularly for low-value administrative and civil issues. ODR has effectively increased access to justice by lowering costs and logistical barriers, while also improving efficiency and equality in dispute resolution procedures (Zhao, 2024). E-warrants are yet another technical advancement that allows law enforcement agencies to electronically obtain, issue, and monitor search and arrest warrants, resulting in greater ease and responsiveness.

California and New York are innovative hotspots for e-justice technology. The New York Unified Court System improves administrative efficiency by updating case management, filing, and scheduling systems throughout the court system. California's virtual hearings programmes, which were hastened in response to the COVID-19 pandemic, improved court accessibility for plaintiffs with geographical or mobility limitations (Chen, 2024). However, innovations raise a number of concerns, including inequalities in digital access for different demographic cohorts, cyber security risks, and the potential compromising of procedural safeguards if technology is used without control (National Centre for State Courts, 2023). The American experience demonstrates both the potential and the hazards of implementing significant technological breakthroughs into criminal justice systems. It demonstrates the importance of balancing innovation with solid ethical and legal frameworks to promote fairness, accountability, and inclusivity in the administration of digital justice.

Key comparative insights. The comparative study of e-justice programmes in India, the United Kingdom, and the United States demonstrates that integrating criminal justice systems with technology requires considerations beyond hardware and software installation. While the technology base may serve as the fundamental justification for digital justice reforms, legislative support mechanisms and behavioural changes in the judicial system provide the deeper fuel for long-term transformation. Each of these components – legislative change, institutional leadership, and citizen action – has a synergistic effect on the efficacy, legitimacy, and acceptability of e-justice systems. A significant finding is that adopting technology without proper legislative support is unlikely to result in long-term transformation. In each of the three countries investigated, the creation or alteration of legal frameworks has aided in the legitimisation of digital proceedings, the admission of electronic evidence, and the development of procedural rules for electronic submissions and virtual hearings. The United Kingdom's efforts to digitalise court processes, for example, have been aided by amended procedural rules that explicitly recognise digital inputs and distant testimony, removing uncertainties that had previously hampered court acceptance of technology (Haviland, 2025).

Similarly, India's legislative initiatives, including as revisions to the Code of Criminal Procedure[1] and information and communications technology statutes, have aided the institutionalisation of schemes like the e-Courts project by giving explicit instructions and protections. These legislative reforms do more than merely include technology; they fundamentally alter the justice system, necessitating adjustments to case management systems and court procedures.

[1] Code of Criminal Procedure of India. (1974, January). Retrieved from https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure,_1973.pdf.

In addition to legislative improvements, changes in the behaviour of judicial and legal professionals have a significant impact on the effectiveness of e-justice efforts. If not addressed via capacity building and cultural transformation, judges, prosecutors, and attorneys' opposition to digital tools can seriously hamper reform efforts. The impact of positive attitudes toward the adoption of technology and the necessity of specialised training is demonstrated by empirical evidence from the United States, for instance, which shows that court officials, including judges, administrators, and attorneys, who adapted to virtual court hearings and electronic filing, expressed increased participation and improved procedural efficiency (The Pew Charitable Trusts, 2021). In contrast, countries where technology is pushed without proper input of interested parties frequently see limited utilisation and disorganised deployment. This emphasises the importance of implementing change management techniques that foster acceptance, enhance capabilities, and drive creativity across the justice staff.

At the heart of several legislative and behavioural factors is the need for strong institutional leadership to drive e-justice reform objectives. The leadership given by the e-Committee of India's Supreme Court and the Ministry of Justice (MoJ) in the United Kingdom exemplifies how imaginative and coordinated governance institutions can handle complicated technology advancements across several tiers of the judicial system. The e-Committee of India's Supreme Court has served as more than just an advisor on policy issues. It has played an important role as an integrating node, ensuring that suitable technology is used in an effort to solve day-to-day operational bottlenecks in district courts across India. For example, its implementation of an e-Courts Case Management System in India, its initiative to establish video-conferencing tools in courts to conduct virtual hearing sessions, and its efforts to ensure that a level of standardisation is incorporated into court-level e-filing to ensure smooth court operation. India has also held training sessions for its judicial and administrative staff to make them more technologically adept. Such high-level leadership has instilled consistency and convergence in the deployment of e-Courts, assuring alignment with Court goals while encouraging collaboration between IT suppliers and court management.

For example, the MoJ's strategic direction for the HMCTS Reform Programme in the UK highlights the potential for extensive digitalisation within the jurisdiction through government-led initiatives supported by a clear mandate and effective project management techniques. These initiatives combine user-centric design with cooperation among operational teams and the entire justice system to foster a sense of trust and ownership (Ministry of Justice, 2022). Such leadership arrangements are critical for overcoming institutional resistance, coordinating cross-agency efforts, and ensuring continued financing, all of which are recurrent threats to criminal justice reform.

Comparative studies of e-justice initiatives have revealed that digital courts and online case management systems can improve access to legal information, increase procedural transparency, and streamline judicial processes. This reduces the likelihood of bureaucratic bottlenecks and the need for middlemen for basic case tracking and information access (Jubaer, 2025). Direct digitalisation of case management, filing, and communication that is available for immediate use enables litigants to follow their cases in real time, file online, and get automated alerts, simplifying processes and reducing opportunities for corruption or leverage. For example, India's National Judicial Data Grid (NJDG) serves as a standard for a publicly available platform that provides complete case status information and court performance metrics, promoting accountability and allowing litigants to make educated decisions (NIC, 2024). Similarly, the UK's "Common Platform" enables online case management and evidence filing, allowing parties to engage with court proceedings remotely and transparently (HM Courts and Tribunals Service, 2025b). They have contributed to the democratisation of access by lowering reliance on intermediaries who have traditionally functioned as gatekeepers and fostering procedural fairness and public confidence.

Nonetheless, system creation for people must be useable and inclusive to avoid unintentional exclusion of individuals with limited digital literacy or means. The comparative situations show the need of designing with end-user engagement, allowing multilingualism, and guaranteeing offline support in order to reach a wide range of audiences. This involvement strategy combines the availability of technology with people's genuine experiences for which they seek a solution, hence increasing legitimacy and utilisation.

In summary, key comparative observations from India, the United Kingdom, and the United States show that integrating e-justice into criminal justice systems goes beyond mere ICT infrastructures. To truly realise its transformational potential, it requires a comprehensive strategy that includes legal modernisation, strong institutional leadership, and user-centred design. Legislative amendments lay the legal groundwork for digital operations; behavioural changes among justice stakeholders ensure operational efficiency; strong institutional leadership ensures facilitation and resource allocation; and citizen-centric platforms improve transparency and accessibility. All of these interrelated components are essential for effective e-justice systems and give valuable insights into Bangladesh's continuing reform efforts.

Lessons for Bangladesh. Bangladesh may learn useful lessons from the comparative experiences of India, the United Kingdom, and the United States about how to effectively use technology to improve the

criminal justice system. The experience emphasises the importance of establishing an integrated, centralised digital justice system, expanding digital capacity building beyond the judiciary to prosecution and law enforcement agencies, and closing the digital literacy gap between attorneys and plaintiffs. All of the following are required to ensure that technology-driven changes are smooth, fair, and provide substantial potential for improving accessibility, efficiency, and transparency.

Bangladesh needs a centralised digital justice infrastructure and a higher-level coordinating authority. The existing fragmented state of technology interventions, with hundreds of pilot projects and a lack of inter-agency coordination, has resulted in non-uniform acceptance and operational inefficiencies. Bangladesh would greatly benefit from transferring such oversight to either the Supreme Court or the Ministry of Law, drawing on institutional configurations in India and the United Kingdom, where digital justice reform is guided by central entities such as the Supreme Court e-Committee and the Ministry of Justice. A centralised institution would enable a single planning approach, standard formulation, resource facilitation, and performance tracking throughout the criminal justice system.

Institutional integration at the central level would be required to coordinate multiple digital initiatives, improve interoperability across information systems, and allow for consistency in procedural norms governing electronic submissions, digital evidence, and virtual court hearings. Furthermore, the central digital architecture would serve as an interface for collaboration with external actors, such as the Ministry of Information and Communication Technology and private information and communication technology service providers, ensuring that ICT capabilities are adequate for judicial needs. Bangladesh's lack of central governance would make it vulnerable to a fragmented and isolated digital infrastructure, jeopardising both scalability and sustainability.

The second fundamental statement is that digital literacy and technology skill development should extend beyond judges and court officials to include law enforcement agents and prosecutors. Most of the current discussion and reform initiatives in Bangladesh have focused on the court, frequently ignoring the critical responsibilities that police and prosecutorial services play in the criminal justice system. In any event, the efficiency of electronic justice systems is contingent on the efficient transmission of information and inter-agency coordination among all criminal justice players. The case management system digitalisation example demands police personnel to accurately input investigative reports, while prosecutors must be able to examine and amend case files electronically in real time. Without essential digital skills and experience with electronic instruments of justice, those critical players would be able to hinder reform rather than serve as agents of change. Lessons from the United States and India indicate that comprehensive training programmes and dedicated digital units in law enforcement and prosecutorial agencies can significantly improve administrative efficiency and integration into the digital justice system. In Bangladesh, systematic initiatives to improve ICT skills must be institutionalised, spanning from basic computer literacy to advanced data management and cybersecurity knowledge. Furthermore, these programmes must take into consideration the resource constraints and current workloads of police officers and prosecutors to ensure realistic implementation and ongoing engagement.

Third, the discrepancy in digital literacy between litigants and legal practitioners is a significant barrier that Bangladesh must overcome to prevent the escalation of justice inequities. The digital gap, particularly across rural-urban, gender, and socioeconomic lines, risks further marginalising large segments of the population from efficiently utilising digital justice systems. Although digitisation has the potential to increase accessibility, it also risks excluding those who lack basic digital skills or access to Internet-connected devices. As a result, e-justice changes should be accompanied by comprehensive measures aiming at increasing digital literacy and guaranteeing equal access.

Initiatives like as community-oriented digital literacy stores, mobile legal aid clinics equipped with e-justice kiosks, and awareness programmes aimed at marginalised populations have been effective in closing the gap. Legal educational institutions and professionals must also include digital competency development into their curricula and ongoing professional development plans to better educate attorneys and paralegals for a digital future. The user-friendly interfaces and multilingual help provided by e-justice systems would further contribute to accessibility. Furthermore, Bangladesh's reform programme should include support for litigants who are unfamiliar with technology, such as specialised aid desks, an on-chat service, and engagement with civil society organisations that specialise in legal empowerment. Such end-user-oriented facilitation mechanisms are critical for fostering public trust and ensuring that ICT complements rather than hinders access to justice.

Bridging the digital literacy gap requires inclusive infrastructure development that addresses underprivileged communities. Although metropolitan areas have better Internet connectivity and wider access to information and communication devices, substantial areas of rural Bangladesh suffer from infrastructure deficiencies that limit their capacity to interact with digital systems. Without concurrent investments in improving broadband penetration, inexpensive Internet service provision, and reliable power supply, digital justice reforms would likely to be elite undertakings separated

from the reality of the greater people. To create a digital justice-friendly environment across varied geographic and socioeconomically dissimilar places, coordinated policy solutions across several ministries of government must be implemented. Moreover, learning from international models emphasise the significance of deploying technologies that are context-appropriate and consistent with Bangladesh's socio-legal paradigm. Given the extensive usage of smartphones rather than desktop computers, solutions designed for low bandwidth and mobile-friendly devices are sure to be more productive (Bangladesh Judiciary, 2022). Second, using traditional methods such as SMS or phone calls to send information about case developments and court notifications has the immediate effect of increasing end-user engagement, similar to the Indian experience with data grids in courts.

In conclusion, integrating e-justice into the Bangladesh criminal justice system necessitates a comprehensive approach that leverages institutional centralisation, mass capacity building for criminal justice actors, and proactive remedies to digital illiteracy disparities among users. The insights made above imply that more than just technological improvements are required, and that they must be guided by legal and societal perspectives, resulting in increased fairness, openness, and efficiency as justice is digitalised. Only via such diverse and inclusive replies will Bangladesh be able to fully use technology developments in re-inventing its criminal justice system.

Legal and policy reforms needed. Effective e-justice systems in Bangladesh require a solid corpus of law and policy that supports digital processes while protecting fundamental rights and facilitating accountability. The existing legislative provisions are largely insufficient to offset the developments in ICT occurring within the criminal justice system. Thus, foundational reforms are required, such as the introduction of a comprehensive "E-Justice Act" or significant amendments to the existing Code of Criminal Procedure[1] (CrPC), clear guidelines for digital evidence admissibility, and the establishment of meticulous statutes for data security and algorithm culpability. Each of these components plays an important role in providing the legal clarity, procedural fairness, and moral standards essential for technology-assisted justice. For example, the Indian Information Technology Act 2000[2] give the fundamental guidelines for digital signatures, e-filing, and the admission of digital evidence. These rules offer technological insights into the process of codification. The Civil Procedure Rules (CPR 1998)[3] about Electronic Working, which provide comprehensive standards for e-filing, case management, and managing electronic documents, are another example in the UK, particularly in civil procedures. The interests of the plaintiffs are safeguarded and uniformity is ensured by these rules. The Federal Rules of Civil Procedures,[4] which were modified in 2002, and state laws pertaining to digital evidence provide guidance in the United States.

Based on these models, Bangladesh could adopt a comprehensive E-Justice Act or amend the CrPC[5] in the following ways: (1) digital evidence admissibility and authentication, taking inspiration from American and Indian models; (2) uniform rules for conducting online hearings and practicing e-filing and case management through electronic systems, taking inspiration from British digital rules; and (3) comprehensive data protection, algorithmic responsibility, and cyber protection, emulating US federal and state statutes on data protection and similar principles. The aforementioned actions would guarantee the ethical standards, procedural equality, and legal clarity required to realise technology-enhanced, responsible justice.

First and foremost, enactment of a thorough E-Justice Act or relevant modifications to the Code of Criminal Procedure[6] are required to establish a clear legal foundation for electronic court proceedings. Despite Bangladesh's initial efforts to digitalise its judiciary, such as electronic filing and the establishment of virtual courts, these efforts lack a coordinated legislative framework that defines the parameters, procedures, and legal recognition of e-justice. Without clear legal prescriptions, questions about jurisdiction, procedural validity, and the enforcement of electronic court judgements may arise, jeopardising the public's trust in the judicial system.

A comprehensive E-Justice Act would formalise the legal foundation for electronic case management, digital notifications, virtual hearing courts, and electronic signatures, ensuring that courts and criminal justice agencies follow consistent processes. This measure should also include guidelines for interoperability across agencies to facilitate smooth data flow and cooperation. To avoid uncertainty and avert jurisdictional clashes, such a bill should explicitly clarify the roles and obligations of judges and their officials, prosecutors, and law enforcement personnel within the e-justice paradigm, based on international precedents.

[1] Code of Criminal Procedure of Bangladesh. (1898, March). Retrieved from http://bdlaws.minlaw.gov.bd/act-75.html.
[2] Information Technology Act of India. (2000, June). Retrieved from https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf.
[3] Civil Procedure Rules of the United Kingdom. (1998, December). Retrieved from https://www.legislation.gov.uk/uksi/1998/3132/contents/made.
[4] Federal Rules of Civil Procedure of the USA. (1938, September). United States District Courts. Retrieved from https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-civil-procedure.
[5] Code of Criminal Procedure of Bangladesh. (1898, March). Retrieved from http://bdlaws.minlaw.gov.bd/act-75.html.
[6] Ibidem, 1898.

Apart from establishing a statutory framework for electronic procedures, clear and comprehensive regulations governing the admission of digital evidence in criminal proceedings are required. With the increasing digitisation, digital evidence has presented a plethora of evidential quandaries about the legitimacy, integrity, and chain of custody for electronically stored information (ESI). Bangladesh's present evidentiary laws, which are mostly based on conventional frameworks, are unable to address these emerging difficulties (Sheikh *et al*., 2024). Without rewritten rules, judges may become confused when dealing with digital evidence, which may result in varied judgements or the rejection of critical material.

Legislative changes must formalise best practices for acquiring, preserving, and presenting digital evidence, including methods for forensic testing, metadata inspection, and the use of blockchain or other secure means of authentication. It is also critical that the legislation provide a threshold of competency for judges and attorneys to analyse digital data and apply evidence-based scientific approaches. The establishment of dedicated forensic cybercrime units inside the judicial system, guided by explicit legal norms, will also improve dependability and credibility (Yesmen & Ahmed, 2022). It will bring Bangladesh on level with globally acknowledged standards established by the United Nations Office on Drugs and Crime (UNODC) and the International Association of Prosecutors.

In addition to procedural legislation, the increasing digitalisation of criminal processes necessitates the creation of robust data security rules that safeguard sensitive personal data and guarantee privacy rights. The processing of large datasets including personal, biographic, and case information raises the stakes for unauthorised use, misuse, and data security breaches. Bangladesh lacks a specific data security paradigm that controls how judicial data is collected, stored, and distributed in accordance with worldwide privacy norms (Islam, 2022). Without sufficient legislative limits, digital court systems will be vulnerable to privacy abuses, undermining citizen trust and infringing on constitutional rights.

Therefore, reform should centre on the passage of an appropriate data protection statute for the criminal justice system that addresses data minimisation, purpose limitation, informed consent, and data controller responsibility. The legislation should include measures for data storage in a secure location, encryption, and data rectification and access tools for individuals. Most critically, it should form independent oversight bodies with investigative and enforcement authority to monitor compliance and respond to data breaches. Drawing on experience of the European Union's General Data Protection Regulation (GDPR)[1] and applying them to Bangladeshi legal setting would create a solid normative framework (Haq *et al*., 2025)

Another significant facet of law reform is the fairness and transparency of algorithmic decision-making tools that are increasingly being used in criminal justice systems, such as risk assessments, predictive policing, and sentencing guidelines. As helpful as these AI and machine-learning-based systems are for alleged efficiency, they also carry the risk of instilling biases, perpetuating injustice, and destroying due process if left unchecked (Berk *et al*., 2021). Currently, Bangladesh has no specific regulations or standards for the use of AI in courts or law enforcement, raising issues about impartiality, transparency, and monitoring. To bridge this gap, new legislation or regulatory frameworks must be enacted that establish criteria for algorithmic transparency, explainability, and frequent audits to identify and correct biases (Islam & Uddin, 2023). Legislation would thus be necessary to demand impact assessments prior to the deployment of AI technologies, define human-in-the-loop rules that allow judges to use discretion, and guarantee that concerned individuals have redress mechanisms for opposing algorithmic choices. Bangladesh, drawing on contemporary legal frameworks in outside jurisdictions such as Australia and Canada, may draft context-sensitive legislation that balances innovation and rights protection. In addition to legislation revisions, interdisciplinary expert panels comprised of legal scholars, technologists, and civil society members might be established to ensure the ethical use of AI in criminal justice.

In summary, a comprehensive legal and regulatory framework is needed to support Bangladesh's aim for integrating technology into its criminal justice system. To verify digital procedures and harmonise disparate changes, it is imperative to codify an overarching E-Justice Act or a new CrPC. Good data protection rules will preserve privacy and inspire trust in the public, while specific instructions on digital evidence will increase the fairness of the legal system and the dependability of courts. In the end, algorithmic accountability laws are necessary to guarantee the ethical and transparent use of emerging AI methods.

All of these reforms should be planned with the goal of future-proofing the law, preparing for the rapid advancement of digital technologies, and fostering equality, inclusion, and respect for basic rights. With such fundamental legal and policy reforms, Bangladesh may only expect to implement e-justice in its criminal justice system.

Infrastructures and training. The establishment of strong technology infrastructures and extensive capacity-building programmes are essential to the successful implementation and ongoing operation of electronic judicial systems. The promises of digital justice

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

will not materialise without sufficient investments in safe data management systems and ICT infrastructure. For the efficient use of e-justice systems, it is also essential to guarantee ongoing professional development for judges and magistrate officers, law enforcement personnel, and attorneys. A scalable and sustainable e-justice ecosystem in Bangladesh also depends on innovation, resource collection, and technical adaptation, all of which may be fostered via public-private partnerships (PPPs).

The growing investments in ICT solutions and reliable data systems that are specifically made to meet the special needs of the criminal justice system are at the heart of the infrastructural requirements. High-definition video conferencing systems, digital recording tools, and end-to-end case management software that supports electronic filing, calendaring, and real-time case monitoring are all examples of how courts are being modernised. To prevent system failures that might jeopardise court operations, a strong and scalable server architecture is required to host these applications. Additionally, in an environment where cyberattacks are becoming more frequent, it is crucial to invest in strong cybersecurity solutions and encrypted data transit protocols to prevent sensitive data from leaking and being used illegally.

Bangladesh has to put a high priority on developing reliable data management and storage systems that adhere to international standards. The cloud computing systems are cost-effective and scalable when managed appropriately, but they also need stringent data sovereignty and access control protocols. Since blockchain technology's distributed ledger may provide clear and tamper-evident audit trails, it offers yet another cutting-edge method of guaranteeing the durability and integrity of data at the judicial level. Standards for data formats and interoperability between and within the police, prosecution, and courts must also be developed to facilitate smooth information flow, reducing the likelihood of errors and delays caused by human transfers.

Electronic justice is based on infrastructure, but for effective operation, judges, law enforcement, prosecutors, and attorneys need regular and specialised training. Both technological developments and an awareness of the moral and legal ramifications of electronic justice instruments are necessary for the digitisation of judicial systems. Building skills related to the use of electronic case management systems, digital evidence management, cybersecurity awareness, and the procedural complexities of virtual hearings should be the main emphasis of capacity-building initiatives (UNDP, 2025). To guarantee context relevance and diversity, training curricula should be created in collaboration with police colleges, bar councils and judicial academies.

Legal professionals are kept abreast of technology advancements and the evolving dynamics of e-justice frameworks through the incorporation of continuous professional development (CPD) frameworks. By enabling adaptable and expandable learning settings, online learning portals and webinars help modify traditional classroom training. Exercises including simulation and experience-based learning, such as simulated e-court hearings, greatly increase participants' confidence and hands-on proficiency. To initiate a cultural change in the judicial sector, customised training programmes should also address reluctance and distrust among senior judges and solicitors who are not familiar with or uneasy with IT.

Developing digital literacy among litigants and people in general is another crucial factor to be considered to improve the usability and accessibility of e-justice services. Ignoring the digital gap might exacerbate already-existing disparities brought on by technological advancements, especially in rural and marginalised areas. For the sake of inclusion, awareness campaigns, user-friendly interfaces, and content provided in vernacular languages must thus adhere to infrastructure development. Non-governmental organisations and community legal aid groups are especially crucial because they help litigants by supporting their use of digital platforms, reducing the need for middlemen, and promoting improved case management.

Given the significant financial and technological outlays required, PPPs could be a useful instrument for guaranteeing digital innovation in Bangladesh's criminal justice system. Building regionally relevant and appropriate tailored e-justice solutions might be made possible by an enabling ecosystem created by government agencies, commercial businesses, academic institutions, and civil societies working together. PPPs allow sharing resources, lowering risks, and getting access to cutting-edge technologies that are sometimes hard for the public sector to develop without.

The potential of such collaboration is demonstrated by successful PPP frameworks worldwide. As an example, courts in certain jurisdictions have collaborated with tech firms to develop AI-powered case management systems, while academic institutions provide research and assessment to improve system performance (Dahiya & Banerjee, 2024). The creation of innovation hubs and incubators for justice technology holds the potential to promote the rapid development of digital solutions that are interoperable, replicable, and reasonably priced, and that are specifically suited to Bangladesh's criminal justice system.

Furthermore, in order to ensure that PPP projects are open, accountable, and consistent with the objectives of the public interest, the government should establish explicit regulatory frameworks and governance structures for their oversight. Sections of the agreements that ensure data privacy, fair access, and system integrity maintenance for a period of time must be included. Ensuring venues for stakeholder engagement is

equally important since it allows citizens, legal experts, and engineers to collaborate on the design and implementation of technology, resulting in solutions that are both culturally appropriate and people-centred.

Funding for training and infrastructure should be viewed as a continuous and evolutionary process rather than a one-time event. The rapid rate of technology advancement necessitates ongoing software and hardware system updates and skill development for all users. By putting in place procedures for routine evaluation, feedback gathering, and performance reviews, it will be easier to identify shortcomings and develop adaptable solutions, ensuring that the e-justice system stays aware of emerging possibilities and difficulties.

Ultimately, a coordinated strategy to infrastructure development and capacity training is necessary for Bangladesh's transition to e-justice concept. Systematic and inclusive teaching programmes for all stakeholders in the justice sector should be implemented in tandem with conscientious investment in advanced ICT tools, robust data infrastructures, and scalable digital infrastructures. Collaborations between public and commercial entities continue to be an essential means of leveraging technology advancements and expanding the availability of resources. All of these elements work together to create a robust, effective, and easily accessible digital justice system that may increase transparency, speed up case resolution, and restore public trust in the criminal justice system.

Risks and ethical concerns. Technology integration in criminal justice systems nearly always results in frightening hazards and moral dilemmas that must be carefully considered, even while it offers previously unheard-of benefits. Bangladesh must weigh the hazards posed by algorithmic prejudice, privacy invasion, monitoring, and digital marginalisation as it moves to improve its criminal justice system by implementing e-justice programmes. For technological advancements to avoid violating fundamental rights, perpetuating systemic unfairness, or undermining public confidence, these problems must be resolved proactively.

One noteworthy concern is from the increase in monitoring and the ensuing privacy violations. Sensitive personal data, such as biometrics, court documents related to legal proceedings, and conversations between parties, are massively collected, stored, and processed by e-justice systems. These data storages are susceptible to exploitation by both state and non-state actors, unauthorised usage, and potential data breaches in the absence of strict protection measures (Kekül *et al*., 2021). In situations where there are no strong legal safeguards specifically designed for the judiciary, the use of surveillance tools like location tracking and facial recognition in law enforcement and court settings exacerbates privacy violations (Liu, 2021). Therefore, creating strong legislative frameworks that encompass data collecting operations, get appropriate permission, and provide redress procedures in the event of malicious conduct should be Bangladesh's top priority.

The ethical conundrum raised by algorithmic bias in risk assessment, sentencing, and predictive policing techniques is closely tied to privacy concerns. The algorithm being used in the criminal justice system is mostly based on historical data that has underlying social prejudices and may ultimately instil these biases against marginalised people. Economically disadvantaged persons or members of minority groups may be disproportionately impacted by predictive models used to estimate recidivism or compute risk scores, which might result in biased choices. Due process and fairness are hampered by the opaqueness of the majority of proprietary algorithms, which also makes judicial review more difficult. Transparent algorithmic systems should be implemented as a cure, together with ongoing bias evaluations and human monitoring. Bangladesh's e-justice system ought to incorporate moral guidelines for the application of AI technologies, encouraging responsibility, and adherence to constitutional protections.

Digital isolation among rural, poor, and other marginalised litigants is another major issue. Digital literacy, Internet connectivity, and the availability of appropriate devices are prerequisites for the benefits of e-justice portals, which promise increased accessibility and efficiency. The majority of people in Bangladesh, particularly those living in rural areas, are constrained by a shortage of reasonably priced cell phones, poor computer skills, and inadequate Internet infrastructure (Bangladesh Bureau of Statistics, 2025). Therefore, the digital gap has the potential to worsen existing disparities by favouring high-income, urban users and denying rights to vulnerable populations that are already under-represented in the legal system. In order to bridge the gap, policymakers must implement digital inclusion initiatives including accessible user interfaces, public terminals, and community digital literacy programmes. Furthermore, in situations where electronic instruments are not user-friendly or adequate support infrastructures are not accessible, rapid electronic court procedures may unintentionally increase dependency on intermediaries, such as court officers or legal help bureaux. This situation can strengthen gatekeeping practices and undermine plaintiffs' true empowerment. In order to encourage self-representation and lower obstacles to admission, the design of the e-justice system must be focused on citizen-oriented tactics.

The possibility of data breaches and cyber threats is a major worry from an institutional standpoint. Because of the type of data they have and their essential role in governance, judicial institutions and law enforcement organisations are prime targets for cyberattacks. Events such as ransomware attacks, illegal intrusions, or insider threats have the potential to undermine the

judiciary's integrity and obstruct the administration of justice. Therefore, any electronic justice endeavour must include investments in robust incident response strategies, sophisticated cybersecurity measures, and ongoing monitoring.

One of these ethical concerns is that computerised judging methods may lessen human empathy and judgement. The sophisticated decisions that human adjudicators make on complicated criminal cases may be diminished by automation and algorithmic dependence on technology. There is a chance that ICT would take away the human element of justice, which would undermine confidence and the validity of adjudication decisions. As a result, e-justice systems must to be designed as instruments to support human decision-making rather than to take its place, protecting the importance of judicial discretion and procedural fairness.

Additionally, the use of technology should be matched with open governance and accountability-related solutions. This would cover everything from the open application of data regulations to digital decision audit trails and channels for resentful parties to challenge errors or prejudices brought upon by technology solutions. Without these protections, technology usage might turn into a "black box", removing supervision from decision-making and increasing public mistrust. Therefore, Bangladesh should set up independent monitoring bodies and laws that ensure transparency enforcement and citizen rights safeguards under digital justice systems.

In conclusion, the digitalisation of Bangladesh's criminal justice system has enormous potential, but it also presents moral and practical issues that require careful and skilful handling. Addressing the issues of privacy and surveillance, reducing algorithmic bias, closing the digital gap, improving cybersecurity standards, protecting human discretion, and guaranteeing open governance should all be included into the planning and implementation of e-justice reforms. Only then will technology cease to be a source of fresh injustices and inequities and instead serve as a facilitator of justice.

Conclusions

This research investigated how technology affected the reform of the criminal justice system, specifically in the setting of Bangladesh. The study demonstrated the revolutionary potential and the difficulties associated with digital integration in criminal justice systems by comparing the electronic justice frameworks of the United States, India, and the United Kingdom. Although technology could significantly improve procedural efficiency, transparency, and access to justice, the results showed that its real effectiveness depended on a number of institutional, social, and legal factors that went beyond infrastructure alone.

The study concluded that the criminal justice systems in the jurisdictions under investigation had incorporated a range of digital technologies, from virtual courts and AI-assisted decision-support systems to automated case management and electronic filing, all of which enhanced judicial accessibility and efficiency for the general public. Their effectiveness was maximised when programmes were supported by strong institutional leadership, solid legal frameworks, and human-centred design methodologies prioritising transparency and usability. By eliminating case backlogs, improving information exchange, and reducing reliance on intermediaries, whole-of-government approaches shed light on a more transparent and participatory legal system. Conversely, the research emphasised that integrating technology without corresponding behavioural and legal adjustments frequently led to fragmented and suboptimal outcomes. Although Bangladesh launched pilot e-filing programmes and established virtual courts during the COVID-19 pandemic, the absence of a coherent and deliberate strategy hindered long-term development. The full benefits of e-justice were also impeded by systemic problems, such as inadequate ICT infrastructure, resistance from legal professionals, and litigants' lack of digital literacy. These similarities illustrated the need for comprehensive reforms, including capacity building, institutional cooperation, and equitable distribution of technological resources.

The paper also identified persistent risks associated with the digitisation of the criminal justice system, including digital exclusion, algorithmic bias, and privacy concerns. These challenges highlighted the importance of balancing the use of technology to enhance the administration of justice with the protection of social justice and fundamental rights. The findings suggested that, without appropriate legal, technological, and ethical safeguards, technological implementation could exacerbate existing inequalities and undermine public trust in legal institutions. Integration of these lessons made it clear that transforming Bangladesh's criminal justice system through technology required a complex and phased strategy. The ability of the public, legal practitioners, and institutions to adapt to new modes of justice delivery proved just as crucial as the availability of digital technologies. The comparative perspective underscored the importance of developing context-sensitive solutions tailored to Bangladesh's specific socio-legal environment, infrastructural conditions, and societal needs.

Ultimately, the study suggested that technology could serve as a driving force for improving the efficiency, accessibility, and transparency of Bangladesh's criminal justice system if it were deliberately integrated and supported by comprehensive reforms. Realising this potential required sustained institutional

commitment and continuous evaluation of e-justice initiatives to ensure alignment with the principles of accountability, inclusiveness, and fairness. Further research was proposed to examine how technological innovations were implemented in practice, how effective they were, and what broader social implications they produced, including issues of digital literacy, user experience, and institutional readiness.

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Реформування кримінального правосуддя в Народній Республіці Бангладеш за допомогою технологій: порівняльний аналіз моделей електронного правосуддя в Індії, Великій Британії та США

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Анотація
Дослідження ґрунтувалося на тому, що система кримінального правосуддя Народної Республіки Бангладеш зазнає негативного впливу зволікань, неефективності та проблем з доступністю, що створює серйозні перешкоди для правосуддя та сприяє зниженню рівня довіри громадськості. Метою цієї публікації було сформувати науково обґрунтовану, загальнодержавну дорожню карту для впровадження електронного правосуддя в Бангладеш з акцентом на реформу законодавства, цифрову інфраструктуру, інституційне будівництво та доступне правосуддя для маргіналізованих верств населення. Дослідження здійснено у формі порівняльного аналізу законодавства, поєднує право, політику й технології. У цій статті використання електронного правосуддя розглянуто як науковий виклик у сфері інституційної модернізації та правової інтеграції, що актуалізує необхідність порівняльного аналізу та контекстно орієнтованих коригувань. Ключовим аргументом стало те, що цифрові зміни, якщо вони ґрунтуються на всеосяжних законодавчих рамках та інституційній готовності, можуть стати потужним каталізатором реформи системи кримінального правосуддя. У дослідженні виокремлено масштабовані, юридично прийнятні та контекстуально релевантні механізми, які можуть сприяти реформам у Бангладеш на основі порівняльного аналізу досвіду Індії, Великої Британії та Сполучених Штатів Америки, які запровадили різні системи електронного правосуддя. Дослідження, що поєднало доктринальні та порівняльні підходи, стало внеском у сферу знань про правову цифровізацію в країнах Глобального Півдня та надало практичні рекомендації політикам, судовим органам і партнерам з розвитку. Воно продемонструвало, як технологічні реформи, що відповідають контексту, можуть підвищити довіру громадськості, захистити права людини та посилити процесуальну справедливість, пропонуючи дорожню карту для довгострокової, технологічно орієнтованої реформи системи кримінального правосуддя Бангладеш

Ключові слова:
доступ до правосуддя; порівняльне право; цифрова трансформація; ефективність судової системи; правові інновації

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Digital evolution of forensic methods for investigating criminal offences in the field of official activity in Ukraine

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Abstract
The purpose of the study was to analyse the capabilities of digital forensics in investigating official offences by integrating international standards and forensic-by-design concepts with Ukrainian criminal procedural legislation. A comparative legal analysis of international and Ukrainian standards of digital forensics revealed a systemic gap between technical standards and procedural and judicial practice, where courts practically do not articulate the requirements for forensically correct handling of digital evidence. The systematic classification of digital traces by types of official offences in criminal legislation allowed systematising specific sources of origin, types of digital traces, and typical threats to the integrity of evidence for each element of official offence in the context of large-scale digitalisation of the public sector. The case study method was used to examine the judicial practice of Ukraine, the United States of America, and Germany regarding the use of digital evidence in cases of official offences, which made it possible to establish the absence of references to international standards of digital forensics in the motivational parts of Ukrainian court decisions and to identify gaps in the procedural design of electronic evidence that make it impossible to verify the authenticity and integrity in accordance with the requirements of ISO/IEC 27037:2012. A four-block algorithm for the digital forensics methodology for investigating official offences related to official forgery (Article 366 of the Criminal Code of Ukraine) was developed, which includes forensically oriented initial recording of the digital situation, identification of relevant sources of digital evidence, forensically correct acquisition and analysis, and presentation of evidence in court with compliance with the procedures of the chain of custody. The practical significance of the research results lies in the possibility of the use by the legislator to amend criminal procedural legislation, by law enforcement agencies to create specialised units in the field of investigating official offences using digital forensics, as well as by higher education institutions to introduce relevant educational components into legal education

Keywords:
electronic evidence; digital traces; forensic-by-design; international standards; state information systems; evidence; forensic copy

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Introduction

The digital transformation of the public sector changed the ways in which official offences are committed and the logic of the investigation: electronic document management, qualified electronic signatures, departmental registers and logs of access to information systems formed a qualitatively new array of digital traces of official abuses. The growing role of electronic evidence in cases of official forgery, illegal changes in registers and unauthorised use of official access to state databases is accompanied by a lack of methodological support in Ukraine, where investigators mostly do not have clear algorithms for working with digital traces. At the same time, the concepts of forensic-by-design and digital forensic readiness are being formed in the member states of the European Union and the United States of America, when requirements for the preservation of access logs and traceability of actions of officials are built into state information systems at the design stage. In the member states of the European Union (EU), the analysis of access logs and the history of changes in registers allowed to identify a specific employee and reconstruct the full mechanism of the service scheme (European Union Agency for Cybersecurity, 2025), while in Ukraine similar opportunities remained unrealised due to insufficient formalisation of procedural approaches. Under such conditions, the digital evolution of the forensic methodology of investigating official offences became important for improving the quality of evidence and adapting national practice to international standards of work with electronic evidence.

In modern Ukrainian procedural doctrine, the study of V.M. Fihurskyi (2023) was of fundamental importance for understanding the nature of electronic evidence, who showed that evidence in electronic form constituted a new socio-legal phenomenon and, in its properties, was not reduced to traditional documents or physical evidence. The scientist proved that the intangible nature of digital data, the dependence of the perception on a special software and technical environment, and the vulnerability to manipulation necessitated the separation as an independent procedural source, which required a rethinking of the usual rules for collecting, verifying, and evaluating evidence in criminal proceedings. In developing this position, L.V. Milimko & Y.V. Zhydovtsev (2025), analysing the practice of Ukrainian courts, established that electronic evidence has actually become a central element of evidence in cybercrime cases, but the procedural status remained unclear, which gave rise to contradictory approaches to the authenticity and admissibility of digital files, logs, screenshots, and data from cloud services.

O.D. Kvashuk (2025) also contributed to the understanding of the practical consequences of digitalisation for evidence, showing that based on case law the key problems remained non-compliance with the procedures for the extraction and fixation of electronic evidence, the vulnerability of the chain of custody, as well as the lack of unified approaches to expert verification of the authenticity of electronic documents and log files, on this basis justifying the need to develop standardised protocols for investigators' work with digital media. O.G. Predmestnikov & A.R. Bekhter (2024) demonstrated that the introduction of automated document management systems and video recording of procedural actions significantly changed the very structure of evidentiary material, shifting the emphasis from traditional paper documentation to digital traces of the activities of the participants in the proceedings, however, without proper forensic adaptation, these technologies could remain neutral from the point of view of the investigation.

Directly related to official offences was the cycle of works by T. Chepurna (2025), who, analysing the investigation of crimes committed by law enforcement officers, showed that the typical mechanism of such acts was almost always accompanied by digital traces from official electronic correspondence and changes in departmental registers to the use of departmental information systems to mask illegal actions. The author proved that during the inspection of the scene of the incident in cases of official offences, not only traditional material objects were of central importance, but also the digital environment of workstations, servers, and employee profiles in internal systems, and therefore the inspection took on the features of a complex digital-physical investigative inspection.

International studies focused on digital evidence and forensic-by-design demonstrated the regulatory and organisational horizon to which developed law enforcement agencies aspired. A. Akilal & M. Kechadi (2021), developing the idea of forensic-by-design in cloud systems, proposed an engineering framework within which the requirements for preserving digital traces, logging operations, and traceability of user actions were built into the system at the design stage, which allowed significantly increasing the evidentiary value of electronic traces. V. Kebande *et al*. (2021), substantiating the concept of digital forensic readiness, demonstrated that organisations that created intelligent repositories of potential digital evidence in advance were able to meet the needs of the investigation in complex cyber incidents much faster and more fully. F.I. Fagbola & H.S. Venter (2022), modelling intelligent digital forensic readiness for IoT infrastructure in smart cities, showed that proactive logging and automated anomaly detection not only facilitated further evidence collection, but also actually built a preventive component into the systems. T. Loskutov *et al*. (2023), considering the information and analytical support of the investigation of corruption offences, demonstrated that modern anti-corruption investigations are already unthinkable without the use of hybrid cybernetic

methods, where electronic evidence became the basis for building cross-border evidentiary chains. However, even in these studies, attention was focused primarily on the organisational, legal and technical aspects of digital evidence, while the algorithm of the investigator's actions in cases of official offences committed in the conditions of total digitalisation of public authorities remained insufficiently formalised.

The purpose of the study was to form a conceptually and algorithmically justified approach to the use of digital forensics in the investigation of criminal offences in the field of official activity in Ukraine, in particular, to develop an algorithm for investigating official forgery, taking into account international standards and the possibilities of the adaptation to the Ukrainian criminal procedural context.

Materials and Methods

The study was conducted within the conceptual framework of international standards for digital forensics, in particular ISO/IEC 27037:2012 (2012), which defined four key phases of the digital evidence lifecycle. The theoretical framework was developed by authors such as L. Pasquale *et al*. (2013), G. Grispos *et al*. (2017), and L. Daubner & R. Matulevičius (2021). The concepts involved designing information systems in such a way that the systems created and stored evidentiary information by default. An additional methodological basis was the recommendations of the European Network of Forensic Science Institutes (2015), which were updated to define reference procedures for forensic investigation and evidence evaluation.

The research was carried out in three consecutive stages, each of which applied specific methods of scientific knowledge and used relevant empirical materials. The first stage was devoted to establishing the legal basis for the digitalisation of public service and the forensic characteristics of official offences in the context of digital transformation. Systemic-logical interpretation was used to interpret the provisions of the Criminal Code of Ukraine[1] on the elements of official offences under Articles 364, 365, 366 and 366-2, as well as the Criminal Procedural Code of Ukraine[2] on the procedural regime of electronic evidence. The historical-legal method was used for a retrospective analysis of the transformation of the methods of committing official forgery, in particular, a comparison of Article 172 "Official Forgery" of the Criminal Code of the Ukrainian SSR of 1960[3], which provided for traditional paper forms of document forgery, with the current version of Article 366 of the Criminal Code of Ukraine[4], which covered digital methods of committing a crime through electronic documents, state information systems and electronic identification mechanisms[5]. This analysis allowed establishing a qualitative transformation of the forensic characteristics of official forgery from material traces in paper documents to digital traces in distributed information systems. The system-structural method was used to construct a classification of digital traces of official offences, which allowed systematising the types of digital traces, the sources of origin and typical threats to integrity.

The second stage was aimed at analysing international standards of digital forensics, the implementation in Ukrainian legislation and judicial practice to identify gaps in legal regulation and forensic documentation. The comparative legal method was used to compare ISO/IEC 27037:2012 (2012) with the national analogue of DSTU ISO/IEC 27037:2017 (2017), as well as to identify the gap between technical standards and procedural and judicial practice in the context of European approaches (Committee of Ministers of the Council of Europe, 2019; Commonwealth Secretariat, 2025). National technical standards, in particular DSTU 7564:2014 (2014) were used to justify hash integrity verification, DSTU ISO/IEC 27040:2016 (2016) – organisation of evidence storage protection, backup copies and access control. The case-study method was used to analyse the judgments of Ukrainian courts[6,7,8,9,10] as well as two decisions of international case law, which represented the legal systems of common law and continental law, respectively: the decision of the Supreme Court of the United States of America in the case Van Buren v. United States[11] and the judgment of

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[2] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[3] Criminal Code of Ukraine RSR. (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[4] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[5] Law of Ukraine No. 2155-VIII "On Electronic Identification and Electronic Trust Services". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2155-19#Text.
[6] Judgment of Supreme Court in Case No. 715/758/20. (2022, November). Retrieved from https://iplex.com.ua/doc.php?regnum=107251729&red=1000034f2647aef95df9d6e093c285548f1c73&d=5.
[7] Judgment of Supreme Court in Case No. No. 450/168/18. (2022, February). Retrieved from https://iplex.com.ua/doc.php?regnum=103963360.
[8] Judgment of the High Court of Anti-Corruption in Case No. 991/185/23. (2023, March). Retrieved from https://iplex.com.ua/doc.php?regnum=109915446&red=1000035a4b7b910d8438484cac84f946a85d4f&d=5.
[9] Judgment of the Onufriivka District Court of Kirovohrad Region in Case No. 399/368/24. (2024, July). Retrieved from https://zakononline.ua/court-decisions/show/120611524.
[10] Judgment of the Chornomorsk City Court of Odesa Region in Case No. 123247255. (2024, November). Retrieved from https://youcontrol.com.ua/catalog/court-document/123247255/.
[11] Syllabus of the Supreme Court of the United States in Case "Van Buren v. United States". (2020, November). Retrieved from https://www.supremecourt.gov/opinions/20pdf/19-783_k53l.pdf.

the Tiergarten District Court (Germany) (Datenshutz Praxis, 2017), in order to establish the features of the judicial assessment of digital evidence, identify gaps in forensic documentation and establish the absence of references to international standards ISO/IEC 27037 in the motivational parts of Ukrainian court decisions. The third stage involved the development of a four-block algorithm of a digital forensic methodology for investigating official forgery with targeted recommendations. A synthetic method was used to integrate the results into a single methodological system. Modelling was used to develop sequential procedures in each of the four blocks of the algorithm. The system-structural method was used to formulate a set of targeted recommendations.

Results

Digitalisation of public service and transformation of the forensic characteristics of official offences. The official activities of state authorities and local self-government bodies in Ukraine take place in conditions of large-scale digital transformation, which radically changes both the methods of performing official functions and the forensic characteristics of crimes in the field of official activities. The legal basis for digitalisation is a set of regulatory acts, among which the central place is occupied by Law of Ukraine No. 851-IV[1], which recognises an electronic document as a full-fledged analogue of a paper one, provided that there is an electronic signature and the possibility of its visual reproduction, and also establishes the obligation to ensure the integrity and preservation of electronic documents within the established time limits. Further detailing of the legal regime of electronic identification was provided by Law of Ukraine No. 2155-VIII[2], which since 2018 has replaced the previous regime of electronic digital signature with a system of qualified electronic signatures and seals, harmonised with the European regulation eIDAS (European Union Agency for Cybersecurity, 2025). The infrastructural embodiment of digitalisation was the creation of the Unified State Web Portal of Electronic Services "Diya", the legal regime of which is enshrined in the Resolution of the Cabinet of Ministers of Ukraine No. 1137-2019-p[3], which determines the functionality of the portal and the obligation to keep records of requests and transactions in the relevant information systems. Such large-scale digitalisation means that most decisions of officials are mediated by electronic registers, departmental electronic document management systems, official e-mail, remote access to databases, which is accompanied by the emergence of specific digital traces – access logs to information systems, history of changes in registers, metadata of electronic documents, records of authorisation and transactions, time stamps and electronic signatures – which become a key element of evidence in criminal proceedings for official offences.

In this digital infrastructure, the classic elements of official offences, provided for in Articles 364 (abuse of power or official position), 365 (exceedance of power or official authority by an employee of a law enforcement agency), 366 (official forgery) and 366-2 (declaration of false information) of the Criminal Code of Ukraine[4], acquire a qualitatively new forensic characteristic. If under the Criminal Code of the Ukrainian SSR of 1960 (Article 172 "Official Forgery")[5] official forgery was associated primarily with entering false information into paper documents, forging signatures or seals, then in the current version of Article 366 of the Criminal Code of Ukraine, typical methods of committing this crime include the formation and signing by an official of electronic documents with knowingly false data using electronic identification mechanisms and trust services, entering false information into state information systems through an authorised web interface, unauthorised changes to records in databases using official accounts, blocking access to electronic documents or the deletion in order to hide illegal decisions, as well as intentional failure to submit or submission of knowingly false data in electronic declarations by persons authorised to perform state or local government functions.

Statistical indicators on official offences under Articles 364, 365 and 366 of the Criminal Code of Ukraine[6] are summarised based on official data of the Office of the Attorney General (n.d.), published in the form of a unified report on registered criminal offences and the results of the pre-trial investigation for the period 2020-2025. Under Article 364 of the Criminal Code of Ukraine (abuse of power or official position), 17,985 criminal offences were recorded in the period 2020-2025, however, 1,467 proceedings were sent to court with an indictment, which is 8.16% of the total number recorded. Under Article 365 of the Criminal Code of Ukraine (abuse of power or official authority by a law enforcement officer), out of 8,964 registered criminal offences in the period 2020-2025, 197 proceedings were sent to court with an indictment, which is 2.20%. For comparison, under Article 366 of the Criminal Code of Ukraine (official forgery), out of 30,899 registered offences in the period 2020-2025, 15,281 proceedings were sent to court with an indictment, which is 49.45%. The dynamics of the effectiveness of the investigation under each Article is presented in Figure 1.

[1] Law of Ukraine No. 851-IV "On Electronic Documents and Electronic Document Management". (2003, May). Retrieved from https://zakon.rada.gov.ua/laws/show/851-15#Text.
[2] Law of Ukraine No. 2155-VIII "On Electronic Identification and Electronic Trust Services". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2155-19#Text.
[3] Resolution of the Cabinet of Ministers of Ukraine No. 1137-2019-p "On Issues of the Unified State Web Portal of Electronic Services and the Register of Administrative Services". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1137-2019-%D0%BF#Text.
[4] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[5] Criminal Code of Ukraine SSR. (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2001-05#Text.
[6] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.

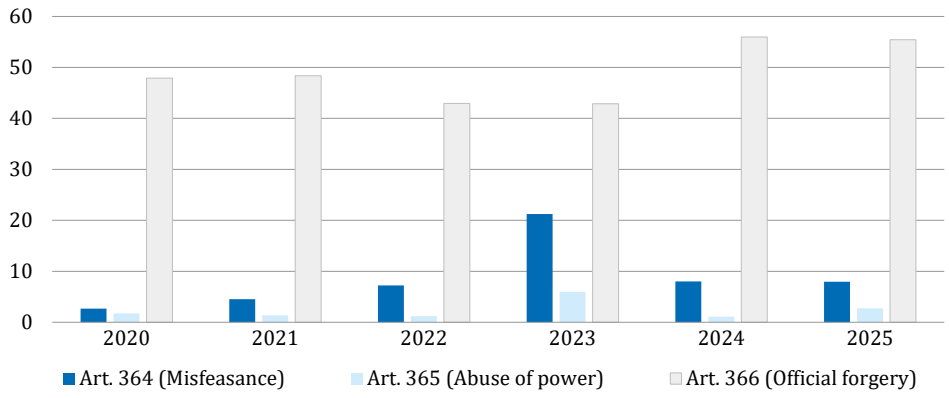

Figure 1. Efficiency of investigation of official offences under Articles 364, 365, 366 of Criminal Code of Ukraine (2020-2025)
Source: compiled by the author based on Office of the Attorney General (n.d.)

The data presented in the histogram demonstrate a significant disparity in the effectiveness of investigating various official offences. The indicators for Article 366 (official forgery) consistently exceed 40% throughout the entire period under study, reaching a maximum of 55.97% in 2024 and maintaining a consistently high level of 55.45% in 2025, which indicates a relatively high effectiveness of proving this category of offences. At the same time, Articles 364 and 365 demonstrate critically low indicators, which fluctuate within 1-21% and 1-6%, respectively, with a noticeable peak in 2023, which may be due to the intensification of anti-corruption efforts during this period. This disparity confirms the difficulty of proving crimes related to abuse or excess of power or official authority, compared to official forgery, where digital traces and documentary evidence are more accessible for recording and procedural processing, which is due to the insufficient use of digital forensics capabilities to document official manipulations in registers, electronic document management systems, and other digital environments.

The systemic nature of the problems is also confirmed by the significant volume of complaints about failure to enter information into the Unified Register of Pre-Trial Investigations: in 2024 alone, investigating judges received almost 80 thousand complaints about decisions, actions, or inaction of an investigator or prosecutor, of which more than 37 thousand were satisfied (Supreme Court of Ukraine, 2024), and in the High Anti-Corruption Court (2025) out of 1,618 complaints filed, 920 (57%) concerned precisely the failure to enter information into the Unified Register of Pre-Trial Investigations in criminal proceedings on corruption and official offences, while only 209 complaints out of 984 considered on the merits were satisfied, which is 21%. The low efficiency of investigating official offences is due not only to the complexity of proving, but also to the insufficient use of digital forensics capabilities to document official manipulations in registers, electronic document management systems and other digital environments.

From the perspective of forensics, the digital evolution of official offences means the emergence of an extensive system of digital traces that must be purposefully identified, recorded, and interpreted. These include electronic documents in departmental electronic document management systems in PDF, XML, DOCX formats, signed with a qualified electronic signature, records in transaction logs of state registers, including land, demographic, construction, property rights registers and the Unified State Register of Declarations of Persons Authorised to Perform State or Local Self-Government Functions, system logs of servers and workstations that record the facts of entering the system, changing access rights and performing official operations, network logs of application gateways and VPN servers, electronic correspondence of officials in departmental domains, backup copies of databases and file storages, as well as data from mobile devices that were used for two-factor authentication or decision approval (Kent & Grance, 2006; Kalancha, 2025).

Unlike traditional physical traces, digital traces are extremely sensitive to any interference, are easily copied and can exist simultaneously in several environments, in particular in local media, virtual systems and cloud services. This necessitates the need for a special methodology for the collection and storage, which combines the technical approaches of digital forensics with the procedural guarantees of the Criminal Procedural Code of Ukraine[1], in particular with the admissibility of evidence (obtaining in accordance with the established procedure), judicial control over access to electronic systems, documentation of the technical means used and preservation of data integrity throughout the entire chain of custody. To systematise digital traces in terms of individual elements of official offences, a generalised forensic characteristic was used, presented in Table 1.

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

Table 1. Types of digital traces in official offences and the forensic significance

Type of official offence	Typical methods of commission in the digital environment	Types of digital traces	Sources of origin	Typical threats to the integrity of evidence
Abuse of power or official position (Article 364 of the Criminal Code)	Use of official access for unauthorised changes to records in state registers; granting of illegal preferences through electronic systems	Access logs (time, IP address, account); history of changes to records in the database; authorisation logs; electronic official correspondence	State information systems (cadastres, registers); departmental document management systems; authentication servers	Automatic deletion of logs; configuration change by the administrator; lack of chain of custody; lack of hashing when copying
Official offence (Article 366 of the Criminal Code)	Creation and signing of electronic documents with knowingly false information; substitution of attached files in the document management system; change of details after signing	Electronic documents with QES; document version history; file metadata; approval and routing logs; electronic signature logs	Departmental electronic document management system; qualified trust service providers; file servers	Editing without saving previous versions; use of drafts outside the official system; technical limitations of the depth of the version history
Declaring false information (Article 366-2 of the Criminal Code)	Entering knowingly false information about income, expenses, property, corporate rights and financial obligations into an electronic declaration through the NACP register	Entries in the Unified State Register of Declarations; personal account login logs; IP addresses and session times; NACP electronic messages; QES usage logs	NACP information systems; qualified electronic signature services; declarant's postal services	Incompleteness of logs in case of technical work; limited storage period; shared use of accounts; difficulty in proving knowledge

Note: DB – database; IP address – Internet Protocol address; QES – qualified electronic signature; NACP – National Agency for the Prevention of Corruption
Source: compiled by the author based on DSTU ISO/IEC 27040:2016 (2016), DSTU ISO/IEC 27037:2017 (2017), I. Kalancha (2025)

The systematisation given in Table 1 demonstrates that for each element of official offences there is a specific set of digital traces, which differ in the sources of origin, technical characteristics of fixation and typical threats of loss of evidentiary information. Forensic practice shows that the success of the investigation largely depends on the timely identification of relevant sources of digital traces and the use of adequate technical means of the fixation, taking into account the specific threats to the integrity of each type of data. The Judgment in the ase No. 991/1512/23[1] is indicative, where correspondence in the messenger, fixed during the examination of a mobile phone in compliance with the procedural requirements for the protocol, became key evidence in establishing the circumstances of the crime. Similarly, in the case of unauthorised change of information in an automated system, the court relied on digital records of data modifications made by a person with access rights, which confirms the importance of system logs and proper fixation of changes in the database environment[2]. International practice demonstrates similar approaches: in the case of Van Buren v. The United States[3] Supreme Court of the United States analysed the logs of a police officer's access to a law enforcement database, recognising authorisation logs as a key digital trace for establishing the fact and time of access to confidential information (Congressional Research Service, 2021). The lack of a unified approach to working with these traces among various pre-trial investigation bodies necessitates the development of a standardised algorithm that would integrate international standards of digital forensics with Ukrainian procedural legislation.

The scientific literature has already drawn attention to the fact that the dominance of electronic forms of document management is transforming the institutional dimension of law enforcement and prosecutorial activities. Thus, in the work of O.Y. Amelin (2024b), devoted to the information support of the prosecutor's office and the implementation of its functions as an element of the national security mechanism, the author emphasises that the effectiveness of prosecutorial supervision is inextricably linked to the quality of access to information resources, compliance with data protection standards and the ability of prosecutorial bodies to work with digital traces in public administration. This is directly projected onto the forensic methodology of investigating official offences: the prosecutor as a procedural manager must understand the architecture of state information systems and the minimum technical requirements for the admissibility of digital evidence, which requires specialised training and methodological support.

International standards of digital forensics, national legal regulation and judicial practice in cases of official offences. The international standard for working with digital evidence is ISO/IEC 27037:2012 (2012), which defines four key phases of

[1] Judgment of the High Court of Anti-Corruption in Case No. 991/1512/23. (2024, November). Retrieved from https://iplex.com.ua/doc.php?regnum=123349217&red=100003508b6a1068a6e52617075203562acc4f&d=5.
[2] Ibidem, 2024.
[3] Syllabus of the Supreme Court of the United States in Case "Van Buren v. United States". (2020, November). Retrieved from https://www.supremecourt.gov/opinions/20pdf/19-783_k53l.pdf.

the digital evidence life cycle: identification of potentially relevant digital sources, secure data collection, creation of a forensically correct copy and its verification, preservation, and documentation of all actions with the evidence. DSTU ISO/IEC 27037:2017 (2017) emphasises that a copy of digital data should be created by a competent person according to a clearly documented procedure, and its integrity is confirmed by calculating cryptographic hash values. In international and national practice, the MD5, SHA-1, SHA-256 hash functions, as well as national standards, in particular DSTU 7564:2014 (2014), are used for these purposes, and modern recommendations emphasise the use of more stable algorithms of the SHA-2 and SHA-3 family or combining several algorithms to reduce the risk of collisions. Ukraine has formally implemented ISO/IEC 27037 through the national standard DSTU ISO/IEC 27037:2017 (2017), which declares identity to the international text and operates in the system of technical regulation. However, these standards are not integrated into the criminal procedural law, and the application during pre-trial investigation is of a recommendatory nature, which is directly reflected in court decisions, where there are practically no references to the requirements of ISO/IEC 27037 when assessing the admissibility and relevance of digital evidence.

Ukraine has formally harmonised technical approaches to working with digital evidence through the adoption of the national standard DSTU ISO/IEC 27037:2017 (2017), however, its provisions are not enshrined in the Criminal Procedural Code of Ukraine[1] as procedurally binding admissibility criteria. This is evident in judicial practice regarding official offences: even in cases where digital evidence is the central object of investigation, courts argue conclusions regarding its admissibility and reliability mainly through the norms of the Criminal Procedural Code of Ukraine and the legislation on electronic documents, without appealing to international standards of digital forensics. For example, in Decree in the name of Ukraine No. 154/2277/17[2] (Articles 364, 366 of the Criminal Code), where the subject of evidence assessment was the reliability of information entered into the electronic log of the checkpoint of the Unified Analytical and Information System "Inspector", the court confirmed the officiality, relying solely on mutual consistency with witness statements and data from related databases in accordance with Article 94 of the Criminal Procedural Code of Ukraine, – without applying any procedures for technical verification of the integrity of digital records.

A more progressive level of international approaches is associated with the concepts of forensic readiness and forensic-by-design, developed by scientists L. Pasquale *et al*. (2013), G. Grispos *et al.* (2017), and L. Daubner & R. Matulevičius (2021). The concept of forensic readiness assumes the organisational and technical readiness of systems for a potential investigation even before the incident occurs, which allows maximising the use of evidence while minimising the costs of the investigation. L. Pasquale *et al.* (2013) proposed an approach in which forensic requirements are explicitly modelled and integrated into the software development process, allowing systems to automatically take proactive actions to preserve potentially important, but ephemeral evidence based on an assessment of the risk of a crime occurring. An alternative strategy is forensic-by-design, which involves embedding forensic requirements directly into the relevant phases of the system development lifecycle in order to create systems that are forensically ready from the design stage (Grispos *et al*., 2017). L. Daubner & R. Matulevičius (2021) developed this approach by proposing to consider forensic readiness through the lens of information security risk management, which allows re-evaluating security decisions to ensure reliable data in the event that security measures prove ineffective, and also to take into account the potential disputes that digital evidence can resolve.

These concepts suggest building in mechanisms from the design stage for complete and immutable logging of user actions, time synchronisation, cryptographic protection of logs, delimitation of access to audit records and the possibility of automated reconstruction of events from logs. In practical terms, these approaches have been implemented, for example, in the Estonian data exchange infrastructure X-Road, where a distributed architecture is combined with the use of the KSI blockchain for cryptographic signing of access logs, which provides long-term evidentiary confirmation of the immutability of records of access to state registers (e-Estonia, n.d.). Similar principles directly apply to official offences: in the case of proper implementation of forensic-by-design, each access by an official to a sensitive register leaves a trace in the action log that can be protected from modification, which can be used as highly reliable digital evidence. The European Network of Forensic Science Institutes (2015) developed the Best Practice Manual for the Forensic Examination of Digital Technology, which details the sequence of actions when working with digital media, focuses on the risks of data modification during the study, formulates requirements for the laboratory environment and the qualifications of experts. The degree of implementation of these international approaches in the Ukrainian practice of investigating official offences is reflected in the comparative analysis (Table 2).

[1] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[2] Judgment of the Supreme Court in Case No. 154/2277/17. (2023, May). Retrieved from https://iplex.com.ua/doc.php?regnum=111192893.

Table 2. International standards of digital forensics and the status of the implementation in Ukraine

Standard/concept	Basic principles	Status of implementation in Ukraine	Identified gaps	Recommendations for implementation
ISO/IEC 27037:2012 (2012), DSTU ISO/IEC 27037:2017 (2017)	Four phases of working with digital evidence (identification, collection, retrieval, preservation); minimal intervention in the original data; application of hash functions; documentation of all actions	National analogue in force since 2019; used in individual expert institutions, but not integrated into the Criminal Procedural Court of Ukraine as a mandatory guideline	No mention of the standard in the Criminal Procedural Court of Ukraine; no legal definition of digital evidence; no mandatory requirements for hashing and chain of custody	Enshrine in the Criminal Procedural Court of Ukraine a definition of electronic evidence harmonised with ISO/IEC 27037; provide for the obligation to record the method of obtaining and ensuring integrity; introduce a training system for investigators and prosecutors
European Network of Forensic Science Institutes (2015)	Practical recommendations for forensic laboratories; requirements for planning expertise, documentation, validation of instruments, quality assurance	Used as a guideline by individual laboratories; not directly implemented by regulation, but taken into account in the methods of NDEKC and KNDISE	Lack of formal consolidation of ENFSI BPM in the accreditation system; lack of unified requirements for software validation; different levels of documentation quality	Provide for orientation on ENFSI-BPM in subordinate legislation; require documented procedures in accordance with BPM when accrediting laboratories; develop national methodological recommendations based on ENFSI-BPM
Forensic-by-design (Pasquale, 2013; Grispos, 2017; Daubner & Matulevičius *et al*., 2021; Commonwealth Secretariat, 2025)	Designing IT systems so that these systems create and store evidentiary information by default: full logging; log protection; time synchronisation; role-based access separation	Individual elements have been implemented in some state systems, but there is no single regulatory act on the minimum level of forensic readiness of state IT systems	There are no requirements for mandatory access logs in all SIS; no minimum log retention periods have been established; there are no criteria for assessing IT solutions for forensic-ready	Introduce forensic-ready requirements into the legislation on public electronic registers; include a forensic requirements section in the technical specifications for the creation of SIS; develop pilot implementation projects in critical systems

Note: SIS – state information systems; software – software; NDEKC – Scientific Research Forensic Centre of the Ministry of Internal Affairs of Ukraine; KNDISE – Kyiv Scientific Research Institute of Forensic Expertise; ENFSI – European Network of Forensic Science Institutes; BPM – Best Practice Manual
Source: compiled by the author

The comparative analysis presented in Table 2 demonstrates a systemic gap between international standards of digital forensics and the practical implementation in the Ukrainian system of investigation of official offences. The presence of national analogues of international standards, in particular DSTU ISO/IEC 27037:2017 (2017), in itself does not ensure the effective application without the integration of relevant requirements into criminal procedural legislation and mandatory departmental instructions. The concept of forensic-by-design deserves attention, the implementation of which at the level of designing state information systems could radically improve the quality of the evidence base in criminal proceedings on official offences by ensuring the automatic creation and reliable preservation of relevant digital traces of official activities.

Against this background, Ukrainian criminal procedural legislation demonstrates limited adaptation to digital reality. The Criminal Procedural Code of Ukraine[1] in Articles 98-99 operates with categories of material evidence and documents, without distinguishing electronic evidence as an independent procedural form, while the current version of Article 99 only covers information on material media in general terms and does not establish a special regime for digital objects. Law of Ukraine No. 851-IV[2] fixes the equality of legal force of electronic and paper documents, but does not contain mandatory requirements regarding the retention periods of access logs, backup copies, previous versions of documents or methods of recording the integrity of an electronic document for the purposes of future criminal proceedings. Law of Ukraine No. 2155-VIII[3] creates a qualified electronic signature regime and imposes certain obligations on qualified providers to maintain certificate registers, but does not establish a direct obligation to keep detailed logs of key usage, which significantly complicates the investigation of abuses of qualified electronic signatures in the field of official activities.

Judicial practice acts as a regulator of digital evidence in criminal proceedings on official offences. An analysis of court decisions reveals six cases that illustrate the approaches of Ukrainian courts to the assessment of digital evidence in cases on official offences.

[1] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[2] Law of Ukraine No. 851-IV "On Electronic Documents and Electronic Document Management". (2003, May). Retrieved from https://zakon.rada.gov.ua/laws/show/851-15#Text.
[3] Law of Ukraine No. 2155-VIII "On Electronic Identification and Electronic Trust Services". (2017, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2155-19#Text.

In criminal proceedings against a customs inspector in Decree No. 715/758/20[1], the electronic journal of the automated system "Inspector" was examined, which recorded the actions of the official during customs clearance of goods. The court recognised that the electronic journal is an official document within the meaning of Article 99 of the Criminal Procedural Code of Ukraine[2], since it contains legally significant information, and the official's entry into the system using the official's login and password, which is unique and not subject to disclosure, is equated with an electronic digital signature as a mandatory requisite of an electronic document. Accordingly, entering knowingly false information into such a journal constitutes an objective aspect of official forgery, as provided for in Article 366 of the Criminal Code of Ukraine[3]. The motivational part of the resolution does not contain any mention of the use of hash functions or the chain of custody procedure, and the assessment of the admissibility of evidence is limited to an analysis of the system user's powers and the procedural aspects of the inspection and seizure of equipment.

Decree in the name of Ukraine No. 592/6618/16-k[4] considered the accusation of a customs official under Part 2 of Article 364 and Part 1 of Article 366 of the Criminal Code of Ukraine[5], which was based, in particular, on the incrimination of entering knowingly false information into the information bases of the Unified Automated Information System of the State Fiscal Service and the software and information complex "Inspector-2006", as well as drawing up and storing in the EAIS-ASMO subsystem a knowingly false act on the inspection of a vehicle. The central object of the evidentiary controversy was the photographs stored in the "Inspector 2006" database: the court decided the issue of the availability, date of entry and reliability solely through the mutual consistency of witness testimonies in accordance with Article 94 of the Criminal Procedural Code of Ukraine[6], without applying any procedures for technical verification of the integrity of digital data.

The practice of the High Anti-Corruption Court in cases under Article 366-2 of the Criminal Code of Ukraine[7] demonstrates the use of various forms of digital evidence. Judgment in the case No. 991/185/23[8] examined data from the Unified State Register of Declarations of the NACP, the log of user actions in the NACP information system and bank statements provided on an optical medium, recognising this information as appropriate and admissible evidence of property declaration of false information. Decree No. 629/5254/21[9] analysed criminal proceedings under Article 366-3 of the Criminal Code of Ukraine[10] regarding the intentional failure to submit an annual declaration by the declaring entity, emphasising that the obligation to submit is implemented by filling out the declaration on the official website of the NACP, and the disposition of Article 366-3 of the Criminal Code of Ukraine does not make criminal liability dependent on prior written notification to the NACP about the fact of failure to submit a declaration. It is noteworthy that the court focused exclusively on the substantive and legal issues of the offence, leaving out of consideration the issue of technical verification of digital traces in the NACP information system.

The empirical base is supplemented by two court decisions that demonstrate the complexity of assessing digital evidence in criminal proceedings for official offences. Judgment in the case No. 123247255[11] considered the accusation of a state inspector of a customs post under Part 1 of Article 366 of the Criminal Code of Ukraine[12] of entering knowingly false information into the "Passage Log" software module of the Unified Automated Information System (UAIS) of the State Customs Service. The court described in detail the system architecture and the mechanism for recording all user actions using personal logins and passwords, which creates an electronic trace of each operation in the system. The Judgment is acquittal: the court stated that the prosecution did not prove beyond reasonable doubt the illegality of the inspector's actions and could not recreate a lawful model of the official's behaviour in similar factual circumstances. Decree in the name of Ukraine No. 991/503/23[13] demonstrates another aspect of the same problem: the courts of previous instances based

[1] Judgment of the Supreme Court in Case No. 715/758/20. (2022, November). Retrieved from https://iplex.com.ua/doc.php?regnum=107251729&red=1000034f2647aef95df9d6e093c285548f1c73&d=5.
[2] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[3] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[4] Decree in the name of Ukraine No. 592/6618/16-k. (2023, January). Retrieved from https://iplex.com.ua/doc.php?regnum=108686222.
[5] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[6] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[7] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[8] Judgment of the High Court of Anti-Corruption in Case No. 991/185/23. (2023, March). Retrieved from https://iplex.com.ua/doc.php?regnum=109915446&red=1000035a4b7b910d8438484cac84f946a85d4f&d=5.
[9] Judgment of the Supreme Court in Case No. 629/5254/21. (2025, February). Retrieved from https://iplex.com.ua/doc.php?regnum=125297104.
[10] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[11] Judgment of the Chornomorsk City Court of Odesa Region in Case No. 123247255. (2024, November). Retrieved from https://youcontrol.com.ua/catalog/court-document/123247255/.
[12] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[13] Judgment of the Supreme Court in Case No. 991/503/23. (2025, August). Retrieved from https://iplex.com.ua/doc.php?regnum=129691175.

the conviction of the judge under Part 1 of Article 366-2 of the Criminal Code of Ukraine[1] (declaration of false information) on the tables of the sequence of actions of the user of the Unified State Register of NACP declarations with IP addresses, obtained by NABU detectives in accordance with Article 93 of the Criminal Procedural Code of Ukraine[2]. The Supreme Court confirmed the admissibility and reliability of these digital data, assessing these data exclusively through the criteria of Article 94 of the Criminal Procedural Code of Ukraine in conjunction with other evidence – without any reference to ISO/IEC 27037 (2012) standards or procedures for verifying the integrity of electronic records.

International case law in cases of official offences in the digital environment demonstrates more detailed attention to the technical aspects of digital evidence and forensic procedures for obtaining it. In the decision of the Supreme Court of the United States Van Buren v. United States[3] Georgia State Police Officer Nathan Van Buren, having legal access to a law enforcement database, used it to obtain vehicle licence plate information for personal gain, which was the subject of a Computer Fraud and Abuse Act[4] charge. The digital logs of access to the database became key evidence of the fact that protected information was accessed using valid credentials, while the legal debate revolved around the interpretation of the concept of exceeds authorised access in the context of using legitimate access for unauthorised purposes. A similar emphasis on the evidentiary value of access logs to government information systems is contained in the decision of the Tiergarten District Court in 2017, where an official of the Berlin Bürgeramt population registration office was found guilty of five hundred and sixty-one unauthorised accesses to the electronic Melderegister in violation of the Bundesdatenschutzgesetz (Datenshutz Praxis, 2017). The court relied on detailed access logs that recorded each request by the employee's personal login with a time stamp and the content of the request, and qualified the very fact of unauthorised digital access to a closed state personal database as a complete breach of official duties, imposing a fine of EUR 4,950. Ukrainian judicial practice in the above cases reveals a systemic limitation: courts focus on the formal and legal assessment of documents as evidence in accordance with Articles 84-99 of the Criminal Procedural Code of Ukraine[5] and do not articulate the requirements for forensically correct handling of digital evidence in accordance with international standards, in particular ISO/IEC 27037:2012 (2012), which necessitates the development of an integrated algorithm for digital forensic methods for investigating official offences.

Algorithm of digital forensic methodology for investigating official forgery and targeted recommendations. Based on the hypothesis that the quality of evidence of official forgery can be significantly improved by implementing a standardised algorithm of digital forensics, it is advisable to propose a four-block methodology that combines international standards ISO/IEC 27037:2012 (2012), forensic-by-design approaches and the requirements of Ukrainian criminal procedural legislation. The first block, forensically oriented primary fixation of the digital situation, should begin with the correct choice of procedural form: depending on the situation, a scene inspection under Article 237 of the Criminal Procedural Code of Ukraine[6], a search under Article 234 of the Criminal Procedural Code of Ukraine or temporary access to things and documents under Articles 159-166 of the Criminal Code is used. The investigator, in agreement with the prosecutor, must determine in advance which information systems, servers, workstations, mobile devices, removable media and network segments potentially contain traces of official offences. Before conducting a procedural action, it is necessary to involve a digital forensics specialist, who is tasked with identifying the sources of digital traces, proposing a safe procedure for the fixation and warning the investigator about the risks of losing volatile data, in particular RAM, temporary files, caches (Mastering digital forensics…, 2025). The state of the system at the time of the intervention is recorded by taking photos and videos of screens, saving current event logs, describing the equipment configuration and network connections in the protocol of the investigative action. Typical mistakes at this stage are turning off the server without first taking a RAM dump, working with the original data carrier instead of a forensic copy, and conducting live analysis on the suspect's workstation without using write-blockers and capturing hash values.

The second block of the algorithm, identification of relevant sources of digital evidence, requires an understanding of the architecture of state information systems. A typical state authority combines a departmental electronic document management system with the functions of registering incoming and outgoing documents, approving, applying a qualified electronic signature and storing versions, one or more industry registries, a local file server, a domain infrastructure with directory and authentication services, remote access tools via VPN or RDP gateways, integration gateways

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.
[2] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[3] Syllabus of the Supreme Court of the United States in Case "Van Buren v. United States". (2020, November). Retrieved from https://www.supremecourt.gov/opinions/20pdf/19-783_k53l.pdf.
[4] Computer Fraud and Abuse Act. (1986, January). Retrieved from https://www.justice.gov/jm/jm-9-48000-computer-fraud.
[5] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[6] Ibidem, 2012.

with interdepartmental systems of the Trembit level or X-Road analogues used within the framework of the "Diya" digital services. For each system, the investigator, together with a specialist, determines which database tables, audit logs, backup copies and configuration files may contain evidence of official forgery. At this stage, it is necessary to ensure interaction with administrators of information systems and centralised platforms, which is formalised by requests of the investigator in accordance with Article 93 of the Criminal Procedural Code of Ukraine[1] and by decisions of the investigating judge on temporary access to things and documents, which clearly indicate the types of data, the period for which the data are requested, and the requirements for the format of the provision. A significant gap in the current legislation is that neither the Criminal Procedural Code of Ukraine[2] nor special laws on electronic documents and trust services oblige subjects of government authority to store audit logs and backup copies for the minimum period sufficient for the investigation of potential official offences.

The third block, forensically correct acquisition and analysis of digital evidence, should be based on ISO/IEC 27037:2012 (2012) standards and NIST and ENFSI recommendations. The basic principle is to create a forensic copy of digital data using write-blockers and specialised software, in particular FTK Imager, X-Ways, dd in a Linux environment, while at least one modern SHA-256 hash algorithm is calculated and recorded in the protocol for each medium and, if necessary, compatibility with existing MD5 or SHA-1 tools, which forms a double level of integrity control (Kent & Grance, 2006; Scientific Working Group on Digital Evidence, 2019). Analysis methods depend on the type of evidence: for electronic documents in PDF, DOCX or XML format, the key is the study of metadata, including creation and modification dates, authorship, version history, comparison of checksums of different copies, detection of inconsistencies between text content and file structure; for databases, the analysis of transaction logs, triggers, backup copies is critical, which allows reconstructing the sequence of operations of an official; for operating system event logs, it is necessary to build a timeline of user actions, including logging in and out of the system, launching programs, installing updates, connecting external media; for network logs, it is important to correlate IP addresses, ports, VPN channels with specific workstations and accounts. The results of the analysis should be presented in the form of an expert opinion, the structure of which corresponds to the best European practices of the European Network of Forensic Science Institutes (2015): a clear separation of the descriptive part, technical observations, interpretation and the actual conclusion, where probabilistic judgments are carefully formulated.

The fourth block of the algorithm, the presentation of digital evidence in court, should take into account both the gaps in the Criminal Procedural Code of Ukraine[3] and the existing practice of the Supreme Court. The absence of special norms on electronic evidence in the code does not prevent the court from assessing such evidence as documents, but requires the prosecution to disclose as much information as possible about the origin, method of obtaining and ensuring the integrity of digital data. It is advisable in each proceeding on official offences to submit to the court protocols of investigative actions with a detailed description of the seized equipment and media, technical acts or reports of a digital forensics' specialist, an expert opinion indicating the used standards ISO/IEC 27037:2012 (2012) and national DSTU, chain of custody, which documents who, when and on what basis had access to forensic copies.

The practical applicability of the proposed algorithm should be demonstrated on a case study of a hypothetical case of official forgery in the field of public procurement. It is worth assuming that the head of the procurement department of a central executive body, having access to the electronic document management system and the public procurement web portal, entered into the electronic draft contract and approval letters knowingly false information about the actual volumes of supplies and the cost of services, and also made an unauthorised replacement of the attached commercial proposal files. At the first stage of the investigation, the investigator, with the participation of a specialist, conducts an inspection of the body's server room and the suspect's workplace, recording the system configuration, taking current event logs and a dump of the RAM of the electronic document management system server. Then, using temporary access, the investigator receives from the administrator of the central public procurement platform complete audit logs for the relevant tender, including the history of file downloads and replacements, IP addresses, time stamps and user IDs. At the third stage, the specialist creates forensic copies of the server disks and the official's workstation using SHA-256, analyses the metadata of electronic documents, correlates these metadata with the audit logs of the procurement platform, as well as with the data of the network logs of the VPN gateway. At the fourth stage, the expert reconstructs the chronology in the conclusion: the expert finds that on a certain day and time from the workstation of the head of the department, the system was logged in, commercial proposal files

[1] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[2] Ibidem, 2012.
[3] Ibidem, 2012.

were replaced, and essential terms of the contract were edited. In court, the combination of electronic documents, audit logs, and network logs, the suitability of which is confirmed by the correct collection and hashing procedure, makes it possible to prove the fact of official forgery in a digital environment with a high level of evidentiary persuasiveness.

Based on the above algorithm, it is possible to formulate a set of targeted recommendations. It is advisable for the legislator to propose supplementing Article 99 of the Criminal Procedural Code of Ukraine[1] with a separate part that would legalise the concept of electronic evidence in the following wording: electronic evidence is digital data that is stored, processed or transmitted in electronic form and is important for establishing the circumstances of criminal proceedings, in particular electronic documents, files, databases, electronic messages, metadata, event logs of information systems, as well as other forms of digital information; electronic evidence is submitted in the form of forensic copies or in the form of duly certified electronic extracts indicating the method of the receipt and means of ensuring integrity. It is also worth considering the possibility of supplementing the provisions of Articles 364, 366 and 366-2 of the Criminal Code of Ukraine[2] with qualifying features reflecting the use of information and communication systems, for example, committed by unauthorised changes to information in state information systems or by entering knowingly false information into state electronic registers, which would allow for a more accurate reflection of the increased public danger of the digital aspects of such crimes.

For law enforcement agencies, in particular pre-trial investigation bodies and prosecutors, organisational, staffing and methodological recommendations are key. It is advisable to provide for the creation of specialised digital forensics units in the field of official offences investigation within the structure of the National Police, the State Bureau of Investigation and the National Anti-Corruption Bureau, which will be entrusted with supporting investigations, where work with state information systems is central. Such units should be provided with a minimum list of software and hardware, including modern forensic workstations, write-blockers, licensed software for creating forensic images and analysing event logs, and integrated into the budget planning system through public procurement mechanisms (Cyclopes, 2023). The Ministry of Internal Affairs, the State Bureau of Investigation and the Office of the Prosecutor General should approve by departmental orders methodological recommendations for working with digital evidence, including with reference to ISO/IEC 27037:2012 (2012) and DSTU ISO/IEC 27037:2017 (2017), with a clear description of the protocols of the investigator's and specialist's actions at each stage of the algorithm. In the study by O.Y. Amelin (2024a), devoted to the procedural aspects of the appointment and replacement of a prosecutor in criminal proceedings for offences in the field of official activity, attention is drawn to the need for prosecutors to specialise in cases of this category, which logically includes mastering the skills of working with digital evidence and understanding the principles of digital forensics.

For the scientific community, it is advisable to outline several priority areas of research. Firstly, the development of a classification of official offences in the digital environment, taking into account the specifics of various sectors of the public service, in particular fiscal, customs, land, urban planning, medical, and defence, which will allow identifying industry-specific features of digital traces and methods of the fixation. Secondly, empirical studies of the applicability of the proposed algorithm to real criminal proceedings in order to verify its effectiveness, for example, by analysing the dynamics of acquittals and convictions in cases where forensic actions were properly documented in accordance with international standards. Thirdly, an in-depth comparative legal analysis of the experience of countries that have already integrated the concept of electronic evidence and digital forensics standards into national legislation, in particular the states of the European Union, the United States of America, the United Kingdom, and the countries of Northern Europe, with an assessment of the possibilities of adapting the solutions in the Ukrainian context.

Finally, for higher education institutions that train lawyers and law enforcement officers, it is worth proposing the development of specialised educational components, in particular a separate course "Digital Forensics of Official Offences", within which students and trainees will master the basic principles of ISO/IEC 27037:2012 (2012), simulate the investigation of official forgery in electronic registers, and practice skills in working with event logs, electronic documents, and network logs in a training ground. Such a course can be integrated into master's programs in criminal law and procedure, cybersecurity, as well as into the system of advanced training for prosecutors and investigators, supporting the need to adapt legal education to the digital environment of the functioning of justice and public administration. Taken together, the proposed algorithm and set of recommendations form the basis for a conceptually and algorithmically sound digital forensic methodology for investigating official offences, which is based on international standards, real judicial practice, and the institutional needs of the Ukrainian law enforcement system.

[1] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/4651-17#Text.
[2] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.

Discussion

The results obtained demonstrate a systemic problem of investigating official offences in the context of digitalisation of the public sector, which is manifested in the gap between the number of recorded criminal offences and proceedings that reach the judicial stage. The developed four-block algorithm eliminates the identified gaps in the chain of custody procedure by integrating the requirements of the Criminal Procedure Code of Ukraine and granting procedural status to intermediate copies, which is a fundamental difference from foreign models. Conceptually, this proposal echoes the Cloud Digital Forensic Readiness model presented by A. Akilal & M. Kechadi (2025), where automated management of law enforcement requests and control of checksums at all stages ensured data integrity in multi-jurisdictional calculations by creating secure channels for transmitting evidentiary information. E. Egho-Promise *et al*. (2024) emphasise the importance of adhering to standardised procedures for digital forensics in cloud computing, as the distributed nature of cloud infrastructure makes it more difficult to identify, collect, and preserve digital evidence compared to traditional local systems. The Ukrainian model additionally takes into account the procedural aspects of the national criminal process, as judicial practice assesses the admissibility of evidence primarily through the prism of the procedural form of its receipt, and not exclusively the technical correctness of forensic procedures, which was confirmed by the analysis of six court decisions of different instances. At the same time, the proposed approach maintains compatibility with the international standards ISO/IEC 27037:2012 (2012), which allows it to be integrated into cross-border investigations and ensure mutual recognition of evidence within the framework of international legal assistance, especially in cases of transnational corruption.

A detailed taxonomy of digital traces for each element of official offences demonstrates that the most vulnerable block is the log data block, in particular, change logs in databases, authorisation logs, and electronic correspondence of officials, which poses the main risk of losing evidentiary information at the initial stages of the investigation. The findings coincide with the work of S. Makura *et al.* (2021), where the limited retention period of operational logs in cloud systems is defined as the risk of losing evidence due to automatic overwriting, which varies from 7 to 30 days depending on the system configuration. The proposed typology develops this approach, outlining specific threats for each type of official offences: automatic deletion of logs after the expiration of the established retention period, lack of hashing when copying between different media, changing the system configuration by the administrator without saving previous settings, and editing documents without saving previous versions in electronic document management systems. These specifications provide a basis for developing forensic checklists that can be used by investigators to pre-assess the risks of losing digital traces and prioritise procedural actions during the investigation planning stage.

The proposed procedural safeguards are consistent with modern approaches to cloud forensics, which have systematised the challenges of preserving event logs of distributed systems as a major obstacle to reconstructing the sequence of events in criminal proceedings. However, unlike the general model of cloud forensics, which focuses on external cybersecurity threats from illegitimate users, the study takes into account the specifics of official offences, where the offender has internal authorised access to the infrastructure and can purposefully destroy digital traces of the offender's actions by using administrative privileges to modify event logs. S. Friedl & G. Pernul (2024), based on an empirical study of European organisations, found that funding and the presence of organisational policies are the main factors in the readiness of IoT environments for investigative intervention. In particular, the researchers found that most organisations do not have centralised procedures for backing up event logs of sensor devices, which significantly complicates further forensic investigation of such environments.

In terms of ensuring a continuous chain of custody, the proposed double control of hash values through the simultaneous use of SHA-256 and MD5 algorithms, as well as mandatory logging of all official operations with forensic copies, correspond to the approach of S. Nath *et al*. (2024), where the emphasis is on transparent reproducibility of the chronology of actions and the possibility of independent verification of integrity at any stage of the investigation by different subjects of criminal proceedings. Double hashing ensures compatibility with different expert tools that use different algorithms to verify data integrity, and reduces the risk of evidence rejection due to technical limitations of specific software or incompatibility of forensic utility versions between different expert institutions. At the same time, the solution of M. AlKhanafseh & O. Surakhi (2024), which proposes to combine blockchain and steganography technologies to record metadata of forensic copies in order to ensure the immutability and the possibility of verification in the long term for more than ten years, remains unattainable due to the lack of the necessary technical infrastructure in state bodies of Ukraine and the high cost of implementing distributed registries. The proposed measures are more feasible in the short term through the use of existing equipment and free open-source utilities, but retain compatibility with promising technologies for long-term fixation.

An analysis of case law in six national cases showed that Ukrainian courts focus on the formal legal assessment of documents in accordance with Articles 84-99

of the Criminal Procedural Code of Ukraine[1], without articulating the requirements for forensically correct handling of digital evidence. Courts rarely refuse to accept evidence obtained using open-source tools if experts have confirmed the application of appropriate procedures when creating forensic copies, which indicates a pragmatic approach to assessing technical reliability regardless of the formal certification of the tools. This partly contradicts the findings of I. Ismail & K.A.Z. Ariffin (2025), who, based on Malaysian case law, found that the rejection rate of evidence obtained using uncertified tools was around 35% due to the lack of formal accreditation of forensic laboratory software. In the national context, the principle of procedural expediency is at work, as courts recognise the technical uniqueness of electronic traces even when using utilities without formal certification, given that alternative commercial solutions with licensed software are often unavailable due to budgetary constraints of expert units and lengthy public procurement procedures.

A systematic review by A.A. Ahmed *et al.* (2024) summarised global trends in Internet of Things forensics based on an analysis of over two hundred publications for the period 2019-2024 and highlighted the lack of interdisciplinary protocols for integrated ecosystems that combine cloud computing, mobile devices and sensor networks in a single data processing chain. The proposed algorithm addresses this shortcoming by combining technical and procedural phases in a single evidence route that covers all types of digital sources regardless of the architectural features and physical location in different segments of the state information infrastructure. The systematisation of digital traces is also consistent with the TAM-TOE entropy model proposed by S.I. Safie *et al*. (2025) to analyse the factors influencing the ability of government agencies to apply practices oriented to the ISO 27037:2012 (2012), where the technological, organisational and environmental levels are considered as equivalent determinants of the success of implementation. Unlike the Malaysian experience, where the main barrier was the distrust of staff in new protocols due to the habit of traditional working methods and fear of additional workload, the Ukrainian environment is faced primarily with underfunding of technical equipment of expert units and the lack of systematic training of investigators in the field of digital forensics, which prioritises budget-neutral changes to procedural rules and departmental instructions.

Thus, the results of the study confirm the need for a systemic transformation of approaches to the investigation of official offences through the introduction of the forensic-by-design concept, which implements the ISO/IEC 27037:2012 (2012) standards into state information systems and ensures evidentiary readiness at the design stage of e-government services. The proposed algorithm is consistent with leading international developments in the field of digital forensics, while adapting these developments to the Ukrainian procedural context, filling the gaps that were overlooked in previous studies due to the focus on general issues of electronic evidence without taking into account the specifics of official offences. The identified discrepancies with certain foreign approaches, in particular regarding the admissibility of open-source tools and the current unavailability of blockchain technologies, outline the directions of future empirical and normative research aimed at increasing the effectiveness of the investigation of official offences in the digital environment.

Conclusions

The study was devoted to the formation of a conceptually and algorithmically grounded approach to the use of digital forensics in the investigation of official offences in the context of a large-scale digital transformation of the public sector of Ukraine. The study found that the digitalisation of public service, which takes place on the basis of legislation on electronic documents, electronic identification and the functioning of the "Diya" portal, has radically transformed the forensic characteristics of official offences provided for by the current criminal legislation of Ukraine. The created extensive system of digital traces in state information systems requires specialised methods of detection and fixation, which are significantly different from traditional forensic approaches to material traces.

The systematisation of digital traces in the context of individual elements of official offences revealed specific sources of origin, technical characteristics of fixation and typical threats of loss of evidentiary information for each type of offence. A comparative analysis of international standards of digital forensics and the state of the implementation in Ukraine has shown a systemic gap between the presence of national analogues of international standards and the practical application due to the lack of integration into criminal procedural legislation. An analysis of six court decisions has demonstrated that Ukrainian courts focus on the formal and legal assessment of documents in accordance with the norms of criminal procedural legislation on evidence and substantiation, without articulating the requirements for forensically correct handling of digital evidence in accordance with international standards. Based on the identified gaps, a four-block algorithm of digital forensics methodology for investigating the most common type of official offences – official forgery, has been developed, which includes forensically oriented primary fixation of the digital situation, identification of relevant sources of digital evidence, forensically correct acquisition and analysis of data using hash functions and write-blockers, as well as presentation of evidence in

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

court in compliance with the requirements of the chain of custody. The practical applicability of the algorithm is confirmed through a detailed case study of a hypothetical case of official forgery in the field of public procurement, which demonstrates the sequence of forensic actions from the initial fixation of the server infrastructure to the presentation of an expert opinion in court.

The results obtained form a conceptual basis for overcoming the low efficiency of the investigation of official offences, which is manifested in the minimal share of criminal proceedings on official offences that reach the court stage with an indictment, as well as in significant volumes of complaints about the inaction of investigative bodies regarding the failure to enter information into the Unified Register of Pre-Trial Investigations in Corruption and Official Proceedings. The proposed approach allows transferring digital traces of official activity from the category of potential to the category of actually used evidence through standardisation of the procedures for the collection, recording, and presentation in court in accordance with international standards. The formulated targeted recommendations cover legislative amendments to criminal procedural legislation regarding the legalisation of the concept of electronic evidence and to criminal substantive legislation regarding the qualifying features of the use of information and communication systems, organisational and staffing measures for law enforcement agencies regarding the creation of specialised digital forensics units, priority areas of scientific research on the industry-specific nature of digital traces, as well as educational components for legal education in the form of a specialised course on digital forensics of official offences.

Promising areas of further research are the empirical verification of the proposed algorithm on an array of real criminal proceedings, the development of industry modifications of the methodology for specific sectors of the public service, in particular fiscal, customs, land and urban planning, as well as an in-depth analysis of the possibilities of implementing the forensic-by-design concept in the design of state information systems of Ukraine in order to ensure the readiness for a potential investigation from the stage of developing technical tasks.

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Conflict of Interest

None.

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Цифрова еволюція криміналістичної методики розслідування кримінальних правопорушень у сфері службової діяльності в Україні

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Анотація
Метою дослідження був аналіз можливостей цифрової криміналістики в розслідуванні службових злочинів шляхом інтеграції міжнародних стандартів і концепцій forensic-by-design з українським кримінальним процесуальним законодавством. Порівняльно-правовий аналіз міжнародних та українських стандартів цифрової криміналістики виявив системний розрив між технічними стандартами та процесуальною і судовою практикою, де суди майже не артикулюють вимоги до форензично коректного поводження із цифровими доказами. Системна класифікація цифрових слідів за типами службових правопорушень у кримінальному законодавстві дала змогу систематизувати специфічні джерела походження, види цифрових слідів і типові загрози цілісності доказів для кожного складу службового злочину в умовах масштабної цифровізації публічного сектору. Методом кейс-стаді було досліджено судову практику України, Сполучених Штатів Америки та Німеччини щодо використання цифрових доказів у справах про службові злочини, що дало змогу встановити відсутність посилань на міжнародні стандарти цифрової криміналістики в мотивувальних частинах українських судових рішень і виявити прогалини в процесуальному оформленні електронних доказів, які унеможливлюють перевірку їх автентичності та цілісності відповідно до вимог ISO/IEC 27037:2012. Розроблено чотириблоковий алгоритм цифрової криміналістичної методики розслідування службових злочинів, пов'язаних зі службовим підробленням (ст. 366 КК України), що охоплює форензично орієнтовану первинну фіксацію цифрової обстановки, ідентифікацію релевантних джерел цифрових доказів, форензично коректне здобуття та аналіз, а також представлення доказів у суді з додержанням процедур ланцюга збереження доказів. Практичне значення результатів дослідження полягає в можливості їх використання законодавцем для внесення змін до кримінального процесуального законодавства, правоохоронними органами для створення спеціалізованих підрозділів у сфері розслідування службових злочинів із застосуванням цифрової криміналістики, а також закладами вищої освіти для впровадження відповідних освітніх компонентів у юридичну освіту

Ключові слова:
електронні докази; цифрові сліди; forensic-by-design; міжнародні стандарти; державні інформаційні системи; доказування; форензична копія

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Interrogation of victims and witnesses in proceedings concerning torture and the detention of civilians

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Abstract
The relevance of this article stems from the fact that, in the context of the Russian Federation's large-scale war against Ukraine, there is a growing need for the proper documentation of evidence, specifically through the interrogation of victims and witnesses in proceedings related to torture and the unlawful detention of civilians by the Armed Forces of the Russian Federation. The aim of the article was to examine the specifics of conducting interrogations in criminal proceedings concerning crimes related to cases of torture and unlawful detention. To achieve this aim, a wide range of scientific research methods were employed, including empirical, structural and systemic approaches. The theoretical basis of this work was formed by the works of both domestic and foreign researchers, dedicated to a detailed examination of issues related to the interrogation of victims and witnesses in cases concerning the torture and unlawful detention of civilians. An in-depth analysis of these academic sources contributed to the formulation of well-reasoned conclusions. The study identified the specific features of interrogations victims and witnesses in proceedings concerning crimes committed by members of the armed forces of the Russian Federation, as well as in the development of tactical approaches to interrogation, taking into account the specific nature of this category of offences. The research has shown that when conducting interrogations in criminal proceedings related to crimes committed in the context of an armed conflict, particularly in cases involving torture and the unlawful detention of civilians, the investigator must take into account the unique nature of this category of offences. Adherence to this approach is a key prerequisite for ensuring that witnesses and victims provide complete, logically consistent and meaningful testimony. Particular attention is paid to taking into account the specificities of working with individuals who have undergone traumatic experiences, and to providing the necessary support both before and after the interview. The practical value of the study lies in the identification of effective methods

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for the interrogation of victims and witnesses, aimed at obtaining the most comprehensive and informative testimony possible

Keywords:
overt investigative (detective) actions; war crimes; formation of the evidentiary base; information gathering; interview

Introduction

The current armed conflict poses a number of challenges for the conduct of criminal proceedings. Among these, the significant increase in the number of reported cases of war crimes committed by the occupying forces stands out in particular. The Russian Federation's invasion of Ukrainian territory is not only an encroachment on Ukraine's territorial integrity, but also an undermining of European values, which have been shaped over centuries in response to the tragic experience of war. As of July 2025, 5,600 civilians had been officially recog nised as victims of torture (Synyuk, 2025). Among them are those whom Russian military personnel abducted at the very start of the full-scale war and who remain in captivity to current day, with no possibility of establishing any contact. Occasionally, during the repatriation of bodies, the Russian side hands over the remains of tortured civilians. For example, three men from the Kyiv region could only be identified through DNA analysis (Kostikov *et al*., 2023). International law proclaims the prohibition of torture as an inviolable principle[1].

Armed conflicts are increasingly accompanied by large-scale acts of violence against the civilian population, as well as crimes against humanity (Felyk *et al*., 2022). Systematic attacks targeting civilians are becoming an integral part of both the practical and doctrinal aspects of warfare (Megret, 2023). The components of the concept of investigating war crimes and crimes against humanity require the creation of a comprehensive system for the collection, systematisation and preservation of factual evidence. This must be a comprehensive activity carried out under specific conditions (Rogatinska *et al*., 2023). An important task is working with the evidence base, in particular systematic activities to document and investigate war crimes in accordance with international standards of evidence. This process is implemented through the organisation of witness and victim interviews within the framework of criminal proceedings concerning war crimes (Pashkovskyi *et al*., 2023).

The process of interviewing participants in criminal proceedings has always attracted interest among both academics and law enforcement officials, owing to its significance at the legislative, theoretical and practical levels. Despite significant progress in contemporary academic research, the conduct of interviews with victims and witnesses in cases involving torture and the unlawful detention of civilians remains a subject of debate and has not been definitively resolved. This highlights the relevance and necessity of a thorough analysis of this issue. The interrogation procedure plays a vital role in the process of obtaining evidential information during the investigation of war crimes. This investigative (detective) procedure is a key element of the pre-trial investigation, without which the latter would be inconceivable. According to research by K.H. Shelenina (2021), interrogation is defined as an investigative (detective) procedure, regulated by the provisions of criminal procedural law, aimed at obtaining statements from witnesses, victims, suspects or accused persons. These statements relate to the circumstances of the case known to the interrogator and also include other information of significance to the criminal proceedings.

M.A. Gotvianska (2019) regards interrogation as a procedural action, which should be understood as an informational and psychological process of interaction between participants, governed by the rules of criminal procedure. The main purpose of interrogation is to obtain complete and objective information about facts known to the interrogator that are relevant to establishing the truth within the framework of criminal proceedings. O. Zhovtiuk (2024) notes that the examination of witnesses and victims in proceedings relating to war crimes requires consideration of their complex psychological state due to the traumatic experiences they have endured, including stress and post-traumatic stress disorder. To this end, it is necessary to ensure psychological safety, establish rapport, involve a psychologist, and apply Article 225 of the Code of Criminal Procedure of Ukraine[2] during interrogation in court (in particular, at off-site hearings) in order to record testimony in cases where there is a threat to life or health. This ensures the quality of evidence in accordance with the requirements of the current Code of Criminal Procedure of Ukraine and legislation. Yu.M. Chornous & S.O. Vlasenko (2022) note that interrogation is a key verbal investigative procedure that plays a primary role in the pre-trial investigation process. This procedure allows for the collection of necessary evidential information; however, its effective conduct requires consideration of specific tactical and psychological aspects. Interrogation is based on the application of various tactical methods and their combinations, aimed at

[1] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/laws/show/4651-17.

establishing constructive psychological rapport with the individual and overcoming potential forms of interference with the investigation of criminal offences.

At the current stage of development of legislation, theory and practice, interrogation is regarded as a multifaceted phenomenon with several key aspects. Firstly, it is an investigative (detective) action, clearly regulated by the provisions of the Code of Criminal Procedure of Ukraine[1]. Secondly, interrogation acts as a process of information-gathering and cognitive activity, involving the collection, clarification and assessment of data necessary for the conduct of a criminal case. And finally, it is a practical tool at the disposal of authorised persons acting in accordance with the provisions of the Code of Criminal Procedure of Ukraine to ensure proper evidence-gathering and the achievement of the objectives of criminal proceedings. In this context, both tactical and psychological factors are taken into account during the interrogation, as these are crucial for achieving effective results.

According to H.Yu. Nikitina-Dudikova (2020), the concept of interrogation was developed as a verbal investigative action requiring consideration of the tactics involved in its conduct. In particular, emphasis was placed on tactical techniques and forensic recommendations aimed at establishing psychological contact and obtaining important information from a child victim. According to M.D. Denisovsky & T.A. Rodenko (2023), these processes – the establishment, stabilisation and maintenance of psychological contact – are among the most complex and multifaceted processes in an investigator's practice during the conduct of investigative (detective) actions. This stage plays a key role, as it forms the basis for the start of a productive interview. Already at this stage, the investigator is forced to adapt to the specific situation and various factors that often cannot be accurately predicted or foreseen. Psychological contact involves the investigator's carefully planned, systematic and purposeful activities, aimed at creating favourable conditions for in-depth and effective communication with the person being questioned. Its main objective is to obtain complete and objective information that is of significant importance for establishing the truth within the framework of criminal proceedings. In her study, S.I. Hrechana (2023) outlined the grounds for conducting this type of interrogation, proposing a list of "other circumstances" as a reason for its implementation. These include: 1) poor health, advanced age of the person and other factors that may indicate risks regarding the ability to give evidence during court proceedings; 2) long-term business trips, travel for work, study or permanent residence outside Ukraine; 3) the person's status as a foreign national, their permanent residence abroad or presence in Ukraine without legal grounds, with subsequent deportation from the country; 4) the person's service in the Armed Forces of Ukraine, as well as other categories of persons defined by the Law of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection"[2].

The aim of the study was to take into account the specific features of crimes committed in the context of armed conflict in order to ensure an adequate evidential basis in the investigation of war crimes and to improve methodological approaches to the interrogation of witnesses and victims in proceedings concerning torture and the detention of civilians by the Russian Armed Forces.

Materials and Methods

The research employed both general scientific and specialised methods of scientific inquiry. Among the general scientific methods, the following were used: deduction, induction, analysis and systematisation. Specialised methods included the empirical method, statistical analysis, extrapolation, systems analysis, idealisation and hypothesis formulation. The synergy of these approaches enabled the creation of a comprehensive conceptual framework for the study, which ensured the achievement of the set objective. Data was extracted from the Unified State Register of Court Decisions covering the period from 2019 to 2026, specifically from the category of criminal cases, the section on "Criminal Offences against Peace, the Security of Mankind and the International Legal Order", and Article 438 (war crimes) of the Criminal Code of Ukraine[3]. Based on the context of the terms "torture, detention of civilians, witnesses", 50 existing cases were identified, of which 24 were from 2025, 19 from 2024, 4 from 2023, and 3 from 2026. These chronological boundaries were chosen because the current Russian-Ukrainian war began on 20 February 2014 and escalated into a large-scale invasion on 24 February 2022.

A systematic analysis has made it possible to justify the need to take into account the specific nature of crimes committed in the context of armed conflict, in order to improve methodological approaches to the interrogating of witnesses and victims in proceedings concerning torture and the detention of civilians by the armed forces of the Russian Federation. Based on the results of the analysis of empirical data, using the scientific research method of extrapolation, it became possible to analyse the key elements for developing a methodology regarding the tactics of interrogating victims and witnesses in proceedings concerning torture and the unlawful detention of civilians. Using a

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/laws/show/4651-17.
[2] Law of Ukraine No. 3551-XII "On the Status of War Veterans, Guarantees of their Social Protection". (1993, October). Retrieved from https://zakon.rada.gov.ua/laws/show/3551-12#Text.
[3] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

structural method, the stages of interrogating this category of persons were identified and formulated.

The legal framework for this study comprises the following acts of Ukrainian national legislation: the Constitution of Ukraine[1], the Criminal Code of Ukraine[2], the Code of Criminal Procedure of Ukraine[3], as well as international human rights instruments: the Convention for the Protection of Human Rights and Fundamental Freedoms[4], the Geneva Convention relative to the Protection of Civilian Persons in Time of War[5], the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly Resolution No. 3452 of 9 December 1975[6], and the website of the General Prosecutor's Office of Ukraine (n.d.).

This Article draws specifically on these sources, as they govern social relations in the sphere of interrogating victims and witnesses in proceedings relating to torture and the unlawful detention of civilians by the Armed Forces of the Russian Federation. It is these regulatory acts that form the basic legal framework upon which research is conducted to improve methodological approaches to the interrogating of witnesses and victims of crimes committed in the context of armed conflict.

Results

The regulatory framework and the effectiveness of pre-trial investigation bodies and the public prosecutor's office. In accordance with Article 4(1) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949[7], the protection of this Convention applies to persons who, at any time and under any circumstances in a situation of conflict or occupation, find themselves under the authority of a party to the conflict or an occupying power of which they are not nationals. In accordance with paragraphs 1, 2 and 3 of Article 6 of this Convention, its provisions shall come into force from the outset of any conflict or occupation as defined in Article 27, paragraph 1, which emphasises that persons protected by the Convention are entitled to respect for their person and honour in all circumstances[8]. They must always be protected and treated humanely, ensuring that acts of violence, intimidation, insult or public humiliation are prevented. In accordance with Article 29 of the Convention, a party to the conflict which has control over protected persons is responsible for the conduct of its representatives towards those persons. This does not exempt representatives from their personal responsibility for their actions[9].

In accordance with Articles 31-32 of the Convention, it is prohibited to use any form of physical or psychological coercion against protected persons, particularly for the purpose of obtaining information from them or from third parties. Any acts likely to cause physical suffering or result in the death of protected persons under someone's control are also prohibited. This provision applies not only to murder, torture, corporal punishment, mutilation or unjustified medical and scientific experiments, but also to any other cruel treatment by both military and civilian authorities. In the preamble to the Additional Protocol of 8 June 1977 to the Geneva Conventions of 12 August 1949, relating to the protection of victims of international armed conflicts (Protocol I)[10], the High Contracting Parties reaffirm that the provisions of the Geneva Conventions and of this Protocol shall apply in full, under all circumstances, to all persons under their protection. Article 146 of the Convention obliges the High Contracting Parties to enact the necessary laws to ensure effective criminal sanctions against persons who commit or order the commission of any grave breaches of this Convention as defined in this Article[11].

Article 1 of the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly Resolution No. 3452 of 9 December 1975 (hereinafter referred to as the Declaration), it is stated that torture is any act by which severe physical or mental pain or suffering is intentionally inflicted on a person[12]. Such acts are committed by or at the instigation of a public official for the purpose of obtaining

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/laws/show/4651-17.
[4] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[5] Geneva Convention relative to the Protection of Civilian Persons in Time of War. (1949, August) Retrieved from https://zakon.rada.gov.ua/laws/show/995_154.
[6] Resolution of the UN General Assembly No. 3452 "Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". (1975, December). Retrieved from https://ips.ligazakon.net/document/MU75010R.
[7] Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154.
[8] Ibidem, 1949.
[9] Ibidem, 1949.
[10] Additional Protocol to the Geneva Conventions relative to the Protection of Civilian Persons in Time of War. (1977, June). Retrieved from https://zakon.rada.gov.ua/laws/show/995_200.
[11] Geneva Convention Relative to the Protection of Civilian Persons in Time of War. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154.
[12] Resolution of the UN General Assembly No. 3452 "Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". (1975, December). Retrieved from https://ips.ligazakon.net/document/MU75010R.

information or a confession from the person concerned or from a third party, as punishment for acts committed or suspected, or to intimidate the person concerned or others. Article 2 of the Declaration emphasises that any acts which may be classified as torture or other cruel, inhuman or degrading forms of treatment or punishment constitute an affront to human dignity[1]. Such acts must be condemned as violations of the purposes of the Charter of the United Nations, human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights[2].

According to statistical data recorded by the Office of the Prosecutor General and summarised in Table 1, the number of criminal offences committed by the Russian Federation's armed forces during the Russian Federation's full-scale invasion of Ukraine under Article 438 of the Criminal Code of Ukraine[3], committed in violation of the laws and customs of war from 2022 to 2023, and Table 2, war crimes from 2024 to 2025, since Article 438 of the Criminal Code of Ukraine has borne the aforementioned title since 2004, amounts to a total of 206,002. At the same time, criminal offences during the aforementioned period in which individuals were served with a notice of suspicion under Article 438 of the Criminal Code of Ukraine amounted to 344 cases, representing 0.16% of the total number of criminal offences (Article 438 of the Code of Criminal Procedure of Ukraine). Proceedings referred to court (sub-paragraphs 2 and 3 of Article 283 of the Code of Criminal Procedure of Ukraine) regarding criminal offences involving war crimes for the specified years total only 155, which constitutes 0.07%

Table 1. Comparison of the number of criminal offences involving violations of the laws and customs of war (Article 438 of the Code of Criminal Procedure of Ukraine), 2022-2025

Years	2022	2023	Total
Number of criminal offences relating to violations of the laws and customs of war (Article 438 of the Code of Criminal Procedure of Ukraine)	60,387	60,944	121,331
Criminal offences in which individuals were served with a notice of suspicion	135	88	223
Where the location of the suspects is unknown	70	38	108
Due to the performance of procedural actions within the framework of international cooperation	0	0	0
Proceedings referred to court (sub-paragraphs 2, 3 of Article 283 of the Code of Criminal Procedure of Ukraine)	47	37	84
With a bill of indictment	47	37	84
Criminal offences in which proceedings were closed	33	5	38

Source: compiled by the authors

Table 2. Comparison of the number of war crimes (Article 438 of the Code of Criminal Procedure of Ukraine) for the years 2024-2025

Years	2024	2025	Total
Number of criminal offences relating to violations of the laws and customs of war (Article 438 of the Code of Criminal Procedure of Ukraine)	28,788	55,883	84,671
Criminal offences in which individuals were served with a notice of suspicion	64	57	121
Where the location of the suspects is unknown	30	29	59
Due to the performance of procedural actions within the framework of international cooperation	0	5	5
Proceedings referred to court (sub-paragraphs 2, 3 of Article 283 of the Code of Criminal Procedure of Ukraine)	46	25	71
With a bill of indictment	46	25	71
Criminal offences in which proceedings were closed	7	0	7

Source: compiled by the authors

Thus, the effectiveness of the pre-trial investigation authorities and the prosecution service in carrying out the tasks of criminal proceedings is extremely low. Overall, war crimes, acts of aggression, crimes against humanity and genocide, as well as military criminal offences – the rise in which is directly linked to the armed conflict – account for 41% of the total number of criminal offences recorded in the country during the relevant period of 2025. In particular, the total number of military criminal offences, which serves as an indicator of the state of military crime, accounts for over 34% of the total number of registered criminal offences. These tasks entail ensuring prompt, comprehensive and impartial investigations so that every person who has committed a criminal offence is held accountable, in accordance with the extent of their guilt. At the same time, the possibility of unjustified procedural coercion against any person must be ruled out, and all participants in criminal proceedings must be afforded appropriate procedural safeguards (Bogutsky, 2025).

[1] Resolution of the UN General Assembly No. 3452 "Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". (1975, December). Retrieved from https://ips.ligazakon.net/document/MU75010R.
[2] Universal Declaration of Human Rights. (1948, December) Retrieved from https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf.
[3] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

According to O. Dufeniuk (2022), the effectiveness of tasks related to the documentation of war crimes depends significantly on the application of a standardised approach and the systematisation of procedural actions. These actions are carried out taking into account international experience in investigating violations of international humanitarian law. Of particular importance is the development of specialised methodological guidelines, which can be classified according to criteria such as: the category of persons targeted by the attack; the object that was attacked; the means used to carry out the attack; the manner in which unlawful acts were committed against the victims; geographical location; as well as compliance with the provisions of the Special Part of the Criminal Code of Ukraine and other relevant factors.

One of the key mechanisms for securing evidence in criminal proceedings is the thorough and effective organisation of the interrogation of persons who have suffered from war crimes caused by the armed aggression of the Russian Federation. The main purpose of the interrogation is to obtain objective information from witnesses or direct victims of military actions; for example, in Case No. 2025 of the Khortytskyi District Court of Zaporizhzhia, six victims and three witnesses were identified and interrogated, and as a result, the court found the charges to be proven[1]. In such circumstances, interrogation must be conducted in accordance with the provisions of criminal procedural law, in compliance with the principles of forensic methodology and taking into account the specific psychological state of the aforementioned participants in the criminal proceedings.

When conducting interrogation in criminal proceedings concerning crimes committed in the context of an armed conflict, in particular those involving acts of torture and the unlawful detention of civilians, the investigator must take into account the specific nature of this category of offences. For example, in the 2025 case of the Chernihiv District Court of Chernihiv Region, the guilt of the accused in committing a criminal offence under Part 2 of Article 28 and Part 2 of Article 438 of the Criminal Code of Ukraine[2] is confirmed by the testimony of two victims interrogated in the court session, as well as three witnesses. These statements, gathered during the criminal proceedings at the time of questioning and directly examined by the court, are certified as proper and admissible evidence[3].

This approach is key to ensuring that detailed, consistent and substantive testimony is obtained from witnesses and victims. The tactics for interrogating victims and witnesses in proceedings concerning torture and the unlawful detention of civilians involve the implementation of distinct stages as set out in Appendix 1. The tactics for interrogating witnesses and victims in the context of investigating cases of unlawful imprisonment and the torture of civilians can be represented as five stages.

Stage one – preparatory. Analysis of all available materials, including medical reports (in accordance with the Istanbul Protocol[4]), reports from human rights organisations, previous statements from victims or witnesses, CCTV footage and other accessible resources. Familiarisation with the personal files of the victim or witness (where available), focusing on aspects of vulnerability, previous injuries and psychological and emotional state.

Planning the location and time: a safe and neutral setting must be chosen. The room for conducting the interview should be selected with both the safety and comfort of the victim in mind. Standard police interview rooms, which may be associated with coercion or threats, should be avoided. The best option would be a specially equipped room for working with victims, a psychologist's office, the office of a human rights organisation, or another location that ensures confidentiality and a comfortable environment. No unauthorised persons should be present in the room to avoid fears of information being disclosed or of judgement. Allow sufficient time; this may sometimes take several hours or even several meetings. At the commencement of the interrogation, explain to the victim that they have full control over the process. Emphasise that they may stop at any moment, take a break, or refuse to answer specific questions. Avoid rigid time constraints to foster a conducive atmosphere for conversation. If the volume of information is significant or the emotional topics are complex, provide extra time or divide the process into several sessions. Do not rush; allowing more time results in higher quality and more detailed testimony. If the victim exhibits signs of severe stress, panic, or flashbacks, the session must be paused or rescheduled. If necessary, complex questions can be revisited later with the support of a specialist psychologist (Pylypenko, 2022).

Forming the team is a crucial stage, where each member must possess specific professional qualities and skills: the investigator, in particular, must have experience in investigating serious crimes, demonstrating a deep understanding of the specifics of such

[1] Judgment of the Khortytskyi District Court of Zaporizhzhia in Case No. 337/4647/24. (2025, May). Retrieved from https://reyestr.court.gov.ua/Review/127424787.
[2] Judgment of the Chernihiv District Court of Chernihiv Region in Case No. 743/262/24. (2025, February). Retrieved from https://reyestr.court.gov.ua/Review/124852078.
[3] Ibidem, 2025.
[4] Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (1999, August). Retrieved from https://ukraine.un.org/sites/default/files/2021-06/Istanbul%20Protocol%20in%20Ukrainian.pdf.

proceedings and the ability to work effectively under highly complex conditions. An important aspect is the ability to apply a trauma-informed approach, which promotes a caring attitude towards victims, ensuring their comfort during communication. In addition, it is necessary to possess highly developed communication skills that allow one to establish contact with different people and gather information effectively. Patience and the ability to show empathy are of particular importance, as they help to build trust and mutual understanding with those involved in the process. An additional advantage is specialised training in areas relevant to such cases, which gives the investigator even greater competence and confidence in performing their duties. The psychologist plays a key role in assessing the psychological state of the victim, providing support during the interrogation, and advising investigators on conversational tactics. Their contribution may be direct (present during the interrogation) or indirect (observing via a one-way mirror). If the victim shows signs of withdrawal or panic, the psychologist has the right to intervene to suggest a break or a change of topic, in accordance with the principles of the Istanbul Protocol[1], ensuring access to professional psychological support is essential for both victims and witnesses of torture, as well as for members of the investigation team. Such support is particularly important in situations involving significant emotional strain. The psychological aspect of the victims' traumatic experiences must be taken into account, as recounting the violence they have endured may cause them to relive these events, creating a risk of their emotional state deteriorating. The involvement of a qualified specialist helps to minimise the negative impact of such experiences and prevent the onset of crisis reactions. Furthermore, hearing such testimonies is a challenging task for investigators as well. A psychologist provides them with support, helping to prevent professional burnout and avoid errors linked to reduced emotional sensitivity or excessive empathy. Thus, the involvement of a psychologist not only improves the condition of the victims but also contributes to the effective work of the investigative team (Zlivkov & Lukomska *et al*., 2022). An interpreter may be engaged if necessary, but it must be ensured that this person is completely independent, qualified and well-versed in both the relevant subject area and ethical considerations. The involvement of relatives or acquaintances for translation purposes is strictly prohibited. A legal representative is mandatory in cases involving minors or persons with partial or complete incapacity. The victim's lawyer is also entitled to participate in the proceedings. Their presence is essential to ensure the protection of the victim's rights and interests.

The preparation of technical equipment is a critically important stage, where video and audio recording tools play a significant role. These instruments ensure not only an accurate record of the conversation but also help avoid the need for re-interrogation, which can be traumatic for the participants. Modern technology allows for the recording of an individual's emotional state and behaviour, while reducing the risk of claims regarding potential influence or pressure during the procedure. It should be noted that cameras must be positioned correctly: they must provide a full view of the situation and all present, yet without creating additional discomfort or stress for those involved. Directing cameras directly at the face should be avoided. Particular attention should be paid to interviews involving victims in cases concerning torture, violence or unlawful detention. In such cases, it is extremely important to preserve all details of the testimony in such a way that they remain as convincing as possible even after a considerable period of time. To this end, international guidelines, such as the Istanbul Protocol, recommend the simultaneous use of both video and audio recording, as well as the mandatory preparation of a written record. The use of a video camera allows not only the content of the victim's words to be recorded, but also their non-verbal cues of emotion, facial expressions and tone of voice, which are often of key importance in assessing the credibility and psychological state of the individual. Under the current Criminal Procedure Code of Ukraine[2], authorised officials, namely the investigator or prosecutor, are empowered to make video recordings of the interrogation process. Consequently, such recordings become an integral part of the criminal case file. Video recordings are particularly significant in cases involving war crimes. As investigations into such proceedings can last for years, the recordings help to preserve the testimony of key figures – both victims and witnesses. Experience from other countries convincingly demonstrates the importance of this approach. For example, in Georgia following the 2008 war, authorities faced situations where victims, long after the events, began to forget key details or were forced to relocate. In some cases, due to the passage of time, witnesses were no longer able to participate in proceedings for natural reasons, such as death or loss of contact with them (OSCE, 2009). In such circumstances, video recordings of interrogations serve as an indispensable source of evidence and a guarantee of the preservation of data that may be crucial for the fair administration of justice. Thus, the recording of testimony using modern technology is a vital element in ensuring the rule of law and the protection of human rights at the international level.

[1] Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (1999, August). Retrieved from https://ukraine.un.org/sites/default/files/2021-06/Istanbul%20Protocol%20in%20Ukrainian.pdf.

[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/laws/show/4651-17.

Physical comfort involves creating a comfortable environment that promote a person's comfort and peace of mind. This includes providing a comfortable chair, an optimal temperature, and the absence of unnecessary noise. It is also important to inform the victim in advance of the location of the toilet, provide access to drinking water, and, in the case of lengthy interviews, ensure that meals are available. All of this is aimed at ensuring that the victim feels cared for and understands that their well-being is a priority during the investigation.

Stage two – commencement of interrogation and establishment of contact. The start and explanation of procedures (1) should be organised as follows:

- introduction (first name, middle name, surname, position), as well as an introduction to the specialists present (psychologist, interpreter or other participants);
- clearly stating the purpose of the interrogation – to obtain information to bring those responsible to justice;
- a step-by-step explanation of the audio and video recording procedure, explaining its importance, and outlining the group of people who will have access to the recordings;
- informing the victim or witness of their rights: the right to refuse to testify against themselves or their relatives, the right to legal assistance, access to medical or psychological support, and the right to take a break at any time;
- obtaining written consent to conduct the interview and record the information, having first provided comprehensive information about their rights. If the interrogation concerns a minor, ensure that the consent of their legal representative is obtained.

Building trust and ensuring a sense of safety during communication (2) is an extremely important aspect, particularly when working with victims or emotionally vulnerable people. To achieve this, several key recommendations must be followed:

- adopt an empathetic approach in communication. This may include using encouraging and supportive phrases, such as "I understand how difficult it may be to discuss this right now". Such words are intended not only to lower psychological barriers but also to demonstrate genuine empathy, which helps to create an atmosphere of trust;
- always show respect for the person speaking, completely avoiding any signs of judgement or doubt regarding their words. It is particularly important to emphasise the significance of the victim's testimony, as this allows to feel their own worth and importance in the situation that has occurred. This approach will help strengthen the person's confidence in the correctness of their decision to speak about the problem;
- it is necessary to closely monitor the person's emotional state throughout the conversation. This task must be carried out by both the psychologist and the investigator, who should carefully observe for any signs of anxiety or emotional overload. Through body language, intense crying, trembling, panic attacks or signs of dissociation, a person may signal that they need immediate help or a break to regain their emotional balance. In such cases, it is advisable to immediately stop discussing difficult topics and switch to neutral questions, or postpone difficult conversations until a later time. It is absolutely unacceptable to apply pressure or demand that the person 'pull themselves together', as this may not only worsen the victim's mental state but also seriously undermine their trust in the investigation process;
- it is important to support the person in practical ways: offer water, ask if they need a break or medical assistance. To reduce stress, the use of sedatives may be considered, but only on the advice of a doctor and preferably before the interview begins. This is particularly relevant in cases where the person is in a state of severe nervous tension and requires additional support. Overall, creating a safe space and paying close attention to the person's emotional needs not only facilitates successful communication but also helps prevent potential psychological trauma during the interaction.

Stage three – main interrogation stage (information gathering). Begin with general questions and an informal account of the circumstances, allowing the victim to speak freely (1). At this stage, it is important to establish an atmosphere of trust. The investigator should explain that the aim is to establish the truth, ensure justice and bring those responsible to account, rather than to force the victim to relive their pain. To this end, it is advisable to begin with friendly and neutral phrases, such as: "Please tell everything that happened to you, starting from (specify a specific moment, for example, the arrest), exactly as you remember it. Take your time".

Subsequently, sufficient time must be allowed for a free account of the circumstances without unnecessary interruptions. Active listening techniques will be key: ensuring a comfortable pace of conversation for the victim, demonstrating patience, attention and empathy both through verbal communication and non-verbally. Avoid expressing doubt about the speaker's words, as well as showing visible shock or judgement, as this may complicate further communication and cause the speaker to become more withdrawn. It is recommended to ask open-ended questions that encourage the victim to provide detailed answers, such as: "Could you describe the circumstances of what happened in more detail?" Leading questions must be avoided, for example: "Were you subjected to electric shocks?", as such questions may negatively affect the accuracy of memories. In accordance with the provisions of the Istanbul Protocol, the use of leading questions should be completely excluded to ensure the most objective and unbiased account of the facts regarding torture or unlawful detention. This

approach facilitates the collection of reliable information and protects the victim from re-traumatisation.

To simplify the process of reconstructing events, it is advisable to use diagrams, maps and images of the locations where they took place. Such visual aids help to organise information and reduce the fragmentation of memories. Practice shows that these tools help the victim to better recall the details of their experience, and enable investigators to obtain more accurate and complete testimony (Dragan, 2024). For example, a detailed map of the area on which the victim can mark specific places of detention, torture or any other important points, such as the locations of events related to their experience, as well as a diagram of the premises where they were held, can help recall additional details or memories of the events; for instance, in the 2025 case of the Chernihiv District Court in Chernihiv Region, where, according to the victims' testimony, they were repeatedly moved to different places of detention[1].

Using techniques that take traumatic experiences into account (2):

- avoid pressure and conflict. Do not force a person to share their most painful memories if they are not ready to do so;
- pay attention to sensory details. It is worth finding out what the person saw, heard, felt physically, and what smells or tastes they remember. This will help to better reconstruct the events, but at the same time may trigger difficult emotional experiences. Questions such as: "What did you feel at that moment?", "What sounds could you hear?", "What was around you?" may be particularly relevant;
- following the chronological order of events helps to structure memories, but it is important to allow the person to deviate from this sequence if it helps to describe the circumstances more accurately (Strok, 2022);
- examining the context leading up to the event is a crucial step. It is important to understand the circumstances that preceded the situation of captivity, as this allows for a deeper understanding of how events unfolded (Hrechana, 2023);
- a detailed description of the conditions of detention is essential. The parameters of the premises must be recorded: dimensions, lighting, temperature, sanitary and hygiene conditions (in particular the condition of sanitary facilities and access to water), the presence of everyday items (for example, beds or facilities for rest), meal arrangements, access to fresh air and natural light, the opportunity to communicate with other people, as well as the presence of technical surveillance or security equipment.

For example, in a 2025 case heard by the Balakliya District Court of Kharkiv Region, civilians were held in cells of a former temporary detention centre located on the ground floor of the building housing Police Station No. 1 of the Izium District Police Department of the Main Directorate of the National Police in Kharkiv Region. The victim was held in inhumane conditions, which could be regarded as offensive and degrading treatment. The cells were completely devoid of furniture, no hygiene products were provided, and access to toilets was prohibited. This forced people to relieve themselves directly within the detention premises. Food and water were provided in minimal quantities and at long intervals. Prisoners were held without access to fresh air, and no medical assistance was provided to them following the use of physical violence[2].

A detailed investigation into acts of torture and cases of unlawful detention requires an extremely meticulous approach to the collection and documentation of information (3). This is a complex process that encompasses several key aspects and demands prudence, objectivity and accuracy.

First and foremost, it is necessary to clarify as fully as possible all specific actions that were carried out against the victim or took place in their immediate presence. In this context, it is important to record every detail that may be significant: the position of the victim's body during various episodes of violence, the instruments used, the methods of influence, as well as the parts of the body targeted by the abuse. For example, in the village of Obukhiv, Vyshhorod District, Kyiv Region, during the occupation by Russian Federation military personnel, a civilian wearing civilian clothing who was protected by international humanitarian law – which prohibits attacks on such persons – was unlawfully deprived of her liberty. A Russian serviceman struck her in the face with the butt of an AK-74 assault rifle and then subjected her to a forced interrogation. He then struck the victim in the right thigh with the rifle, with the bayonet attached, and continuously beat her body and head with the butt of the weapon for 10-15 minutes. As a result of these actions, the civilian sustained bodily injuries: deep open wounds to the right thigh and the area of the left shoulder joint, and numerous bruises all over her body. This caused severe bleeding, significant physical pain, and psychological and emotional distress[3]. When interviewing individuals who have survived such traumatic events, particular attention should be paid to tact and to avoiding repetitive questions, especially if answers to them have already been obtained previously. However, should it

[1] Judgment of the Chernihiv District Court of Chernihiv Region in Case No. 748/2577/24. (2025, May). Retrieved from https://reyestr.court.gov.ua/Review/127524899.
[2] Judgment of the Balakliysky District Court of Kharkiv Region in Case No. 610/1715/24. (2025, December). Retrieved from https://reyestr.court.gov.ua/Review/132801900.
[3] Judgment of the Ivankivskyi District Court of Kyiv Region in Case No. 366/1631/25. (2025, December). Retrieved from https://reyestr.court.gov.ua/Review/132885340.

be necessary to seek further clarification or gather additional facts, the utmost professionalism and caution must be exercised. This applies particularly to questions about moments that may re-enact scenes in the victims' memories, which could cause them psychological trauma or exacerbate existing trauma (Hrydkovets *et al*., 2024);

When recording statements, it is advisable to carefully note the personal characteristics of individuals who may have been involved in unlawful acts. This includes aspects such as their appearance (distinguishing features, height, build, clothing), the specific tone of their voice and manner of speaking, as well as other notable features. If the suspects stated their names or nicknames, or if this information became known in any other way, it is particularly important to record it. Furthermore, details regarding the perpetrators' appearance are significant: the cut or style of their clothing, their behaviour during the events, the level of aggression, or conversely, a certain degree of control over their actions. Nor should the content of conversations between these individuals be overlooked. Words, phrases or characteristic expressions they used, particularly if spoken in a specific language or slang, may be key to the subsequent identification of the perpetrators.

A particular and extremely important task is to establish the chronology of events. In this context, it is necessary to determine with the utmost precision the duration of each specific act or episode of violence, as well as the frequency with which they occurred – whether the events took place hourly, daily, or at specific intervals over the course of weeks. This approach allows for the creation of a structured and coherent picture of the nature and extent of the victim's suffering. Furthermore, it helps to identify the intensity and regularity of the perpetrators' actions and to determine whether they were systematic in nature. A comprehensive approach to collecting such data is key to a productive investigation and makes an important contribution to ensuring justice and fairness. For example, in 2024, the Suvorovsky District Court of Odesa considered a case in which the sequence of events consisted of luring the victim to a prearranged location, abduction, imprisonment and torture. According to the victim's testimony, on 12 March 2022, he received a call from an unknown number from a local activist who had previously been a retired blogger. He suggested meeting at 17:00 near the bus station in the town of Kakhovka. Upon arriving at the location, the journalist was seized by Russian military personnel due to his pro-Ukrainian stance as a journalist for the Kherson regional newspaper "Novy Den", who had not taken part in hostilities but found himself under the control of the occupying authorities during the conflict. Russian Federation soldiers, carrying out their commander's orders, arrived at the bus station in the town of Kakhovka at 17:00 that same day. Using physical force against the journalist, they pinned him to the ground, handcuffed him and forcibly placed him in a vehicle. The detained journalist was then taken to the Kakhovka District Police Department of the Main Directorate of the National Police in the Kherson region, where the victim was searched on the premises whilst being threatened with death. He was struck numerous times on the legs and torso with the butt of a weapon. These actions violated paragraph "b" of Article 3 of the Convention against the Taking of Hostages[1]. In a cold room, the journalist was handcuffed to a radiator, held in conditions that were physically debilitating due to a lack of food and water, until 20 March 2022. During this period, he was forced to perform actions against his will. He was deprived of the opportunity to leave the premises, despite his unwillingness to remain there. He was thus unlawfully detained (imprisoned), with the aim of obstructing his professional activities as a journalist. These actions constitute a violation of paragraph "a" of Article 3 of the Convention, which prohibits inhuman or degrading treatment[2].

Particular attention must be paid to the acts committed and their consequences for the victim's physical and psychological condition. It is necessary to clarify the nature and severity of the bodily injuries sustained, such as bruises, wounds, fractures, etc. In addition to physical injuries, it is advisable to assess the victim's subjective perception of pain, as well as to document the presence of psychotraumatic manifestations, which may include fear, anxiety or humiliation. It is particularly important to pay attention to any physiological reactions of the body to the violence experienced, which may range from nausea or loss of consciousness to temporary loss of speech or spatial orientation. If the victim received medical assistance, it is necessary to note the extent of such assistance, the circumstances under which it was provided, and the persons who provided it, specifying the time. For example, in 2025, the Balakliya District Court of Kharkiv Region heard a case in which a civilian who had been unlawfully detained was held in conditions that fell under the definition of degrading and cruel treatment, as a result of which they developed post-traumatic stress disorder. The detention facility was devoid of furniture, lacked hygiene facilities, and access to toilets was prohibited, forcing detainees to relieve themselves directly in their place of confinement. Food and water were provided in minimal quantities and with significant delays. The detainee was not allowed to

[1] Judgment of the Suvorovsky District Court of Odesa in Case No. 523/224/23. (2024, March). Retrieved from https://reyestr.court.gov.ua/Review/117988682.
[2] Ibidem, 2024.

go outside, and no medical assistance was provided following the use of physical violence. As a result, the victim began to show signs of post-traumatic stress disorder. This disorder arose as a result of unlawful actions by Russian military personnel, which consisted of unlawful detention, confinement in a cell, the use of physical and psychological violence, and being held in inhumane conditions during the period from 18 April 2022 to 28 April 2022[1].

It is equally important to carefully document all verbal expressions or threats made by the perpetrators. These include, in particular, threats of violence or murder, abusive language or humiliating remarks. It is important not only to record the content of such statements, but also to describe their context, emotional tone and the victim's reaction to the statements made. Furthermore, note the frequency of such statements and their specific recipients, whether an individual or a group of people. For example, in 2026, the Khadzhibeyskyi District Court of Odesa considered a case involving not only the unlawful detention and torture of a civilian but also threats to kill the civilian and his family. The events took place in occupied Kherson; during the unlawful detention, Russian military personnel forcibly held the civilian in a fixed seated position with their hands bound by plastic zip-ties. Under orders, the victim was systematically subjected to brutal treatment, including beatings with hands, feet, and rifle butts to the torso, head, and legs. As a result, the civilian repeatedly lost consciousness. Automatic weapons were also pointed at him to simulate an execution. An unidentified Russian soldier fired twice near the victim's head, accompanying this with threats to kill both the civilian himself and his family – his wife and child. These actions caused severe mental and psychological suffering to the victim[2].

Finally, it is necessary to obtain information regarding the possible motives or objectives of the perpetrators' actions. In particular, it should be ascertained whether these actions were intended to obtain information, demonstrate power, impose punishment, tighten control over the victim, or whether they were accompanied by elements of entertainment, sadism or humiliation. For example, in 2025, the Chernihiv District Court of Chernihiv Region considered a case that occurred during the Russian Federation's occupation of the Ukrainian village of Desnyanka in Chernihiv Region, where three male civilians were detained with the aim of obtaining information about individuals collaborating with the Armed Forces of Ukraine and passing on data regarding the location of Russian military personnel and equipment within the village. After transporting the victims to a farmstead not identified by the investigation, a group of unidentified servicemen of the Russian Armed Forces forced them out of the vehicle. Threatening to use weapons, the perpetrators pulled hoods over the victims' faces, covering their eyes. The victims were subsequently led into the courtyard of a neighbouring property, forced to lie face down on the asphalt surface of the courtyard and spread their arms wide apart. On the premises of this courtyard, unidentified servicemen of the Russian Armed Forces, acting with full awareness of the unlawfulness of their actions, used physical force against the victims. For approximately two hours, the perpetrators struck the three detained civilians repeatedly with a metal sledgehammer all over their bodies – from head to toe – causing them severe physical pain and suffering. Afterwards, the victims were placed in a cellar, where they remained until the following morning[3].

It is also important to determine whether these actions were discriminatory in nature; for example, if they were directed against individuals on the grounds of their ethnicity, religious beliefs, gender identity or other characteristics. Analysing these factors will contribute to a comprehensive understanding of the circumstances of the offence and ensure justice is done. For example, in 2025, the Makariv District Court of Kyiv Region heard a case concerning discrimination on the grounds of national self-determination and identity. During the Russian Federation's occupation of the village of Havronshchyna in the Makariv Amalgamated Territorial Community of the Bucha District, a civilian was subjected to physical and psychological abuse due to his pro-Ukrainian stance. During a search of the civilian, a security guard at a golf club, Russian military personnel discovered a mobile phone in which a conversation between the civilian and his sister was found in a messaging app. In the conversation, he expressed his pro-Ukrainian position. Russian military personnel subjected the civilian to physical abuse. Subsequently, after approximately 2-3 minutes, in order to spare the civilian's life, they dug him out of the ground, tied him to a tree and held him for two days with his hands, feet and eyes bound, not allowing him to leave the location. In doing so, they deprived him of the ability to meet his basic needs for food, water, personal hygiene and protection from harsh weather conditions, which constituted cruel treatment of a civilian. He was then placed in a pit dug in the ground, where he was also forcibly

[1] Judgment of the Balakliya District Court of Kharkiv Region in Case No. 610/1715/24. (2025, December). Retrieved from https://reyestr.court.gov.ua/Review/132801900.
[2] Judgment of the Khadzhibeyskyi District Court of the city of Odesa Case No. 521/14869/23. (2026, January). Retrieved from https://reyestr.court.gov.ua/Review/133106441.
[3] Judgment of the Chernihiv District Court of Chernihiv Region in Case No. 748/2577/24. (2025, May). Retrieved from https://reyestr.court.gov.ua/Review/127524899.

detained without the ability to leave the site or meet his basic needs[1].

Addressing inconsistencies and gaps in the perception and recollection of traumatic events is a key aspect of analysing victims' testimonies and statements (4). The human psyche often employs defence mechanisms, such as the repression of memories or the fragmentary reconstruction of experiences, which can affect the quality and completeness of the information provided. As a result, victims' testimonies often take on a fragmentary, inconsistent or even partially incomplete character. Experiences of physical violence, sexual offences, or situations of helplessness and uncertainty often lead to a loss of control over what was happening, which significantly complicates the process of comprehending and integrating these events into memory. In view of this, it is not advisable to highlight possible contradictions or gaps in the victim's initial account of events, as such characteristics naturally arise from the specific nature of psychologically traumatic situations.

Clarifying questions should only be used after the victim or witness has shared their account of the experience in a free and as detailed a manner as possible. The main purpose of such questions is to ensure the elaboration and clarification of information already received, whilst avoiding any pressure, the imposition of new circumstances, or the creation of false assumptions. The wording of questions should be based solely on what the victim or witness has said, remaining neutral and polite in both language and tone. For example, if a witness mentioned that it was cold during the events described, one might ask: "Could you clarify how you experienced this cold?". Or, if a blow is mentioned, it would be appropriate to ask: "Could you describe in more detail exactly where the blow was struck and with what object?". This method of structuring questions is designed to elicit the most accurate and comprehensive information possible. It also helps to minimise psychological pressure on witnesses or victims during questioning and facilitates the reconstruction of a clear sequence of events, even in complex and traumatic circumstances.

During interrogation, it is particularly important to adhere to the principle of avoiding leading statements or questions that might contain assumptions or prompt the interviewee to give a specific answer. Such questions not only undermine the reliability of the information obtained, but may also cause further psychological harm to the victim or witness. For example, a question such as: "Did the attacker hit you on the back with a stick?" is problematic, as it implies a specific method of violence. Such an approach may inadvertently distort the person's recollection of the event or create a false impression of what happened. Instead, it is better to use open-ended questions, which allow the person to describe the circumstances of the incident freely and in their own words. For example, it is advisable to ask: "How exactly were you injured in the back?" Using such questions not only allows for obtaining more detailed and truthful information, but also reduces the risk of influencing the perception of the testimony (GSU of the Ministry of Internal Affairs of Ukraine, 2025). This helps to ensure maximum objectivity and accuracy when recording the facts, leaving minimal scope for bias or the influence of external factors.

Stage four – concluding the interrogation process. This part of the interrogation is aimed at ensuring the maximum effectiveness of the process, creating a comfortable environment for the interviewee, and providing further support after the interrogation has concluded. The first step is to provide an opportunity for additional information and clarifications (1). It is recommended to use neutral, open-ended phrasing that encourages a more detailed account without pressure. For example, one might ask if there is anything important that has been overlooked, or if the person wishes to add or clarify any details. This approach facilitates a deeper and more accurate account of the circumstances, helping to avoid the possible omission of key facts. Furthermore, it helps to create an atmosphere in which the victim or witness feels in control of the situation and psychologically safe whilst giving evidence.

Organisation of support measures (2):

- involves ensuring immediate access to resources and professional assistance following the conclusion of the interrogation. In particular, specialists in psychology or medicine should be engaged to respond promptly to the needs of those affected;
- providing contact details for institutions and organisations that provide legal, psychological, medical or social support to victims of torture. This approach guarantees comprehensive protection and facilitates the rehabilitation of individuals in difficult life situations.

Stage five – post-interrogation. When drafting the protocol, it is essential to ensure the highest possible accuracy, detail and objectivity, avoiding oversimplifications, generalisations or distortions of information. The document must reflect all the important details necessary to reconstruct the events and conduct a subsequent legal assessment. In particular, the protocol should include a description of the circumstances, the behaviour of individuals, the conditions of detention, the nature and consequences of the use of violence, as well as the statements of those involved in the events. Once the protocol has been finalised, the victim or witness should be given the opportunity to review its contents and make comments or

[1] Judgment of the Makarivskyi District Court of Kyiv Region in Case No. 370/2058/22. (2025, May). Retrieved from https://reyestr.court.gov.ua/Review/127640506.

clarifications, which must be duly recorded in the document (Dragan, 2024).

The decision on whether to conduct further interrogations should be considered in the context of minimising the negative impact on victims. One of the main objectives is to prevent situations where a person is forced to recount traumatic events time and time again. Repeated interrogations can exacerbate psychological trauma, so it is particularly important to ensure that all necessary and relevant information is obtained during the first interview. Questions should be formulated in such a way as to gather as much information as possible, both regarding the specific crime and the broader context of the situation (conditions of detention, information about other individuals who were also detained, details of possible accomplices and the circumstances of the crime). The record should note even those details which, at first glance, appear peripheral to the current investigation but may play an important role in establishing the full picture of a war crime (Glovyuk *et al*, 2022). For example, victims' references to other detainees or descriptions of guards may become significant evidence in other proceedings, including international ones. Ensuring such comprehensiveness helps minimise the need for re-interrogated of victims by different law enforcement agencies, which is important for preventing secondary victimisation. In this context, coordination between investigators and prosecutors dealing with different episodes of war crimes becomes critical. It is necessary to identify in which cases the same person appears as a witness or a victim, and to make maximum use of already documented testimony. European practice regards such measures as an integral part of victim protection: the state is obliged to ensure their effective participation in the justice process, to protect them from re-traumatisation, intimidation or retaliation by perpetrators, and to provide support for the recovery process (Popov & Poyedynok, 2024).

Providing support to the victim is an extremely important stage in the process of assisting a person who is in a difficult life situation. Once the interrogation has concluded, the victim must be provided with all forms of support that may be necessary for their recovery, in particular psychological support to help reduce emotional stress, and medical care aimed at improving their physical condition. This approach not only helps the victim feel cared for and supported, but also contributes to the overall process of their rehabilitation and return to a normal rhythm of life.

Ensuring the safety of victims of crime, as well as witnesses, is one of the key tasks of law enforcement agencies during the investigation. It is crucial to take measures that minimise the risk of psychological pressure or threats of external influence. This is particularly relevant in cases where crimes have been committed by military personnel of the Russian Federation or other associated entities. In such situations, victims may fear persecution, reprisals or other forms of pressure from perpetrators, who often remain at large. This problem is particularly acute for residents of temporarily occupied territories or other vulnerable groups. One of the key priorities is ensuring the confidentiality of victims' personal data to prevent its unauthorised disclosure. In high-risk situations, procedural mechanisms for protecting information may be implemented. For example, to preserve anonymity, pseudonyms may be used in documentation, closed court hearings may be held, or other special measures may be employed (Solovyova, 2025). Such measures enhance the safety of victims and create conditions for their comfortable cooperation with the investigation. The state has a duty to ensure both the physical and psychological safety of victims of crime, witnesses and their family members. This includes protection from any form of pressure, threats or violence. In fulfilling this duty, the investigator, together with the prosecutor, must conduct a thorough analysis of potential risks to victims and those around them. If a risk is identified, appropriate security measures must be initiated. These may include providing physical protection, changing the person's place of residence, or enrolling them in a state witness protection programme. At the same time, all proposed actions must be agreed with the person under protection to ensure they feel in control of the situation. Guaranteeing safety is not only a practical aspect of law enforcement work but also an ethical obligation towards victims, demonstrating care for their needs and strengthening public trust in the justice system. Providing the necessary conditions for a sense of security reinforces victims' conviction that the state puts their interests first and acts solely with the aim of restoring justice.

Discussion

An investigator conducting an interrogation in certain circumstances must possess not only theoretical knowledge but also practical experience of working with people who have experienced traumatic events and are under stress. When interrogating witnesses and victims, it is essential to adhere to international human rights standards, ensuring compliance with the principles of legality, humanity, justice, respect for the dignity and honour of the individual, as well as the avoidance and prevention of any form of coercion. Furthermore, it is important to create conditions to ensure the safety and confidentiality of witnesses and victims so that they can feel at ease and open during investigative proceedings (Zhovtyuk, 2024). The researcher's conclusions are entirely appropriate; the presence of outsiders during questioning is unacceptable in order to prevent fear regarding the possibility of information being disclosed or of condemnation. Taking safety and comfort into account during the interrogation gives the victim a sense of security and confidence, which facilitates the provision of important information necessary for an objective investigation.

This position is also expressed by S.I. Hrechana (2023), who emphasises that during the interrogation of a person in accordance with Article 225 of the Code of Criminal Procedure of Ukraine[1] the investigator or judge must take into account their difficult life circumstances, psychological or other vulnerable state, caused, in particular, by the commission of a criminal offence. In this regard, it is necessary to apply a special, psychologically sound approach to communicating with such a person. The author's assertion is consistent with the results of the analysis conducted above: during interrogation, particular attention must be paid to preventing any form of coercion or pressure. V. Shymko (2024) focuses on the use of linguistic indicators, particularly lexical and syntactic characteristics of texts, such as social media posts or self-reports. Paralinguistic features, in particular prosody, intonation and speech rhythm, have been studied less actively, despite their proven predictive significance. Most often, attention has been paid to personality traits such as extraversion and neuroticism, whilst agreeableness and conscientiousness have remained under-researched. At the same time, there is a trend towards integrating artificial intelligence into the development of personality questionnaires. The conclusions of this researcher, taking into account the results of this study, can be considered from another perspective, namely the use of active listening techniques, in particular demonstrating genuine attention to the interlocutor's words and establishing a comfortable rhythm of conversation, whilst avoiding any coercion that might force a person to relive their pain. It is essential to refrain from expressing doubts about their testimony, as well as to avoid visible reactions of shock or judgement, so as not to complicate further interaction or shut down the interlocutor. Particular attention should be paid to sensory details: exactly what the person saw, heard, physically felt, and which smells or tastes they remember. Questions such as: "What did you feel at that moment?", "What was around you?", "What sounds did you hear?" may be important. This will help to reconstruct the events in greater detail. No details relating to conditions of detention, instances of physical or psychological violence, or their frequency and duration should be overlooked.

According to V.M. Pletenets (2022), preparation for interrogation is a key prerequisite for conducting it effectively and to a high standard. A lack of proper preparation significantly complicates, and sometimes even prevents, the achievement of the main objectives of the interrogation, in particular, obtaining sufficient and substantiated information about the circumstances of the commission of a criminal offence and ensuring its proper legal assessment. At the same time, this creates difficulties in minimising the risks of psychological trauma to the person being questioned, who may be forced to recount events of a tragic, violent or sexual nature. Such cases quite often accompany the relevant offences and, under martial law, have become significantly more frequent in the territories of Ukraine occupied by the Armed Forces of the Russian Federation. This researcher's assertions are valid, but it is also advisable to pay attention to the physical comfort of those being interrogated, which involves creating comfortable conditions: a comfortable chair, an optimal temperature, and the absence of unnecessary noise. It is important to inform them in advance of the location of the toilet, to provide water and, if necessary, the opportunity to eat during lengthy interrogations.

According to M.V. Lepei (2024), a critical component of preparing for an interrogation is ascertaining the personal interest of the interviewee in achieving specific outcomes in the case. It is also necessary to determine the nature of the relationships between participants using a structured scheme: witness and suspect, victim and suspect, victim and witness, or suspect and another accomplice. According to O.M. Pasko & V.V. Horoshko (2022), the investigator's communicative readiness during the conduct of investigative (detective) actions is of paramount importance. This aspect is viewed as a complex state that influences the investigator's ability to engage in effective social interaction. Particular attention is paid to the importance of ensuring an adequate level of communicative readiness during the conduct of investigative (detective) actions. In turn, the scholar I.A. Strok (2022) rightly emphasises the importance of structuring questions to the victim in such a way that they follow logically from one another. Each subsequent question must be linked to the previous one, creating a coherent and interconnected chain. This allows for a comprehensive reconstruction of the events as perceived by the interviewee as an eyewitness. This method facilitates the obtaining of the most complete answers, ensuring an accurate reconstruction of the situation. According to O. Chernovsky (2018), the incorrect choice of interrogation method by an investigator or prosecutor, as well as the disregard of the psychological characteristics of the person being questioned, lead to delays in the pre-trial and judicial investigation process. According to O.V. Fedorchuk (2020), the tactical conditions under which an interrogation is conducted directly affect its effectiveness and require special attention. Focus is placed on the potential consequences arising from investigative errors made during the interrogation. Interrogation is the most common method of obtaining information; however, it remains one of the most complex and responsible investigative (detective) actions, requiring not only deep theoretical knowledge but also high-level practical skills.

The analysis conducted reveals that the interrogation of witnesses and victims requires a thorough

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/laws/show/4651-17.

professional approach, encompassing a high level of general and professional competence, as well as an understanding of human psychology, which plays a key role in establishing the veracity of the testimony obtained. The optimal way to organise a witness interview is to divide it into several separate stages. Such a methodological approach not only helps to structure the interview process but also ensures more effective information gathering. This allows the investigator to combine the advantages of various questioning techniques and creates the conditions for obtaining the most detailed and reliable testimony. Furthermore, this method minimises the risk of a significant decline in the quality of verbal communication, whilst maintaining the participants' focus on the details of each episode under discussion.

According to V. Osmolyan (2024), the accuracy of conveying information about a criminal offence depends to a large extent on the witness's ability to articulate their thoughts clearly. However, even with a high level of linguistic proficiency, there may be a discrepancy between what the witness meant and how they expressed it to the investigator (detective). Such distortions often arise due to the overly rapid pace of interrogation or difficulties in choosing the right words. Sometimes investigators (detectives) mistakenly interpret the slow pace of a witness's answers – where the witness ponders their words and pauses whilst giving evidence – as a sign of insincerity. It is important to bear in mind that, when giving evidence, a witness is not only conveying information about the offence to the investigator (detective), but is simultaneously analysing their own words and critically evaluating them, comparing them with their previous perceptions. Thus, the pace of the interrogation must not hinder the witness's ability to express their thoughts in a reasoned and considered manner.

In light of the findings of this study, it is advisable to consider the conclusions of these researchers from a different perspective. Specifically, one should take into account the possibility that it may become necessary to add further information or clarifications to the record during the interrogation. The investigator must therefore anticipate such a situation during the preparatory stage of the interrogation to ensure that this is possible. When drawing up the record, one should strive for maximum accuracy, objectivity and detail, avoiding oversimplifications and generalisations. S.V. Kobets (2022) emphasises that although interrogation is one of the most important and widespread sources of evidence in criminal proceedings, it remains one of the most complex investigative procedures in terms of the tactics employed. This conclusion stems from the fact that, to conduct an interrogation successfully, an investigator must not only possess legal knowledge but also understand the basics of psychology, as well as be able to establish effective rapport with the interviewee. This must be done in such a way that the interviewee discloses important information to the investigator, even if they are not particularly inclined to do so. This involves establishing what is known as psychological contact – the most conducive psychological atmosphere during an interrogation, which facilitates the establishment of interaction and rapport between the parties. It is a certain mindset geared towards productive communication.

According to V.Yu. Shepitko (2023), criminalistics currently faces new challenges aimed at developing scientific approaches to documenting, recording and proving the commission of war crimes and other crimes of an international nature, as well as at the effective application of the capabilities of digital criminalistics. Video and audio recording are integral elements of the process. They help to avoid repeated interrogations and also allow the emotional state and behaviour of a person to be recorded. Of particular importance is the accurate preservation of victims' testimonies in cases involving torture or unlawful detention, to ensure their reliability even after a long period of time. During interrogation, it is recommended to use a video camera, which allows not only the content of what is said to be recorded, but also the victim's emotions, facial expressions and intonation to be captured.

O.E. Solovyova (2025) also holds this view, emphasising the issue of protecting victims and witnesses, as individuals who have suffered from war crimes are in a state of psychological trauma, which complicates the obtaining of credible and sufficient testimony, and the need to use video recordings of interviews for subsequent use in national and international courts. The assertions of these researchers are entirely well-founded and consistent with the present study, as providing support to victims is an extremely important element of assisting people who find themselves in difficult life circumstances. Particular attention should be paid to the safety of victims of crime, ensuring the confidentiality of their personal data to prevent unauthorised disclosure. An important component of the modern investigative process is the audio and video recording of interviews with witnesses and victims. The use of such methods ensures the accuracy of the recorded evidence and prevents its distortion. The main procedure comprises several key stages. Firstly, it is necessary to ensure that the technical equipment is functioning properly and that the recording conditions meet the required standards. Before commencing, the investigator must inform the individual that their testimony will be recorded via audio or video and obtain their consent, where required by law. During the interrogation, it is important to avoid any actions that could compromise objectivity or negatively influence the testimony. Recordings made during the interrogation are of great significance as evidence. They confirm the authenticity of the testimony and help the court assess its credibility. Furthermore, such materials serve as a vital element

in safeguarding the rights of those being questioned, as they reduce the risk of their answers being misinterpreted or manipulated by third parties. Access to these materials is restricted and governed by legal provisions that guarantee the protection of personal data.

M.G. Korabel & A. Pavlenko (2025) make a valid point when they argue that the examination of witnesses in proceedings relating to violent criminal offences is an extremely emotionally charged process. For the most part, these individuals have witnessed the suffering of their loved ones, which further complicates the situation. The main objective during the interrogation is to clarify the circumstances preceding the crime, as well as the events that occurred afterwards. In doing so, the professional experience of the witnesses and any particularities of their condition must be taken into account. The informational and psychological interaction between the participants in the process must take into account the emotional state of both the victims and the witnesses to ensure the most appropriate approach. It is particularly important to consider the presence of physical or psychological trauma both during preparation for the interview and directly during the interview itself. The conclusions drawn by the researchers are entirely relevant, as a thorough analysis of the individual and a preliminary examination of the circumstances of the crime, taking into account the individual characteristics of the witness or victim, allows for an assessment of their current emotional state and psychological profile, which is necessary for adapting the interrogation tactics. This approach ensures the collection of both verbal and non-verbal information.

The synergy of the conclusions drawn by all the scholars discussed above, taking into account the results of this study, has made it possible to identify the key features of conducting interrogations of witnesses and victims in cases of torture and the unlawful detention of civilians. The following aspects should be noted:

- a thorough analysis of the individual and a preliminary examination of the circumstances of the crime, taking into account the individual characteristics of the witness or victim. This allows for an assessment of their current emotional state and psychological profile, which is necessary for adapting interrogation tactics. This approach ensures the collection of both verbal and non-verbal information;
- ensuring psychological safety: establishing conditions that guarantee the interviewee's safety through both legal protections and a supportive, comfortable atmosphere during the session;
- conducting the interrogation separately from other witnesses to avoid mutual influence or pressure;
- strict adherence to procedural requirements in accordance with Article 224 of the Criminal Procedure Code of Ukraine[1];
- involvement of a psychologist: engaging a qualified psychologist helps to create safe conditions and ensure the interrogation is conducted properly;
- use of tactical techniques aimed at minimising psychological stress. Particular attention is paid to taking into account the traumatic experience of the witness or victim, which becomes critical during wartime;
- application of the provisions of Article 225 of the Criminal Procedure Code of Ukraine. In accordance with the law, to protect witnesses and victims and ensure the credibility of testimony, interrogations may be conducted in a court session, including through remote or mobile court hearings.

Conclusions

It was found that in order to obtain high-quality and maximum detailed testimony during the interrogation of witnesses or victims who have been subjected to unlawful detention or torture, the investigator must approach all stages of the process meticulously, starting from the preparatory phase. In summarising the results obtained, it can be noted that for a successful interrogation, an investigator must possess not only a thorough knowledge of the law and legislative norms but also demonstrate a deep understanding of the psychological aspects of human behaviour. Furthermore, it is extremely important to have developed communication skills that allow for the establishment of a trusting and effective relationship with the interviewee. The investigator must create conditions in which the person being interrogated is prepared to share relevant or key information, even if they are initially sceptical or disinclined to cooperate. Of particular importance here is the establishment of what is known as psychological contact – a favourable atmosphere that ensures harmonious mutual understanding between the parties. This is a complex process of building trust, aimed at creating an active and constructive dialogue that encourages the interviewee to be open and participate productively in the conversation. The findings suggest that the process of interrogating witnesses in proceedings relating to violent criminal offences is particularly challenging given the deeply emotional context of such situations. Often, witnesses find themselves in a difficult position, having observed significant suffering or even tragedies affecting their relatives or acquaintances. Such circumstances add additional psychological pressure, which significantly complicates the process of obtaining reliable and exhaustive testimony. In such cases, it is extremely important to take into account the specifics of the emotional state of both witnesses and victims. Conceptually, the above indicates that information-psychological interaction should be built on the basis of a highly delicate approach rooted in empathy, professionalism, and attentiveness to the psycho-emotional well-being

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/laws/show/4651-17.

of every person involved. Only such a balanced and correct approach will contribute to minimising stress for the participants in the process and ensuring the objectivity of the information obtained.

Defining effective methodologies for conducting interrogations of persons who have become victims or witnesses of events is an important step in achieving a thorough and objective investigation. The main aim of such an approach is to obtain the most accurate, comprehensive and detailed testimony possible, capable of helping to establish the truth and ensure a fair outcome. The application of modern approaches, focused on creating a comfortable atmosphere for respondents, helps to minimise psychological pressure, strengthens trust and improves the quality of the information provided. A promising direction for further research in this field would be to ensure not only the physical but also the psychological safety of victims of crime. Particular attention should be paid to the development of detailed methodologies that enable a thorough analysis of potential risks that may arise for victims and their immediate environment.

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Appendix 1. Strategies for interrogating victims and witnesses in proceedings concerning torture and the unlawful detention of civilians

<table>
<tr><td colspan="5">I. Preparatory stage:</td></tr>
<tr><td colspan="5">1. Collection of preliminary information:</td></tr>
<tr><td colspan="2">Analysis of all available materials, including medical reports.</td><td colspan="3">Familiarisation with the personal files of the victim or witness (where available), specifically examining indicators of vulnerability, past traumas, and current psychological state.</td></tr>
<tr><td colspan="5">2. Planning of place and time:</td></tr>
<tr><td colspan="2">Selection of a safe and neutral location: The interrogation room should be chosen to avoid any environmental associations with imprisonment or detention for the victim.</td><td colspan="3">The interview should not be constrained by rigid time limits (it may be conducted over several sessions on different days, lasting several hours with breaks); if the interviewee experiences acute stress, flashbacks, or panic, the investigator should pause the proceedings or terminate the session for the day entirely.</td></tr>
<tr><td colspan="5">3. Formation of the team:</td></tr>
<tr><td>An investigator with specialist training in this field (able to demonstrate empathy and patience).</td><td>A psychologist: to assess the psychological state of the victims, to provide support during interviews, and to advise the investigator on the appropriate approach to take.</td><td>An interpreter: if necessary (independent, competent, well-versed in the relevant subject matter and adhering to ethical standards. Translation by relatives or acquaintances is not permitted).</td><td>Legal representative: for minors or persons who have partial or total legal incapacity.</td><td>The victim's legal representative has the right to participate in the proceedings.</td></tr>
<tr><td colspan="5">4. Preparation of technical equipment:</td></tr>
<tr><td colspan="2">Video and audio recording.</td><td colspan="3">Physical comfort involves creating a comfortable environment: a comfortable chair, an optimal temperature, and the absence of unnecessary noise. It is important to inform the interviewee in advance of the location of the toilet, to provide water and, if necessary, the opportunity to eat during lengthy interviews.</td></tr>
<tr><td colspan="5">II. Commencement of interrogation and establishment of contact:</td></tr>
<tr><td colspan="5">1. Introduction and explanation of procedures:</td></tr>
<tr><td>Provide an introduction by stating first name, middle name, surname, and position, and also introduce all persons present, including the psychologist, interpreter, or any other individuals involved in the process.</td><td>Clearly explain the purpose of the interrogation – to gather information with a view to bringing those responsible to justice.</td><td>Explain the audio and video recording process step by step, provide information on its importance, and clearly outline who will have access to the recordings.</td><td>Inform the victim or witness of their rights: the right to refuse to testify against themselves or their relatives, the right to legal representation, medical or psychological support, and the right to take a break at any time.</td><td>Obtain written consent to conduct the interview and record the information after providing detailed information about their rights. When working with minors, it is essential to obtain consent from their legal guardian.</td></tr>
<tr><td colspan="5">2. Building trust and creating a safe environment:</td></tr>
<tr><td>Empathetic approach: "I understand how difficult it is to speak about this right now".</td><td>Maintain respect: Avoid any judgement or doubt regarding the victim's statements. Emphasise the importance of their testimony.</td><td colspan="2">Continuously monitor their emotional state. In the event of signs of distress (such as uncontrollable crying, trembling, panic attacks, or manifestations of dissociation), a break must be taken immediately. The investigator may shift the conversation to a neutral topic or postpone the discussion of the most difficult moments to a later time. It is strictly prohibited to apply pressure or demand that the person "pull themselves together," as this can severely damage their mental state and undermine trust in the investigation.</td><td>Offer support: Proactively offer water and check whether the participant requires a pause or medical assistance.</td></tr>
<tr><td colspan="5">III. Information gathering:</td></tr>
<tr><td colspan="5">1. Commencing with general questions and an open-ended conversation:</td></tr>
<tr><td>Start with general questions and an open-ended conversation: – It is important to establish an atmosphere of trust right from the start. The investigator should explain that the main aim is to ensure justice is done and to hold those responsible to account, rather than to make the victim relive their pain. For example, it is worth beginning the interview with the following words: "Please tell everything that happened to you, starting from (specify a specific moment, for example, the arrest), exactly as you remember it. Take your time".</td><td colspan="2">Allow sufficient time for the person to speak freely without interruption. Use active listening techniques: let the person speak at a pace that feels comfortable to them, and demonstrate patience, attention and empathy both verbally and non-verbally. Avoid expressing doubt about the victim's words or showing shock or judgement, as this may prevent them from communicating further. It is better to ask open-ended questions that encourage detailed responses ("Could you tell more about what happened to you?" rather than direct questions such as "Were you subjected to electric shocks?"). Leading questions should generally be avoided, as they can distort memories. According to the recommendations of the Istanbul Protocol, leading questions are completely excluded to ensure the most impartial account of the facts of torture or unlawful detention.</td><td colspan="2">To facilitate the reconstruction of events, it is advisable to use diagrams, maps and photographs of the scene. Such visual aids help to organise information and reduce the fragmentation of memories. Practical experience shows that these tools make it easier for the victim to recall details of their experiences and enable the investigator to obtain more accurate testimony. For example, a map of the area on which the victim marks the locations of detention and torture, or a diagram of the room where they were held, can trigger additional memories and details.</td></tr>
</table>

Appendix 1, Continued

<table>
<tr><td colspan="5">2. Application of trauma-informed techniques:</td></tr>
<tr><td>Avoid pressure and confrontation. Do not force a person to talk about their most painful experiences if they are not ready to do so.</td><td>Focus on sensory details. It is helpful to find out what the person saw, heard, felt (physically), smelled or tasted.</td><td>Following the chronology of events helps to structure memories, but it is important to allow the person to deviate from the chronological order if this is necessary to reflect the situation more accurately.</td><td>It is important to explore the context prior to the event. It is necessary to establish the circumstances preceding the person's captivity.</td><td>A detailed description of the conditions of detention. The characteristics of the premises should be recorded: their size, lighting, temperature, sanitary and hygiene conditions, such as the state of the toilets and access to water; the presence of everyday items (for example, a bed or facilities for rest); the meal schedule; access to fresh air and natural light; the opportunity to communicate with other people; and the presence of technical means of video surveillance or security.</td></tr>
<tr><td colspan="5">3. Addressing inconsistencies and gaps in the perception and recall of traumatic events:</td></tr>
<tr><td colspan="2">The human psyche frequently employs defence mechanisms, such as the repression of memories or the fragmentary recall of traumatic experiences. Consequently, the information provided by victims may be disjointed, inconsistent, or incomplete. Thus, highlighting perceived contradictions or gaps in the victim's initial account is inappropriate, as such features are a natural consequence of psychotraumatic circumstances.</td><td colspan="2">Clarifying questions should only be introduced after the victim or witness has provided a relatively free and as comprehensive an account as possible of the events experienced.</td><td>Avoid leading phrases or questions that contain assumptions or imply a specific answer. Such questions not only distort the reliability of the testimony but may also cause further trauma to the victim/witness. An alternative is to use open-ended questions, which allow the victim to describe the factual circumstances in their own words. For example: "How was the pain inflicted upon your back?", this minimises the risk of biased interpretation of the testimony and ensures maximum objectivity.</td></tr>
<tr><td colspan="5">IV. Concluding the interrogation process:</td></tr>
<tr><td colspan="5">1. Providing an opportunity to add further information. It is recommended to use neutral and open-ended phrasing, for example: "Is there anything else of significance that has not been discussed, or perhaps you would like to clarify or add something?" This method facilitates a more detailed and accurate account of the facts, helps to avoid the loss of potentially important information, and creates conditions for the victim or witness to feel in control and psychologically safe whilst giving evidence.</td></tr>
<tr><td colspan="5">2. Providing support and resources: – arrange immediate access to specialist services, in particular a psychologist or healthcare professional, following the conclusion of the interrogation; – provide contact details for institutions and organisations offering legal, psychological, medical and social support to victims of torture.</td></tr>
<tr><td colspan="5">V. Post-interrogation:</td></tr>
<tr><td colspan="5">1. Maximum accuracy of the record. When drawing up the record, it is essential to ensure that it is as accurate, thorough and objective as possible, avoiding any oversimplifications, generalisations or distortions of information. The document must contain all relevant details that are important for reconstructing the events and for subsequent legal assessment, in particular a description of the circumstances, the behaviour of individuals, the conditions of detention, the nature and consequences of the violence used, as well as the statements made by those involved.</td></tr>
<tr><td colspan="5">2. Assessing the need for repeat interviews. One of the priority tasks is to avoid repeatedly forcing victims to recount traumatic events. A repeat interview may cause re-traumatisation, so it is important to cover as much relevant information as possible during the initial session.</td></tr>
<tr><td colspan="5">3. Providing support to the victim. It is important to ensure that the victim receives the necessary psychological or medical assistance immediately following the conclusion of the interrogation.</td></tr>
<tr><td colspan="5">4. Ensuring safety. Measures must be taken to protect victims or witnesses from potential psychological pressure or external threats. In cases where crimes were committed by Russian Federation military personnel or affiliated entities, such individuals may fear reprisals or persecution (this applies particularly to residents of occupied territories or individuals whose perpetrators remain at large). The personal data of victims must be reliably protected; where necessary, procedural mechanisms for protecting information should be provided for (for example, the use of pseudonyms in case files or the conduct of closed court hearings).</td></tr>
</table>

Source: compiled by the authors

Допит потерпілих і свідків у провадженнях щодо катувань і утримання цивільних

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Анотація
Актуальність статті зумовлена тим, що в умовах широкомасштабної війни Російської Федерації проти України зростає потреба в належному документуванні доказів, зокрема шляхом проведення допиту потерпілих і свідків у провадженнях, пов'язаних із катуваннями та незаконним утриманням цивільних з боку Збройних сил Російської Федерації. Метою статті є дослідження специфіки проведення допиту в кримінальних провадженнях щодо злочинів, пов'язаних із випадками катувань і незаконного утримання. Для досягнення поставленої мети було застосовано низку методів наукового дослідження, серед яких емпіричний, структурний і системний підходи. Теоретичною основою статті є праці як українських, так і закордонних дослідників, присвячені детальному вивченню питань, пов'язаних із допитом потерпілих і свідків у справах щодо катувань і незаконного утримання цивільних осіб. Поглиблений аналіз цих наукових джерел сприяв формуванню аргументованих висновків. У межах дослідження було окреслено особливості здійснення допиту потерпілих і свідків у провадженнях щодо злочинів, скоєних представниками військових формувань Російської Федерації, а також розроблення тактичних підходів до допиту з урахуванням специфіки цієї категорії правопорушень. Дослідження засвідчили, що під час проведення допиту в кримінальних провадженнях, пов'язаних зі злочинами, скоєними в умовах збройного конфлікту, особливо за обставин катувань і незаконного утримання цивільного населення, слідчий має зважати на своєрідність цієї категорії правопорушень. Дотримання цього підходу є ключовою передумовою для забезпечення отримання від свідків і потерпілих повних, логічно послідовних і змістовних свідчень. Увагу зосереджено на потребі врахування особливостей роботи з особами, які зазнали травматичного досвіду, та забезпечення підтримки як перед, так і після проведення допиту. Практична цінність дослідження полягає у визначенні дієвих методик допиту потерпілих і свідків, спрямованих на отримання максимально повних та інформативних свідчень

Ключові слова:
гласні слідчі (розшукові) дії; воєнні злочини; формування доказової бази; збір інформації; інтерв'ю

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Compensation for damage caused by medical error in private international law: Comparative legal analysis

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Abstract
This study aimed to conduct a systematic, comparative legal analysis of approaches to determining the legal grounds for compensating for damage caused by medical errors in legal relationships involving a foreign element. Comparative legal, formal legal and conflict-of-laws methods were employed, alongside case study and typological methods, to analyse regulatory frameworks and judicial practice in the field of medical liability. The comparative analysis revealed that, although they differ in the normative formulation of the standard of medical care and the mechanisms for its procedural proof, the legal systems under consideration all retain the principle of fault as a mandatory condition for civil liability for medical harm. The German model was found to ensure the highest degree of legal certainty due to the codification of the treatment contract and statutorily defined presumptions. The Czech model was found to institutionalise treatment as a specific contractual type, applying the criterion of care provided in accordance with generally recognised professional medical standards, and allowing for the concurrence of contractual and tortious qualifications. The French model was found to combine the classical construction of civil liability with an institutional mechanism for compensating harm through national solidarity, implemented via the Office national d'indemnisation des accidents médicaux (ONIAM) system. The Italian model was found to be characterised by

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differentiated liability between medical practitioners and healthcare institutions following legislative reform on patient safety. On the basis of the comparative analysis, a generalised model of proof in medical disputes involving a foreign element was formulated, integrating the following components: substantive grounds of liability determined by contractual or tortious qualification; procedural mechanisms of proof, including presumptions, expert evidence, and redistribution of the burden of proof; and transnational factors, taking into account the application of conflict-of-laws rules, the lex fori principle, and supranational mechanisms of the European Union concerning jurisdiction and the taking of evidence. The practical significance of the findings lies in their potential use by courts and legal representatives for forecasting the risks of refusal to recognise and enforce judgments in cross-border medical disputes

Keywords:
presumption; fault; treatment contract; medical liability/medical malpractice; private international law

Introduction

The growth in cross-border population mobility, medical tourism and the digitalisation of healthcare services has led to an increase in legal relationships associated with the provision of medical care involving a foreign element. Patients receive treatment outside their country of habitual residence, conclude contracts with foreign clinics, and use telemedicine services operating across multiple jurisdictions. Under such conditions, the issue of compensation for damage caused by medical error extends beyond national tort law and acquires a dimension of private international law.

The problem lies in the complexity of determining the correct jurisdiction and applicable law, as well as the mechanisms for recognising and enforcing judicial decisions in cases of medical liability involving a foreign element. For example, a medical error may occur in one state, the patient may be a citizen of another state, and the insurance company may be registered in a third state. In such circumstances, the question arises as to which state's law should govern liability grounds, compensation scope, and limitation periods. The absence of a unified approach leads to the fragmentation of judicial practice and inequality in the legal position of the parties involved. At the same time, the complexity of cross-border medical disputes stems from the need to define the standard of medical care and the criteria for establishing a medical error in different legal systems. Standards of treatment, the scope of a physician's professional duties, rules on informed consent and the limits of acceptable professional risk differ depending on national legal regulation. This directly affects the assessment of unlawfulness and the causal link between the actions of a medical professional and the resulting harm. The lack of harmonised approaches to defining the standard of medical care makes it difficult to provide an equal level of protection for patients' rights in cross-border legal relations.

Scholarly discourse on compensation for damage caused by medical errors has shifted from a purely substantive analysis of tort liability to a more comprehensive understanding of the standard of proof, causation and allocation of burden. K. Hajková (2024) showed that causal uncertainty in medical disputes is not just a procedural issue, but a systemic feature of these types of case. The researcher showed that the traditional model of requiring full proof of causation does not reflect the nature of medical interventions, where outcomes are affected by various factors. Consequently, the researcher concluded that the standard of proof could be adjusted through presumptions and the redistribution of the burden of proof. C. Campiglio (2024) showed that the development of cross-border telemedicine within the European Union has led to the partial harmonisation of professional and product liability approaches. However, this harmonisation is incomplete. The author revealed that regulatory fragmentation persists in defining the standard of due care and the limits of physicians' professional autonomy. It was concluded that the cross-border nature of medical services creates jurisdictional competition and complicates the determination of applicable law. M. Kvirkvia (2025) demonstrated, in a comparative study of the burden of proof, that European legal systems are gradually moving away from the rigid "*onus probandi incumbit actori*" model in medical disputes. They found that flexible models of burden redistribution had been introduced in cases of informational asymmetry or breaches of the duty to maintain medical records in the legal systems of Germany, France, and Italy. These findings confirm a trend towards strengthening procedural protection for patients. T. Holčapek *et al*. (2023) demonstrated that the rapid development of telemedicine necessitates a re-evaluation of the traditional standard of medical care. The authors found that digital communication formats change the way professional risk is structured and make it more difficult to assess whether a physician's conduct is adequate. They concluded that criteria for evaluating professional activity must be adapted to new technological conditions.

O.O. Mendelia (2022) developed an approach to civil liability for medical errors under Ukrainian law, emphasising that the presumption of fault does not negate the obligation to prove unlawfulness and causation. The author substantiated that the national model combines elements of tort liability with procedural guarantees of adversarial proceedings. P.G. Peters (2024)

showed that modernising the standard of medical negligence in American law must consider the evolution of clinical practice and evidence-based medicine. The author found that excessive formalisation of the standard could distort the assessment of professional conduct and increase procedural costs. Particular attention was paid to the role of expert opinion as decisive proof. A.V. Shevel *et al*. (2023) distinguished between the concepts of 'medical error' and 'medical negligence', showing that not every adverse treatment outcome constitutes grounds for legal liability. The authors emphasised the importance of establishing deviation from the professional standard as a key liability criterion and concluded that clear normative delineation of the limits of fault is necessary. However, the issue of how these concepts are qualified across borders and their impact on applicable law remains insufficiently explored. M. Šolc (2022) analysed the context of the pandemic and substantiated that the standard of due medical care must be assessed in light of the dynamics of scientific knowledge and resource constraints. The author concluded that retrospectively evaluating a physician's actions without considering the context creates a risk of unjustly imposing liability. Conversely, V. Myronenko & M. Skrynyk (2022) found that the improper performance of professional duties by medical and pharmaceutical workers in Ukraine is associated with challenges in establishing the subjective element of the offence, as well as insufficient specialised procedural mechanisms. They emphasised the need to improve the regulatory framework to enhance the effectiveness of combatting offences in the medical sphere.

Thus, analysis of scholarly sources shows that considerable depth has been given to the issues of the standard of medical care, causal uncertainty and allocation of the burden of proof. However, the interrelation of these elements with the mechanisms of private international law, namely the determination of applicable law, jurisdictional competition and the recognition and enforcement of judicial decisions, remains insufficiently systematised.

This article aims to conduct a comparative legal analysis of the mechanisms used to determine applicable law and the conditions for compensating for damage caused by medical errors involving a foreign element. To this end, the following research objectives were defined: analysing theoretical approaches to qualifying medical errors in cross-border legal relations as a basis for contractual or non-contractual liability, and identifying the specific features of determining the standard of medical care and proving fault in different legal systems.

Materials and Methods

The study was conducted within the framework of a qualitative comparative legal analysis. The sample included the legal systems of the Czech Republic, Germany, France and Italy, which are continental legal orders that have developed different normative constructions for regulating liability in the field of medical activity and for compensating harm caused by improper medical care. The legal categories of "medical error", "standard of medical care", "informed consent", "fault" and "models of compensation" were systematised using the comparative legal method. Within the Czech legal system, the analysis was based on the provisions of the Civil Code of the Czech Republic[1], particularly those concerning contracts for the provision of medical care, as well as the Law of the Czech Republic No. 372/2011[2], which defines the duty to inform patients and the conditions for lawful medical intervention. The German model was examined based on the provisions of the Civil Code of Germany[3], including the rules concerning treatment contracts, the standard of due medical care and the allocation of the burden of proof in disputes relating to medical errors. The French legal order was analysed in relation to the provisions of the Public Health Code of the French Republic[4], which define patients' rights, the conditions for informed consent and the organisational mechanisms for compensating for harm. It was also analysed in relation to Law of the French Republic No. 2002-303[5]. The Italian model was examined based on Law of the Italian Republic No. 24[6] and Law of the Italian Republic No. 219[7], which establish the legal framework for the liability of medical professionals, the duty to inform patients, and the conditions for the lawfulness of medical intervention.

The formal legal method was employed to analyse EU legal acts that regulate the procedural and conflict-of-laws aspects of cross-border medical liability disputes, as well as the national legislation of Member States. The provisions of the following regulations were

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[5] Law of the French Republic No. 2002-303 "On Patients' Rights and the Quality of the Health System". (2002, March). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000227015.
[6] Law of the Italian Republic No. 24 "On Patient Safety and Professional Liability of Healthcare Professionals". (2017, March). Retrieved from https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-03-08;24.
[7] Law of the Italian Republic No. 219 "On Informed Consent and Advance Healthcare Directives". (2017, December). Retrieved from https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-12-22;219.

examined: Regulation of the European Parliament and of the Council No. 2020/1783[1]; General Data Protection Regulation[2]; Regulation of the European Parliament and of the Council No. 910/2014[3]; Directive of the European Parliament and of the Council No. 2011/24/EU[4]; and Regulation of the European Parliament and of the Council No. 1215/2012[5]. The conflict-of-laws method was used to analyse the conflict-of-laws aspects of determining applicable law in medical harm disputes. The case study method was employed to empirically analyse judicial practice in medical liability cases involving an international element, and to identify practical approaches to allocating the burden of proof, establishing causation and assessing the standard of medical care. The following decisions were analysed in particular: the judgment of the Bundesgerichtshof in case VI ZR 108/23 (Federal Court of Justice of Germany, 2024); the decision of the Decision of the Court of Cassation of France No. 19-15.035[6]; the Judgment of the Supreme Court of the Czech Republic No. 25 Cdo 2937/2020[7]; and the decision of the Corte di Cassazione, Sez. III, No. 28985/2019 (Di Massimo, 2019).

The typological method was then used to create a generalised model of the relationship between contractual and tortious grounds of liability, methods of normatively fixing the standard of medical care and mechanisms for adjusting the burden of proof. The criteria for typologisation included the dominant liability model; the level of codification of the standard of treatment; the presence or absence of specific presumptions; the role of medical documentation and expert evidence; and the degree of integration between substantive standards and procedural guarantees.

Results

The standard of medical care and the peculiarities of proving fault in medical error cases. The concept of "medical error" as a basis for liability shapes the way authors establish fault and causation, as well as the overall structure of the case. This includes determining which rules, whether contractual or tortious, apply, the possibility of relying on both grounds simultaneously, the applicable limitation period, the scope of compensation, and the elements that constitute the civil wrong (Gutorova *et al*., 2019). From a comparative perspective, three approaches can be distinguished: contractual (breach of the terms of the therapeutic obligation); tortious (causing harm to life and health as absolute values); and mixed (simultaneous relevance of both contractual and tortious rules, depending on the factual circumstances and the claims advanced).

The starting point of the continental model, which includes the Czech Republic and Germany, is the idea of a "dual" nature of the doctor-patient relationship. Treatment is provided within the framework of obligations (a contract for the provision of medical care), but any resulting injury to health is protected by tort law. The Czech approach demonstrates a more pronounced institutionalisation of treatment as a specific type of contract, making it possible to speak specifically of contractual liability for breach of the duty to provide care in accordance with professional standards, while preserving the possibility of relying on general tortious grounds. Medical services are provided on the basis of a contract for the provision of medical care, which is a specific type of contract regulated by § 2636 of the Civil Code of the Czech Republic[8]. Depending on the chosen legal construction, the claimant can either claim for breach of a contractual obligation or for breach of a statutory duty. This creates a normative basis for concurrence of grounds in the sense of procedural alternatives: the same factual event (improper treatment) can be described in terms of breach of a contractual obligation (defective service) or in terms of tort (causing harm to health through breach of the duty to act properly). This choice affects the structure of proof, the scope of compensation and the applicable limitation periods.

As in other areas of civil law, liability for medical harm in Germany is based on the principle of fault. However, the law specifically regulates matters of proof in cases of medical error. For example, § 630h of the Civil Code of Germany[9] sets out rules for allocating the burden of proof that deviate from the general model. Notably, when a gross treatment error (grober Behandlungsfehler) is proven, a presumption of causation be-

[1] Regulation of the European Parliament and of the Council No. 2020/1783 "On Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters (Recast)". (2020, November). Retrieved from https://surl.li/bjgoka.
[2] General Data Protection Regulation. (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[3] Regulation of the European Parliament and of the Council No. 910/2014 "On Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (eIDAS Regulation)". (2014, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910.
[4] Directive of the European Parliament and of the Council No. 2011/24/EU "On the Application of Patients' Rights in Cross-Border Healthcare". (2011, March). Retrieved from https://eur-lex.europa.eu/eli/dir/2011/24/oj.
[5] Regulation of the European Parliament and of the Council No. 1215/2012 "On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)". (2012, December). Retrieved from https://eur-lex.europa.eu/eli/reg/2012/1215/oj.
[6] Decision of the Court of Cassation of France No. 19-15.035. (2021, October). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000044183628.
[7] Judgment of the Supreme Court of the Czech Republic No. 25 Cdo 2937/2020. (2022, October). Retrieved from https://www.zakonyprolidi.cz/judikat/nscr/25-cdo-2937-2020.
[8] Civil Code of the Czech Republic. (2012, February). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/2012/122919.
[9] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.

tween the breach and the harm is permitted, and the burden of proving that there is no causal link falls upon the defendant. Similarly, if the physician has failed to properly document the treatment, the court may assume that the relevant medical measures were not carried out. Therefore, while German law does not abandon the principle of fault, it redistributes the burden of proof in cases where the patient lacks access to full information about the course of treatment by means of special presumptions. The German model is illustrative of a mixed system offering a high level of legal certainty, as it combines a clear typology of the treatment contract (Behandlungsvertrag) with general tort liability for violations of absolute rights, while also codifying specific rules of proof in cases of medical error. The central provision in this sphere is § 630a of the Civil Code of Germany[1], which normatively defines the physician's duties in relation to treatment and documentation of medical intervention, whereas § 630h specifies the procedural aspects of allocating the burden of proof in cases concerning treatment and informational breaches, including the establishment of presumptions in favour of the patient.

French law establishes a distinct model for regulating liability for medical harm, combining classical civil law tort mechanisms with an institutional system of out-of-court compensation. The modern system is based on Law of the French Republic No. 2002-303[2], the provisions of which are integrated into the Public Health Code of the French Republic[3]. According to Article L1142-1 of the Code, medical professionals and healthcare institutions are liable for harm caused to a patient if a breach of professional treatment standards is proven. At the same time, French legislation provides a special compensation mechanism for medical incidents without proof of fault in cases of accidents thérapeutiques, where harm results from treatment but is not associated with a breach of professional standards. In such cases, compensation may be provided through the administrative compensation system involving the Office national d'indemnisation des accidents médicaux (ONIAM), which operates in accordance with the provisions of the Public Health Code of the French Republic[4]. This system aims to reduce the evidential burden on patients in cases of complex medical complications, ensuring swifter compensation without the need to prove fault on the part of the doctor. Thus, the French model combines classical civil liability for breach of the standard of medical care with elements of a socialised system of compensation for medical harm. From an evidential point of view, establishing the physician's fault remains the key condition for judicial liability. However, the law provides an alternative compensation mechanism in certain cases, operating outside the boundaries of the classical tortious construction.

The Italian law on liability for medical harm was transformed by the adoption of Law of the Italian Republic No. 24[5]. This statute introduced a differentiated liability model for doctors and medical institutions, combining contractual and tortious elements. Under this new system, healthcare institutions are contractually liable to patients for failing to properly organise medical care, whereas individual doctors are liable under tort law. This distinction affects the burden of proof and limitation periods, as a longer period of protection is afforded to contractual claims. Another notable feature of the Italian model is the normative recognition of the role of clinical recommendations and professional standards. According to the law, the assessment of whether a physician's conduct was appropriate is conducted in light of the clinical guidelines and proper medical practice in force at the time of treatment[6]. This creates a defined criterion for assessing professional conduct, while also affecting the evidential structure of disputes, as deviation from clinical recommendations may indicate a breach of the treatment standard.

Thus, a higher degree of predictability in the application of law is associated with a mixed continental model, provided there is a system of proof that is normatively defined. In the German legal system, the regulation of medical liability is linked to the codification of treatment contracts and specific provisions regarding the allocation of the burden of proof. In the Czech Republic, structural coherence is ensured through the contractual typology of medical care combined with the possibility of alternative legal argumentation. France has a mixed model combining tortious liability of physicians with administrative mechanisms for compensating medical incidents. Italy, for its part, has a reformed liability model that distinguishes between the contractual liability of the healthcare institution and the tortious liability of the doctor. This model also integrates clinical recommendations as a criterion for assessing the proper standard of treatment. A comparative analysis of liability models shows that the degree of legal certainty in cases of medical error depends on how the standard of medical care is formulated and procedurally integrated into the relevant legal system. It is precisely through this standard that the unlawful-

[1] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.
[2] Law of the French Republic No. 2002-303 "On Patients' Rights and the Quality of the Health System". (2002, March). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000227015.
[3] Public Health Code of the French Republic. (2002, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072665.
[4] Ibidem, 2002.
[5] Law of the Italian Republic No. 24 "On Patient Safety and Professional Liability of Healthcare Professionals". (2017, March). Retrieved from https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-03-08;24.
[6] Ibidem, 2017.

ness of the doctor's conduct is specified, the boundary of acceptable professional risk is determined and the evidential structure of the dispute is established. In medical error cases, the standard of medical care performs the function of a substantive legal criterion for assessing the propriety of professional conduct, while simultaneously serving as an instrument for specifying unlawfulness within the structure of the civil wrong (De Ravin *et al*., 2022). By establishing the content of the standard, the court can determine whether a deviation has occurred from the proper level of professional care, and whether one of the key elements of liability has therefore been satisfied. From a comparative perspective, the differences between legal systems lie not so much in the very idea of "proper treatment" as in the way it is normatively fixed and procedurally incorporated into the evidential model of the dispute.

In France, the content of the standard of medical care is formed through a combination of the general duty to provide care in accordance with professional rules, and the specific legislative regulation of patients' rights. This model's normative basis is set out in the Public Health Code of the French Republic[1] and Law of the French Republic No. 2002-303[2]. The French model is based on the idea that a breach of the treatment standard is determined by comparing the physician's actions with the requirements of proper professional practice. If fault is present on the part of the medical professional or institution, the traditional model of civil liability applies. At the same time, French law provides that, in the absence of fault but where there has been a serious medical incident, an iatrogenic condition, or a nosocomial infection, compensation may be granted through the mechanism of national solidarity (au titre de la solidarité nationale) pursuant to Article L1142-1 of the Public Health Code of the French Republic. This means that in the French system the standard of medical care functions not only as a criterion of fault, but also as the boundary between fault-based liability and a special compensation mechanism.

In Germany, the standard of medical care is set out in the provisions on treatment contracts, which oblige physicians to provide treatment in accordance with the professional standards recognised at the time the care is provided (§ 630a of the Civil Code of Germany[3]). This criterion is established through special rules on the allocation of the burden of proof (§ 630h of the Bürgerliches Gesetzbuch), which specify the consequences of breaches relating to treatment and documentation. This ensures the integration of the substantive standard and the procedural mechanisms for its application: the court determines whether the physician's actions met the established professional standard and, in certain cases, applies presumptions in favour of the patient. In German law, the standard is linked to the level of development of medical science and practice at the time of the intervention, thus excluding retrospective assessment from the standpoint of later scientific advances.

Czech law recognises treatment as a specific type of contract and obliges healthcare providers to act in accordance with professional rules and contemporary advances in medical science Civil Code of the Czech Republic[4]. The standard is defined by generally recognised professional standards (lege artis), which serve as the substantive test of the propriety of treatment. Procedurally, this enables a breach to be classified as either improper performance of a contractual obligation or causing harm through breach of a professional standard. In both cases, the content of the standard is determined through expert assessment, taking into account the physician's area of expertise and the clinical recommendations in force at the time of treatment.

In Italy, the standard of medical care is formed within the framework of a reformed mixed model, updated by Law of the Italian Republic No. 24[5]. This model links the assessment of a physician's professional conduct to clinical recommendations, guidelines and proper medical practice. This means that determining unlawfulness is based not only on the general concept of professional care, but also on whether the doctor acted in accordance with the applicable clinical standards in the given situation. The normative recognition of the role of guidelines enhances the predictability of legal application since it enables the court to compare the medical professional's conduct with formalised criteria of proper practice. At the same time, the Italian model does not reduce the assessment to an exclusive mechanical check of compliance with a protocol, as the clinical features of the case in question, the complexity of the intervention and the justification of the physician's professional decision are also significant factors.

A comparative analysis shows that, in all the systems considered, the standard of medical care takes into account the physician's specialisation, the clinical circumstances and the level of medical scientific development at the time of the intervention. However, the methods of its normative formulation and procedural application differ. In France, for example, the standard is combined with a model of civil liability based on fault and a compensation mechanism founded on national

[1] Public Health Code of the French Republic. (2002, March). Retrieved from https://surl.li/rhgtxc.
[2] Law of the French Republic No. 2002-303 "On Patients' Rights and the Quality of the Health System". (2002, March). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000227015.
[3] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.
[4] Civil Code of the Czech Republic. (2012, February). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/2012/122919.
[5] Law of the Italian Republic No. 24 "On Patient Safety and Professional Liability of Healthcare Professionals". (2017, March). Retrieved from https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-03-08;24.

solidarity. In Germany, on the other hand, the standard is integrated into a codified model with a defined allocation of the burden of proof. In the Czech Republic, it is linked to the contractual typology of treatment, while in Italy, it is connected with a reformed model of liability oriented towards clinical recommendations and the distinction between the liability of the doctor and that of the healthcare institution. In cross-border disputes, the determination of the standard's content depends on the applicable law, which directly affects liability predictability in the context of medical tourism.

Alongside determining the professional standard of treatment, the doctrine of informed consent is an independent element of medical liability (Kmucha, 2020). While the standard of medical care determines whether the medical intervention corresponds to the professional level, informed consent determines whether the intervention itself was legitimised from the perspective of patient autonomy. In the evidential structure, this means that a defect in the provision of information may constitute a separate ground of liability, even in the absence of an error in treatment. A comparative analysis reveals that different jurisdictions have different criteria for determining the appropriate level of information: some rely on the professional standard (what a reasonable doctor would disclose), while others use the reasonable patient criterion (what information is important to the patient's decision).

In Germany, the principle of informed consent is enshrined in the provisions governing treatment contracts. In particular, § 630e of the Civil Code of Germany[1] sets out the physician's duty to explain all material circumstances to the patient, including the nature, scope and manner of the intervention, the expected consequences, the risks and the availability of alternative treatment methods where these differ in terms of risks or prognosis. Thus, the law directly defines the structural elements of proper disclosure, thereby increasing the certainty of the subject matter of proof. The German model combines the professional standard with an objective test of the materiality of risk: the court assesses whether the information provided was sufficient for an informed decision to be made, taking medical standards and the specific clinical situation into account. Similarly, Czech law recognises the necessity of voluntary and informed patient consent as a prerequisite for the legality of the intervention. Law of the Czech Republic No. 372/2011[2] defines the information that must be provided to patients, including details of their health, the proposed treatment, potential risks and alternatives. In Italy, the doctrine of informed consent has autonomous legislative regulation in Law of the Italian Republic No. 219[3]. This law defines informed consent as a prerequisite for lawful medical intervention and stipulates that information provided to patients must cover diagnosis, prognosis, the benefits and risks of diagnostic and therapeutic measures, possible alternatives, and the consequences of refusing treatment. The law also stipulates that any form of consent must be recorded in medical documentation and the electronic medical record. This increases evidential certainty, as it links the adequacy of disclosure to both the content of the information communicated and the duty to document it. In France, the duty to inform and the requirement to obtain consent are set out in the Public Health Code of the French Republic[4]. Article L1111-2 in particular provides for a person's right to information concerning their state of health, the proposed examinations and treatment, their benefits, urgency, consequences, and the ordinary or serious foreseeable risks and possible alternatives, as well as the consequences of refusing treatment. Article L1111-4 establishes that no medical intervention or treatment may be carried out without a person's free and informed consent, which they can withdraw at any time. The consolidation of these provisions into a formalised model means that a defect in disclosure can be classified as an independent breach of duty, regardless of the technical quality of the treatment. From an evidential perspective, decisive importance is attached to medical records, records of the information provided and documents confirming the patient's wishes. Although this construction is based on the German model, the content of proper disclosure is determined through expert assessment and analysis of the documentation in procedural terms. A comparative analysis shows that, in all the systems under consideration, informed consent is regarded as a necessary condition for the lawfulness of medical intervention. However, the degree of normative detail of this duty, and how it is integrated into the evidential model of dispute, differ. In France and Italy, the content of disclosure is clearly set out in special legislation, reducing variability in judicial interpretation. In Germany, the relevant requirements are integrated into the codified treatment contract model. In the Czech Republic, they derive from special legislation on medical services. Thus, in cross-border cases, the doctrine of informed consent depends directly on the applicable law, since it determines the criteria for proper disclosure and the evidential requirements for proving patient consent.

[1] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.
[2] Law of the Czech Republic No. 372/2011 "On Health Services and Conditions of Their Provision". (2011, December). Retrieved from https://www.zakonyprolidi.cz/translation/cs/2011-372?langid=1033.
[3] Law of the Italian Republic No. 219 "On Informed Consent and Advance Healthcare Directives". (2017, December). Retrieved from https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-12-22;219.
[4] Public Health Code of the French Republic. (2002, March). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072665.

Irrespective of whether claims are qualified as contractual or tortious, the rules governing the allocation of the burden of proof, the possibility of applying evidential presumptions, the role of forensic medical expert evidence, and the admissibility of special procedural doctrines are of decisive importance in medical error cases. In France, the general model of liability for medical harm remains linked to the principle of fault; however, alongside this there operates a special mechanism for compensating medical incidents without proof of fault by virtue of national solidarity, provided that the conditions laid down in Article L1142-1 of the Public Health Code of the French Republic are met. In cases of fault-based liability, proof of breach of the treatment standard and of causation, as a rule, requires expert determination. At the same time, the very existence of the special compensation procedure through ONIAM reduces the procedural burden on the patient in cases where the harm suffered is serious but cannot be explained by culpable conduct on the part of the physician or institution. In Germany, the principle of fault likewise remains the basis of liability, but the allocation of the burden of proof is detailed in special rules. Thus, §630h of the Civil Code of Germany[1] provides for a number of presumptions in cases of medical error, in particular where there has been a gross breach of the professional standard or inadequate documentation. Where a gross error exists, the burden of proving causation may be shifted to the defendant. Such a construction is aimed at compensating for the informational asymmetry between the patient and the medical institution. Czech law proceeds from the general provisions on liability for harm, which require proof of unlawfulness, harm, and causation; however, judicial practice allows defects in documentation to be taken into account when assessing the evidence. In Italy, the reformed liability model distinguishes between the contractual liability of the medical institution and the tortious liability of the individual practitioner. This distinction directly affects the evidential structure of disputes (Cascini *et al*., 2020). Under this model, claims against the healthcare institution are considered in terms of a breach of the contractual duty to organise and provide proper medical care. In contrast, claims against the doctor are primarily assessed through a tortious construction. Establishing a breach of the treatment standard involves analysing clinical guidelines, proper medical practice, medical records and expert conclusions. Thus, unlike German law, the Italian model does not establish a presumption of fault, but it increases the predictability of disputes by distinguishing between the parties liable and by giving clinical guidelines a formalised role in the court's assessment of physicians' conduct. Accordingly, the key difference between the two systems does not lie in abandoning the principle of fault, but in the degree to which the substantive standard of medical care and the procedural mechanisms for proving it are integrated into the legal system, which directly affects the level of legal certainty in cases involving medical errors.

Recognition and enforcement of foreign judgments in medical liability cases. In cross-border disputes involving medical errors, obtaining proof is complicated by the fact that key evidence, such as medical records, the institution's internal protocols, staff explanations and primary digital records of diagnostic systems, is located within the jurisdiction of another state (Laarman & Akkermans, 2018). This affects both the speed at which evidence can be obtained and its procedural status. The court must ensure that the evidence is requested properly, and that the documents are authentic and admissible. The court must also reconcile access to medical data with the regime governing its protection. Regulation of the European Parliament and of the Council No. 2020/1783[2] is the basic instrument for taking evidence in civil and commercial matters. It aims to accelerate cooperation between the courts of the Member States and formalise standard procedural channels. It provides for two principal models: (1) a court in one state requesting a court in another state to carry out a specific procedural act (e.g., obtaining documents, examining a witness/expert or inspecting evidence); (2) a court in the requesting state directly taking evidence in the territory of another state under established conditions, including by means of videoconferencing or other remote communication technologies. This is of practical significance for medical disputes, since it enables a doctor, clinic representative or expert to be examined without the physical movement of the parties, while ensuring that the court hearing the case retains procedural control. The Regulation also uses standardised forms for requests and notifications, reducing the risk of refusal due to procedural errors and increasing the predictability of the evidential process.

However, even where a procedural mechanism for obtaining evidence exists, the key limiting factor in medical cases is the legal regime governing medical information as a special category of personal data. In the EU, data concerning health is generally prohibited from processing, unless an exception under Article 9 of General Data Protection Regulation[3] applies. The most relevant exception for judicial disputes is the necessity "for the establishment, exercise or defence of legal claims" (Article 9(2)(f)). Therefore, the transfer of medical documentation for judicial proceedings may be lawful, but only within the limits of necessity and

[1] Civil Code of Germany. (1896, August). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.
[2] Regulation of the European Parliament and of the Council No. 2020/1783 "On Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters (Recast)". (2020, November). Retrieved from https://surl.li/bjgoka.
[3] General Data Protection Regulation. (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.

proportionality. This involves minimising the volume of data and ensuring appropriate safeguards for access, as well as considering whether there is a procedural duty to provide such data (e.g., pursuant to a court order or in compliance with a request under Regulation of the European Parliament and of the Council No. 2020/1783[1]). Accordingly, in a cross-border case, the court and the parties must synchronise two regimes: the evidential regime (requesting/obtaining evidence) and the data protection regime (legal basis, limits and safeguards).

Alongside the procedural mechanisms for obtaining evidence, the legal regulation of cross-border medical disputes in the European Union includes instruments for determining international jurisdiction and the choice of applicable law. A key role is played by Regulation of the European Parliament and of the Council No. 1215/2012[2], which establishes rules of international jurisdiction and ensures the recognition and enforcement of judgments in civil and commercial matters between Member States. In cases concerning medical harm, this means that an action may be brought not only before the courts of the state where the defendant is domiciled, but also before the courts of the place where the damage occurred, which is of particular importance for patients who received treatment abroad. The choice of applicable law in medical liability cases is made in accordance with Regulation of the European Parliament and of the Council No. 864/2007[3], which provides for the application of the law of the state in which the damage occurred, unless the circumstances of the case indicate otherwise. This means that the legal regime of medical liability in cross-border disputes may be determined by different conflict-of-laws instruments of EU law depending on whether the claim is characterised as tortious or contractual. Such a construction makes it possible to align the court's procedural jurisdiction with the substantive rules of liability applicable in the particular case.

If the dispute falls outside the EU or if cooperation is required with a state not covered by the Regulation-based mechanism, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters[4]. The Convention relies on letters of request, which are sent via central authorities. The evidence is then gathered by the competent authority of the requested state in accordance with its procedural law. Special procedures can be taken into account, provided they do not conflict with the law of the requested state. This is important for medical disputes where an official route is required to obtain medical records, examine staff or request materials that are subject to professional secrecy. The Convention establishes a channel of cooperation while preserving the role of national procedural limitations, affecting the predictability of time limits and the scope of evidence.

Another aspect of the international dimension is the admissibility of electronic evidence, particularly electronic medical records, digital event logs of medical information systems, image files, electronic signatures of physicians on records and electronic timestamps. Regulation of the European Parliament and of the Council No. 910/2014[5] is the key normative foundation for the judicial "legalisation" of electronic evidence. It enshrines the principle of non-discrimination, meaning that an electronic signature cannot be denied legal effect or admissibility as evidence solely because it is in electronic form. A qualified electronic signature has a legal effect equivalent to that of a handwritten signature. In the context of medical disputes, this regulation establishes a procedural framework for verifying the authenticity of documentation. The court will examine whether the signatory has been identified, whether the record's integrity is intact, and whether the time of creation or modification of the record can be verified. Meanwhile, the parties must demonstrate the chain of custody of the digital files. When it comes to the structure of proof, it is important to note that the "international element" in a medical case extends beyond the mere technical request for documents. Rather, it determines which procedural channel applies (Regulation 2020/1783[6] within the EU or the Convention on the Taking of Evidence outside the EU), whether there is a legal basis for the transfer of medical data and to what extent (GDPR[7], particularly Article 9(2)(f)), and which criteria of authenticity and admissibility apply to digital records (Regulation (EU) No. 910/2014, which establishes the framework for electronic signatures and trust services). A further specific element of the legal regime governing cross-border medical disputes is Directive of the European Parliament and of the Council

[1] Regulation of the European Parliament and of the Council No. 2020/1783 "On Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters (Recast)". (2020, November). Retrieved from https://surl.li/bjgoka.
[2] Regulation of the European Parliament and of the Council No. 1215/2012 "On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)". (2012, December). Retrieved from https://eur-lex.europa.eu/eli/reg/2012/1215/oj.
[3] Regulation of the European Parliament and of the Council No. 864/2007 "On the Law Applicable to Non-Contractual Obligations (Rome II)". (2007, July). Retrieved from https://eur-lex.europa.eu/eli/reg/2007/864/oj.
[4] Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. (1970, March). Retrieved from https://www.hcch.net/en/instruments/conventions/full-text/?cid=82.
[5] Regulation of the European Parliament and of the Council No. 910/2014 "On Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (eIDAS Regulation)". (2014, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910.
[6] Regulation of the European Parliament and of the Council No. 2020/1783 "On Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters (Recast)". (2020, November). Retrieved from https://surl.li/bjgoka.
[7] General Data Protection Regulation. (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.

No. 2011/24/EU[1], which establishes the normative framework for patients' access to safe and high-quality healthcare in other EU Member States and also provides for mechanisms for reimbursement of costs and the exchange of medical information between national healthcare systems. In the context of judicial disputes, this is relevant for determining the legal status of treatment received abroad and for assessing the standards of medical care that may be applicable to a particular clinical situation. As a result, proof of fault and causation in a cross-border case depends not only on medical facts, but also on the parties' ability procedurally correctly to "transfer" evidential material between jurisdictions in compliance with the rules of evidence and data protection. The regulatory mechanisms set out above do not operate in isolation. In a cross-border medical dispute, they cover not only the taking of evidence, but also the determination of international jurisdiction, the choice of applicable law, and the subsequent recognition and enforcement of judgments (Table 1).

Table 1. Legal structure of the consideration of cross-border medical liability disputes in European Union law

Analytical criterion	Regulatory framework
Characterisation of the claim	Claims concerning medical harm may be characterised as contractual (breach of the therapeutic obligation) or tortious (causing harm to life and health). This characterisation determines the application of the relevant conflict-of-laws rules of EU law
International jurisdiction	Determined in accordance with Regulation (EU) No. 1215/2012[2] (Brussels I bis): an action may be brought before the courts of the state where the defendant is domiciled or before the courts of the place where the damage occurred (Article 7(2))
Choice of applicable law	Tortious claims are governed by Regulation (EU) No. 864/2007[3] (Rome II), under the general rule the law of the state where the damage occurred (Article 4). Contractual claims are governed by Regulation (EU) No. 593/2008[4] (Rome I)
Substantive conditions of liability	Determined by the law selected in accordance with Regulation (EU) No. 593/2008 or Regulation (EU) No. 864/2007[5], and encompass the standard of medical care, the existence of fault, causation, and the scope of compensation
Evidence	Questions of evidence are governed by the law of the court seised of the case. The taking of evidence in cross-border disputes is carried out in accordance with Regulation (EU) 2020/1783[6]
Recognition and enforcement of judgments	Judgments of Member States are recognised and enforced in accordance with Regulation (EU) No. 1215/2012[7] without an exequatur procedure, save for grounds of refusal connected with public policy or infringement of the right of defence

Source: compiled by the authors based on Regulations of the European Parliament and of the Council

A comparative analysis reveals that the substantive elements of liability, particularly the standard of medical care, the presence of fault and causation, are determined by the chosen law in accordance with conflict-of-laws rules. In contrast, the procedural mechanisms for acquiring and assessing evidence are governed by the law of the forum (*lex fori*). Consequently, the evidential model of a cross-border case emerges at the intersection of several legal regimes: the conflict-of-laws regulation, the procedural law of the forum state and special instruments of international legal assistance. This multi-layered structure gives rise to specific transnational evidential risks, such as the territorial fragmentation of evidence, informational asymmetry between parties, the protection of medical data and the admissibility of electronic evidence. At the same time, European Union law and international procedural mechanisms form a system of legal instruments aimed at mitigating these risks and ensuring procedural fairness in cross-border disputes (Table 2).

[1] Directive of the European Parliament and of the Council No. 2011/24/EU "On the Application of Patients' Rights in Cross-Border Healthcare". (2011, March). Retrieved from https://eur-lex.europa.eu/eli/dir/2011/24/oj.
[2] Regulation of the European Parliament and of the Council No. 1215/2012 "On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)". (2012, December). Retrieved from https://eur-lex.europa.eu/eli/reg/2012/1215/oj.
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Table 2. Transnational evidential risks in medical liability cases and the mechanisms of their legal compensation

Structural risk in a cross-border dispute	Source of the risk	Compensatory effect on the standard of proof
Informational asymmetry between the patient and the medical institution	Control of evidence (medical records, internal protocols) by the defendant	Ensuring procedural access to evidence; reducing imbalance in proving causation
Territorial fragmentation of evidence	Evidence is located in different jurisdictions	Preserving the integrity of the evidential basis; minimising loss of evidence
Restrictions on access due to the data protection regime	Medical information as a special category of personal data	Reconciling the right to evidence with the right to privacy; legitimising data transfer for judicial protection
Risk of inadmissibility of digital evidence	Electronic form of medical documentation	Ensuring the legal force of electronic records; supporting evidential reliability
Differences in national standards of proof	Differences in the allocation of the burden of proof and presumptions	Protecting the stability of the judgment; limiting review on the merits at the recognition stage
Procedural imbalance between the parties	Limited possibility of rebutting evidence or a presumption	Maintaining the legitimacy of the judgment in international circulation

Source: compiled by the authors based on Regulation of the European Parliament and of the Council No. 910/2014[1], General Data Protection Regulation[2], Convention on the Taking of Evidence Abroad in Civil or Commercial Matters[3]

Thus, the international dimension of medical liability cases transforms the process of providing proof from a national procedural process into a multi-level system of interaction between legal regimes. Each regulatory instrument – from mechanisms for obtaining evidence to the regime of electronic authentication – compensates for a specific structural risk. Consequently, the standard for proving fault and causation is influenced not only by medical facts, but also by the parties' capacity to exercise their procedural rights amid territorial and normative fragmentation. For this reason, the procedural mechanisms for obtaining evidence in cross-border disputes are important for establishing the facts of the case and for the subsequent recognition and enforcement of the judgment in another state. While the standards of proof applied by the court of the state of origin are not subject to review on the merits, they can be indirectly evaluated in terms of fair trial guarantees and the public policy of the enforcing state. This is clearly reflected in the practice of the Federal Court of Justice of Germany (2024). In judgment VI ZR 108/23 (Bundesgerichtshof, the court drew a detailed distinction between Befunderhebungsfehler (error in collecting diagnostic findings) and therapeutische Aufklärung (therapeutic disclosure). This had a direct impact on the application of § 630h BGB with regard to the redistribution of the burden of proof. In that context, a presumption of causation was possible only where the breach was clearly classified as one that had created evidential uncertainty. This approach shows that, while German law allows the standard of proof to be adjusted, this can only be done within predictable and normatively defined criteria. This structured nature reduces the risk of a judgment being refused recognition in another EU Member State, since redistribution of the burden does not appear as an arbitrary restriction of the right to defence. A similar issue of balancing the burden of proof can be seen in French judicial practice.

In Decision of the Court of Cassation of France No. 19-15.035[4] emphasised that establishing medical error requires a thorough evaluation of medical records, expert opinions and clinical circumstances. The court stated that a negative outcome of a medical intervention does not indicate a breach of the standard of medical care in itself, and that a causal link between a doctor's actions and damage must be established through medical-scientific analysis. This approach aims to strike a balance between protecting patients' rights and preventing the automatic imposition of liability on medical personnel. In Czech judicial practice, the category of *lege artis* (in accordance with generally recognised professional standards of medical practice) does not function as a declaratory formula of proper treatment; rather, it is an evidential criterion whose content is established through expert assessment and analysis of the clinical situation. In Judgment of the Supreme Court of the Czech Republic No. 25 Cdo 2937/2020[5], the court assessed the physician's conduct based on the circumstances known when the medical decision was made. This implements the function of an objective

[1] Regulation of the European Parliament and of the Council No. 910/2014 "On Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (eIDAS Regulation)". (2014, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910.
[2] General Data Protection Regulation. (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj.
[3] Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. (1970, March). Retrieved from https://www.hcch.net/en/instruments/conventions/full-text/?cid=82.
[4] Decision of the Court of Cassation of France No. 19-15.035. (2021, October). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000044183628.
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"*lege artis*" standard, whereby the doctor's actions are assessed based on medical knowledge and practice at the time of treatment rather than the outcome of the intervention. In the context of international recognition, this reduces the risk of the judgment being characterised as incompatible with another state's public policy, since the standard of proof is based on normatively defined and foreseeable criteria for evaluating professional conduct. Similar issues arise in the practice of the Italian Court of Cassation in the context of legislation on the safety of medical care and the liability of healthcare professionals (Chambers *et al*., 2025).

In Sez. III, Judgment No. 28985/2019, the Court emphasised that establishing a causal link between a medical intervention and harm requires scientifically sound expert analysis and an evaluation of the particular clinical context (Di Massimo, 2019; Clayton *et al*., 2020). At the same time, the Court emphasised that a negative treatment outcome is not in itself sufficient proof of medical error. This approach aims to strike a balance between protecting patients' rights and preventing the automatic imposition of liability on medical personnel, which is important for ensuring the stability of judicial decisions in the context of international legal circulation. Thus, judicial practice demonstrates that standards of proof in medical disputes have a transnational effect. They determine not only the outcome of the dispute, but also how resilient the judgment is in the process of international recognition.

Based on the comparative analysis conducted, it can be concluded that the elements of the structural-functional model for resolving cross-border disputes concerning compensation for damage caused by medical errors encompass the essential stages and components of the process, including the categorisation of the claim as contractual or tortious, the determination of international jurisdiction, the selection of applicable law, the establishment of substantive liability conditions, the organisation of proof (including the standard of medical care and the informed consent doctrine), and the procedures for recognising and enforcing foreign judgements. Consolidating these elements into a single model clearly delineates the normative and procedural framework of the dispute, increases the predictability of legal application and ensures the integration of national and transnational mechanisms for protecting patients' rights.

Discussion

The findings showed that the liability model for medical errors is determined not only by substantive rules, but primarily by the structure of proof, which shapes the procedural opportunities available to the parties involved. It was established that the differing degree of legal certainty in the examined jurisdictions is determined by the extent to which the standard of medical care is integrated into the mechanisms for allocating the burden of proof. Synthesising the material confirmed that it is precisely the procedural construction of proving causation and fault that constitutes the system-forming factor of liability.

In their work, I. Ketsekioulafis *et al*. (2026) conducted a narrative review of legislative models and insurance mechanisms of medical liability in different countries. The authors concluded that the overwhelming majority of legal systems retain a liability model based on the principle of fault, but apply different methods of adjusting the burden of proof procedurally. They emphasised that the effectiveness of patient protection depends largely on access to evidence and the role of medical documentation. The findings in this article are consistent with these conclusions but supplement them with a detailed analysis of how contractual and tortious characterisation influences the structure of proof. V.P. Maroudas (2024) examined the German and Greek liability models in the context of artificial intelligence systems and observed that, even amidst the technological complexity of medical decision-making, the principle of fault retains systemic significance. The author demonstrated that the German special rules on the allocation of the burden of proof perform a compensatory function in cases of informational asymmetry. The results of the present study confirm this: it was found that codified presumptions in German law increase the predictability of dispute outcomes without abandoning the principle of fault. At the same time, the article broadened the analytical perspective by focusing not only on the technological factor, but also on the systemic role of legal characterisation. In contrast, A.G. Grasso (2025) analysed liability rules in the field of medical artificial intelligence, noting that the expansion of algorithmic autonomy poses a risk to the traditional concept of fault. The author argued for preserving the structural logic of tortious liability and warned against transitioning to an objective model without justification. The findings of this study confirmed that the principle of fault had not been replaced by a model of strict liability in the legal systems examined, and that the differences concerned only the procedural mechanisms of proof. Thus, the results are consistent with A.G. Grasso's (2025) position regarding the systemic stability of the traditional approach to liability.

Meanwhile, A. Vozikis *et al*. (2021) proposed a tool for analysing litigation risk in medical liability cases, demonstrating that predicting case outcomes depends on identifying the elements of wrongdoing and evaluating the evidential potential of the parties involved. The authors emphasised the importance of causation as a key element of the dispute. This study established that the normative model of allocation of the burden of proof determines the degree of risk for the parties within a particular jurisdiction. Unlike A. Vozikis *et al*.'s (2021) instrumental approach, this article conducted a normative-comparative analysis to explain

why disputes are more or less predictable in the examined legal systems.

The results obtained indicate that in cross-border medical liability disputes, the proof process structurally extends beyond the national civil procedure model and is shaped by the complex interaction between evidential law regimes, personal data protection regimes, and international judicial cooperation mechanisms. The study found that it is precisely this combination of regimes that determines both the possibility of gathering evidence and the subsequent resilience of the judgment at the recognition and enforcement stage. This conclusion aligns with comparative approaches presented in contemporary medical liability doctrine, while also specifying them in terms of the procedural "export" of evidence between jurisdictions. As discussed in the collective monograph edited by D. Bach-Golecka (2021), the effectiveness of compensation mechanisms in healthcare depends not only on the liability model (tortious, contractual, or mixed), but also on the availability of procedural instruments that enable the injured party to access evidence and expert information. The authors emphasise that informational asymmetry between patients and medical institutions is a systemic feature of most legal systems and therefore requires institutional compensation through presumptions, the redistribution of the burden of proof or special disclosure procedures. The results of the present study are consistent with this approach but extend it to the transnational level. It is demonstrated that in cross-border cases, asymmetry is exacerbated by territorial fragmentation of evidence and differences in admissibility standards. In a purely national context, compensation for asymmetry is achieved through procedural presumptions. In an international dispute, however, decisive importance is attached to the parties' ability to use mechanisms for taking evidence internationally and to transfer medical data legitimately, in accordance with protection regimes. M.J. Bono *et al*. (2022) analyse medical negligence through the prism of the classical American model, in which proving deviation from the standard of due medical care and the causal link between the breach and the harm is of central importance. The authors emphasise the pivotal role of expert opinion as a key evidential tool, highlighting that while procedural nuances transform the structure of proof, the obligation to provide the defendant with the opportunity to refute a presumption remains. The findings obtained partly coincide with these conclusions: it was established that the transformation of the structure of proof through presumptions or inferences directly impacts the subsequent evaluation of a judgment in the procedure of international recognition. However, the study also shows that, in a cross-border context, significance attaches not only to the internal logic of the standard of proof, but also to compliance with procedural guarantees. These guarantees may be reviewed by the court of the enforcing state through the lens of public policy and the right to a fair trial.

The article by M. Nioi *et al*. (2025) is devoted to medical liability in the field of ophthalmic surgery. It demonstrates a tendency towards the "trivialisation" of certain medical procedures. This does not reduce the level of legal risks for medical institutions. The authors showed that an increase in routine interventions is accompanied by an increase in claims, and that the assessment of treatment standards is increasingly reliant on documentation, digital records and formalised protocols. These conclusions resonate with the findings of the present study, which established that electronic medical records and digital event logs are becoming key evidence in disputes with an international element. However, in a cross-border context, their significance is complicated by the need to confirm their authenticity, integrity and legitimacy of transfer in accordance with personal data protection rules. This was not the central focus of the study by M. Nioi *et al*. (2025), but it becomes decisive when a foreign judgment is recognised. G. Nittari *et al*. (2020) analysed the ethical and legal challenges of telemedicine, including the cross-border transfer of medical data, jurisdictional uncertainty and differences in regulatory standards. The authors pointed out that providing medical services remotely creates a new liability allocation model and increases conflict-of-laws risks, especially when the doctor and patient are located in different states. The present study's findings confirm and specify these observations in evidential terms: it demonstrates that the telemedical format complicates not only the determination of applicable law, but also the procedure for requesting and legitimately transferring evidence containing health data. Thus, the conclusions of M. Nioi *et al*. (2025) regarding the normative fragmentation and ethical vulnerability of telemedicine are consistent with the thesis of this study, which emphasises the need to align the evidential and data protection regimes in cross-border disputes.

Overall, the analysis makes it possible to conclude that, while the contemporary doctrine of medical liability pays considerable attention to the substantive grounds of compensation and the transformation of standards of proof, it does not examine their impact on the stage of international recognition and enforcement of judgments sufficiently or systematically. Within the framework of this study, it has been demonstrated that the procedural structuring of proof, the predictability of the redistribution of the burden of proof and compliance with guarantees determine the cross-border resilience of a judgment. Accordingly, the results obtained extend existing scholarly approaches by combining the analysis of standards of proof with issues of international judicial cooperation and the protection of medical data regime, which is of fundamental importance for the effective recognition and enforcement of judgements in medical liability cases.

Conclusions

The comparative legal analysis revealed that the classification of medical error as a basis for liability affects the proof required in disputes. This includes the elements to be proven, the allocation of the burden of proof between parties, the application of procedural presumptions and the limits of compensation for harm. In continental legal systems, the relationship between doctors and patients is mixed, combining the contractual basis of treatment with tort law protection of life and health. Consequently, the same instance of improper treatment may result in both contractual and tortious liability, impacting the evidential model and the structure of legal argumentation.

Comparative analysis shows that German law ensures a high level of legal certainty due to the codification of the standard of medical care and the special rules of proof set out in the provisions on the treatment contract. The legislative establishment of presumptions and the possibility of redistributing the burden of proof in cases of gross medical error or defective documentation aims to compensate for the information asymmetry between patients and medical institutions. French law combines the classical model of civil liability with institutional mechanisms for out-of-court compensation. The introduction of a compensation system based on national solidarity, implemented through ONIAM, enables compensation for harm caused by medical risks or treatment complications, even in the absence of proven fault on the part of the medical professional.

Following the reform, the Italian model is characterised by a differentiation between the liability of medical professionals and that of healthcare institutions. This differentiation affects the structure of proof and the allocation of procedural risks between the parties. Meanwhile, Czech law institutionalises treatment as a specific type of contract and allows for the alternation of contractual and tortious liability, ensuring procedural flexibility in choosing the legal basis of the claim. In cross-border medical liability disputes, it was established that proof acquires a multi-level character. Substantive liability elements are determined by the chosen law, in accordance with conflict-of-laws rules, whereas procedural mechanisms for obtaining and evaluating evidence are governed by *lex fori*. Within the European Union, this system is supplemented by supranational mechanisms for determining jurisdiction, selecting applicable law and admitting evidence. This increases the predictability of the procedural aspects of cross-border disputes.

Systematising the study's findings enabled the identification of key transnational evidential risks in medical disputes, such as informational asymmetry between parties, territorial fragmentation of evidence, restrictions on access to medical data, and differences in national standards of proof. Analysis of judicial practice in Germany, France, Italy and the Czech Republic showed that compensation for these risks is ensured through a combination of procedural presumptions, expert evidence and mechanisms for redistributing the burden of proof. Such procedural balance contributes to ensuring a fair trial and increases the stability of judicial decisions in the process of their international recognition and enforcement. Further research should be directed towards the analysis of the harmonisation of standards of proof and models of compensation for harm in medical liability cases within the European Union, in particular in the light of the development of cross-border healthcare and the digitalisation of medical documentation.

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Компенсація шкоди, завданої лікарською помилкою, у міжнародному приватному праві: порівняльно-правовий аналіз

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Анотація
Метою цього дослідження було проведення систематичного порівняльно-правового аналізу підходів до визначення правових підстав для відшкодування шкоди, завданої лікарськими помилками, у правовідносинах, що мають іноземний елемент. Для аналізу нормативно-правових баз і судової практики у сфері медичної відповідальності було застосовано порівняльно-правові, формально-правові та колізійні методи поряд з методами вивчення конкретних випадків і типологічними методами. Порівняльний аналіз засвідчив, що хоча вони відрізняються нормативним формулюванням стандарту медичної допомоги та механізмами його процесуального доказування, усі розглянуті правові системи зберігають принцип вини як обов'язкову умову цивільної відповідальності за медичну шкоду. Було виявлено, що німецька модель забезпечує найвищий ступінь правової визначеності завдяки кодифікації договору про лікування та законодавчо визначеним презумпціям. Було виявлено, що чеська модель інституціоналізує лікування як специфічний договірний вид, застосовуючи критерій надання допомоги відповідно до загальновизнаних професійних медичних стандартів, допускаючи збіг договірних і деліктних кваліфікацій. Французька модель поєднує класичне тлумачення цивільної відповідальності з інституційним механізмом компенсації шкоди через національну солідарність, що реалізується через систему Національного управління з відшкодування збитків у медичних випадках. Встановлено, що італійська модель характеризується диференційованою відповідальністю між лікарями та закладами охорони здоров'я після законодавчої реформи щодо безпеки пацієнтів. На основі порівняльного аналізу було сформовано узагальнену модель доказування в медичних спорах, що мають іноземний елемент, яка об'єднує такі компоненти: матеріальні підстави відповідальності, визначені договірною або деліктною кваліфікацією; процесуальні механізми доказування, зокрема презумпції, експертні докази та перерозподіл тягаря доказування; транснаціональні фактори, з огляду на застосування колізійних норм, принцип lex fori; наднаціональні механізми Європейського Союзу щодо юрисдикції та отримання доказів. Практичне значення висновків полягає в їх потенційному використанні судами та законними представниками для прогнозування ризиків відмови у визнанні та виконанні рішень у транскордонних медичних спорах

Ключові слова:
презумпція; вина; договір про лікування; медична відповідальність/лікарська недбалість; міжнародне приватне право

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The applicability of the civil limb of Article 6(1) ECHR in the ECtHR's jurisprudence

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Abstract
The relevance of the study is rooted in the persistent tension between state sovereignty and the applicability of human rights guarantees under the European Convention on Human Rights (ECHR), particularly concerning Article 6(1) ECHR. The aim of the article was to explore how the European Court of Human Rights (ECtHR) interprets the application of procedural guarantees in cases involving sovereign state actions. The methodology employed includes a selective analysis of ECtHR case law, focusing on matters involving public and private law and the distinction between *acta jure imperii* and *acta jure gestionis*. The article demonstrated that the applicability of Article 6(1) depends significantly on whether the dispute relates to public law matters, such as tax assessments, or private law matters, such as contractual disputes. It was found that the Court generally excludes state actions in sovereign capacities from the scope of Article 6(1), while extending it to cases involving non-sovereign state activities. This distinction underscored the Court's ongoing balancing act between protecting individual rights and respecting state sovereignty. The article concluded that, despite challenges, the evolving jurisprudence of the ECtHR shows a potential for expanding the scope of human rights guarantees under the Convention. The practical value of this research lies in its contribution to the broader understanding of the ECtHR's approach, which can guide future case law and academic discussions regarding the limits of state sovereignty and the application of fair trial guarantees

Keywords:
human rights; state sovereignty; fair trial guarantees; international law; public law; judicial jurisprudence; legal interpretation

Introduction
Article 6(1) of the European Convention on Human Rights (hereinafter: the Convention, the ECHR)[1] is one of the main procedural guarantees of the Council of Europe's human rights protection system (Jones, 2023). Encompassing virtually all the protective measures needed to ensure a fair judicial process for a person, natural or legal, this provision has been interpreted by the European Court of Human Rights (the Strasbourg Court, the ECtHR) to include various elements of a fair trial (Van Drooghenbroeck & Rizcallah, 2019). As such,

[1] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

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it prescribes conditions as varied as independence and impartiality of the judicial body dealing with the case at hand and reasonableness of the examination's duration. Despite this broad scope and its fundamental importance in international human rights law, the applicability of the civil limb of Article 6(1) ECHR was interpreted to depend on whether the proceedings in a case involve elements of public or private law. As the present Article aims to demonstrate, this approach is deeply rooted in the paradigm of State sovereignty, a theoretical approach which has continued to dominate European (and international) legal space since the adoption of the Convention.

Among the extensively studied scenarios in which such logic emerges, scholars have focused on tax assessment issues and asylum and deportation cases. In those types of proceedings, the guarantees of Article 6(1) ECHR have been considered inapplicable because both activities are generally regarded as falling within the exclusive competence of States. On the other hand, in situations where States have acted rather as private actors, the ECtHR has held that the procedural guarantees of this provision are applicable. This situation is further complicated by the fact that not each and every case is clearcut, as the Court's jurisprudence includes examples of situations where the judges used their discretion to rule that Article 6(1) ECHR guarantees might, in narrowly defined circumstances, apply to public-law-related proceedings. Viewed through the lens of the concept of State sovereignty, this approach reflects the traditional public international law distinction between *acta jure imperii* and *acta jure gestionis*, an idea emanating from the field of State immunity. It is necessary to offer a novel doctrinal perspective that seeks to connects all these theoretical elements, as the most pertinent scholarly arguments do not offer a comprehensive overview of the matter (Grech, 2006; Boschiero, 2013).

Numerous scholars, for example M. Kloth (2010), A. Sanger (2016), A. Orakhelashvili (2025), have already engaged in discussing the applicability of Article 6(1) ECHR to cases where applicants sought to argue that these guarantees should prevail over the immunities of sovereign States. These questions, however, lie outside of the scope of the present research. Instead of contributing to those debates, this Article only proposes to borrow the main logic of the distinction between sovereign and non-sovereign acts to support its thesis. Since Y. Okada (2023) have attempted to analyse how the bifurcation between *acta jure imperii* and *acta jure gestionis* informs different areas of international law, the scientific objective of this research was to provide a fresh perspective on the role that State sovereignty plays in the field of human rights. The main hypothesis of this research was that the Strasbourg Court's decisions on the applicability of Article 6(1) ECHR depend on whether the procedures complained involve issues of public or private law, thus reflecting the State acts' nature: in its sovereign capacity (*acta jure imperii*) or otherwise (*acta jure gestionis*). To support its hypothesis, this Article conducted a selective analysis of relevant ECtHR jurisprudence and the Convention's preparatory works. The scarce and inconsistent character of the academic literature on this topic underpins the scientific relevance of this research.

Materials and Methods

Given the vast scope of Article 6(1), the present paper focused only on the general guarantee prescribing that everyone is entitled to a fair hearing in the determination of their civil rights and obligations. Considering that the ECtHR, as a victim of the Council of Europe's political success, has produced considerable jurisprudence (Helfer, 2008), there are 407 judgments in English alone addressing this issue, which most closely resembles the theme of this research. This number excludes decisions, some of which might be especially germane for the purposes of this article, as it is reasonable to assume that once the Court finds that a matter brought up by the applicant falls within the ambit of public law (thus, is an *actus jure imperii*), the case will most likely be resolved through an inadmissibility decision without addressing its merits. Therefore, the methodological scope of this analysis was limited to the most relevant judgments and decisions of the Strasbourg Court that identified beforehand through a literature review and manual searches on the Court's jurisprudential database (HUDOC). The prompts included, among others, the following keywords: "migration", "tax assessment", "public law", "private law", "sovereignty", "State immunity", "*acta jure imperii*", and "*acta jure gestionis*" (the last two also spelled with an "I"). The selection was additionally narrow by relying on the Registry's own method of attaching importance to cases ("Key Case" indicator on HUDOC).

In accordance with the principle of systemic integration in interpreting international law norms, according to which they should be understood in harmony with other relevant applicable rules (Rachovitsa, 2017), attention was drawn to how the United Nations Human Rights Committee interprets Article 14 of the International Covenant on Civil and Political Rights (ICCPR)[1], a provision that largely codifies the same rule as Article 6(1) ECHR. It allowed to understand whether the ECtHR's judicial reasoning on the matter aligns with those of other (quasi-)judicial international bodies in light of the standard of universality of human rights. Additionally, the resort to this UN treaty body

[1] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.

is justified by numerous references that were made to the drafts of the ICCPR during the drafting process of Article 6 ECHR (Council of Europe, 1956). Although other regional and international (quasi-)judicial bodies tasked with examining claims of alleged violations of the right to a fair trial were excluded from the scope of this research due to the latter's constraints, it should by no means be interpreted as Eurocentrism or ignorance. On the contrary, other systems' approaches might shine light on potential means of overcoming the prevalence of the idea of State sovereignty in this field in further research.

Applying the distinction between *acta jure imperii* and *acta jure gestionis* horizontally, as developed in the context of State immunity, would be methodologically incorrect, since the analysis here emphasises vertical legal relations between persons (natural or legal) and States in the context of human rights litigation. As it is commonly known, the discipline of public international law presupposes the sovereignty *equality* of all States, seeing their relations as strictly horizontal. Instead of endorsing this, the idea is merely borrowed from its original context to highlight how this logic can help explain differences in the Court's approach to the applicability of fair trial guarantees.

In this light, the following section introduced the concept of State sovereignty in public international law and the distinction between the two types of State acts mentioned above. This is followed by an overview of the conditions of applicability of Article 6(1) ECHR in its civil limb, as per the ECtHR's case law. Subsequently, the paper offered convincing examples from the Court's jurisprudence where State sovereignty considerations have influenced judicial reasoning about the applicability of fair trial guarantees. Finally, the last section summarised the findings of this Article and suggests areas for future related research.

Results and Discussion

State sovereignty and the nature of state acts. As what seems to be a consensus among international jurists suggests, the international human rights protection system remains largely State-centred. However normatively undesirable this *status quo* might be, the Council of Europe and its organs, including the ECtHR, continue the quest for a fine balance between protecting the holders of human rights and avoiding State backlash, a process which oftentimes requires sophisticated mental and legal gymnastics (Bates *et al*., 2025). In the context of this article, it will suffice to recall that the traditional understanding of State sovereignty in public international law supports the axiom that international law is based on the consent of States and is created only by States and only for them (Henkin, 1995). Although in the 2010s the field of international human rights law has begun to offer more room for the involvement of non-State actors, it, as well as the entire discipline of public international law, continues to be dominated by this paradigm. The situation was even more favourable to States in the immediate aftermath of the Second World War, when the Convention was drafted. The following passage aims to support this assertion by referring to the preparatory works of the Council of Europe's leading treaty.

Reflecting the importance of the notion of State sovereignty, the founders of the Convention discussed several issues that were considered capable of directly affecting this idea from the outset of the process. The broader context of the drafting process was that of the "hesitat[ion] to support a real transfer of sovereignty to supra-national organisations" (Kivisto & Haapala, 2023). In particular, the Belgian representative, Mr Fayat, followed a radically State-centred approach when he minimised the importance of debating the implementation of the Court's judgments, his main argument being that the parties to the Convention were "States by right of law" (Council of Europe, 1972). Authors who analyse the travaux préparatoires of the Convention more often conclude that the idea of State sovereignty ultimately prevailed over the utopian spirit of universality of human rights (Huneeus & Rask Madsen, 2018). Although at later meetings it was acknowledged that, in principle, "the proposed Convention would involve some voluntary surrender of sovereignty" (Le Moli, 2022), the very idea that it was the States themselves that had to voluntarily agree to give up part of their sovereignty in order to protect human rights indicates that their representatives were negotiating a system designed for States. Legal historians have also underlined this objective, agreeing that the aim pursued by the founders of the Convention was to minimise any risk that could lead to a loss of sovereignty beyond what was considered absolutely necessary (Bates, 2010; Walther, 2024). The subsequent evolution of the Strasbourg machinery, with the ECtHR only becoming fully operational in the 1970s and 1980s, suggests that in the early 1950s States were merely not ready to transfer their sovereignty to a supranational body.

The drafting process as Article 6 ECHR were also underpinned by strong sovereignty connotations. Mr Teitgen, one of the most prominent drafters of the Convention, addressed the concerns of several participants over potentially intrusive Strasbourg institutions, emphasising the latter's subsidiarity in the context of this article: "[i]f the verdict has been given in a regular manner by a court regularly constituted, after the plaintiffs have made use of the normal channels which the laws of their country guarantee them, then no request is receivable by the international organ" (Council of Europe, 1956). Nevertheless, the position of State sovereignty in international law and, by implications, in the ECtHR's jurisprudence should not be seen as static. As R. Bernhards (1999), a former President of the Court, wrote over twenty-five years ago, "[e]very effective

protection of individual freedoms restricts State sovereignty, and it is by no means State sovereignty which […] has priority". Thus, one of the indicators of the Court's impact is that it successfully balances between imposing more limitations on State sovereignty through its rulings and avoiding backfire from States, whose participation is crucial for a meaningful implementation of the judgments. In this historical context, the distinction between *acta jure imperii* and *acta jure gestionis* might serve as a useful tool for understanding the purpose of State sovereignty and its implications for the applicability of Article 6(1) ECHR (Table 1). This dichotomy underpins a set of rules governing State immunity and marks the boundary between acts carried out by a State in its sovereign capacity and those undertaken in a private capacity (Sun & Liamzon, 2018).

The notion of *acta jure imperii* refers to inherently governmental acts carried out by a State as a sovereign entity. These include activities such as legislation, taxation, diplomatic and military measures, all of which are exercises of sovereign authority (Orakhelashvili, 2019). This notion has been codified in the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (not yet in force but reflects partly customary international law) in Article 2(1)(b)(iii), but received little interpretation there[1]. Confirmed by numerous expert and judicial authorities[2] as a rule of customary international law, the sovereign nature of these acts makes them immune from the jurisdiction of foreign courts (International Law Commission, 1991; Moravcová, 2023). For example, in the case of Germany v. Italy (Greece Intervening)[3], crucial for the development of international law, the International Court of Justice (ICJ) held that Germany's actions during the Second World War, although manifestly illegal from the perspective of substantive rules, were acts of State sovereignty and therefore entitled to immunity under international law.

Table 1. Practical examples of *acta jure imperii* and *acta jure gestionis*

Acta jure imperii	***Acta jure gestionis***	**Not-so-clear examples**
Taxation	Contracting	State-owned companies with mixed functions
Diplomatic acts	Commercial acts	Procuring goods/services for public services
Legislation	Foreign investment	Loaning cultural property to private museums

Source: developed by the author

On the other hand, the field of *acta jure gestionis* covers acts performed by States in a manner similar to private actors, engaging in non-sovereign activities such as commercial ones (Sun & Liamzon, 2018). These acts are not immune from foreign jurisdiction and are subject to the same legal consequences as those applicable to non-State entities. The reasoning behind this distinction is that when a State engages in non-sovereign activities, it should not benefit from sovereign immunity, as this would place it in an advantageous position over private actors engaged in the same type of activities. Therefore, when a State is involved in contractual, commercial or employment disputes, its actions are not immune by virtue of its sovereignty (Grant, 2013). It is also important to understand that sometimes the boundary between the two types of acts may be unclear, and in some cases, a detailed, case-specific analysis may be necessary to classify a State's acts within this dichotomy. In complex cases of interactions between a state and private entities, a golden standard would be, where possible, to separate acts and related (in-)tangible objects into two categories based on the purpose of their use. After explaining the theoretical distinction between these two types of State acts, it is opportune to turn to the Court's jurisprudence on the applicability of Article 6(1) ECHR, before examining how the former influences the latter.

General principles of the applicability of Article 6(1) ECHR under the civil limb. Article 6(1) ECHR has several purposes in light of which its applicability should be understood. It was included in the Convention because a judicial mechanism for protecting the individual rights of each person is required by the rule of law doctrine, which underpins the entire regime (Vogiatzis, 2022). Equally, it protects individuals from the arbitrariness of national courts and ensures the fair determination of the rights and obligations of persons under the jurisdiction of each State "based on democratic principles" rather than "social privilege, chauvinism, and racial inequality" (Council of Europe, 1956). However, historically, the Court, as the sole entitled interpreter of the Convention, has understood this provision as having a broad but selective scope (Teleki, 2021). The ECtHR has limited the applicability of its civil limb to a set of proceedings, making it subject to three cumulative criteria. Thus, there must be: (1) a genuine

[1] United Nations Convention on Jurisdictional Immunities of States and Their Property (2004, December). Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf.
[2] Judgment of the European Court of Human Rights in Case No. 45197/13 "Radunovic and Others v. Montenegro". (2016, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-167803%22]}.
[3] Judgment of the International Court of Justice in Case "Jurisdictional Immunities of the State (Germany v Italy, Greece Intervening)". (2012, February). Retrieved from https://www.icj-cij.org/case/143.

dispute over a right/obligation; (2) having its legal basis in domestic law; and (3) it must be of a civil nature[1]. Each of these will be addressed separately in the following passages.

In public international law, the idea of dispute refers to a situation of "disagreement on a point of law or fact, a conflict of legal views or interests between two persons" [2]. Although the definition comes from another court's jurisprudence, it would not be incorrect to apply it here because a person may be either a natural or a legal person, and sovereign States belong to the latter group by virtue of their full legal personality in international law (Worster, 2016). In most recent ECtHR cases, the parties rarely disputed the existence of a dispute, which leads us to turn to older case law for a summary of the relevant principles.

In Benthem v. the Netherlands[3], the Strasbourg judges clarified that in the context of the applicability of Article 6(1) ECHR, the notion should not be interpreted too technically. Instead, it must be given a "substantive rather than a formal meaning", implying that the existence of such a dispute should be deduced by the Court autonomously, even when the domestic legal system regulates it strictly. Moreover, the purpose of the dispute is extended to cover issues related to the existence and determination of the scope of a civil right, both in fact and in law. Finally, in addition to being genuine and serious (conditions that exclude frivolous complaints to the Court from wasting the judges' time), the dispute should have the civil rights or obligations at stake as one of its objectives[4]. The UN Human Rights Committee's (2007) interpretation aligns with that of the ECtHR on this matter, reaffirming that the "nature of the right [or obligation] in question should be examined, rather than […] the status of one of the parties or […] the specific forum offered by national legal systems for determining certain rights [or obligations]". Practical examples of situations which the ECtHR considered to give rise to a dispute for purposes of Article 6(1) ECHR include admission to the bar, suspension of the right to practice medicine, and claim for compensation after unlawful detention (Vitkauskas & Dikov, 2012).

This is perhaps the easiest condition to satisfy out of all three. It is important to bear in mind that according to the principle of subsidiarity, in light of which national authorities should be given an opportunity to address and rectify an alleged human rights violation before the Strasbourg Court engages with it (Kleinlein, 2019), the ECtHR is not in a position to interpret Article 6(1) ECHR *ex officio* so as to create new rights that have no legal basis in the domestic legal system. Coming back to the idea of State sovereignty, here one can notice a clearcut division of labour between national and supranational levels in favour of the former's interests.

In Grzęda v. Poland[5], the judges stressed that the starting point in analysing the existence of the legal basis of a civil right is national legislation and the interpretations given to it by the highest domestic courts. Thus, in situations where national judges have analysed in a reasoned manner, with reference to the principles emanating from the ECtHR's case law, the necessity to restrict a civil right protected by Article 6(1) ECHR, the Strasbourg Court should provide very compelling reasons to substitute its own interpretation for the national one. The case of Károly Nagy v. Hungary[6] offers an example of how the quality of domestic judicial analysis in an Article 6(1) case leaves no room for hesitation in this context. The majority considered that since the national courts had logically and coherently interpreted the appellant's right to compensation after his dismissal as a pastor as being governed by ecclesiastical rather than civil law, there was no indication of manifest arbitrariness in that interpretation. A critical observer might, nevertheless, take issue with this approach, as, in doing so, the Strasbourg Court seems to give national judicial systems a degree of credit, which might, as the cases of Russia, Türkiye, and, most recently, Poland, have demonstrated, lead to breaches of fundamental democratic processes (Kurban, 2023).

Finally, most Article 6(1) cases focus on the determination of whether a right or an obligation allegedly violated are of a civil character. The Court's jurisprudence, starting with *König v. Germany*, clarifies that this notion has an autonomous meaning under the Convention, which implies that it cannot always be interpreted solely on the basis of the relevant domestic provisions, thus granting the Strasbourg judges a significant degree of discretion. Nonetheless, domestic codification of a right plays a role in the initial determination of its civil nature, as the Court has stressed that this must be done "by reference to the substantive content and effects of the right – and not to its legal

[1] Judgment of the European Court of Human Rights in Case No. 6319/21 "Fabbri and Others v San Marino". (2024, September). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-237239%22]}.
[2] Judgment of the International Court of Justice in Case "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)". (2024, February). Retrieved from https://www.icj-cij.org/case/182.
[3] Judgment of the European Court of Human Rights in Case No. 8848/80 "Benthem v the Netherlands". (1985, October). Retrieved from https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-57436%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 51357/07 "Nait-Liman v Switzerland". (2018, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22appno%22:[%2251357/07%22],%22itemid%22:[%22001-181789%22]}.
[5] Judgment of the European Court of Human Rights in Case No. 43572/18 "Grzęda v Poland". (2022, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-216400%22]}.
[6] Judgment of the European Court of Human Rights in Case No. 56665/09 "Károly Nagy v Hungary". (2017, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-177070%22]}.

classification – under the domestic law of the State concerned"[1]. Resonating with the principles applicable to identifying a dispute discussed above, what is essential in determining whether the guarantees of Article 6(1) ECHR apply to a right or obligation is the nature of the right in question, not the way it is prescribed in national law. This civil nature of the right disputes before a judicial body should be understood as opposed to criminal (covered under the criminal limb of Article 6(1) ECHR), political (covered under Article 3 Protocol 1)[2], or administrative rights.

The ICCPR's codification of a similar notion ("determination of rights and obligations in a suit at law") is more problematic[3]: as equally authentic versions of the Covenant in various languages use concepts with slightly different meanings (English: suit at law, French: *matière civile*, Spanish: *materia contenciosa*), it was the UN Human Rights Committee that had to interpret it in its subsequent practice. The Committee's approach follows a logic similar to that of the ECtHR, as the UN body has consistently reiterated that the nature of the right in question, and not the status of one of the parties to the proceedings, matters for the determination of whether there is a "suit at law" regarding the determination of civil rights or obligations within the meaning of Article 14(1) ICCPR[4]. It later became more specific, with the Committee providing a list of examples of such rights, including rights and obligations stemming from contract, property, and tort law, termination of public servants' employment, determination of social security benefits or soldiers' pension rights, or proceedings concerning the use of public land or expropriation of private property (Human Rights Committee, 2007). As will be discussed below, the ECtHR has had many opportunities to address the applicability of Article 6(1) in civil matters to many of these situations over the years. Based on this rich jurisprudence, the following section seeks to explain how the applicability of Article 6(1) ECHR to matters involving public and private law reflects the distinction between sovereign and non-sovereign acts of the State.

***Acta jure imperii* and *acta jure gestionis* in the Court's jurisprudence on the applicability of Article 6(1) ECHR**. The starting point of analysis would be the summary of relevant principles in the judgment of Denisov v. Ukraine[5], where the ECtHR noted that the guarantees of Article 6(1) may apply to disputes which domestic law regards as belonging to the field of public law, and thus as an exercise of its sovereign power. From this, it can deduce that the applicability of Article 6(1) ECHR in civil matters is not an absolute value, but a relative one, depending on the category of dispute in question. It would, therefore, be more useful to imagine it on a spectrum, with one side containing disputes in which the State acted in a sovereign manner. The opposite pole of this spectrum (Fig. 1) will include disputes concerning rights and obligations based on the State's non-sovereign activities.

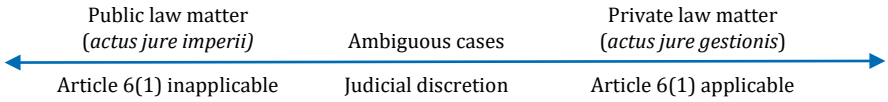

Figure 1. Applicability of Article 6(1) ECHR on a spectrum
Source: developed by the author

The first type of proceedings involving inherent governmental interests, which the Court has consistently considered not to fall within the scope of Article 6(1) of the Convention, is tax assessment. In Ferrazzini v. Italy[6], the Grand Chamber confirmed that the pecuniary nature of a tax dispute between an individual and a State is not sufficient to make Article 6(1) applicable in civil matters. The judges supported this decision by stating that "tax matters […] form part of the hard core of public-authority prerogatives, with the public character of the relationship between the taxpayer and the [State] remaining predominant". This reasoning indicates that taxation activities fall within *acta jure imperii* because of their predominantly public-law nature and are, therefore, excluded from the Strasbourg Court's scrutiny. The most recent Grand Chamber authorities on this subject confirmed that "despite the pecuniary effects which tax disputes necessarily produce for the

[1] Judgment of the European Court of Human Rights in Case No. 6232/73 "König v Germany". (1978, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57512%22]}.
[2] Judgment of the European Court of Human Rights in Case No. 14305/17 "Şelahattin Demirtaş v. Turkey (No. 2)". (2020, December). Retrieved from https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-207173%22]}.
[3] Decision of the Human Rights Committee in Communication No. 2862/2016 "Aheyeu v. Belarus". (July, 2021). Retrieved from https://juris.ohchr.org/casedetails/3188/en-US.
[4] Decision of the Human Rights Committee in Communication No. 441/1990 "Casanovas v. France". (1990, December). Retrieved from https://hrlibrary.umn.edu/undocs/html/vws441.htm.
[5] Judgment of the European Court of Human Rights in Case No. 76639/11 "Denisov v Ukraine". (2018, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186216%22]}.
[6] Judgment of the European Court of Human Rights in Case No. 44579/98 "Ferrazzini v Italy". (2001, July). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59589%22]}.

taxpayer", the civil limb of the right to a fair trial remains inapplicable to such disputes[1].

Another obvious example of an *actus jure imperii* excluded from the material scope of Article 6(1) ECHR concerns asylum and deportation matters. The Grand Chamber's judgment in Maaouia v. France offered the first authoritative statement on the inapplicability of this rule to proceedings concerning the entry, stay, or expulsion of aliens from the territory of a State. Unlike tax assessment proceedings, however, the Court considered it necessary to resort to a contextual interpretation of the Convention, together with its protocols, to argue this way. The majority was of the view that, since the Contracting Parties had decided to take on an additional obligation to guarantee the rights of foreigners by adopting Protocol No. 7 to the Convention, they "were aware that Article 6 § 1 does not apply to procedures for the expulsion of aliens"[2]. Although a different line of argumentation was followed to reach a similar conclusion, the Court's logic demonstrates that asylum and deportation issues fall within the exclusive competence of the State, since it is its sovereign prerogative to decide who has the right to enter and reside on its territory. At the same time, Judges Loucaides and Traja[3] suggested in their dissenting opinion that one of the reasons for the majority's decision was that such matters are traditionally public-law in nature, implying that their exercise derives directly from State sovereignty. One can observe similar tendencies in the UN Human Rights Committee's approach to deciding whether the guarantees of Article 14(1) ICCPR apply to migration and deportation cases. Albeit without evident references to state sovereignty, a consistent line of its quasi-jurisprudence strongly indicates that unless an instance of deportation results from the application of serious criminal sanctions, there is no room for arguing that a civil right or obligation of a person was determined in such proceedings[4,5].

Since the early years of the Council of Europe's judicial mechanism, the European Commission on Human Rights in Strasbourg has refused to recognise that issues of citizenship and nationality fall within the ambit of Article 6(1) ECHR[6]. It is indisputable that State decisions concerning citizenship and nationality are *acta jure imperii* because only the State itself has the legitimacy to decide who may be its national and who may not. They are, consequently, always regulated by means of public law. In Sergey Smirnov v. Russia[7], for instance, in which the applicant argued that the State's refusal to confirm his Russian citizenship violated his rights under Article 6(1), the ECtHR emphasised that 'neither the right to citizenship nor the right to a passport is a civil right, given that it is not of a pecuniary or otherwise of a private character'[8]. Instead, the Court held in its subsequent jurisprudence that "an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual". This logic aligns with the main argument of the present article, explaining their exclusion from the application of Article 6(1) ECHR guarantees.

In various scenarios for the applicability of Article 6(1) ECHR to public and private law matters on a spectrum, the issuing of licences for commercial activities would find its place closer to the opposite pole. In Tre Traktörer Aktiebolag v. Sweden[9], the applicant company faced the revocation of its licence to serve alcoholic beverages and claimed that, contrary to Article 6(1) of the Convention, domestic law did not provide for the possibility of judicial review of the license revocation. The respondent Government argued that since the wholesale sale of alcohol in Sweden was subject to a State monopoly, the issuance of such licences had to be strictly regulated by public-law provisions and that, therefore, the guarantees of Article 6(1) ECHR should not apply to such proceedings. However, the Court rejected the Government's objections, stating that all the 'companies concerned [were] carry[ing] on a private commercial activity, which has the object of earning profits and [wa]s based on a contractual relationship between the license-holder and the customers"[10]. Thus, since the nature of those actions of the Swedish State

[1] Judgment of the European Court of Human Rights in Case No. 49812/09 "Vegotex International SA v Belgium". (2022, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-220415%22]}.
[2] Judgment of the European Court of Human Rights in Case No. 39652/98 "Maaouia v France". (2000, October). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58847%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 39652/98 "Maaouia v France". (2000, October. Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58847%22]}.
[4] Decision of the UN Human Rights Committee in Communication No. 1341/2005 "Ermst Zundel v Canada". (2007, March). Retrieved from https://hrlibrary.umn.edu/undocs/1341-2005.html.
[5] Decision of the UN Human Rights Committee in Communication No. 1234/2003 "Ms. P.K. v Canada" (2007, March). Retrieved from https://hrlibrary.umn.edu/undocs/1234-2003.html.
[6] Decision of the European Commission of Human Rights in Case No. 17309/90 "Galip v Greece". (1994, August). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-25814%22]}.
[7] Decision of the European Court of Human Rights in Cases Nos. 41788/22 and 51028/22 "Ali Aba Kadr and Rouhi v Spain". (2024, October). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-238088%22]}.
[8] Decision of the European Court of Human Rights in Case No. 14085/04 "Sergey Smirnov v Russia". (2006, July). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-76823%22]}.
[9] Judgment of the European Court of Human Rights in Case No. 10873/84 "Tre Traktörer Aktiebolag v Sweden". (1989, July). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57586%22]}.
[10] Ibidem, 1989.

was not at the core of its sovereignty and had significant implications for private commercial interests, there was no reason to exclude them from the scope of Article 6(1) of the Convention[1].

Similarly, the Court's case-law includes a number of judgments where the guarantees of Article 6(1) ECHR were found applicable to contractual disputes between legal persons and states, because the latter's actions in concluding and (non-)performing the contracts were clearly *acta jure gestionis*[2]. A prominent example from the Strasbourg institution's jurisprudence is offered by arbitration proceedings between a company and a State, whereby arbitral awards prescribed civil rights of pecuniary nature, such as the right to demand payment of a debt, as in Regent Company v. Ukraine[3]. Returning to theoretical spectrum of the applicability of Article 6(1), these situations will represent its opposite pole, being located as far as possible from situations where the State acts in a sovereign manner. These situations, therefore, offer another example of how the dichotomy of *acta jure imperii* and *acta jure gestionis* shapes the Court's decisions on the applicability of fair trial procedural guarantees.

Since the Convention is a living instrument which has to be interpreted in the light of contemporary developments (Letsas, 2018), the Court's case law provides an example of a type of procedure which, although initially outside the scope of the civil limb of the right to a fair trial, is now included therein. By implication, the Strasbourg judges might be seen as benefiting of a degree of judicial discretion in dealing with ambiguous, not-so-clear in terms of this dichotomy, State acts. In this context, it is worth mentioning public sector employment disputes. For a very long time, the ECtHR consistently emphasised that a State's decision to dismiss a civil servant was an exercise of its sovereignty, thus not subject to supranational scrutiny (Lawson, 2018).

The change came with the Pellegrin judgment[4], where the Grand Chamber decided to introduce a new requirement for examining the applicability of the guarantees of Article 6(1) ECHR to such disputes, namely "a functional criterion based on the nature of the employee's duties and responsibilities". The French Government argued that Pellegrin, a French ministry employee, "had taken part in the exercise of [State] sovereignty", which should make his Article 6(1) claims inadmissible[5]. Dismissing the Respondent's argument, the Court established a functional approach, whereby the it would subsequently analyse whether the duties (functions) of a dismissed civil servant are quintessentially public, such as police or military functions, thus outside the scope of the ECtHR's scrutiny. Years later, in Fábián v. Hungary[6], the Grand Chamber confirmed that the *Pellegrin* logic rests on the idea of State sovereignty, stating that "it is […] for the […] States […] to identify expressly those areas of public service involving the exercise of the *discretionary powers intrinsic to State sovereignty* where the interests of the individual must give way".

In this context, the Court's judgment in Roche v. the United Kingdom deserves special attention[7]. This post-Pellegrin case was brought by a retired soldier, who developed serious health issues after having participated in chemical weapons trials. Thus, following Pellegrin, Roche's functions were inherently public and, therefore, fell outside the scope of ECtHR's scrutiny. However, the judgment was not that simple, as the overall context of the United Kingdom's legal system mattered; in a common-law State, the distinction between substantive and procedural rights played an important role for deciding on Roche's claims.

The crux of the matter under Article 6(1) ECHR was whether disputes concerning compensation for service-related injuries, claimed through a statutory pension mechanism and not ordinary tort law, touched upon determining civil rights and obligations within the meaning of this provision. The United Kingdom's Government argued that the Parliament had deliberately opted for a specialised pensions mechanism through a statute instead of allowing victims like the applicant to submit general tort claims. In line with Fábián, this choice reflects its sovereignty in legislative matters, as by delimiting the extent of the civil rights in domestic law, the State practically immunised itself from certain lawsuits under Article 6(1) ECHR. By the narrowest majority possible, the Grand Chamber ruled against a violation of the right to a fair trial, confirming that State sovereignty considerations retain their importance in the Court's jurisprudence.

[1] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[2] Judgment of the European Court of Human Rights in Case No. 13427/87 "Stran Greek Refineries and Stratis Andreadis v Greece". (1994, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57913%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 773/03 "Regent Company v Ukraine". (2008, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-85681%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 28541/95 "Pellegrin v France". (1999, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58402%22]}.
[5] Ibidem, 1999.
[6] Judgment of the European Court of Human Rights in Case No. 78117/13 "Fábián v Hungary". (2017, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-176769%22]}.
[7] Judgment of the European Court of Human Rights in Case No. 32555/96 "Roche v the United Kingdom". (2005, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-70662%22]}.

The Pellegrin logic was subsequently supplemented by two additional safeguards in Vilho Eskelinen and Others v. Finland[1]: (1) specialised national laws must expressly exclude access to court for a certain category of public servants, and (2) such exclusion must be justified on objective grounds of national interest. Here, it is also important to mention that the ECtHR has consistently held that it is a State's prerogative to decide what it considers to be a national interest[2,3], another testimony to the importance of State sovereignty: no other State or supra-national body may decide for a State how to act. Although the Vilho Eskelinen approach seems to benefit public sector employees by prescribing more protection against arbitrary acts of State as employer, it was met with criticism from sovereignty-supporting judges.

For instance, in their dissenting opinion to this judgment, judges Costa, Wildhaber, Türmen, Borrego Borrego, and Jočienė went as far as to argue that the majority overruled its previous jurisprudence and set up a precedent through an 'arbitrary interpretation' of the Convention[4]. As know from the Strasbourg judges' emphasis on the notion of legal certainty, only a compelling reason might justify a departure from the Court's established jurisprudence[5]. Such a compelling reason, according to the Vilho Eskelinen bench, was the fact that the functional approach established in Pellegrin neither simplified the analysis of related cases, nor brought above more certainty[6]. The majority, then, thought it necessary to articulate the approach used to examine the applicability of the fair trial guarantees to public sector employment matters to ensure that the protection of Article 6(1) ECHR remains effective.

This line of case law indicates that there may be room for international examination of disputes involving *acta jure imperii*, since the conditionality of the requirements which the ECtHR has imposed on States to successfully exclude public-sector employment disputes from the guarantees of Article 6(1) suggests at least "a strong presumption [that they apply] to labour disputes between public servants and their State" (Lawson, 2018). A decade later after the Court had departed from its previous case law in Vilho Eskelinen, the Czech Government in the Regner proceedings argued that "the question whether or not a State should regard as reliable from a national security point of view a person working within its central administration concerned the core of public authority prerogatives and State sovereignty"[7]. However, as national legislation of the Czech Republic did not prescribe a specialised regime regulating employment terms for civil servants, the relationship between the applicant and his employer, the State, raised concerns under Article 6(1) ECHR.

An additional argument in favour of allowing such supranational scrutiny was offered by Judge Lemmens in his concurring opinion to the Grzeda judgment[8], where he opined that the litmus test to be applicable in such situations should address the question of whether "the effective functioning or the sovereignty of the [...] State" is concerned. According to this logic, the considerations of State sovereignty have to be balanced against the founding principles of the Council of Europe's human rights protection system. In other words, although State is indeed sovereign in deciding who it employs, it should not be entitled to abuse its position of power in employment matters unless it is essentially necessary to an effective exercise of its sovereignty, hence the Vilho Eskelinen guarantees. In a way, the development of the Court's jurisprudence on this topic provides an interesting example of how the judges have continuously pushed the boundaries of State sovereignty to the extent that could be considered an encroachment upon the latter, to ensure an effective Article 6(1) ECHR protection.

Lastly, before concluding, it is worth referring to a scenario which does not easily fit into either of the approaches discussed above. Some careful commentators may point to the Court's judgments in which the guarantees of Article 6(1) were found applicable to nationalisation (or other State-led manipulations) of private property, which is intuitively an *actus jure imperii* (Tomz & Wright, 2010). The UN Human Rights Committee (2007) has mentioned this type of disputes as determining individuals' civil rights or obligations, implying that fair trial guarantees apply to them. It is true that, although in such scenarios States act as sovereigns in restricting property rights in pursuit of its interests, the ECtHR has emphasised that various fair trial guarantees

[1] Judgment of the European Court of Human Rights in Case No. 63235/00 "Vilho Eskelinen and Others v Finland". (2007, April). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-80249%22]}.
[2] Judgment of the European Court of Human Rights in Case No. 69698/01 "Stoll v Switzerland". (2007, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83870%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 13863/19 "Uab Braitin v Lithuania". (2023, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-225221%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 63235/00 "Vilho Eskelinen and Others v Finland". (2007, April). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-80249%22]}.
[5] Judgment of the European Court of Human Rights in Case No. 17056/06 "Micallef v Malta". (2009, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-95031%22]}.
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[7] Judgment of the European Court of Human Rights in Case No. 35289/11 "Regner v the Czech Republic". (2017, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-177299%22]}.
[8] Judgment of the European Court of Human Rights in Case No. 43572/18 "Grzęda v Poland" (2022, March). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-216400%22]}.

are applicable to proceedings arising from claims related to expropriation. Thus, in De Geouffre de la Pradelle v. France[1], the judges found that the applicant, part of whose property had been designated by the French State as an area of public interest, effectively limiting his property rights, "was entitled to expect a coherent system that would achieve a fair balance between the authorities' interests and his own". The Court's reasoning in this judgment provides an interesting example of how it can avoid discussing highly complex questions of State sovereignty by redirecting the issue at hand towards related deficiencies of the legal system, which in themselves trigger the applicability of the fair trial provision. In addition, in Sporrong and Lönnroth v. Sweden[2], it was established that a national expropriation programme affecting the applicants' properties could give rise to a dispute concerning civil rights.

However, a more complex approach to these judgments reveals that the applicability of Article 6(1) ECHR to such matters is triggered by the obviously pecuniary nature of the damage suffered by applicants as a result of the expropriation (and other restrictions) of their property (Tomz & Wright, 2010). This contrasts sharply with the Court's approach to the applicability of fair trial guarantees in tax assessment situations. This seeming discrepancy in approaches is resolved if turn to the above-mentioned judgment in Denisov[3], where the ECtHR stipulated that "the civil limb [of Article 6] has covered cases which might not initially appear to involve a civil right but which may have direct and significant repercussions on a private pecuniary or non-pecuniary right belonging to an individual". Thus, the Court focused on the consequences of the sovereign act of nationalisation rather than the act itself to successfully argue that Article 6(1) could apply, despite the sovereign character of the expropriation measures. This logic should be seen on a par with the ECtHR's above-explained exercise of discretion in interpreting State acts which are not-so-clear *acta jure imperii* or *acta jure gestionis* as falling within the realm of Article 6(1) ECHR. Together, these are some indicators of the Court's willingness to engage in mental gymnastics to expand the scope of conventional rights, an approach that should be seen as a positive one because it offer individuals greater protection under the Convention.

Conclusions

Through a selective analysis of ECtHR jurisprudence, the present Article has sought to demonstrate that the traditional public international law distinction between sovereign and non-sovereign acts of the State is reflected in the Court's decisions on the applicability of Article 6(1) ECHR in civil matters. The analysis suggests that even when there is a genuine dispute over a civil right or obligation, an essential condition for the applicability of this provision, the Court tends to decide that it does not fall within the scope of Article 6(1) of the Convention when the issues raised are of a public law nature and represent the exercise of State sovereignty. Examples from the Court's case law include matters of asylum, deportation, and taxation, all typically regarded as *acta jure imperii*, leading us to the conclusion that the paradigm of State sovereignty continues to play an important role in the Convention system. In this light, academics might use the findings of this Article to further emphasise the analytical and practical strength of the doctrine of State sovereignty.

However, it would be wrong to conclude that the European system of human rights protection is incapable of meeting contemporary challenges due to being anchored in the idea of State sovereignty, especially given that in the 2010s several scholars have sought to challenge the rigidity of the latter concept. As shown by the example of how the Court's approach to disputes relating to employment matters in the public sector has evolved, this perspective is not one set in stone, and social developments could affect the applicability of fair trial guarantees to sovereign acts. In fact, the Court itself has acknowledged that the majority of the Convention rights, including those of non-pecuniary nature, should be treated as 'civil rights' for the purposes of Article 6(1) ECHR.[4] Likewise, the UN Human Rights Committee clearly explains that the scope of these guarantees is not exhaustive and may cover other disputes between individuals and States which must nonetheless be assessed on a case-by-case basis, depending on the nature of the right in question. It is also important to note that even in a case as clear-cut an *actus jure imperii* as taxation, Article 6(1) of the ECHR will be applicable to related disputes if criminal law-type sanctions are involved (Case Jussila v Finland). This difference suggests that the prerogatives of State sovereignty are seen as requiring more supranational scrutiny where they might result in harsher punishments for individuals. The scope of the civil limb of Article 6(1) ECHR, therefore, despite initially being limited to *acta jure gestionis*, is evolving and now extends beyond it.

[1] Judgment of the European Court of Human Rights in Case No. 12964/87 "Geouffre de la Pradelle v France". (1992, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57778%22]}.
[2] Judgment of the European Court of Human Rights in Cases Nos. 7151/75 and 7152/75 "Sporrong and Lönnroth v Sweden". (1982, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57580%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 76639/11 "Denisov v Ukraine". (2018, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186216%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 45835/95 "Shapovalov v Ukraine". (2012, July). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-112570%22]}.

Nevertheless, it would be too ambitious to expect that more disputes related to the exercise of State sovereignty will soon follow the example of labour disputes. In the poetic words of the judges of the International Criminal Tribunal for Former Yugoslavia (case "Prosecutor v Tihomir Blaskic"), States are incredibly jealous of their sovereignty and related prerogatives. This jealousy becomes toxic when politicians anchor their disagreement with the decisions of international (judicial) bodies in it. The situation of the European Union shows that even the most progressive and results-oriented States are not yet ready to give up their sovereignty in matters of taxation. What this Article suggests, instead, is that disputes concerning asylum and deportation represent an area on which future research could focus. The Court's reasoning in Vilho Eskelinen, where the judges decided that the guarantees of Article 6(1) could be applicable to disputes involving *acta jure imperii*, indicates that such a change is possible only under certain, strictly defined, conditions. This approach is reasonable, because to argue otherwise would mean advocating for an extensive encroachment on State sovereignty, respect for which remains crucial for the ECtHR's effectiveness and legitimacy. However, and especially in light of the ambiguous acceptance in the Court's case law of the importance of respecting and protecting the rights of asylum seekers and migrants, particularly in the anticipation of the 2026 Chișinău meeting of the Committee of Ministers, theorists might start developing a theoretical framework of conditions under which the Strasbourg judges might consider a transition analogous to that in public sector employment disputes.

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Застосовність цивільного аспекту статті 6(1) ЄКПЛ у практиці ЄСПЛ

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Анотація
Актуальність дослідження пов'язана з постійною напруженістю між державним суверенітетом і застосовністю гарантій прав людини згідно з Європейською конвенцією з прав людини, зокрема в контексті статті 6(1). Метою дослідження був аналіз тлумачення Європейським судом з прав людини застосування процесуальних гарантій у справах, що стосуються дій суверенних держав. Використана методологія передбачала вибірковий аналіз практики Суду з акцентом на питаннях, що стосуються публічного та приватного права, розмежування між *acta jure imperii* та *acta jure gestionis*. У статті продемонстровано, що застосовність статті 6(1) суттєво залежить від того, чи стосується спір питань публічного права, таких як податкові нарахування, чи питань приватного права, таких як договірні спори. Встановлено, що Суд загалом виключає дії держав у суверенній якості зі сфери застосування статті 6(1), поширюючи її на справи, що стосуються діяльності несуверенних держав. Це розмежування засвідчує постійне балансування Суду між захистом прав особи та повагою до державного суверенітету. Сформульовано висновок, що, попри складнощі, розвиток судової практики Суду демонструє потенціал для розширення сфери гарантій прав людини згідно з Конвенцією. Практична цінність цього дослідження полягає в його внеску в розширення розуміння підходу Суду, що може спрямувати судову практику й академічні дискусії щодо меж державного суверенітету та застосування гарантій справедливого судочинства

Ключові слова:
права людини; державний суверенітет; гарантії справедливого судочинства; міжнародне право; публічне право; судова практика; юридичне тлумачення

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